
(2008) 06 GAU CK 0053
In the Gauhati High Court

Nirendra Nath Koch

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 GLR 113 : (2008) 3 GLT 611

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. B.P. Borah, learned Senior Counsel assisted by Mr. D. Borah, learned Counsel for the petitioner, Mr. B. Bhattacharjee, learned Standing Counsel, ASEB and Mr. B.C. Saikia, learned Additional Senior Government Advocate for the State of Assam.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner challenging the office order No. 105 dated 17.2.1996 issued by the Chief Engineer (D), Assam State Electricity Board (ASEB), accepting the voluntary retirement sought by the petitioner which was purportedly withdrawn by him before its acceptance by the employer.

3. The petitioner was appointed as Junior Engineer in the ASEB vide order dated 3.5.1982 and was posted at Gossaingaon in the district of Kokrajhar. He completed more than 10 years of continuous service without any blemish from any quarter. In July 1995, the petitioner made an application vide Annexure-B before the Chief Engineer, ASEB praying for voluntary retirement from his service and accordingly informed the ASEB that his wife, son or any of his brother may enjoy the benefit that maybe available to the petitioner. However, the petitioner also filed a letter dated 26.6.1995 to the Chief Engineer, ASEB, intimating that he wanted to resign from his service w.e.f. 1.7.1995 due to his personal works; a copy of which has been annexed as Annexure-A to the writ petition. Thereafter,

his wife, by a letter dated 17.10.1995 informed the Chairman, ASEB that her husband has been missing since 24.6.1995 and an Ejahar was lodged in this regard with the Dispur Police Station on 2.7.1995. In the said letter, the petitioner's wife Smt. Saya Rani Koch requested the Chairman, ASEB to make an enquiry into the matter from his end to trace out her missing husband. By another letter dated 20.7.1995 addressed to the Chief Engineer (D), ASEB, the petitioner's wife requested to treat the resignation letter submitted by her husband as cancelled/withdrawn. It has been stated in para 10 of the petition that the petitioner visited almost all the holy places of India including Prajapati Brahma Kumari Iswariya Vidyalaya at Bangalore where the patients suffering from depression are treated and the petitioner underwent treatment in the said institution. Ultimately, the petitioner after getting recovered from depression, returned to his native place at Dibrugarh. The petitioner, thereafter, obtained a medical certificate dated 13.1.2004 for fitness from Dr. P.K. Choudhury, Prof. and Head of the Department of Psychiatry, Assam Medical College Hospital, Dibrugarh. On the basis of the said certificate, the petitioner approached the respondent ASEB for allowing him to resume his duties. The respondent ASEB authorities vide a letter No. ASEB(RC)/109/91/PT-1/33 dated 18.5.2004 (Annexure-1 to the writ petition) informed the petitioner that as per relevant rules the Board has already accepted his voluntary retirement with effect from 1.7.1995 and since the matter had already been finalized about 9 years ago from the date of acceptance of voluntary retirement, his prayer for allowing him to rejoin in service could not be allowed.

4. Mr. B.P. Borah, learned Senior Counsel submits that the voluntary retirement letter submitted in July, 1995 was purportedly accepted by the ASEB on 17.2.1996 prior to which the resignation letter dated 12.6.1995 was withdrawn by an application dated 20.7.1995 and therefore, the acceptance of the voluntary retirement took place after the receipt of letter of withdrawal of resignation. According to Mr. Borah, it is the settled law that when an employee submits his resignation and the same is withdrawn prior to acceptance by the authority and the reason given by the employee for withdrawal of such resignation is found to be justified, authority ought to have allowed such employee to resume his duty. In support of his submission, Mr. Borah has cited the case of Bipin Ch. Thakuria v. State of Assam and Ors. as reported in (1988) 1 GLR 226. Citing the case of Pralay Saran Chakraborty v. State Bank of India as reported in (1996) 3 GLT 248, Mr. Borah submits that an employee who applies for voluntary retirement should be afforded with an opportunity of counseling and guidance to enable the office to know the real reasons for voluntary retirement and the petitioner having not been provided with such opportunity and guidance, the purported acceptance of offer of voluntary retirement cannot be treated as legal and proper.

5. According to Mr. Borah, learned Senior Counsel for the petitioner, the petitioner was suffering from mental depression and therefore he was found to be in the State of ill health. He tendered his resignation due to his mental depression but before such resignation was accepted a request was made to

cancel/withdraw the said resignation letter. There was a valid reason for withdrawal of the resignation and for requesting the respondent authority to allow him to rejoin his duties. The petitioner recovered from his mental illness and submitted fitness certificate from the medical authority.

6. The further submission of Mr. Borah is that assuming but not admitting that the letter of acceptance is prior to the letter of withdrawal of resignation, even then, the said letter was not communicated to the wife of the petitioner or any one of his relatives till the petitioner returned to his native place and submitted his representation through his wife for resuming his duties in his earlier post. The undue delay in communicating the petitioner on the action taken on the resignation letter, according to Mr. Borah is not at all justified and therefore, the impugned action of the respondent authorities is illegal and liable to be set aside.

7. Countering the submission of the learned Counsel for the petitioner, it is submitted by Mr. Bhattacharjee, learned Standing Counsel for the respondents that the petitioner initially submitted a resignation letter on 26.6.1995 to be effective from 1.7.1995 and then submitted application for voluntary retirement w.e.f. 30.6.1995. The petitioner's wife by his letter dated 20.7.1995 requested the Chief Engineer (D), ASEB to treat the resignation letter tendered by her husband as cancelled/withdrawn as her husband was suffering from mental disorder and under medical treatment since February, 1995. But before receipt of this request, the respondent authorities have already accepted the application for voluntary retirement w.e.f. 1.7.1995 and accordingly, the same was communicated to the petitioner vide a letter under Memo No. CE(D) Esstt-C/64/88/64 dated 17.2.1996.

8. It is submitted by Mr. Bhattacharjee that considering the representations dated 21.7.1995 and 17.10.1995 filed by the petitioner's wife, the respondent authorities did not give effect to the resignation letter tendered by the petitioner but the petition for voluntary retirement was accepted because a request was made for the same by the petitioner's wife vide her letter dated 3.2.1996 (Annexure-3 to the counter affidavit). The letter requesting for voluntary retirement was not withdrawn or sought to be withdrawn at any point of time either by petitioner's wife or by petitioner himself. The petitioner went missing and after a period of more than 8 years, he came out with a request through his wife vide letter dated 22.12.2003 to allow him to join in service. The petitioner remained absent from duties unauthorized w.e.f. 24.6.1995. The petitioner was asked to appear in person before the Superintending Engineer (S.E.) BGSK, ASEB respondent No. 6 within 15 days for verification of authenticity of resignation letter submitted by him on 26.6.1995 but he did not turn up and since no response was received from him, the respondent authorities had to accept his petition for voluntary retirement.

9. It is further submitted by Mr. Bhattacharjee that the moment the authority accepts the notice of voluntary retirement, the retirement becomes effective and relationship of master and servant comes to an end. An employee can withdraw

his application for voluntary retirement before the effective date only. The effective date would necessarily be the date on which the retirement takes place. In this case, according to Mr. Bhattacharjee, the request was made by the petitioner for retirement in July, 1995 with effect from 30.6.1995 and the same was accepted on 17.2.1996 with effect from 1.7.1995, whereas the request for withdrawal of resignation was made by his wife on 20.7.1995. According to Mr. Bhattacharjee it is the settled law that the grant of permission to withdraw the letter of voluntary retirement, after its acceptance cannot be allowed and the law is same in regard to resignation also. In support of his submission Mr. Bhattacharjee has cited the case of P. Lal Vs. Union of India (UOI) and Others, .

10. In his reply, Mr. Borah, learned Counsel for the petitioner submits that at no point of time the petitioner's wife submitted a representation on 3.2.1996 requesting the Chief Engineer (D), ASEB to accept the application for voluntary retirement of her husband. Further he submits that at no point of time the ASEB informed the petitioner or his wife about the acceptance of petitioner's offer of voluntary retirement and therefore, it was completely false and afterthought, projected for the purpose of defeating the contention of the petitioner that he had withdrawn his resignation letter before it was accepted.

11. I have carefully gone through the writ petition, counter affidavit filed by the respondents and the affidavit in reply filed by the petitioner. The following undisputed facts emerged therefrom:

- (1) The petitioner first tendered resignation on 26.6.1995 w.e.f 1.7.1995.
- (2) The petitioner applied for voluntary retirement in July 1995 effective from 30.6.1995.
- (3) The petitioner's wife by a letter dated 20.7.1995 represented before the Chairman, ASEB for withdrawal of the resignation letter.
- (4) The petitioner's resignation letter was not accepted by the respondents till this date.
- (5) The petitioner's wife informed the respondent authorities about the mental disorder of her husband and his missing.
- (6) The petitioner returned home after a lapse of 8 years on 7.11.2003 and intended to rejoin in service through an application dated 22.12.2003 submitted by his wife to the Chairman, ASEB.

12. Since the petitioner's wife represented for withdrawal of the resignation letter and the same was admittedly not accepted by the ASEB authority, this issue needs no adjudication. The only issue required to be addressed by this Court is whether the purported acceptance of offer of voluntary retirement vide office order No. 105 dated 17.2.1996 is valid and legal.

13. The petitioner in para 15 of the writ petition contended as follows:

15. That the petitioner states that he submitted his letter of voluntary retirement and/or resignation on 26.6.1995 and in the month of July 1995 respectively and the same was purportedly accepted by the Board on 17.2.1996 prior to which the wife of the petitioner by her application dated 20.7.1995 requested the Board to withdraw the prayer for resignation/voluntary retirement. Therefore, the acceptance of resignation is later than that of withdrawal and, as such, the acceptance of resignation was not justified inasmuch as the same was apparently accepted after receipt of the application for withdrawal of resignation/voluntary retirement filed by the wife of the petitioner.

14. But from the aforesaid letter dated 20.7.1995 one would find that petitioner's wife sought to withdraw the resignation letter only and not the offer of voluntary retirement. The full text of the aforesaid letter dated 20.7.1995 is quoted below:

To The Chief Engineer (D), Assam State Electricity Board, Paltan bazar, Guwahati-1. Date: Guwahati, the 20th July 1995. Sub: Prayer for withdrawal of resignation submitted by Mr. Niren Koch, Junior Engineer. Sir,

Most respectfully, I beg to lay the following few lines for favour of your kind and sympathetic orders.

That Sir, my husband, Shri Niren Koch (J.E.) has submitted his registration from service as was informed by S.E., GS.S.K., ASEB, Guwahati.

That Sir, it may be mentioned here that my husband is mentally disorder and under medical treatment since February 1995. (Medical certificate is being enclosed).

Under the circumstances, his resignation submitted by Shri Koch may kindly be treated as cancelled/withdrawn for which act of your kindness, I shall remain grateful to you.

Yours faithfully, (Sayarani Koch) Wife of Shri Niren Koch Guwahati.

This letter bears clear intention of the petitioner's wife that the resignation letter should not be accepted while the offer of voluntary retirement should be accepted.

15. The petitioner's wife, thereafter, vide her letter dated 3.2.1996 (Annexure-3 to the counter affidavit) requested the Chief Engineer (D), ASEB for acceptance of application for voluntary retirement of her husband. English rendering of the said letter is reproduced below:

To The Respected Chief Engineer (D) ASEB, Bijulee Bhawan Paltan Bazar, Guwahati-1. Dated: 3.2.1996 Sub: Request for acceptance of the application for voluntary retirement of Shri Nirendra Nath Koch, Junior Engineer, ASEB of Bijulee Bhawan Grahak Seva Kendra (BGSK). Sir,

With due respect I would like to state that an application for voluntary retirement

has been received from my husband, Shri Nirendra Nath Koch on last 25.1.1996.

You are therefore requested to initiate necessary action on the same.

Thanking you.

Yours faithfully, Mrs. Chayarani Koch W/o Nirendra Nath Koch JE, BGSK, ASEB, Guwahati

Enclose : Application for voluntary Retirement of Shri Nirendra Nath Koth.

16. In para 10 of the affidavit in reply, the petitioner denied having submitted the said letter by his wife and verified that the statement made in para 10 are true to his knowledge. It is not discernible how he could verify the said statement true to his knowledge when the letter dated 3.2.1996 was submitted by his wife during the time when he went admittedly missing. This assertion of the petitioner is belied by his wife who made statements in para 4 and para 7 of her petition dated 22.12.2003 (Annexure-G to the writ petition) requesting the Chairman, ASEB in the following words:

4. That Sir, immediately after living the house my husband posted a letter to the Chief Engineer, ASEB, whereby he tendered his voluntary retirement from service on 30.6.1995 (A.N.) due to home affairs. In the said letter, he also intimated that his wife, son and brother may enjoy the service benefit due from the Board. The said letter was received by me by post and thereafter, I submitted it to the Chief Engineer, Guwahati (Bijuli Bhawan) and the Chief Engineer was pleased to accept the same w.e.f. 1.7.1995 and the said fact was known to the petitioner from the office of the Chief Engineer, subsequently when she went there to enquire about the drawal of financial benefit for her husband.

From the above fact it is apparent that though the resignation was termed as voluntary, it was not at all voluntary the same was due to tender due to mental depression of husband for which he was undergone treatment in various Prilgimiger in India including Kanya Kumari and now he is mentally quite sounded and fit to resume his duties.

7. That Sir, though he is entitled for retirement benefits after acceptance of his voluntary retirement no such benefits have been afforded to the petitioner, his son or any family member of my husband even after lapse of about 8 years and therefore, his resignation cannot be treated as acceptance by the Board, and accordingly there would not be any impediment to allow my husband to resume his duties for interest of his health as well as his livelihood along with his family member including school-going children in these of economic hardship.

The above are sufficient materials to come to a conclusion that the petitioner opted for voluntary retirement and his wife persuaded for acceptance of the same and the respondent authorities in their turn accepted accordingly vide office order No. 105 dated 17.2.1996 (Annexure-J to the writ petition), receipt of which has been admitted by the petitioner's wife in her petition as quoted above.

17. There should not be any confusion by now, though it is sought to be made by the petitioner, that there are two separate applications/request made by the petitioner-one for resignation and the other for voluntary retirement on different dates. The respondent authorities did not accept the resignation letter as it was represented by petitioner's wife to withdraw the same. There was however, no representation either from the petitioner or his wife for withdrawal of the application for voluntary retirement and hence it was accepted by the competent authority on 17.2.1996 i.e. after about 8 months from the date of filing the application for voluntary retirement. The petitioner, particularly his wife had enough time and opportunity for counseling and guidance to think over and withdraw the offer of voluntary retirement in the light of observations made by this Court in the case of Pralay's case (supra) relied by the learned Counsel for the petitioner.

18. The authorities cited by the counsel for the parties have been gone through. In the case of Bipin Chandra Thakuria (supra), the petitioner tendered resignation on 11.7.1979 out of frustration and he insisted on acceptance of his resignation. Having received no response from the respondent authorities, he addressed a letter on 7.9.1983 withdrawing his resignation but he was informed by his employer that his resignation had already been accepted by an office order dated 18.8.1983 and as such his prayer for withdrawal of resignation could not be considered and so his request was rejected. That case, as cited by the counsel for the petitioner has not relevancy at all as the case in hand does not involve the question of legality or validity of acceptance of resignation letter but the question of acceptance of voluntary retirement. In the other case of Pralay Saran Chakraborty (supra), the petitioner's letter of withdrawal or revocation of the notice of voluntary retirement was made after the authority permitted him to retire and in the present case, the letter of voluntary retirement was not sought to be withdrawn. That case, therefore, has also no relevancy to the present case because of the fact that the petitioner went missing for a long period and he was not available for counseling and guidance. The petitioner in the present case maintained no communication with the respondent authorities after submitting a letter of voluntary retirement in July 1995 till his wife submitted a petition on 22.12.2003 requesting the Chairman, ASEB to allow her husband, petitioner to resume his duties.

19. The law as regard to resignation and acceptance of voluntary retirement has been settled already by the Apex Court in various cases. In the case of Jai Ram Vs. Union of India (UOI), , it has been held that it was open to a Government servant who had expressed his desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he could be allowed to do so long as he continued in service and not after it was terminated. The Apex Court in the case of P. Lal Vs. Union of India (UOI) and Others, held that the moment the Government accepts the notice of voluntary retirement., the retirement becomes effective and relationship of master and

servant stood severed. The moment it is accepted, the retirement becomes effective and neither communication or gazette notification of the acceptance is necessary for that purpose. At the costs of repetition, it may be stated that in the present case there was no request for withdrawal of the offer of voluntary retirement made by the petitioner and as such the petitioner, in view of the decision rendered in the case of P. Lal (supra) would not be entitled to question the validity or legality of the acceptance of his voluntary retirement and the submission that the acceptance of voluntary retirement was not communicated to him would be of no avail. In my considered opinion, the respondent authorities committed no illegality in accepting the request of voluntary retirement after a lapse of 8 months from the date of petitioner's letter for voluntary retirement and more so in absence of any request for withdrawal of the voluntary retirement before the same was accepted.

20. Yet there are certain other disturbing aspects in this matter. The petitioner returned home on 7.11.2003 as reflected in the application dated 22.12.2003 (Annexure-G to the writ petition) filed by his wife and he obtained a medical certificate dated 13.1.2004 for fitness from Professor and Head of the Department Psychiatry Assam College and Hospital, Dibrugarh. The petitioner did not represent before the respondent authorities for allowing him to rejoin in service. Only his wife vide letter dated 22.12.2003 made such request on his behalf. It is not known what makes him to keep aloof and prevented from making an effective representation before the authorities for allowing him to resume/rejoin his service. He has also not stated before any respondent authority that he had ever made a request for withdrawal of his request for voluntary retirement before the same was accepted. He has neither stated that the order of acceptance of voluntary retirement was communicated to him nor ever challenged the acceptance of said order accepting the voluntary retirement. The petitioner did not offer himself to be examined by the medical board for being certified as medically fit.

21. During the course of hearing, the learned Counsel for the petitioner could not show any provision of law or authority enabling him to rejoin in service once his option for voluntary retirement was accepted by the authorities. The only question that requires to be decided is whether the petitioner is entitled to receive pensionary benefit under the existing provision of law. It has been stated in the petition that the pensionary benefit have not yet been offered to the petitioner. In my considered opinion, since the authorities have allowed the petitioner to go on voluntary retirement, a legal duty has been cast on them to pay the pensionary and other financial benefit to the petitioner as per the existing provision of law followed by the ASEB.

22. Having heard the learned Counsel for the parties and having considered the materials placed before this Court, it is held that there is no illegality in accepting the petitioner's voluntary retirement as ordered vide impugned order dated 17.2.1996 since the same was accepted before it was withdrawn and there is no

valid ground for interference with the same.

23. This writ petition has no merit and the same is liable to be dismissed and accordingly, it is dismissed but without imposing any costs. However, it is directed that the respondent authorities shall take necessary steps for payment of pensionary benefit to the petitioner as per the existing rules within a reasonable period of time.