(2011) 08 PAT CK 0185

In the Patna High Court

Case No : CWJC No. 6427 of 2009

Malay Kumar Lata APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:
Central Vigilance Commission Act, 2003 — Section 8(g)

Citation : (2012) 2 PLJR 471

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Advocate : Shashi Anugrah Narain and Viendra Narayan Sharma, for the Appellant; Y.V. Giri and Sanjay Singh, for the Respondent

Judgement

Kishore K. Mandal, J.—The present writ petition was heard and disposed of by order dated 21.5.2009. Aggrieved thereby, the respondent The Oriental Insurance Company Ltd. (for short "the Insurance Company") and its officials preferred writ appeal being L.P.A. No. 1386 of 2010 (The Oriental Insurance Company Ltd. ft Ore. vs. Malay Kumar Lala). Learned Division Bench of this Court allowed the said appeal and after setting aside the order dated 21.5.2009, remitted the case to the Writ Court for hearing and decision afresh. The respondent Insurance Company was granted liberty to file pleadings/counter affidavit in the writ petition. That is how the matter has come up for consideration before this Court. Setting of facts giving rise to the application are as under:-

Petitioner was serving as Scale-IV officer under the respondent Insurance Company. On 6.8.2007 (Annexure-1), he submitted his resignation from the service of the Insurance Company. On 14.11.2007, he unilaterally relinquished the job/service of the Insurance Company and joined another private company called Royal Sundaram Alliance Insurance Company Ltd. and thereafter served the said company for 2 years. Under the relevant Rule of the Insurance Company called Personnel Manual Chapter-II(iv), an officer of the rank of the petitioner was required not to leave or discontinue the service without first giving the notice in writing to the Appointing Authority and the period of notice required to be given in the case of the petitioner was three months. The aforesaid period of 90 days expired w.e.f. 4.11.2007. On 13.5.2008, a charge-sheet (Annexure-8) was served on the petitioner. On receiving the said article/memo of charge, the petitioner by a communication dated 9.2.2009 sought to withdraw his resignation dated 6.8.2007 (Annexure-1). On 16.2.2009 (Annexure-11), petitioner claims to have submitted his joining in the office of Chief Regional Manager, Patna. On 12.6.2008, the respondents sought to initiate a departmental proceeding. Petitioner appeared in the departmental enquiry and requested to supply documents enabling him to file show cause. In the meantime, by communication dated 25.3.2009 (Annexure-14), he was informed that his joining has not been accepted whereafter he filed a representation before the Chair-man-cum-Managing Director of the Insurance Company seeking appropriate direction on the authorities to permit him to join. Since no action was taken thereon, the present writ petition was filed seeking quashment of the letter dated 25.3.2009 (Annexure-14) by which his rejoining in the Insurance Company and to pay salary from the date of joining of the Insurance Company was declined.

2. Learned counsel for the petitioner submitted that till acceptance of his resignation and communication thereof, the petitioner would be entitled to withdraw the resignation. It is next contended that from their own action, it would appear that the respondent Insurance Company have not accepted the resignation of the petitioner as on 13.5.2008, a charge-sheet was served on the petitioner for imposing major penalty. In the submission of the petitioner, initiation of departmental proceeding presupposes existence of master and servant relationship. In the submissions of learned counsel, the respondent Insurance Company would be wholly unjustified in treating him to have resigned from the service and at the same time to initiate and proceed with the departmental proceeding for infliction of major penalty. This will amount to blowing hot and cold at the same time. Learned counsel submits that if the respondent Insurance Company intends to proceed against him departmen-tally then it is incumbent upon the respondents to treat the petitioner in the service of the Insurance Company and permit him to join the service. The stand of the respondent Insurance Company in not permitting him to join the service and at the same time to proceed with departmental proceeding is not only inexplicable but also contrary to law since petitioner was never communicated about refusal or acceptance of his resignation from the service of the respondent Insurance Company on 6.8.2007. In this regard, reliance has been placed on Annexure-18 to the supplementary affidavit which is/are notings in the file when considerations on his claim for rejoining was/were being made. It is submitted with reference to those notings that it is admitted position that the respondents did not communicate the petitioner about acceptance/refusal of his resignation till he submitted his rejoining and sought to withdraw his resignation. Alternatively, it has been argued that if the respondents take a stand that the

petitioner no longer survives on the rolls of the Insurance Company as an officer of Scale-IV then continuance of the departmental proceeding against him be declared as a nullity in the eyes of law and the respondents be directed to pay the terminal benefits to the petitioner forthwith.

3. Counter affidavit and supplementary counter affidavit have been filed on behalf of the respondent Insurance Company.

4. Learned counsel for the respondent Insurance Company, on the other hand, submits that from bare perusal of the documents emanating from the petitioner as contained in Annexures-2, 4, 5 and 7, it would appear that the petitioner, having regard to the provisions of law contained in the Manual governing the case of the petitioner, accepted the position In law that under the extant rules, if no communication regarding refusal or acceptance of resignation is made within 90 days of the submission of the resignation, it will be deemed in law that the same has been accepted and the petitioner was free to join another concern/ company of his choice. Learned counsel highlights that on expiry of period of 90 days, the petitioner unilaterally left/abandoned the service of the Insurance Company and later joined another private company. He led emphasis, in this regard, on the letter written by the petitioner on 14.11.2007 (Annexure-4) relevant part whereof reads as under:

Thus after complying the provisions of 90 days notice period I am relinquishing my duty from the post of Mgr., R.O., Patna with immediate effect to join Royal Sundaram Alliance Insurance Company at Bhubnseshwar.

5. Highlighting the rule governing the case (Personnel Manual of the respondent Insurance Company), it is submitted that once a resignation is tendered by an employee of the category to which the petitioner belongs, it is for the competent authority of the respondent Insurance Company to decide whether the employee/ officer be released immediately or may be asked to continue till the expiry of the notice period depending upon the exigencies of the office requirement. Since the respondent Insurance Company did not permit him to be released immediately and/ or directed him to continue till the expiry of the notice period, it will be deemed in law that the resignation of the petitioner has been accepted upon expiry of the period of 90 days as provided in the Manual and also evident from the understanding of the relevant law of the petitioner in this regard as would appear from Annexure-2 which is another request letter written by the petitioner on 14.9.2007. He led stress on the contents of the letter contained in Annexure-2 which was written by the petitioner and addressed to the Chief Regional Manager on the subject "resignation from service of the company". This Court deems it apposite to extract part of the contents of the aforesaid letter which read as under:-

I once again request that my resignation be accepted immediately. I wish to also inform that I joined the co, as a direct recruit officer in the year 1985 and in all these years of service I have not received any warning letter, letter of censure or charge-sheet in any manner, I also request that the notice period be waived and the consequent emolument may be deducted from my terminal benefits, if the competent authority so desires.

Please note that I have to take up employment elsewhere, and you would appreciate that my new employers may not wait for an endless period for my joining. Considering this issue I would once again request for your urgent advises in the matter.

It is the stand of the respondent that on expiry of period of notice (90 days), petitioner unilaterally abandoned/left the service of the Insurance Company and joined a private company and served for close to 2 years. It has, thus, been argued that petitioner not only resigned from the service but on expiry of notice period of 90 days, unilaterally abandoned the service of the company and joined another private company. It is thus submitted that in the light of aforesaid facts and the provision of law, the relief(s) prayed for in the application for permitting him to join the service is/are fit to be rejected. Dealing with alternative submission of the petitioner, it is argued that considering the provisions of the Manual and the law contained in Central Vigilance Commission Act, 2003, the matter has been referred to the Central Vigilance Commission (for short "the CVC") (Annexure-A to the counter affidavit) seeking appropriate advice/approval in the matter enabling the respondent Insurance Company to drop the departmental proceeding. Relying on averments made in the supplementary counter affidavit, it is contended that terminal benefit(s), payable on resignation, were made available to the petitioner acceptance whereof was refused by the petitioner.

6. I have heard the parties at great length and perused the relevant pleadings on record in the shape of writ petition, supplementary affidavit, counter affidavit and supplementary counter affidavit.

7. Under the Chapter/head captioned as "Determination of Service", the Manual provides as under:

1. Resignation from Service:

(a) Class-I: Officers and Development Officers:

(i) An officer or a Development Officer, other than one on probation, shall not leave or discontinue his service without first giving notice in writing to the Appointing Authority of his intention to leave or discontinue the service and the period of notice required to be given shall be three months:

Provided that such notice may be waived in part or in full by the Appointing Authority at its discretion.

Explanation-1: Under this provision, the month shall be reckoned according to the English calendar and shall commence from the day following that on which the notice is received by the Company.

Explanation-2: A notice given by ah Officer or a Development Officer under this paragraph shall be deemed to be proper only if he remains on duty during the period of notice and such an officer shall not be entitled to set off any leave earned against the period of such notice.

Note: No leave except the PROPORTIONATE Casual Leave and Quarantine Leave can be sanctioned to an employee after receipt of notice of resignation.

(ii) In case of breach of an. Officer or a Development Officer of the provisions of sub-paragraph (i), he shall be liable to pay to the Company as compensation a sum equal to his salary for the period of notice required of him which sum may be deducted from any monies due to him.

(b) Supervisory, Clerical and Subordinate Staff: (i) A confirmed employee shall not leave or discontinue his service without first giving notice in writing to the Appointing Authority of his intention to leave or discontinue the service and the period of notice required to be given shall be one month as stipulated in the Appointment letter, except otherwise provided. In case the notice for a period of one month is not given the salary in lieu of one month''s notice may be recovered. However, if the notice given is less than one month, the salary may be recovered for the period short of the notice.

(ii) During the notice period no kind of leave is admissible to the employee and if the employee remains absent from duty whether with or without prior permission, the salary for the period of absence may be deducted.

Note; No leave except the proportionate casual leave and quarantine leave can be sanctioned to an employee after receipt of notice of resignation.

Miscellaneous: (1) Notice Period: An officer or a Development Officer other than on probation, shall not leave or discontinue the services without first giving the notice in writing to the Appointing Authority and the period of notice required to be given shall be 3 months. The period of notice in respect of Supervisory, Clerical and Subordinate Staff shall be one month.

The period of notice may be waived in part or in full by the Appointing Authority at its discretion. Once the notice of resignation is submitted by the employee/ officer, it is for the Competent Authority to decide whether the employee/officer may be released immediately or may be asked to continue till the expiry of the notice period, depending upon the exigencies of office requirements. If the condition of notice is not waived and the employee/officer seeks early release, the salary for unexpired period of notice, may be recovered from him.

(2) Resignation of employee/officer on deputation: Ordinarily, it is necessary for an employee on deputation to report back to the Company. However, as the Competent Authority is vested with the power to waive the notice period in part or in full, it would be in order for the Competent Authority to treat the case of resignation on deputation on the same lines as applicable to the resignations of other officers who are not on deputation. Therefore, it would not be necessary to

insist upon reporting back from deputation if the Competent Authority so decides.

(3) Resignation of employees against whom departmental action is initiated: In those cases where the officer tenders resignation after the advice of the Central Vigilance Commission regarding initiation of departmental action, the commission may be informed about the matter. It is also required that a mention of the fact of a pending vigilance case/enquiry must be made in the letter accepting resignation.

(4) Vigilance Clearance: It is necessary to obtain clearance in respect of an official, who has tendered his resignation before accepting the same and settlement of his dues.

(5) Competent Authority: Appointing Authority will be the Competent Authority.

8. Petitioner, in the light of the said provision, submitted his resignation (Annexure-1) on 6.8.2007. By communication dated 14.9.2007 (Annexure-2), he requested the authorities for acceptance of his resignation forthwith. In the said com-munication, he also requested for waiving the notice period and offered/ volunteered to get the emoluments of the notice period deducted from the terminal benefits payable to him on acceptance of his resignation. The Insurance Company by communication contained in Annexure-3 informed him that for resigning the service, 90 days period is required. He was informed that notice period has not been yet waived by the competent authority and hence the decision for acceptance of resignation notice will be communicated to the petitioner in due course on or before expiry of 90 days notice period subject to availability of vigilance clearance. It was further clarified that the vigilance clearance is a pre-requisite for processing the resignation request of any officer of the Insurance Company. Annexure-4 is another communication emanating from petitioner dated 14.11.2007 wherein it was clarified by the petitioner that after complying with the provision of 90 days notice period, he was unilaterally relinquishing the office of Manager, Regional Office, Patna with immediate effect to join Royal Sundaram Alliance Insurance Company Ltd. By another communication dated 14.11.2007 (Annexure-7), the petitioner requested the Chief Regional Manager of the Insurance Company to authorize some body to collect the telephone and WLL phone from his residence. Annexure-6 dated 15.11.2007 is the document which indicates that the landline phone set and WLL hand set with charger were handed over by the petitioner to an employee of the Insurance Company who was deputed for the said purpose. It is admitted position that during the notice period of 90 days, he was not communicated about acceptance or refusal of the resignation. The rule governing the case of the petitioner requires a Class-I Officer like the petitioner to give notice in writing in advance to the appropriate authority of his intention to leave or discontinue the service. A discretion is, however, vested in the Competent Authority/ Appointing Authority to waive in part or in full the notice period of 90 days in a particular case. Once the Appointing Authority/Competent Authority of the Insurance Company allows the notice period of 90 days to pass without there being any

communication then, in view of the provisions governing the case of the petitioner, it will be deemed that the officer has, left the service of the Insurance Company. From relevant pleadings and the annexures attached thereto, it is obvious that the petitioner also understood the implication of law governing his case in the same manner. Thereafter, he joined another Company and drew salary for close to 2 years. Since, in the meanwhile, a charge-sheet was served on him in the light of vigilance case pending against him, the petitioner under the cover of the said communication/action submitted his joining which was, however, not accepted. If the Rule/ Regulation of the Insurance Company provides for notice in writing in advance and the period of notice is not waived, it will be deemed in law that resignation of the petitioner was accepted on expiry of the notice period and he no longer survives on the rolls of the Insurance Company. Learned counsel for the petitioner has relied on the judgment of the Supreme Court in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., . The appellant of the said case was a Senior Manager in the Company. He tendered his resignation on 4.1.1993 and sought to be relieved from duties from the date. As per Company Rules, his resignation was accepted on 4.1.1993 itself with immediate effect. However, the Company by another letter of the same date informed him that his casual leave had been sanctioned from 5.1.1993 to 13.1.1993 and he would be relieved by close of working hours on 15.1.1993 (14.1.1993 being a holiday). On 8.1.1993, the appellant withdrew his resignation. The Hon''ble Supreme Court noticed that as per the Company Rules, such resignation was effective after expiry of one month. In that context, it was held that before expiry of the aforesaid period of 30 days, the appellant had withdrawn his resignation which was required to be allowed. In the setting of these facts of the case and the rule/provision, the aforesaid judgment was rendered. The facts of the present case are entirety different. The Rule/provision clearly shows that for leaving or discontinuing the service of the Insurance Company, the employee of the category of the petitioner is required to first give notice of 90 days. The Competent Authority in its discretion can waive the aforesaid notice period. From the materials on record, it appears that during the period of 90 days (notice period), the Competent Authority/Appointing Authority did not communicate him either the refusal or the acceptance of his resignation. In the light of the Rule/provision governing the case of the petitioner, this Court has no hesitation in holding that after expiry of the period of 90 days, the petitioner shall be deemed to have left and/or discontinued the service under the Insurance Company. In another words, his resignation stood accepted. I have already noticed that the petitioner himself understood the implication of the rule/ provision in similar manner, and not only left attending to his job under the Insurance Company but joined service of a private company and performed duties for close to 2 years.

9. In that view of the matter, this Court would decline the prayer made in the application commanding the respondents to accept his joining as Manager in Regional Office, Patna.

10. Learned counsel for the petitioner has alternatively argued that if the petitioner is not treated as an employee of the Insurance Company then there is no relationship of master and servant and as such the terminal benefits are required to be made available to him forthwith. The respondents would not be justified in continuing the departmental proceeding against him since there is no relationship of master and servant existing between the Insurance Company and the petitioner. Learned counsel for the petitioner, in this regard, has referred to Clause (3) under Head "Miscellaneous" of the Manual to submit that it is not the case of the Insurance Company that after the advice of the CVC in the matter of departmental proceeding, he tendered his resignation and as such the stand of the respondent that the matter has now been referred to the CVC seeking its approval for dropping/ closing the proceeding is unsustainable in law.

11. Learned counsel for the respondents, on the other hand, submitted that u/s 8(g) of the CVC Act, 2003, the CVC is empowered to tender advise to the Central Government, Corporation established by or under any Central Government Act, Government Companies, Societies and Local Authorities owned or controlled by the Central Government on such matter as may be referred to it. Relying on clause (4) of the Manual under the head "Miscellaneous", it is highlighted that it is imperative on the respondents to seek vigilance clearance and approval of the CVC in respect of an official who has tendered his resignation before accepting the same and settlement of his dues. The stand of the respondent Insurance Company, in this regard, seems to be incongruous. On the one hand, it has been stated in the supplementary counter affidavit that all terminal dues have been made available to the petitioner which was/ were refused and on the other hand, they rely on the aforesaid Clause (4). It is not the case of the Insurance Company that the departmental proceeding and/or action was taken/initiated against the petitioner after obtaining advice of the CVC and during the said period, the petitioner tendered his resignation. On 6.8.2007 when the petitioner tendered his resignation and/ or the day on which notice period of 90 days expired, there was no departmental proceeding against the petitioner either with or without the advice of the CVC. In that view of the matter, the stand of the respondents that the proceeding shall be dropped after seeking advice from the CVC is wholly unsustainable in law. This Court finds no justification in the stand of the Insurance Company in continuing the departmental proceeding against the petitioner until appropriate advice/approval from the CVC is obtained.

12. In view of my discussions made hereinabove, this Court holds that the respondent Insurance Company shall not treat the departmental proceeding pending against the petitioner as the petitioner is no longer an employee of the Insurance Company. The respondent Insurance Company shall calculate and pay the admissible post retiral/terminal benefits payable to the petitioner within four weeks from the date of receipt/production of a copy of this order. There shall be no order as to costs.

