

(2017) 02 JH CK 0088
In the Jharkhand High Court
Case No : W.P.(S) No. 2022 of 2007

Ram Ekbal Chaudhary 'Raman'	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Citation : (2017) 2 JBCJ 121

Hon'ble Judges : Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. P.P.N. Roy, Sr. Advocate, for the Petitioner; Mr. Ashok Kumar Singh, JC to SC (L&C) and Mr. Sarvendra Kumar, JC to SC (L&C), for the Respondent-State; Mr. Indrajit Sinha and Mr. Arpan Mishra, Advocates, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J.—The petitioner is aggrieved of order dated 30.12.2006 passed by the appellate authority.

2. Facts disclosed in the writ petition disclose a chequered history of litigation. When on the application dated 06.11.1999 of the petitioner the Chief Inspector of Factories, Jharkhand did not move, the petitioner moved this Court in C.W.J.C. No. 1441 of 2001. Consequently, an order was passed on 10.09.2001 by the Chief Inspector of Factories which was quashed by the appellate authority (Secretary, Department of Labour, Employment and Training, Government of Jharkhand) vide its order dated 03.08.2002 on the ground that the said order was passed without proper enquiry in the matter. On remand, by an order dated 10.10.2002 the Chief Inspector of Factories quashed the order of pre-mature retirement, however, this order was again interfered by the appellate authority vide an order dated 17.01.2005. Order dated 21.10.2005 passed thereafter by the Chief Inspector of Factories was the order impugned before the appellate authority. It is the order of the Secretary dated 30.12.2006, quashing order dated 21.10.2005, which has been challenged in the present proceeding.

3. Heard.

4. The petitioner was appointed on 02.09.1968 under the respondent-Tata Iron and Steel Company Limited as Technical Probationer. On his application dated 22.10.1999, letter dated 25.10.1999 was issued by the vice-president of the company. The petitioner filed an application on 06.11.1999 alleging that he was forced to submit application dated 22.10.1999 for pre-mature retirement. Mr. P. P. N. Roy, the learned Senior counsel for the petitioner contends that the petitioner immediately upon receiving letter dated 25.10.1999 approached the Chief Inspector of Factories and merely because he had accepted the retiral benefits it would not preclude him from challenging an order which, in fact, is an order of discharge by way of punishment. It is further contended that the findings returned by the Chief Inspector of Factories in so far as illegality committed by the respondent-authority is concerned, could not have been interfered by the appellate authority. Another plea is that there was no scheme of voluntarily retirement and while so, the letter dated 25.10.1999 could not have been issued by the respondent-company.

5. In the context of the plea that after receiving the benefits under letter dated 25.10.1999 the petitioner, still, can challenge the order of pre-mature retirement, judgment in "Bennett Coleman and Co. Pvt. Ltd. v. Punya Priya Das Gupta" reported in 1970 LIC (512) relied upon by the petitioner is not relevant. Unless a conclusion is arrived at that the order of separation is an order of discharge by way of penalty, ratio in Bennett Coleman and Co. Pvt. Ltd. case is not attracted. On his own saying, by letter dated 22.10.1999 the petitioner sought pre-mature retirement on the conditions; if he is paid retiral benefits and ex-gratia and these benefits have been paid to him, letter dated 25.10.1999 cannot be said to be an order of discharge by way of punishment. Leaving aside the order of the appellate authority on the point that the petitioner immediately did not make a complaint of illegal pressure upon him as a consequence of which he wrote letter dated 22.10.1999, no evidence was produced by the petitioner on this point. What happened in the chamber of the vice-president on 22.10.1999, no doubt, is a matter exclusively within the knowledge of the petitioner, however, the fact remains that the petitioner did not inform about the alleged incident to any one of his colleagues and none of them have been examined. Dr. T. Mukherjee is not a witness of the petitioner. On account of his absence in the proceeding under the Factory Act, the Chief Inspector of Factories could not have returned an adverse finding. It is pertinent to note that the Chief Inspector of Factories in order dated 21.10.2005 has noticed that there was no complaint against the petitioner by the company and rather, the company has appreciated his work under it, however, on this ground the Chief Inspector of Factories has drawn an inference to the extent that there was no reason for the petitioner to seek pre-mature retirement. The inference drawn by the Chief Inspector of Factories is apparently erroneous. It was for the petitioner in that event to establish, why someone forced him to tender resignation and seek pre-mature retirement. Even if it is assumed that there was no scheme of Voluntary

Retirement, the fact remains that letter dated 25.10.1999 records that by way of a special case the benefits of ex-gratia etc. have been extended to him. Order passed by the Chief Inspector of Factories is based on mere ipsi-dixit. Order dated 25.10.1999 (in fact, more of a letter) does not contain any allegation against the petitioner rather, it records appreciation for petitioner's service. It is, thus, definitely not stigmatic. How this order becomes a penalty, has not been established by the petitioner. In law, an order of pre-mature retirement, if not passed in a departmental proceeding, is not considered a punishment to the employee. The appellate authority had jurisdiction to examine the legality of order dated 21.10.2005 both on law as well as on facts.

6. In the above facts, I find no infirmity in the impugned order dated 30.12.2006 and accordingly, the writ petition is dismissed.