

(2006) 03 CAL CK 0011
In the Calcutta High Court
Case No : W.P.C.T. No. 3 of 2006

Rajesh Kumar and Others

APPELLANT

Vs

Rajan and Others

RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : 110 CWN 520

Hon'ble Judges : Subhro Kamal Mukherjee, J; Arun Kumar Bhattacharya, J

Bench : Division Bench

Advocate : Haradhan Banerjee and Amitava Pain, for the Appellant; H.R. Bahadur and Vijay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India against the orders dated December 21, 2005 passed by the Central Administrative Tribunal, Calcutta Bench, Circuit at Port Blair. The writ petitioners, by filing an application u/s 19 of the Administrative Tribunal Act, 1985, challenged the selection process in the posts of Inspectors and Sub-Inspectors of Co-operative Societies. The said application was registered as O.A. No. 67/AN/2002.

2. Before the judgment could be pronounced in the said case, the petitioners filed an application for withdrawal of the said application u/s 19 of the Administrative Tribunal Act 1985. It was contended that all the petitioners were no interested to proceed with the said application as by efflux of time they have got their own sources of income. The said application was registered as MA No. 29/AN/2005.

3. The tribunal, however, by the order impugned, rejected such application as the hearing of the main application was concluded and order was reserved. After

rejection of the application, the tribunal allowed the application u/s 19 of the Administrative Tribunal Act 1985 and set aside the selection process so far as the Sub-Inspectors Cooperative Societies were concerned.

4. Being aggrieved, the petitioners have come up with this application.

5. We have perused the application for withdrawal. The petitioner wanted to withdraw and abandon their claims without permission to file fresh application on the same subject matter.

6. In *Saraswati Bala Samata and others vs. Surabala Dassi & Ors.*, reported in AIR 1957 Calcutta 57, a Division Bench of this Court inter alia, holds that if the plaintiff desires to withdraw the suit and does not want permission to institute a fresh suit, he is at liberty to do so. The Court has no discretion in the matter and the plaintiff is entitled to withdraw the suit as a matter of right. The consequence of such withdrawal is that the plaintiff is precluded from instituting any fresh suit in respect of the subject matter of the suit.

7. The Supreme Court of India in the case of *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, inter alia, holds that law gives an unqualified right to a plaintiff to withdraw from a suit, and if no permission to file a fresh suit is sought, the plaintiff becomes liable for such costs as the court may award and becomes precluded from instituting any fresh suit in respect of the subject matter.

8. The principle of withdrawal from or abandonment of the proceedings is based on the maxim *invito beneficium non datur* meaning that a benefit is not conferred on one, who is unwilling to receive it; that is to say, no one can be compelled to accept a benefit. Every man may renounce a benefit or waive a privilege, which the law has conferred upon him. Law confers upon a man no right or benefit, which he does not desire. Second proceeding after withdrawal or abandonment of first proceeding is barred, not because of the principles of the *res judicata*, as there has been no adjudication, but because, whoever waives, abandons or disclaims a right, will lose it.

9. The reliance placed by the tribunal in the case of *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, was misplaced. That was the case of a police officer. It was detected that the police officer was in possession of pecuniary resources or properties in his name and/or in the names of the members of his family, close relative and associate, which were found to be disproportionate to his known source of income. The Government of Maharashtra accorded sanction to the prosecution of the said public servant. The police officer filed one criminal writ petition in the High Court u/s 482 of the Code of Criminal Procedure, 1973 or under Article 227 of the Constitution of India and, by the judgment impugned before the Apex Court, the High Court quashed the proceedings pending before the learned Special Court, Greater Bombay, against the public servant. During the course of his argument, the learned advocate appearing for the public servant submitted that the public servant should be allowed to withdraw the original writ petition and he should be permitted to

agitate all the contentions, which he had raised, before the learned Special Judge. In the aforesaid background, the Apex Court observed that it was strange that when the petition had been filed in the High Court, judgment obtained and the losing party came to the Superior Court, then, in order to avoid an unfavourable order, a request should be made for the withdrawal of the original proceeding in an effort to avoid an adverse decision from the Superior Court with a view to re-agitate the same contentions once again before the subordinate court. The Supreme Court deprecated such practices as such practices would be opposed to judicial discipline and might lead to unhealthy practices which would not be conducive. On the facts of the case, the Supreme Court declined permission to the public servant to withdraw his writ petition.

10. In this case, the judgment was not pronounced in the matter. Before the tribunal could pronounce the judgment, the petitioners unconditionally prayed for leave to withdraw, the proceeding. The tribunal had no discretion left in the matter; the tribunal had no option, but to allow such prayer. Therefore, the order impugned dated December 21, 2005 passed by the Central, Administrative Tribunal, rejecting the application for withdrawal, are not based on the proper legal tests. The order impugned is set aside. The application for withdrawal is, thus, allowed. The order of the tribunal dated December 21, 2005 allowing the application u/s 19 is, also, set aside. The application u/s 19 of the Administrative Tribunal Act, 1985, which was registered as OA No. 67/ AN/2002, is dismissed.

This application is, thus, allowed. Writ allowed

We make no order as to costs.

Arun Kumar Bhattacharya, J.

I agree.