

(2019) 05 UK CK 0134
In the Uttarakhand High Court
Case No : Special Appeal No. 304 Of 2016

PT Purnanand Tiwari Intermediate College And Others	APPELLANT
Vs	
Sunil Kumar Agrawal & Others	RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Uttarakhand School Education Act, 2006 — Section 24, 24(1), 24(2), 37, 37(3), 37(4)
Uttar Pradesh General Clauses Act, 1904 — Section 16
Uttarakhand School Education Regulations, 2009 — Regulation 7, 18(a), 19, 20, 23, 25
Punjab National Bank (Officers) Service Regulations, 1979 — Regulation 16(3), 20, 20(2)

Citation : (2019) 05 UK CK 0134

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Arvind Vashistha, Jitendra Chaudhary, K.S. Bora, P.C. Petshali, B.P.S. Mer

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred by respondent nos. 3 & 4 in WPSS No. 2394 of 2015 aggrieved by the order passed by the learned Single Judge in WPSS No. 2394 of 2015 dated 31.08.2016.
2. The first respondent in this appeal had filed the aforesaid writ petition seeking a writ of mandamus directing respondent no. 3 in the writ petition (the first appellant herein) to accept the petitioner's application dated 18.11.2015 seeking permission to withdraw his application dated 05.11.2015; and a writ of mandamus directing respondent nos. 3 & 4 to permit him to continue in his present service.
3. Facts, to the limited extent necessary, are that the first respondent-writ petitioner was appointed as a Daftari on 10.09.1990 in the first appellant college (herein after called the college). He was later promoted in the year 2004 to the

post of Junior Clerk.

4. It is the respondent-writ petitioner's case that the former principal of the college had threatened to send him to jail on false charges; he was served with a notice on 26.10.2015, to which he had submitted a reply on 31.10.2015; the notice issued by the third and fourth respondents showed that they wanted to harass him; the second appellant (fourth respondent in the writ petition) had issued another notice to him on 03.11.2015, and an adverse entry was marked in his service book on the same day; he submitted an application, under the pressure of the second appellant, seeking voluntary retirement on 05.11.2015, stating that his eyesight had deteriorated because of cataract; his application, for voluntary retirement, was accepted by the school management committee on 08.11.2015, and he was informed accordingly vide letter dated 14.11.2015; and the resolution, passed by the Committee of Management of the College, dated 08.11.2015 records that the application for voluntary retirement, submitted by him, was unanimously accepted, and a copy of the resolution be forwarded to the Chief Education Officer, Udham Singh Nagar for his approval.

5. It has not been disputed before us that no approval was granted by the Chief Education Officer to the resolution passed by the Committee of Management on 08.11.2015. While matters stood thus, the respondent-writ petitioner withdrew his earlier request to be permitted to retire voluntarily, initially by his letter dated 17.11.2015, and again by letter dated 18.11.2015, informing the appellants that the letter seeking voluntary retirement submitted by him earlier was under duress, and on the threat of false charges being made against him before the police; he had ascertained from doctors that his cataract problem could be corrected with a minor surgery; and he be permitted to withdraw his application for voluntary retirement.

6. All the letters, including the letter submitted by the respondent-writ petitioner on 05.11.2015, the resolution of the Committee of Management dated 08.11.2015, the letter addressed to the respondent-writ petitioner by the second appellant on 14.11.2015, and the letters of the respondent-writ petitioner dated 17/18.11.2015, refer only to the fact that the respondent-writ petitioner had sought voluntary retirement "स्वेच्छिक सेवानिवृत्ति" and not resignation "त्याग पत्र".

7. The respondent-writ petitioner invoked the jurisdiction of this Court by way of WPSS No. 2394 of 2015 and the learned Single Judge, by interim order dated 26.11.2015, directed the District Inspecting Officer of School (re-designated as the Chief Education Officer) not to act upon the recommendation of the Management Committee.

8. Curiously, the appellants herein made a U-turn from what they had stated earlier, both in the resolution of the Committee of Management dated 08.11.2015, and in the letter addressed by the second appellant to the respondent-writ petitioner on 14.11.2015, that the voluntary retirement of the respondent-writ petitioner was accepted. In paragraph 3 (XII) of their counter

affidavit, filed in the writ petition, it is stated that "after receiving acceptance of resignation letter on 14.11.2015", and "the petitioner had personally met the fourth respondent and prayed for withdrawal of his resignation", thereby giving an impression that the respondent-writ petitioner had resigned from service, though he had, in fact, only sought voluntary retirement. In paragraph 7 of the said counter affidavit, the appellant herein further stated that the respondent-writ petitioner had, on his own free will, given voluntary retirement/resignation letter. It does appear that the appellants have distorted facts, and have surreptitiously converted the respondent-writ petitioner's request, for voluntary retirement, as a request for acceptance of his resignation though, in fact, the respondent-writ petitioner had neither resigned from service nor did he seek withdrawal of his resignation.

9. In passing the order under appeal, the learned Single Judge proceeded on the premise that the Managing Committee had accepted the respondent-writ petitioner's resignation. The learned Single Judge observed that, even in case the respondent-writ petitioner's application was considered as a voluntary retirement, it was never accepted as per U.P. Fundamental Rule 56, which required three months prior notice to be given by the respondent-writ petitioner, which was not given; nor was this condition waived by the department in its acceptance letter dated 08.11.2015; in any case, the respondent-writ petitioner had withdrawn his resignation on 17.11.2015 prior to its approval by the Chief Education Officer; merely because the resignation was accepted by the Managing Committee, would not mean its final acceptance, as acceptance of the resignation was dependent upon the approval of the Chief Education Officer; and this had not been done although, prior thereto, the respondent-writ petitioner had moved his application for withdrawal of his resignation.

10. On the contention, urged on behalf of the appellants, that there was no provision in law for acceptance of the resignation to be approved by the Chief Education Officer, the learned Single Judge observed that, in such a case, the general principles of law would be applicable, particularly because appointment of the respondent-writ petitioner, in a Class III post, could only have been made after approval of the Chief Education Officer; the regulations, relating to appointment, clearly suggested that it was to be made only on the approval of the Education Authority; the 2009 Regulations, made under the Uttarakhand School Education Act, 2006, also suggested that, before appointment in Class-III posts, approval had to be taken from the District Education Officer; and, before dispensing with the services of the respondent-writ petitioner, approval of the Education Authority was necessary.

11. The learned Single Judge, thereafter, observed that, prior to grant of approval by the Education Officer, the respondent-writ petitioner had withdrawn his resignation; he should, therefore, be treated as a Junior Clerk in the College; and the Management Committee should also release the salary of the respondent-writ petitioner from the date he was not paid the said amount. After taking note

of the contention, urged on behalf of the appellants, that the respondent-writ petitioner had not been performing his duties, he had failed to discharge his duties as a Junior Clerk, he had no knowledge of typing, computer etc, and he was a financial burden on the College, the learned Single Judge granted the appellants liberty to grant compulsory retirement to the respondent-writ petitioner, in accordance with law, after appraising his past service record. Aggrieved thereby, the present appeal.

12. Sri Arvind Vashistha, learned Senior Counsel appearing on behalf of the appellants, would submit that the Committee of Management is not obligated to obtain approval of the Chief Education Officer before acceptance of the resignation of any of its employees; the voluntary act of the respondent-writ petitioner in submitting his resignation on 05.11.2015, its acceptance by the Committee of Management on 08.11.2015, and communication of such acceptance by the second appellant to the respondent-writ petitioner by letter dated 14.11.2015, had resulted in the cessation of a master and servant relationship with effect from that date (14.11.2015); the letter addressed by the respondent-writ petitioner, thereafter, on 17.11.2015 & 18.11.2015, withdrawing his resignation which had already been accepted, was of no avail; while approval of the Chief Education Officer is required for appointment of a Clerk in an aided College, the Regulations are silent as to whether approval of the Chief Education Officer is required for acceptance of his resignation; the Competent Authority, to appoint a Clerk in an aided College, is the Committee of Management, and not the Chief Education Officer; the Regulations superimposed the requirement of obtaining approval of the competent authority i.e. the Chief Education Officer for making such an appointment; since the requirement of approval is confined only to appointment, there is no requirement of obtaining approval of the Chief Educational Officer for acceptance of resignation; and the Committee of Management was, therefore, justified in accepting the respondent-writ petitioner's resignation by its resolution dated 08.11.2015, and in communicated the same to him by letter dated 14.11.2015, without awaiting approval of the Chief Education Officer.

13. On the other hand Sri K.S. Bora, learned counsel appearing on behalf of the respondent-writ petitioner, would submit that the appellants have sought to mislead this Court by contending that the respondent-writ petitioner had resigned from service when, in fact, he had sought voluntary retirement; while the respondent-writ petitioner had, no doubt, sought voluntary retirement with immediate effect, FR-56 required three months notice to be given for the voluntary retirement to take effect, or for payment of three months' salary in lieu thereof; while the Competent Authority may possibly have the power to waive the notice period, and accept the request for voluntary retirement forthwith, the resolution passed by the Committee of Management is silent either regarding waiver of, or insistence on, payment of three months' salary in lieu of notice; since FR 56 required three months notice to be given, it is always open to an employee to withdraw his resignation before the said period of three months,

except in cases where the employer has waived the requirement of such a notice, and has thereafter accepted the request for voluntary retirement forthwith; having, themselves, sought approval of the Chief Education Officer by their resolution dated 08.11.2015, it is not open to the first appellant to now turn around and contend that no such approval is required; and the learned Single Judge, even though he had erroneously proceeded on the premise that it was a request for resignation, was justified in holding that, in the absence of approval of the Chief Education Officer before withdrawal of the letter seeking voluntary retirement, the respondent-writ petitioner continued to remain an employee of the first appellant-College.

14. When we asked Sri Arvind Vashistha, learned Senior Counsel appearing on behalf of the appellants, to show us, from the correspondence placed on record, that the respondent-writ petitioner had submitted his resignation (R;kx i=½] and had not sought voluntary retirement (LosfPNd Lksokfuo`fRr), learned Senior Counsel would submit that, while a literal reading of the correspondence does indicate that both the respondent-writ petitioner and the appellants had proceeded on the basis that the letter dated 05.11.2015 was a request for voluntary retirement, the counter affidavit filed by the appellants, before the learned Single Judge, shows that it was possibly a letter of resignation. As all the letters on record, and as referred to hereinabove, only reflect that the respondent-writ petitioner had sought voluntary retirement, the change of stand by the appellants herein, in the counter affidavit filed in the writ petition before the learned Single Judge, misconstruing a letter seeking voluntary retirement as a letter of resignation, must be deprecated.

15. Since the contention, urged on behalf of the appellants, is that the Committee of Management, as the Appointing Authority, was entitled to accept such a request from its employee, and approval of the Chief Education Officer is wholly unnecessary, it is necessary to briefly refer to the relevant provisions of the Uttaranchal School Education Act, 2006, and the Uttarakhand School Education Regulations, 2009, in this regard. Appointment of clerical staff in Government aided Institutions is governed by Section 37 of the 2006 Act. Section 37 (3) stipulates that, for selection of candidates for appointment as a Clerical staff in a College, there shall be a selection committee consisting of the President or any member of the Committee of Management, the Head of the Institution, and one officer nominated by the District Education Officer not below the rank of provincial education service cadre. Section 24 of the 2006 Act confers power on the Board of School Education to make regulations to provide for all or any of the matters enumerated thereunder. Section 24 (2) of the Act stipulates that no regulations shall be made, under sub-section (1), except with the prior approval of the State Government.

16. It is in exercise of the powers conferred under Section 24 (1) and (2) of the Act, that the 2009 Regulations were made. Regulation 7 of the 2009 Regulations confers power on the Committee of Management to appoint, confirm, promote,

grant efficiency bar, suspend and punish employees. While Regulation 25, under Chapter III of the 2009 Regulations, relates to punishment which requires prior approval of the District Education Officer thereto, Regulation 23, under Chapter III of the 2009 Regulations, relates to resignation and stipulates that the conditions for acceptance of resignation would be similar to those relating to termination of service of an employee in terms of Regulation 20, whereunder termination of an employee, consequent upon abolition of a post, is permitted by giving three months notice to the employee or salary in lieu of such notice.

17. The 2006 Act and the 2009 Regulations neither contain any provision relating to voluntary retirement nor do they confer any specific power on the Committee of Management (appointing authority) to permit an employee to retire voluntarily. Learned counsel on either side would fairly state that the 2009 Regulations do not deal with cases of voluntary retirement. The contention urged before us is that it is implicit in the power, conferred on the Committee of Management to appoint an employee in the clerical cadre, to also retire such an employee compulsorily, or to accept his request for voluntary retirement; and no approval in this regard is required to be obtained from the Chief Education Officer.

18. It is necessary, therefore, to take note on the 2009 Regulations which relates to appointment of an employee in the clerical cadre. Regulations 18 (a), under Chapter II of the 2009 Regulations, prescribes the procedure of appointment and stipulates that the procedure under Section 37 (3) and 37 (4) shall be followed in this regard. Regulations 19, under Chapter II of the 2009 Regulations, stipulates that appointment, of a person in the clerical cadre, shall be made with the approval of the prescribed authority. It is evident, therefore, that appointment of a person in the clerical cadre can only be made with the approval of the prescribed authority which, in the case of the appellants-Institution, is the Chief Education Officer.

19. No specific provision is made, either in the 2006 Act or in the 2009 Regulations, regarding voluntary retirement of an employee in the clerical cadre. Absence of any statutory provision in this regard would require resort to the provisions of the U.P. General Clauses Act, 1904. Section 16 thereof stipulates that the power to appoint would include the power to suspend, dismiss or otherwise terminate the tenure of office and, thereunder, where a power to make any appointment is conferred, then, unless a different intention appears, the authority having, for the time being, the power to make appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or by any other authority, in the exercise of that power.

20. The power to appoint would, therefore, bring within its ambit the power to terminate the tenure of an employee. The power of termination would include acceptance of the employees request for voluntary retirement, as the tenure of the employee would stand terminated thereby. Since the power of the Committee of Management to make appointment is conditioned by the requirement of

obtaining approval of the Chief Education Officer to do so, the power to accept a request for voluntary retirement would also be subject to the same condition of having to obtain approval of the Chief Education Officer. It is evident, from the resolution passed by the Committee of Management of the first appellant dated 08.11.2015, that they also understood this to be the requirement, and had in fact sought approval of the Chief Education Officer for acceptance of the request of the petitioner to be permitted to voluntarily retire from service.

21. Sri Arvind Vashistha, learned Senior Counsel appearing on behalf of the appellants, would submit that since acceptance of resignation of an employee, unlike appointment, does not cast any financial burden on the Government, approval of the Chief Education Officer is not required. As noted hereinabove, the first appellant is a Government aided Institution, and the salaries and other emoluments of its staff are provided entirely by the Government of Uttarakhand. Unlike acceptance of resignation, acceptance of an employee's request for voluntary retirement would obligate the State Government to pay him his retiral benefits which would, undoubtedly, place a considerable financial burden on the public exchequer. Even on this score approval of the Chief Education Officer is required for the decision of the first appellant, in its resolution dated 08.11.2015, accepting the respondent-writ petitioner's request for voluntary retirement, to have effect.

22. The learned Single Judge has, in the order under appeal, referred to U.P. Fundamental Rule 56 (c) which stipulates that a Government Servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years. Rule 56 (d) of the U.P. Fundamental Rules stipulates that the period of such notice shall be three months. Under proviso (1) thereto, the Government Servant may by the order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time. Proviso (2) stipulates that it shall be open to the appointing authority to allow a Government Servant to retire without any notice or by a shorter notice without requiring the Government Servant to pay any penalty in lieu thereof.

23. While the resolution passed by the Committee of Management on 08.11.2015, accepting the respondent-writ petitioner's request for voluntary retirement, does not stipulate any such conditions, the letter addressed by the second appellant, to the respondent-writ petitioner, on 14.11.2015 required him either to pay three months salary for his act of voluntary retirement with immediate effect, and to furnish an undertaking in a stamp paper, failing which three months salary would be adjusted against his retiral dues. It is evident, from the said letter dated 14.11.2015, that the respondent-writ petitioner was called upon to pay three months salary in lieu of notice, consequent upon his request for voluntary retirement being accepted with immediate effect.

24. The respondent-writ petitioner did not, in his letter dated 05.11.2015 seeking voluntary retirement, request for waiver of the notice period of three months.

While it was open to the appellants to inform the respondent-writ petitioner that his request for voluntary retirement would be accepted only if he paid three months salary, or if he agreed for adjustment of three months' salary from his retiral dues, the appellants had, curiously, accepted the respondent-writ petitioner's request for voluntary retirement in the first instance, and had thereafter called upon him to pay three months salary in lieu of notice.

25. In *Punjab National Bank vs. P.K. Mittal* : AIR 1989 SC 1083, the Supreme Court was called upon to examine the scope of Regulation 20 of the Punjab National Bank (Officers) Service Regulations, 1979. The said Regulation 20 read as under:

"20.(1) Subject to Sub-regulation (3) of Regulation 16, the bank may terminate the services of any officer by giving him three months' notice in writing or by paying him three months' emoluments in lieu thereof.

(2) No officer shall resign from the service of the bank otherwise than on the expiry of three months from the service on the bank of a notice in writing of such resignation. Provided further that the competent authority may reduce the period of three months, or remit the requirement of notice."

26. In this context the Supreme Court observed that there were two ways of interpreting Regulation 20(2); one was that the resignation of an employee from service was a voluntary act on his part, and he was entitled to choose the date with effect from which his resignation would be effective, and give a notice to the employer accordingly; the only restriction was that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation; the other interpretation was that, when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof; in either view of the matter, the resignation would normally, automatically, take effect after three months; it was common knowledge that a person, proposing to resign, often wavers in his decision; equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee; Regulation 20(2) also gave the employee a period of adjustment and rethinking; it also enabled the employer to have some time to arrange its affairs with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires it; until the resignation becomes effective, in terms of Regulation 20, it was open to an employee, on general principles, to withdraw his letter of resignation; and this issue has been settled in the earlier decisions of the Supreme Court in *Raj Kumar vs. Union of India* AIR 1969 SC 180; *Union of India vs. Gopal Chandra Misra* : AIR 1978 SC 694; and *Balram Gupta vs. Union of India*: AIR 1987 SC 2354. In the present case also, FR 56 (d) of the U.P. Fundamental Rules stipulates a similar requirement of three months' notice to be given by an employee while seeking voluntary retirement.

27. While the respondent-writ petitioner has, no doubt, sought voluntary

retirement forthwith (i.e. on 05.11.2015), FR 56(d) required him to give the appellant three months' notice. The first appellant was no doubt entitled, in terms of proviso (1) & (2) of FR 56(d), to permit voluntary retirement of the respondent-writ petitioner without any notice, and without requiring him to pay any penalty in lieu thereof. In the present case, while informing the respondent-writ petitioner that his request for voluntary retirement had been accepted by the Committee of Management on 08.11.2015, the 2nd appellant had called upon him, vide letter dated 14.11.2015, to deposit, within three days from the date of receipt of the said letter, three months' salary with the department, for his failure to give three months' notice, or else this amount would be adjusted from his retiral benefits. The second appellant informed the respondent-writ petitioner that he should file a notarized No Objection Certificate of his family members on a stamp paper, failing which he would be responsible for the delay in payment of his dues.

28. Though the respondent-writ petitioner had sought voluntary retirement forthwith i.e. from 05.11.2015, the stipulation in FR 56(d), of three months notice, would mean that his request for voluntary retirement would take effect only from 05.02.2016 (i.e. three months after the date on which he submitted the letter seeking voluntary retirement), unless he paid three months salary in lieu of notice or the first appellant had waived this requirement. The appellants could have accepted the respondent-writ petitioner's request for voluntary retirement, with immediate effect, waiving the requirement of three months' notice, in terms of FR 56(d) and its provisos. As they did not waive this requirement, and had called upon the respondent-writ petitioner to pay three months' salary in lieu of notice, and as the respondent-writ petitioner had neither agreed, nor did he pay three months' salary in lieu of three months' notice, or even agree for adjustment of the said amount from his retiral dues, the voluntary retirement of the respondent-writ petitioner would have taken effect only three months, after the date on which he had made such a request on 05.11.2015, i.e. on 05.02.2016 and not prior thereto.

29. If, on the other hand, the appellants intended the voluntary retirement, of the respondent-writ petitioner, to take effect immediately, then an order should have been passed by the first appellant waiving this three months' notice requirement. As the appellants had called upon him to pay three months' salary in lieu of notice, they could not have, at the same time, accepted the respondent-writ petitioner's request for voluntary retirement with immediate effect. As the respondent-writ petitioner withdrew, his earlier request for voluntary retirement, by his letters dated 17.11.2015/18.11.2015 within two weeks of his letter dated 05.11.2015, acceptance of his request for voluntary retirement prior thereto is of no avail. Acceptance of the respondent-writ petitioner's request for voluntary retirement by the first appellant in its resolution dated 08.11.2015, and its communication by the second appellant vide letter dated 14.11.2015, fall foul of FR 56(d) of the U.P. Fundamental Rules and its provisos.

30. The respondent-writ petitioner withdrew his earlier letter dated 05.11.2015, seeking voluntary retirement, by his subsequent letters dated 17.11.2015 and 18.11.2015 before the time stipulated in the letter dated 14.11.2015 was to expire (i.e. for payment of three months' salary in lieu of notice within three days of receipt of the said letter dated 14.11.2015). As the respondent-writ petitioner withdrew, his earlier request for voluntary retirement, by his letters dated 17.11.2015/18.11.2015, long before expiry of three months from the date of its submission, his earlier letter of voluntary retirement dated 05.11.2015 could not have been acted upon by the appellants herein, and they ought to have permitted the respondent-writ petitioner to join duty.

31. Viewed from any angle, the resolution of the Committee of Management of the first appellant dated 08.11.2015, and the letter dated 14.11.2015 addressed by the second appellant to the respondent-writ petitioner, must be set aside, be it for not obtaining approval of the Chief Education Officer, or because the Committee of Management had illegally accepted the respondent-writ petitioner's request for voluntary retirement forthwith, without even waiving the notice period of three months. As it does not suffer from any legal infirmity, we see no reason to interfere with the order under appeal. The Special Appeal fails and is, accordingly, dismissed. No costs.