
(2008) 06 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition (s) No. 359 of 2006

Maresh Kumar Swarnakar

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 3 MPLJ 165

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : D.M. Kulkarni, for the Appellant; Arvind Gokhale, Government Advocate for Respondent No. 1 and S.C. Bagadiya with G.K. Mandhaniya for Respondent No. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

Petitioner was appointed on the post of Sub-engineer on 26-6-1982 in Mandi Samiti, Neemuch. On 4-10-2003, he had applied for voluntary retirement. The Fifth respondent vide letter dated 19-12-2003 (Annexure P-10) informed the petitioner to submit the application for voluntary retirement in the prescribed form No. 28. Thereafter vide letter dated 1-9-2005 (Annexure P-II), petitioner submitted an application seeking voluntary retirement w.e.f. 1-12-2005. The respondents vide letter dated 5-10-2005 (Annexure P-2) accepted the petitioner's application for voluntary retirement w.e.f. 1-12-2005.

However on 6-10-2005, the petitioner submitted an application stating therein that he does not want to retire and his application of seeking voluntary retirement be treated as cancelled. The said application dated 6-10-2005 (Annexure P-12) was forwarded by Fifth respondent Dy. Director to the Second Respondent Managing Director of M.P. Rajya Krishi Vipan Board (for short the, "Board") vide letter dated 10-10-2005 (Annexure P-13). However, no orders

were passed on the said application for withdrawal of application of voluntary retirement and the petitioner was relieved from his services by the respondent vide order dated 1-12-2005 (Annexure P-4). On the same day itself, petitioner attended the office and submitted an application Annexure P-14, expressing his willingness to perform his duties and to continue his services, but, was not allowed to work and taken back in service. Aggrieved, the petitioner has filed this petition under Article 226/227 of the Constitution of India.

Though in the petition, petitioner has sought for the relief in regard to promotion also, but, at the time of hearing, Learned Counsel for petitioner confined the prayer to the extent of directing the respondent/s to take back the petitioner in service with arrears of salary and allowances payable to him from 1-12-2005 reserving the right to seek promotion in case petitioner succeeds by way of separate proceedings.

Contention of the petitioner's counsel is that after having withdrawn the application of voluntary retirement much prior to the effective date of his retirement, the action of the respondents in not allowing to withdraw the petitioner's application of voluntary retirement, is illegal and deserves to be quashed. According to him the respondents were not entitled to refuse to grant approval for withdrawal of the said application. In support of this contention, he placed reliance on the judgments of Supreme Court passed in the cases of *Balram Gupta vs. Union of India*, 1988 SCC (L & S) 126, *Punjab National Bank Vs. P.K. Mittal*, , *Union of India vs. Wing Commander T. Parthasarathy*, AIR 2000 SCW 4031, *Jitendra Dev Barma vs. State of Tripura and anr.* (Gauhati High Court) 2006 Lab.I.C 1818 and a Division Bench judgment of this Court in the case of *Director General vs. Employees State Insurance Corporation* and another, 2007 (1) MPHT 173 (DB).

On the other hand, learned Senior Counsel Shri S.C. Bagadiya appearing for respondents No. 2 to 5 has supported the action taken by the respondents contending that petitioner's application of seeking voluntary retirement having been accepted on 5-10-2005, the petitioner was having no right to withdraw the same. He argued that in the application for withdrawal of voluntary retirement, petitioner did not show any reason which shows that his conduct was not such requiring any attention on his application for withdrawal of voluntary retirement. He further argued that in case it is held that respondent Board has illegally not acceded to the petitioner's aforesaid application of withdrawal, at least the petitioner may not be awarded salary of the period in view of the fact that he himself was responsible for the situation.

Admittedly, petitioner had sought voluntary retirement vide application dated 1-9-2005 w.e.f. 1-12-2005. Much prior to the aforesaid effective date of retirement, he had submitted an application seeking withdrawal of the same. In the circumstances, in view of the law laid down by Supreme Court in the cases of *Union of India vs. Wing Commander* (supra); *Punjab National Bank vs. P.K. Mittal* (supra) and *Balram Gupta* (supra); the premature acceptance of petitioner's

application for voluntary retirement would not impede or deny the right of petitioner to withdraw application for his voluntary retirement. Before the effective date, petitioner had right and was entitled to withdraw or revoke the request earlier made before it is really and effectively became effective. Merely because no reason has been put forward by the petitioner in his application of withdrawal of his voluntary retirement, it cannot be said that petitioner's conduct was not as such so as to warrant the respondent Board to act upon the said application.

In view of the aforesaid legal position, I have no hesitation to hold that the action taken by respondent board in not allowing the petitioner to withdraw his application for voluntary retirement, is wholly illegal and unjustified and the same cannot be sustained, consequently, the order of relieving the petitioner dated 1-12-2005 (Annexure P/4) is hereby quashed.

True it is that award of backwages is not automatic and the Courts are required to examine the facts and circumstances of the case to award or deny the backwages. In the present case, it has not been disputed by the respondents that on 1-12-2005 itself, petitioner submitted an application showing his willingness to continue to work and to perform his duties. The Supreme Court in the case of J.N. Shrivastava (supra) in similar circumstances negated the contention of the employer that no back salary should be allowed to the appellant as the appellant did not work and therefore, on principles of "No work no pay", the amount of back salary should not be given to the appellant by holding that this submission does not bear scrutiny as the appellant was always ready and willing to work, but the respondent did not allow him to work after 31-1-1990. The Supreme Court awarded all the monetary benefits by treating him to have continuously worked. In the present case, in view of the aforesaid fact that the petitioner was ready and willing to serve but he was not allowed to work, in my considered view, he would be entitled to receive arrears of salary and other allowances from 1-12-2005.

Accordingly, the petition succeeds and is hereby allowed. The respondents are directed to reinstate the petitioner in service with salary w.e.f. 1-12-2005 and other consequential benefits so far as the petitioner's claim for promotion, it will be open for the petitioner to agitate his grievance by way of separate proceedings if need so arises. No orders as to the costs.