

(2010) 09 SHI CK 0239
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 7531 of 2008

Kartar Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Constitution of India, 1950 — Article 217(1)

Citation : (2010) 3 ShimLC 223

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that the Petitioner was appointed as Trained Graduate Teacher on regular basis on 2.3.1967. He was promoted as Head Master in the month of 1994. Petitioner submitted an application/notice/request seeking pre-mature retirement on 2.6.1997. He withdrew the same on 28.8.1997. He was informed on 24.9.1997 that he will be allowed to seek premature retirement on 31.3.1998. Petitioner also submitted another application dated 16.10.1997 seeking withdrawal of earlier application. He was promoted on ad hoc basis as Principal on 28.5.1999. He joined his duties on 7.7.1999. He was permitted to perform his duties upto 31.10.1999.

2. Mr. Ajay Chandel has strenuously argued that his client has submitted application/request/notice seeking premature retirement on 2.6.1997. He has withdrawn the same before its acceptance on 28.8.1997. He then contended that his client was permitted to discharge his duties upto 31.10.1999. However, he has not been paid the retiral/pensionary benefits.

3. Mr. P.M. Negi has vehemently argued that in fact the application/notice of the Petitioner was accepted on 24.9.1997 and the retirement was to be effected with effect from 31.3.1998. He further contended that in these circumstances Petitioner could not continue beyond 31.3.1998. Petitioner was re-employed with effect from 1.4.1998 to 31.10.1999 and the salary etc. for this period was paid

to him.

4. I have heard the Learned Counsel for the parties and have perused the pleadings carefully.

5. Petitioner submitted application seeking premature retirement on 2.6.1997. He sent application/request/notice on 28.8.1997 seeking withdrawal of application dated 2.6.1997. Thereafter he also made representation on 16.10.1997. Petitioner has not disclosed in the petition that his request/notice for premature retirement was accepted on 24.9.1997. It has come in the reply of the Respondent-State that the request of the Petitioner seeking premature retirement was accepted on 24.9.1997. However, the retirement had to be given effect with effect from 31.3.1998.

6. Petitioner has been promoted on ad hoc basis after 31.3.1998, i.e. 28.5.1999, as Principal. He joined his duties on 7.7.1999. He was permitted to discharge his duties against the post of Principal till his retirement, i.e. 31.10.1999. Petitioner submitted application/request/notice seeking premature retirement on 2.6.1997 and before acceptance of the same he had made representation on 28.8.1997 for withdrawal of the request. Whether a request for withdrawal of the notice for voluntary retirement if received before the date of actual retirement can be considered or not, the State has issued instructions on 16.9.1980, which read thus:

The request for withdrawal of notice if received before the date of actual retirement should be considered by the competent authority and the request should be allowed if the said authority is satisfied that:

(a) there has been substantial change in the circumstances which led the Government servant to seek retirement;

(b) the conduct of the Government servant after submitting notice has not been such as unworthy of a Government servant and he has not joined any political activity during this period.

7. In the instant case, Petitioner had withdrawn the notice seeking voluntary retirement before its acceptance. In these circumstances, Respondent-State could not issue letter dated 24.9.1997. An interesting aspect of this case is that though the Respondent-State has stated in the reply that the notice/request seeking voluntary retirement on health ground was accepted on 24.9.1997, despite that Petitioner was promoted on ad hoc basis, as Principal. He was permitted to join his duties as Principal on 7.7.1999 and thereafter he was permitted to superannuate on 31.10.1999.

8. Their Lordships of the Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , have held that the general principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to

terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. Their Lordships have held as under:

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/ or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right, or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked hereafter. But, if he by such Writing chooses to resign from a future date, the act resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

9. Their Lordships of the Hon"ble Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, have held that the notice of voluntary retirement can be withdrawn at any time before retirement becomes effective notwithstanding any rule providing for obtaining of specific approval of the concerned authority as condition precedent to withdrawal of notice. Their Lordships have further held that notice of voluntary retirement stands on par with letter of resignation. Their Lordships have held as under:

8. The facts, therefore, are that the Appellant offered to resign from his service by the letter dated 24th December, 1980 with effect from 31st March, 1981 and according to the Appellant his resignation would have been effective, if accepted, only from 31st March, 1981. Before the resignation could have become effective the Appellant withdrew the application by the letter dated 31st of January, 1981, long before, according to the Appellant, the date the resignation could have been effective. In the meantime, however, prior thereto on the 20th of January, 1981 the Respondent has purported to accept the resignation with effect from 31st March, 1981. The appropriate rule Sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a Government servant shall be precluded from withdrawing his notice except with the specific approval of such authority. The proviso stipulates that the request for withdrawal shall be made before the

intended date of his retirement. That had been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority.

9. Learned Counsel appearing for the Appellant contended before us that this rule was bad as violative of the Fundamental Rights of Citizens. Challenge to the rule was however not made before the High Court on this ground. He, however, contended that if the rule be read as consistent with the constitutional requirements of reasonableness which is well accepted rule of construction, then the Government could not withhold approval to the withdrawal of resignation without any rhyme or reason. The counter-affidavit filed in this proceeding by Shri Majgaonkar, who is the Respondent No. 2 in this appeal reveals very little as to why the sanction was withheld. It is stated in paragraph 5 of the said affidavit that it was not in the knowledge of the Respondent as to what prompted the Appellant to request the withdrawal. What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the Government from withholding the withdrawal. In this respect the Government affidavit certainly lacks candour. In appropriate cases where the Government desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the Government to state those reasons. There may be hundred and one situations where a situation or opportunity like this may be used by, the Government to ease out a disgruntled or reluctant or troublesome employee. It was further stated that there were guidelines which were laid down by the O.M. No. 24(57)-E-V32 dated 24-12-1952 for considering and deciding in the matter of accepting or refusing the withdrawals of notices of voluntary retirement. What part of the guidelines was violated by the Appellant was not indicated or spelled out in the said affidavit. We would advert to certain guidelines and examine if these were violated later. It is only stated that the application for withdrawal was considered in the light of the said guidelines and the request was turned down appropriately. It was further stated that the notice of termination of service or of retirement is a unilateral act whereby the officer communicates his intention to dissolve the contract of service and unlike resignation it operates without the consent of the other party. It is, therefore, submitted that once notice was given it became operative immediately, if it was received by the Government and automatically brought about the dissolution of contract after the expiry of the notice period. We are unable to accept this submission and this position. The dissolution would be brought about only on the date indicated, i.e., 31st of March, 1981; up to that the Appellant was and is a Government employee. There is no unilateral termination of the same prior thereto. He at liberty, and entitled independently without Sub-rule (4) of Rule 48-A of the Pension Rules, as a Government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation.

12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The Appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the offer to retire and withdrawal of Appellant's to the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the Respondent is to blame and not the Appellant.

10. Their Lordships of the Hon"ble Supreme Court in J.N. Srivastava Vs. Union of India (UOI) and Another, have held that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. Their Lordships have held as under:

3. The short question is whether the Appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3.10.1989 which was to come into effect from 31.1.1990. It is true that this proposal was accepted by the authorities on 2.11.1989. But thereafter before 31.1.1990 was reached, the Appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11.12.1989. The said request permitting him to withdraw the" voluntary retirement proposal was not accepted by the Respondents by communication dated 26.12.1989. The Appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the Appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta Vs. Union of India (UOI) and Anr, . In view of the aforesaid decision of this Court it cannot be said that the Appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for

cancellation of voluntary retirement proposal was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the Appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26.12.1989 and directed the Respondent to treat the Appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the Appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The Respondents authorities will have to make good to the Appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amounted other retirement benefits already paid to the Appellant in the meantime upto the date of his actual superannuation. It was submitted by learned Senior Counsel for the Respondents authorities that no back salary should be allowed to the Appellant as the Appellant did not work and therefore, on the principle of "no work no pay", this amount should not be given to the Appellant. This submission of learned Senior Counsel does not bear scrutiny as the Appellant was always ready and willing to work but the Respondents did not allow him to work after January 31, 1990. The Respondents are directed to make available all the requisite monetary benefits to the Appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the Respondents at the earliest.

11. In the instant case, Petitioner's case is on better footing. He had requested vide notice/application dated 2.6.1997 for premature retirement. The same was withdrawn on 28.8.1997. Petitioner's request seeking premature retirement was accepted on 24.9.1997. His date of retirement was fixed as 31.3.1998. However, before this date, Petitioner submitted one more letter on 16.10.1997 seeking withdrawal of earlier application/ notice/proposal for voluntary retirement.

12. In Shambhu Murari Sinha Vs. Project and Development India and Another, the question was whether it was open to a person having exercised option for voluntary retirement to withdraw the said offer after its acceptance but before it is made effective, their Lordships have held that the resignation in spite of its acceptance, can be withdrawn before the "effective date". Their Lordships have held as under:

5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the Appellant by his letter dated 18.10.1995

was accepted by the Respondent-management by their letter dated 30.7.1997, the Appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the Appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta Vs. Union of India (UOI) and Anr, ; J.N. Srivastava Vs. Union of India (UOI) and Another, and Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the Appellant shall be allowed to continue in service with all consequential benefits. There will, however, be" no order as to costs.

13. Their Lordships of the Hon"ble Supreme Court in The Secretary, Technical Education, U.P. and Others Vs. Lalit Mohan Upadhyay and Another, have held that resignation of a Government servant or functionary who cannot under the conditions of his service/office give up his service/office by his own unilateral act of tendering resignation, normally becomes effective and his service/office tenure gets terminated when the resignation is accepted by the competent authority. The employee is entitled to withdraw his resignation before its acceptance. Their Lordships have held as under:

17. The general principle is that a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, gives up his service/or office normally the tender of resignation becomes effective and his service/or office tenure gets terminated when it is accepted by the competent authority. Thus, having regard to the letter of resignation (Annexure P-2), in the present case, there can be no doubt that Shri L.M. Upadhyay had in his letter dated 6.9.1993, indicated his unequivocal intention to resign in the clearest possible terms with immediate effect. The resignation was tendered by Shri Upadhyay voluntarily without any pressure or coercion from the Principal of the College as recorded by all the Inquiry Officers in their respective fact finding reports and the counter allegation of Shri Upadhyay against the Principal was found unwarranted and unfounded. The Principal in fact, had protected the reputation, saved the future career and unnecessary humiliation and embellishment of Shri Upadhyay from the students, staff members and teachers of the College by permitting him to leave the College immediately before his letter of resignation was forwarded to the competent authority for its acceptance.

18. We have carefully gone through the representation/complaint dated 10.9.1993 (Annexure P-3) submitted by Shri L.M. Upadhyay to the Governor, the

Chief Secretary and the Secretary, Technical Education. There is no whisper in the said representation that he intended to withdraw his letter of resignation dated 6.9.1993. Thus, finding of the High Court that Shri L.M. Upadhyay had withdrawn his letter of resignation dated 6.9.1993 by a subsequent letter dated 10.9.1993 was not born out from the record. Similarly, the High Court is not right in holding that the letter of resignation dated 6.9.1993 submitted by Shri L.M. Upadhyay was accepted by the State Government and not by the Board of Governors is not tenable. As noticed above, the letter of resignation tendered by Shri L.M. Upadhyay to the Principal was forwarded by the Principal on the same day to the Board of Governors for its acceptance with immediate effect with a request to waive the period of notice of one month required to be given by the employee before tendering his resignation. The documents marked as Annexures P-6 and P-7 would clearly and plainly establish that the letter of resignation tendered by Shri L.M. Upadhyay was accepted by the competent authority after receipt of the inquiry reports of the inquiry officers. It is not in dispute that the Chief Secretary was the Chairman of the Board of Governors of the College and the Joint Secretary of the Department of Technical Education, State of U.P., had only conveyed the decision of the acceptance of the resignation taken by the Chairman, Board of Governors, to the Principal of the College. In that view of the matter, it cannot be held that the letter of resignation of Shri L.M. Upadhyay was accepted by the Principal of the KEC or by the State Government as submitted by Respondent No. 1.

14. Accordingly, in view of the observations made hereinabove, the petition is allowed. Letter dated 24.9.1997 is quashed and set aside. Petitioner shall be deemed to be in continuous service upto 31.10.1999. Respondents are directed to release the pensionary/retiral benefits to the Petitioner within a period of three months from the date of production of certified copy of this judgment by the Petitioner. No costs.

The appeal is disposed of in the aforesaid terms.