
(1954) 05 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Case No"s. 389, 661 and 690 of 1953

Jwala Prasad

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-05-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 All 638 : (1954) 2 LLJ 698

Hon'ble Judges : Malik, C.J;V. Bhargava, J

Bench : Division Bench

Advocate : Rajeshwari Prasad, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Malik, C.J.—These writ petitions have no force. They have been filed by three Patwaris who had tendered their resignations which were accepted by the Government, and they now claim that they should have been allowed to continue in service. Learned counsel state that the facts of the three cases are similar and the same point arises in all the three. We will, therefore, give the facts of one case and this judgment will govern the other two cases.

2. In Miscellaneous Writ Case No. 389 of 1953 Jwala Prasad was appointed Patwari of Akoraha circle, district Banaras in the year 1942. Towards the end of the year 1952 and beginning of 1953 there was a certain amount of agitation among the Patwaris as they considered that their terms and conditions of service were not satisfactory. On 2-2-1953 Jwala Prasad sent a letter of resignation, which is annexure A to his affidavit. The first paragraph of this letter ends with the words "Atah apne pad se tyag patra de deta hun", which means "I am, therefore, tendering my resignation". The last paragraph of this resignation letter is as follows :

"Atah main yen tyag patra Sriman ji ki sewa men preshit karke prarthana karta

hun ki tarikh 3-3-53 tak mera patra swikar karke mujhe is karya se mukta karneki kripa karen anyatha is tithi ke paschat main is pad ke karya ka uttar dai na rahunga aur apne pad ko karya mukt samjhunga. Tarikh 2-2-53.";

which can be translated as follows :

"I am, therefore, sending this my letter of resignation to you with the request that you may kindly accept it by the 3rd of March 1953 and relieve me of my responsibilities, otherwise after the expiry of the date I shall consider myself free of the responsibility of this office."

On 5-2-1953, the Land Reforms Commissioner, U. P. issued a circular letter No. 146-196/(4)-/393, dated 5-2-1953, directing all district officers to accept such resignations forthwith and not to wait until 3-3-1953. On 10-2-1953, the resignation of Jwala Prasad was accepted by the Sub-Divisional Officer as he was the appointing authority. Pending the transfer of charge, the petitioner submitted an application on 24-2-1953, for withdrawal of his resignation and for his re-employment as Patwari. No orders were passed on this application as Government's orders were awaited and on 7-3-1953, a G. O. No. 2627/IB was issued that those Patwaris who had withdrawn their resignations before they were ordered to hand over charge and those who had applied for withdrawal after the acceptance of their resignations may be re-employed as Lekhpals provided they had not attained the age of 57 years, 6 months by 31-3-1953, & had an excellent record of work and had not taken an active part in the agitation. In accordance with Government's directions the Land Reforms Commissioner issued a D. O. No. 2658-2705/4-104/. 53P, dated 30-3-1953, which substantially reproduced the Government order mentioned above.

3. It is said in the counter-affidavit that as Jwala Prasad's Character-Roll showed 18 adverse entries made against him and his record of service was found to be unsatisfactory, the Sub-Divisional Officer did not consider him fit for re-employment and he was, therefore, not re-employed and was asked on the 8th of April, 1953, to hand over charge.

4. In the rejoinder affidavit Jwala Prasad has denied that his service record was bad. But a certified copy of the character-roll is on the record and it shows that he was fined, suspended and reduced on a number of occasions and it can by no means be said that his service record was good. In paragraph 3 of the rejoinder affidavit Jwala Prasad states that he did not receive any order dated 10-2-1953, directing him to hand over charge. It is, however, not denied in the rejoinder affidavit that an order was passed on that date by the Sub-Divisional Officer accepting his resignation, as deposed to in paragraph 3 of the affidavit of Sri Baij Nath Singh.

5. The facts, therefore, are that Jwala Prasad tendered his resignation on 2-2-1953; that in that resignation he wanted to be relieved by 3-3-1953. On 10-2-1953, the Sub-Divisional Officer accepted the resignation. On 24-2-1953, he sent his application for permission to withdraw his resignation. No question of

withdrawal could then arise, his resignation having been already accepted. Even ii his withdrawal of resignation application had been received before the resignation was accepted, he could not claim an absolute right to withdraw his resignation. The resignation was unconditional, and whether he would be permitted to withdraw chat resignation was a matter within the discretion of the appointing authority. We do not want to express any opinion on the question whether if the resignation had been conditional, the party tendering it could claim a right to withdraw it, as the point has not arisen in this case. After his resignation was accepted on 10-2-1953, he could only be re-employed and the re-employment had to be in accordance with the directions issued by the Government in Government Order dated the 7th of March. The petitioner could not claim that he had a legal right to be re-appointed. His character-roll was not satisfactory. The Sub-Divisional Officer being of that opinion, he decided not to reappoint the applicant. This he was entitled to do and the applicant cannot make a grievance of it in a writ petition under Article 226 of the Constitution. The application has, therefore, no force and is dismissed with costs.