

(2012) 07 UK CK 0059

In the Uttarakhand High Court

Case No : Writ Petition No. 1800 of 2005 (S/S)

Rajendra Singh

APPELLANT

Vs

Additional Director General of Police and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2013) 1 UC 59

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Manoj Tiwari, assisted by Mr. Alok Mehra, for the Appellant; Subhash Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard the learned counsel for the parties. The petitioner was appointed as a Constable in the year 1966 and was posted in various districts of Uttar Pradesh. In the year 1998, the petitioner was posted in District Pauri and applied for voluntary retirement on 06.10.1998. The Superintendent of Police, while processing his voluntary retirement application, found that his application could not be processed as his Character Roll Register was lost while he was serving in Muzaffarnagar and that a duplicate Character Roll was prepared but the same was incomplete. The Superintendent of Police found that such till time as the Character Roll was not complete, his application could not be processed. In this regard, several letters were written to the Superintendent of Police, Moradabad to complete the entries in the duplicate Character Roll Register, so that the petitioner's papers for voluntary retirement could be processed. When no action was taken by the authorities of Moradabad, the petitioner was himself deputed by an order of 12th July, 1999 to go to Moradabad for this purpose.

2. The petitioner armed with this order left Pauri Station and proceeded to go to Moradabad but somewhere he got derailed and did not reach Moradabad. When the respondents came to know that he is absenting without authorised leave, a notice was issued, which was duly served upon him, on 13th October, 1999.

Inspire of this service of notice, the petitioner did not report for work and continued to remain absent. Eventually a charge sheet dated 5th January, 2000 was issued which was duly served upon the petitioner on 8th January, 2000. Based on this charge sheet, the petitioner reported for work on 29th January, 2000. The petitioner was asked to submit a reply to the charge sheet, which he did. The Enquiry Officer initiated the enquiry proceedings and submitted a reply holding that the charge stood proved against the petitioner. The disciplinary authority on the basis of the enquiry report issued a notice to the petitioner to show cause why a penalty of dismissal of service should not be passed against him. The petitioner submitted a reply and the disciplinary authority after considering the matter issued an order dated 5th January, 2000 dismissing the services of the petitioner on account of unauthorized leave of 194 days. The petitioner, being aggrieved, filed an appeal, which was also dismissed. The petitioner, thereafter, preferred a revision, which also met the same fate. The petitioner, consequently, has filed the present writ petition.

3. The learned senior counsel for the petitioner submitted that under Rule 56 of the Financial Hand Book, the petitioner is deemed to have retired voluntary, after the completion of three months notice period and consequently no disciplinary proceedings could have been initiated after the expiry of three months notice.

4. It was also contended that the charge against the petitioner was that he was on unauthorized leave from 12th July, 1999 to 13th October, 1999 whereas the dismissal order relates to the period much after 13th October, 1999, and consequently, the order of punishment is incorrect and liable to be set aside.

5. It was also contended by the learned senior counsel that the enquiry proceedings was not conducted by the Enquiry Officer in accordance with the principles of natural justice and that the Enquiry Officer has proceeded with the enquiry, as if he was a prosecutor. In support of this submission, the learned senior counsel has placed reliance on paragraph-11 of the writ petition, in which it has been stated apart from the aforesaid, that the Enquiry Officer did not permit the petitioner to produce any evidence in his defence nor was the petitioner permitted to cross-examine the witness and that the recital in the enquiry report to the effect that the petitioner declined to cross-examine the witness was wholly incorrect.

6. Upon hearing the learned senior counsel for the petitioner at some length and upon a perusal of the writ petition and other affidavits, the Court finds that the submission of the learned senior counsel for the petitioner cannot be accepted.

7. In so far as the ground taken under Rule 56 of the Financial Hand Book is concerned, no such pleading has been taken in the writ petition to the effect that after the expiry of three months from the date of submitting the application for voluntary retirement the petitioner is deemed to have retired. However, since a submission has been made, the Court is dealing with this proposition and finds from a reading of Rule 56 of the U.P. Fundamental Rules of the Financial I laud

Book Vol. II that the contention of the learned senior counsel is patently erroneous. The first proviso to Rule 56 of the Financial Hand Book contemplates that there has to be an order of the appointing authority permitting the government servant to retire forthwith. The second proviso to Rule 56 clearly indicates that the application for voluntary retirement can only be made effective only if it is accepted by the appointing authority in the case where disciplinary proceedings are pending against the delinquent servant. The third proviso to the said Rule indicates that an application for voluntary retirement of a government servant cannot be withdrawn by the government servant except with the permission of the appointing authority.

8. From a reading of Rule 56 of the Financial Handbook, it is apparently clear and explicit that an application for voluntary retirement can be filed by a government servant. The period of such notice is three months but it does not mean that after the expiry of three months, the application for voluntary retirement is deemed to be accepted. Retirement of a person can only be made effective once an explicit order in writing is issued by the appointing authority. In the light of the aforesaid, the submission of the learned counsel for the petitioner cannot be accepted.

9. In so far as the second submission is concerned that the charge sheet does not specify the dates of unauthorized absence, the charge sheet dated 5th January, 2000 indicates that the petitioner had remained on unauthorized leave since 12th July, 1999 onwards. It has come on record that the petitioner joined his duties on 29th January, 2000 and consequently the entire period was taken into consideration while issuing the order of dismissal. The submission of the learned senior counsel for the petitioner on this ground also fails.

10. In so far as the last submission is concerned, the averments made in paragraph 11 of the writ petition cannot be taken into consideration. Paragraph 11 of the writ petition has been sworn on the basis of record. Such relevant records to show that the petitioner was not permitted to cross-examine the witness or that he was not permitted to produce his evidence in his defence has not been brought on record. On the other hand, the enquiry report clearly indicates that the petitioner declined to cross-examine the witnesses. In the light of the aforesaid, the Court does not find any reason to interfere in the impugned order. However, before parting, the Court felt that the order of dismissal did not commensurate with the misconduct in the given circumstances, as during the period when the petitioner was absent, his son had died on 3rd October, 1999, and in this regard, had submitted the death certificate, medical reports, etc. to the enquiry officer as well as before the appointing authority. The order of dismissal does not consider this aspect and accordingly the learned Standing Counsel was asked to explain the extenuating circumstances which led to the dismissal of the petitioner by the impugned order. The learned Standing Counsel pointed out that this question was raised before the appellate authority who considered the matter and found that the past record of the petitioner indicated

that he was a habitual absentee and at many times his unauthorized leave was converted into, leave without pay. The past record also suggested that the petitioner was punished for various misconduct.

In view of the aforesaid, the Court finds that it is not a fit case where the Court should interfere in the order of dismissal passed by the competent authority. The writ petition fails and is dismissed.