
(1996) 01 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 3743 of 1995

Jyotirmoy Mohapatra

APPELLANT

Vs

Indian Tourism Development Corpn. and Others

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 81 CLT 526 : (1998) 3 LLJ 70

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; P.K. Misra, J

Bench : Division Bench

Advocate : M.K. Misra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The petitioner in this writ application has prayed for quashing the order dated December 31, 1994 (Annexure 20) accepting the resignation of the petitioner. He has also prayed for a direction for enquiring into the harassment and torture undergone by him and to pay him compensation.

2. The petitioner was initially appointed as Accounts Clerk in the year 1988 under I.T.D.C. and was posted in Hotel Kalinga-Ashoka at Bhubaneswar. It is alleged that though the petitioner was basically appointed as Accounts Clerk having no specific knowledge about kitchen control, he was asked to control work in kitchen at the behest of opposite party No. 4. The petitioner reluctantly joined in the kitchen control work in the year 1993. When the petitioner was on leave, opposite party No. 3 wrote to the petitioner alleging certain discrepancies and the petitioner submitted letter dated January 27, 1993 (Annexure 1) explaining the situation and seeking for an additional help to enable him to work properly. It is further alleged that opposite party No. 4 started harassing the petitioner. It is further alleged that opposite party No.5 due to personal malice and bias harassed the petitioner and even threatened to kill him with the assistance of opposite party No. 5's own son. Though the aforesaid aspect was brought to the notice, no action was taken. On the other hand. the petitioner was placed under

suspension on February 12, 1993 and subsequently a disciplinary proceeding was initiated. The petitioner had denied the allegations made against him. However, opposite party No. 4 had appointed one Shri Harmohan Jena, Advocate, as the Inquiry Officer, though no such provision was there in the Regulations. Ultimately, an inquiry report was submitted against the petitioner and the petitioner was asked to show cause as to why he could not be dismissed. Subsequently, opposite party No. 4 passed an order of dismissal on September 1, 1993 as per Annexure 8. The petitioner had preferred appeal. The appellate authority by order dated November 18, 1993 reinstated the petitioner, but directed for stoppage of three annual increments with cumulative effect as per Annexure 9. It is further alleged that even thereafter the petitioner was further harassed. The incidents of such alleged harassment have been mentioned in the writ petition as per various documents and it is not necessary to recount in detail all the documents. Ultimately, it is alleged that being oppressed by severe mental tension, the petitioner submitted letter dated December 8, 1994 styling it as resignation. The said letter is extracted hereunder :--

"To

The General Manager, Bhubaneswar, Hotel Kalinga Ashoka, Dt/-8-12-1994.
Goutam Nagar, Bhubaneswar

Sub :-- Resignation in respect of Jyotirmoy Mohapatra, Accts. Clerk.

Sir,

It is to inform you due to ILLEGAL PUNISHMENT OF DISMISSAL through FRAUD, BIAS, MALA FIDE ENQUIRY PROCEEDINGS, providing the job of S.T. Assessment work of 1992-93 (DISMISSAL PERIOD WORK), Failed to give justice, NON-HANDLING OVER OF CHARGES OF CASHIER, THREATENING (sic) ME FROM SERVICE though efficiently discharging duties with necessary record for the same. I am submitting herewith my resignation with effect from December 8, 1994 (F.N.) since you have VICTIMISED ME as referred above.

Thanking you.

Yours faithfully, Sd/- (JYOTIRMOY MAHAPATRA) Accounts Clerk."

It is alleged that before acceptance of the so-called conditional resignation letter, the petitioner submitted, a representation on December 30, 1994 which has been annexed as Annexure-19. It is further alleged in the writ petition that inspite of withdrawal of the resignation as per Annexure-19, opposite party No. 4 illegally accepted the resignation by order dated December 31, 1994 to be effective from January 7, 1995. i.e. on completion of one month from the date of resignation. The said order has been annexed as Annexure 20 and is being impugned in this writ application.

3. Opposite party No. 4 in his counter- affidavit has denied about the alleged harassments of the petitioner. He has specifically denied about Annexure-19

having been submitted by the petitioner. Opposite party No. 4 has further contended in the counter-affidavit that after acceptance of the resignation, the petitioner has handed over charge on January 7, 1995 as would be evident from letter of the petitioner dated January 7, 1995 (Annexure A/4). Opposite party No. 4 has further referred to the various letters of the petitioner claiming gratuity and provident fund after the acceptance of resignation letter. In short, it is contended that the resignation having been duly accepted, there is no cause of action for the petitioner to claim any relief in this writ application.

4. Though originally the writ application had been filed through Advocates, subsequently, the Advocates have withdrawn their power and the petitioner has been conducting his case in person. Several letters written by the petitioner putting forth his grievance are on record. On the date of final hearing, the petitioner was heard in-person. While hearing the petitioner and learned counsel for the opposite parties, it was suggested to the counsel for opposite party No. 4 to obtain instruction and to explore the possibility of reinstating the petitioner in service without pecuniary benefit for the intervening period. While the counsel for opposite party No. 4 wanted some time to obtain instruction in the matter, the petitioner-in-person submitted that he is no longer interested in being reinstated in service as he apprehended further harassment at the hand of the Management. Instead, the petitioner submitted that compensation may be paid.

5. The petitioner claims that he submitted the letter of withdrawal of resignation (Annexure-19) on December 30, 1994. This allegation of the petitioner has been denied in the counter-affidavit. There is no intrinsic material on record to support the assertion of the petitioner that indeed Annexure-19 had been submitted before the proper authority on December 30, 1994. On the other hand, documents such as Annexures-A/4, B/4 and C/4 which have been written by the petitioner soon after he was relieved from service belie the submission of so-called withdrawal letter. Therefore, it is difficult to accept the contention of the petitioner that he had withdrawn his earlier letter of resignation. However, it is clear from the various documents filed by either of the parties including the letters written by the petitioner to the High Court from time to time, that under some mental strain and pressure, the petitioner had submitted the letter dated December 8, 1994. Ordinarily in the present days of unemployment nobody gives up a job unless there is some compelling reason. Though in a proceeding under Article 226 of the Constitution it is difficult to arrive at the truth regarding alleged harassments et cetera, it can be reasonably concluded that the petitioner had submitted the letter dated December 8, 1994 under some mental pressure and tension. From the order of acceptance of resignation under Annexure-20. it becomes clear that thirty days' notice is required for resigning from service. Annexure-18 did not indicate anything and did not purport to be a notice. It was also not an unconditional resignation as would be clear from the concluding sentence to the effect :--

"..... I am submitting herewith my resignation with effect from December 8,

1994 (F.N.) since you have VICTIMISED ME as referred above."

Since no period had been indicated and it was not unconditional, prima facie it could not have been treated as letter of resignation in accordance with the relevant service regulation. However, as the petitioner has subsequently accepted gratuity and provident fund etcetera, it is possible to come to a conclusion that he has acquiesced in the matter and may not be entitled to reinstatement as such. Moreover, as already indicated earlier, the petitioner while appearing in-person has made a statement in Court that he is not interested in further continuing in service under opposite parties 1 to 5. It is evident from the order dated December 31, 1994 that the petitioner was an experienced hand and his resignation had been reluctantly accepted. About six years' service has been wiped away because of the momentary indiscretion of the petitioner in submitting resignation letter evidently under some mental strain. It appears that the petitioner has already withdrawn his gratuity and provident fund. In the interest of justice and to ameliorate the hardship sustained by the petitioner and keeping in view the relative financial conditions of the parties, taking a very humane view of the matter, it is thought fit and proper to direct the opposite parties to pay a sum of Rs. 20,000/- (Twenty thousand rupees) as an ex gratia payment to the petitioner in order to enable the petitioner to start afresh any new opening.

6. With these observations, the writ application is disposed of and the opposite parties are directed to pay a sum of Rs. 20,000/- (Twenty thousand rupees) to the petitioner within a period of three months.

7. There shall be no order as to costs.

D.P. Mohapatra, Actg. C.J.

8. I agree.