
(1999) 11 PAT CK 0101
In the Patna High Court
Case No : C.W.J.C. No. 11018 of 1995

Krishnamber Jha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2000) 4 PLJR 100

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Ramanand Kumar, Vivekanand Kumar and Pawan Kumar Thakur, for the Appellant; Sandeep Mishra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—Heard learned counsel for the parties. The subject matter of challenge in this writ petition is the order dated 3.11.1995 and 15.11.1995 which was passed by the respondent-Corporation declining to accept the petitioner's letter for withdrawal of his initial offer for voluntary retirement under the Voluntary Retirement Scheme.

2. The short facts of the case are as follows :

On 19th June, 1995 the petitioner applied for voluntary retirement from the post of Sr. Supervisor Assistant with the said Corporation. Before the said offer of the petitioner for voluntary retirement could be accepted the petitioner sent subsequent letter dated 24th June, 1995 for withdrawing his previous letter dated 19.6.1995.

3. The matter was kept pending with the authorities for some time, and the petitioner was allowed to continue in service. Ultimately, by the order dated 3rd November, 1995 which is impugned in this writ petition the petitioner was ordered to be retired from service with effect from 15th November, 1995. Thereafter, office order dated 15th November, 1995 was issued releasing the

petitioner and several other employees in terms of their initial prayer for voluntary retirement.

4. One of such employee whose name is mentioned in the office order dated 15.11.1995, namely, Sri Armanda Kumar challenged the said order by filing a writ petition before this Court. The said writ petition was numbered as C.W.J.C. No. 9396 of 1995. The facts of that case are more or less identical. In the case of Armanda Kumar the learned Judge after hearing the counsel for the parties accepted the plea of the petitioner and allowed his prayer for withdrawing the offer of the voluntary retirement, and quashed the impugned order at Annexure-3.

5. Learned counsel for the Corporation has tried to distinguish the case of the present petitioner from the case of Sri Kumar, inter alia arguing that after the order was passed by the respondent-Corporation on 3rd November, 1995 and on 15th November, 1995, and after the writ Petition was filed before this Court in the Month of December, 1995 challenging those orders, the petitioner accepted the Entire benefit arising out of voluntary Retirement from the office of the respondent-Corporation in the month of January, 1996. Therefore, the petitioner is not entitled to challenge the action of the respondent-Corporation. Learned counsel also submitted that the petitioner waived his right to challenge the action of the respondent. In support of his contention learned counsel has relied upon two decisions of this High Court, the first of which is the full Bench decision in the case of B.B.A., Kha & ors. Jahir Hus-sain, reported in 1980 B.B.C.J., 404. In the aforesaid full Bench decision, the facts of the case were that the landlord withdrew out of time deposit of rent made by the tenant. The Court held that since those deposits were withdrawn by the landlord, they are valid deposits by the tenant, and the tenant's defense cannot be struck off in view of the fact that the landlord withdrew the out of time deposits and the withdrawal in the facts of that case will amount to waiver of the landlord's right to challenge that those deposits are invalid deposits.

6. This Court with great respect does not find any relevance of the principle enunciated in the Full Bench decision to the facts of this case. In the decision of this Full Bench, parallel rights have come into play, namely, by the landlord's withdrawal of the out of time deposits made by the tenant the right of the landlord to contend that those deposits are invalid deposits does not survive, and if the landlord cannot question those deposit as invalid ones, the tenant's right to plead his defense also is not extinguished,

7. But in the instant case nothing of the sort has been taken place. By petitioner's demand to withdraw his offer for voluntary retirement, no third party or parallel right has come into force even by subsequent acceptance of the payment under the scheme. So in these facts it cannot be said that the petitioner cannot challenge the impugned order passed by the respondent-Corporation.

8. The other judgment on which reliance has been placed is in the case of Diwan

Lai vs. Sardar Ballabh reported in 1986 P.L.J.R., 473. In that decision which arose out of a civil suit Between the parties, the Court granted the prayer for amendment of the plaint Under Order-6 Rule-17 of the C.P.C. It is well known that the prayer for amendment of plaints are granted quite liberally. In that case it was granted upon payment of cost, and the amount of cost was accepted by the defendant-appellant, and therefore, in the facts of that case, the learned Judges of the Division Bench came to a finding that the defendant can not challenge the order for amendment subsequently. In the instant case the fact situations are totally different and the ratio in Diwan Lal (supra) cannot be applied

9. Apart from that the learned counsel for the petitioner also relied on the judgment of the Supreme Court in the case of Balaam vs. Union of India reported in A.I.R. 1987 S.C., 2354 The said case was in respect of a similar situation where petitioner filed an application for withdrawal of his offer of voluntary Retirement. In that case also the respondent Government of India refused to accept such prayer. The Hon'ble Supreme Court while considering the rival contentions of the parties made the following observations:

In the modern age embargo cannot be put upon people's choice of 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 appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected.

10. This Court is in respectful agreement with the observation made by the Hon'ble Supreme Court in the aforesaid case, and it is difficult for this Court to accept the plea raised by the respondent. This Court is of the opinion that in the instant case by accepting the amount of voluntary retirement which was offered to him after filing of this writ petition the petitioner has not given up his right to challenge the impugned order. In fact, during the pendency of this writ petition a learned Judge of this Court while admitting the same gave further liberty to the petitioner to receive the balance amount and made it clear that filing of this writ petition will not stand in the way of the petitioner to receive the balance amount of provident fund and any other amount.

11. This Court therefore quashes both orders which are at Annexure-4 and 5 so far petitioner is concerned, and directs the respondent-Corporation to reinstate the petitioner forthwith and definitely by 30th November, 1999. But this Court makes it clear that after such Reinstatement the petitioner will be entitled for continuity of his service and seniority as well but he will get nothing by way of back wages for the period from 16th November, 1995 till 30th November 1999. This Court is making this order in view of the fact that after obtaining the amount which is payable to the petitioner by way of voluntary retirement the petitioner must have utilized that money by suitable investments. However, this Court gives respondent-Corporation a liberty to adjust the money which has been paid to him on account of voluntary retirement with the other dues of the

petitioner after the petitioner's reinstatement.

12. This Court directs the respondent Corporation to act on the basis of the communication to be made by his lawyer in whose presence this order is passed, and they must reinstate the petitioner from 1st December, 1999, even though certified copy of the order is not available, and the petitioner is directed to report for duty positively on 1st December, 1999. This writ petition is thus allowed to the extent indicated above. No order as to costs.