
(1991) 03 PAT CK 0009
In the Patna High Court
Case No : Appeal No. 14 of 1989 (R)

Madan Mohan Tanti

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Citation : (1991) 03 PAT CK 0009

Final Decision : Allowed

Judgement

Satya Brata Sinha, J.—This letters patent Appeal arises out of the judgment dated 16.1.1989 passed by a learned single Judge of this Court in CWJC No. 601 of 1988 (R), whereby and whereunder the said learned court dismissed the writ petition filed by the appellant with an observation that the resignation purported to have been tendered by him, and accepted by Respondent No. 3 in terms of its letter dated 19.2.1988 as contained in Annexure-7 shall operate with effect from the date of issuance of the said letter and not with effect from 1.6.1986.

2. The fact of the matter lies in a very narrow compass.

3. At all material times, the petitioner was stenographer of Respondent No. 3. According to the pet he was promoted to the junior selection grade with effect from 1.4.1981. The petitioner has contended that anonymous complaints were made by some interested persons against him and Respondent No. 3 without going into the correctness thereof placed him under suspension. The petitioner filed a writ petition in this Court being CWJC No. 389 of 1985 (R) questioning the said order of suspension which was admitted and the operation of the order of suspension was stayed. According to him appellant, pursuant to the aforementioned interim order, he submitted his joining report on 15.4.1985 and the same was accepted. The appellant has contended that despite the same, he was not paid his salary owing to which he had to file an application under the provisions of Contempt of Courts Act which was registered as MJC No. 79 of 1989.

4. According to the appellant, owing to malicious attitude on the part of the

concerned respondents towards him, he thought it fit to go for premature retirement, where for he filed an application dated 13.9.1985 before Respondent No. 3 refusing therein to permit him to retire voluntarily with effect from 1.6.1986 subject to certain conditions. The said application is contained in Annexure-1 to the writ petition.

It is admitted that the said offer of voluntary retirement was not accepted by the respondent No. 3 prior to 1.6.1986. According to the appellant, he was also transferred by an order Mated 26.6.1986 and he had all along been performing his duties.

5. On or about 5.1.1987 the petitioner withdrew the said offer of voluntary retirement. However, by order dated 19.2.1988, which is contained in Annexure-7 to the writ petition, the offer of the appellant to retire voluntarily was accepted with retrospective effect from 1.6.1986.

6. The appellant filed the writ petition challenging the aforementioned order and by reason of the impugned order, the learned single Judge held that in view of Clauses (6) and (7) of the Scheme of retirement framed by the respondent (Annexure-A to the counter-affidavit) as the appellant did not withdraw his offer of retirement prior to 1.6.1986, the impugned order dated 19.2.1988 as contained in Annexure-7 to the writ petition was not illegal, but the same would be effective from the date of issuance thereof and not with effect from 1.6.1986.

7. The learned single Judge held:

Annexure-A is a photo copy of the scheme of voluntary retirement of Government servants. The Scheme provides that a Government servant who has put in 20 years effective service may retire and such offer shall be accepted, except the grounds mentioned in Clause 7 of the Scheme.

As departmental proceeding against the petitioner was pending in which maximum punishment could have been inflicted on him, in my opinion, respondent No. 3 could not have passed any final order on Annexure-1, offer of voluntary retirement of the petitioner. The petitioner did not withdraw his offer of voluntary retirement before expiry of 1.6.1986, the date from which he offered to go on voluntary retirement. He withdrew it, as appears from Annexure 5, on 5.1.1987. Further, Clause 6 of the voluntary retirement scheme provides that a Government servant may withdraw his offer of voluntary retirement with the consent of his appointing authority, provided that he writes to the appointing authority with request to withdraw it before expiry of the date from which he offered to go voluntary retirement. Whether Clause 6 or Clause 7 applies to the petitioner, in either case the petitioner could not have made a grievance that before any final order was passed by respondent No. 3 he withdraw his offer of retirement by the letter as contained in Annexure-5. The plea that a Government servant may withdraw his offer of voluntary retirement or resignation before expiry of the date with effect from which it would come in force, therefore, has no application to the facts of this case.

8. The only question which arises for consideration in this appeal is to whether the offer of voluntary retirement of the appellant could have been accepted after the date the withdrawal of the said offer.

9. As noticed hereinbefore the learned Single Judge proceed on the basis of irrespective of the fact that as to whether the Clauses (6) or (7) applies to the appellant he could not have made a grievance that before any final order was passed by the respondent No. 3 he withdrew his offer of retirement.

10. In terms of Clause (7) of the aforesaid scheme which is contained in Annexure-A to the counter-affidavit filed on behalf of the State, according to the State itself as a departmental proceeding as against the appellant was pending, the Respondent No. 3 was not in a position to accept his offer of voluntary retirement. Further as noticed hereinbefore the said offer voluntary retirement being a conditional one, the same could have been accepted only if the conditions imposed therein were fulfilled by the respondents.

In the counter-affidavit it has been made clear that as the departmental proceeding was not concluded, respondent No. 3 was not authorized to accept the appellants offer of voluntary retirement.

11. In this view of the matter, in my opinion, Clause (6) of the said Scheme which provides that a Government servant will be entitled to withdrew the said offer of voluntary retirement with consent of the appointing authority but the same has to be done before the expiry of the date from which voluntary retirement was to take effect has no application in the instant case.

12. Clauses (6) and (7) of the aforementioned scheme apply in different situations. Once the concerned authority, in law, was not in a position to accept the offer of voluntary retirement in view of the pendency of the departmental proceeding, the question of withdrawal of the offer of voluntary retirement by the appellant before the date fixed did not arise. The said offer in view of the Scheme aforementioned remained in operative in this case.

13. In the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , the apex Court held:

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 resign or. 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 privileges 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 his writing under his hand addressed to the president, he resigns in present the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the of trial prospective date which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.

14. In view of the recent Supreme Court decision in J.K. Cotton and Weaving Mills Co. Ltd. v. State of U.P. and Ors. reported in 1990 (4) SCC 22, it is now well settled that "resignation" includes voluntary retirement.

15. In the case of Dr. Ram Naresh Singh Vs. The State of Bihar and others, , a Division Bench of this Court after taking into consideration various decisions held as follows:

The same view was expressed again in the case of P. Kasilingam Vs. P.S.G. College of Technology, saying that the service of a Government servant normally stands terminated from the date on which the letter of resignation is accepted by an appropriate authority, unless there is a statutory law or rule governing the conditions of service to the contrary.

It was observed:

In the background of the settled legal position I fail to understand as to how the resignation tendered by the petitioner on 31.7.1978 with certain conditions (mentioned therein became effective by acceptance of the said resignation by notification dated 12.1.1983 when in the meantime on 19.8.1982 the petitioner had withdrawn his resignation from the service of the State Government saying in clear and unambiguous words that he wanted to continue his lien in the Animal Husbandry Department. The post remarkable aspect is that in the notification dated 12.1.1983, the date of the resignation of the petitioner from the service of the State Government has been mentioned as 18.5.1977, when admittedly petitioner tendered his resignation from the service of the State Government on 31.7.1978. From bare reference to the letter of resignation tendered by the petitioner, which is quoted in a communication addressed by the petitioner to the Commissioner, Animal Husbandry Department, in December, 1984 Annexure 6 to the writ application) it will appear that he purported to tender resignation, to take effect from the date of his permanent absorption under the University. He also put certain conditions because of which his resignation was to become inoperative and was to be deemed to have been withdrawn. It is an admitted position that before the resignation of the petitioner was accepted by the State Government he had already withdrawn the same. In such a situation, according to me, it is difficult to hold that the service of the petitioner under the State Government stood terminated on the basis of the

resignation tendered by the petitioner. The necessary corollary thereof shall be that it shall be deemed that the petitioner continued to hold a lien in the Bihar Animal Husbandry Service Class I.

16. Yet in another recent decision of the Allahabad High Court in the case of Raj Singh Yadav and etc. v. District Inspector of Schools Bulandshahar and Ors. 1990 Lab. L.C. 1526, a Division Bench of the said Court upon taking into consideration various decision of the Supreme Court held as follows:

"In a very recent" decision of the Hon"ble Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, , Hon"ble Sabyasachi Mukherji, J. now Chief Justice of India, had also an occasion to consider the question about the effect of the withdrawal of the request for voluntary retirement Hon"ble the Chief Justice of India observed as follows:

In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of the case. Much complications which had arisen could have been thus avoided by such graceful attitude. The Court cannot but condemn circuitous ways "to arise out" under uncomfortable employees, as a model employer the Government must conduct itself with high probity and condor with its employees.

We are consequently of the opinion that the principles which are applicable to a resignation would also apply to the case of voluntary retirement in regard to Government servant or other employees. In the case of employee also who are not Government servant, the principles on which a Government servant can withdraw his resignation or request "for voluntary retirement would equally apply to them."

17. In view of the aforementioned authoritative pronouncements, there cannot be any doubt that as the case of the appellant did not fall under Clause (6) of the scheme and thus the question of his withdrawing his offer for voluntary retirement prior to 1.6.1986 did not arise.

18. The concerned respondents contended that the appellant's case was within the purview of Clause (7) of the said Scheme and, thus, his offer could not have been accepted before the disciplinary proceedings were completed. It was thus, not open to the respondent No. 3 to accept the appellant's offer of voluntary retirement by reason of the impugned order dated 19.2.1988 retrospectively with effect from 1.6.1986 where in the meanwhile he had already withdrawn his offer on 5.1.1987.

19. In this view of the matter, this Letters Patent Appeal, and, consequently, the writ petition filed by the appellant must be allowed and the impugned order as contained in Annexure-7 has to be quashed.

20. Before parting with the case, it may be mentioned that the learned Standing Counsel No. 1 contended that the appellant did not perform his duties for a long period and, as such, he would not be entitled to salary for the period he voluntarily abstained himself from the duties. In this appeal, we are not concerned with such a question which involves determination of a disputed question of fact. The question as to whether the petitioner was not allowed to perform his duties and/or he himself abstained from performing the duties being a question of fact, the same can be determined by the authority concerned and appropriate order in relation to the salary of the appellant may be passed on the basis thereof.

21. In the result, this appeal is allowed, but in the facts and circumstances of the case, there will be no order as to costs.