
(2015) 07 RAJ CK 0075
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1946 of 1998

R.S. Mehrish

APPELLANT

Vs

LIC of India and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 07 RAJ CK 0075

Hon'ble Judges : Anupinder Singh Grewal, J

Bench : Single Bench

Advocate : R.N. Mathur, Senior Advocate, Rajesh Maharshi and Sandeep Taneja, for the Appellant; Anurag Agrawal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J—This writ petition is directed against the award of the Central Industrial Tribunal, Jaipur dated 10/01/1997 (Ann. 21) whereby claim petition preferred by the petitioner was dismissed while holding that resignation of the petitioner was voluntary.

2. The petitioner had been working as a Development Officer with the respondent-Corporation since 31/03/1967. He tendered his resignation from service on 11/06/1981 (Ann. 11), which was accepted on the same day. After submitting resignation, petitioner wrote a letter to the Corporation on 15/06/1981 (Ann. 10) disclosing reasons for submission of resignation.

3. Petitioner vide application dated 07/07/1981 (Ann. 13) sought to withdraw his resignation stating therein that he had offered resignation under duress as he was being harassed by the respondent-Corporation and even his salary, subsistence allowance and other dues were also not paid to him, but no heed was paid to this application.

4. Hence, the petitioner challenged the order dated 11/06/1981, whereby his resignation was accepted by the respondent-Corporation, by preferring claim

petition before the labour court, which was dismissed by the order, which is impugned in this petition.

5. Learned Senior Counsel appearing for the petitioner has contended that the petitioner had been repeatedly harassed and victimized by the respondent-Corporation for a long period of time and he was not paid his salary for almost fifteen months and other benefits including the payment of road tax and insurance premium, to which he was legally entitled, had not been given. Learned counsel has also drawn attention of this Court to various letters written by the petitioner to the respondent-Corporation for disbursement of his dues. It has further been contended by the learned counsel that in 1979-80, the petitioner was not granted medical leave even though he was undergoing treatment by the government doctors as the respondent-Corporation insisted that he should be medically examined by a private doctor, who was on the panel of the Corporation. It is also contended that due to the aforementioned harassment, petitioner was compelled to tender his resignation as his dues were not cleared and he had been given assurance by the senior officers of the respondent-Corporation that in case he resigns, all his dues would be cleared. He has also drawn my attention to the fact that resignation was accepted on the very day when it was submitted. After acceptance of his resignation, not only his salary was paid but also increments were granted to him, which indicates that salary was intentionally withheld in order to compel the petitioner to tender his resignation from service. Learned counsel submits that petitioner was also not paid the subsistence allowance. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court of State of Maharashtra Vs. Chandrabhan Tale, AIR 1983 SC 803 : (1984) 48 FLR 57 : (1983) LabIC 1128 : (1983) 2 LLJ 256 : (1983) 1 SCALE 690 : (1983) 3 SCC 387 : (1983) 3 SCR 337 : (1983) 2 SLJ 227 , wherein it was held that non-payment of even subsistence allowance during the period of suspension is unconstitutional and departmental enquiry is liable to be set-aside on this ground alone as without payment of subsistence allowance, it would not be possible for the delinquent employee to defend himself in the departmental proceedings.

6. It was then submitted by the learned Senior Counsel for the petitioner that the petitioner withdrew his resignation vide letter dated 07/07/1981 (Ann. 13) and hence, this letter should have been acted upon and petitioner should have been allowed to withdraw his resignation. He has also placed reliance upon the judgment of the Hon'ble Supreme Court of Dr. Prabha Atri Vs. The State of U.P. and Others, AIR 2003 SC 534 : (2002) 10 JT 295 : (2003) 1 LLJ 1123 : (2003) 1 SCC 701 : (2003) SCC(L&S) 118 : (2002) 5 SCR 27 Supp : (2003) 1 UJ 415 .

7. Per contra, the learned counsel for the respondent-Corporation has argued that the petitioner had resigned on his own volition and after acceptance of his resignation on 11/06/1981 itself, it was not open to the petitioner to have withdrawn the same as in any case, withdrawal of the resignation after its acceptance cannot help the case of the petitioner. He has also denied that

petitioner had been harassed by the department and in this connection, he has drawn attention of the Court to the reply filed before the labour court, wherein it is stated that the petitioner had earlier been repeatedly absenting himself without leave on several occasions and he used to submit leave application only after absence. Learned counsel has also referred to the letter sent by the petitioner to the respondent-department on 15/06/1981, wherein in the last para, he has stated that his resignation may be accepted and his dues may be cleared.

8. I have heard learned counsel for the parties and perused the record.

9. It is apparent that the petitioner was not satisfied with the management and had raised grievances on several occasions much prior to 11.06.1981 whereon he had tendered his resignation. These issues pertain to reimbursement of road tax, insurance premium and release of his salary. However, this by itself could not lead to an irrefutable conclusion that the resignation of the petitioner was not voluntary or that it was under coercion or duress. Obviously, an employee who is fully satisfied while working in a particular job would rarely resign from service unless, of course, he has been offered a better assignment. The reply of the respondents on the issues raised by the petitioner does indicate that some efforts were being made to address them though not in a manner which was to the satisfaction of the petitioner. In any case whether the petitioner was entitled to the dues which he had demanded was at best a debatable issue which could be addressed at the level of higher authorities. In case the petitioner had any subsisting grievance the same could have also been agitated in a court of law. A perusal of the letter of resignation dated 11.06.1981 indicates that though the petitioner was highlighting his grievances but he had in the last paragraph also expressed his desire that his resignation may be accepted at the earliest and his dues may be cleared.

10. The petitioner wanted his resignation to be accepted at the earliest and hence no fault can be attributed to the management for having accepted the resignation on the very date when it was submitted. Further, the petitioner submitted another letter to the Divisional Manager on 15.06.1981 and again requested that his resignation may be accepted and the payment of his dues may be expedited.

The operative part of the letter dated 15/06/1981 (Ann. 10) is reproduced, as under:-

"Now, I request you to kindly settle my all the dues cited above for which you had assured me that if I submit the resignation my all the dues will be settled as per rules within no time which of course could have been settled earlier if you would have believed in justice and would have not believed in the false reports of the Crim.

Hope you will kindly not only accept my resignation but will also expedite my all the dues and oblige."

11. The petitioner had again written to the Divisional Manager vide letter dated 04/07/1981 (Ann. 12) wherein he had again requested that his dues be settled otherwise he shall be compelled to move to a Court of Law. In this letter he has nowhere stated that his resignation was not voluntary or it should not be accepted. In fact he has stated that his resignation was promptly accepted but his dues have not been cleared. Thus, not only the tone and tenor of resignation but even the subsequent conduct of the petitioner does not indicate that the resignation was under duress and not voluntary.

12. The word "voluntary" has been defined in Black's Law Dictionary (Sixth Edition) at page No. 1575 as "unconstrained by interference; unimpelled by another's influence; spontaneous; action of oneself; done by design or intention; proceeding from the free and unrestrained will of the person; produced in or by an act of choice; resulting from free choice, without compulsion or solicitation".

The word "voluntary" has also been defined in Advanced Law Lexicon Dictionary, 2005 (3rd Edition) at page No. 4909 as "of one's free will, impulse or choice; not constrained by another; acting voluntarily or willingly".

In Webster's New International Dictionary of the English Language (Second Edition) it is defined as "proceeding from the will, or from one's own choice or full consent; produced in or by an act of choice; as, voluntary action".

The definition of voluntary word in the Concise Oxford English Dictionary reads as "done, acting, able to act, of one's own free will, not constrained or compulsory, intentional".

13. Although the letter of resignation and the subsequent reminder did reflect the petitioner's disenchantment from service over a period of time but it does not point to an act which was not well thought out or was the outcome of a hasty reaction on the spur of the moment. Had it not been so he would not have waited for almost a month to withdraw his resignation vide letter dated 07/07/1981.

14. It is, thus, palpably clear that the petitioner had voluntarily expressed his desire to relinquish the office. He had no intention whatsoever to continue in service and his primary concern appears to be the timely payment of his dues after prompt acceptance of resignation. It would have been altogether different had the petitioner sought only the release of his dues and mentioned that in case his dues are not cleared then he tenders his resignation.

15. The judgment of the Hon'ble Supreme Court of India in the case of Dr. Prabha Atri (supra), relied upon by the counsel for the petitioner is distinguishable on facts and not applicable to the instant case as it pertains to the resignation of a lady doctor who had left the hospital without informing anyone at the crucial time when she was required to give anesthesia to a patient admitted in emergency. She was placed under suspension with immediate effect. It was in response to the order of suspension that she stated in her letter that

instead of taking a lenient view, the department has sought to punish her and in case her explanation is not acceptable, then she has no option but to tender her resignation with immediate effect. It was held to be only a threatened offer to resign in case action was taken against her. On the contrary, the petitioner's resignation indicates that it was a well thought out act of giving up or relinquishing his office. There was a clear intention to leave the job.

16. The judgment of the Hon''ble Supreme Court of India in the case of Chandrabhan Tale (supra) is also distinguishable on facts from the instant case. It pertains to a case where subsistence allowance of the delinquent had not been paid to him as he was involved in a criminal case. It was held in those circumstances that without subsistence allowance, he was not in a position to sustain his family, defend himself before the trial court and in the departmental enquiry. The action which is impugned in the instant petition is not based on disciplinary proceedings but involves the resignation of the petitioner from service.

17. Therefore, the findings of the Tribunal do not appear to be illegal or arbitrary. As a matter of fact the Tribunal has given cogent finding that the resignation had been tendered after full consideration and it is not proved that it was submitted only because his salary had been withheld. It was also held by the Tribunal that the petitioner had not been able to prove that the respondent-department had pressurized him to submit his resignation, and that the same was conditional.

18. It is well settled that the interference by this Court in the award of the Industrial Tribunal would be called for only in case of patent illegality or the finding being perverse based on no evidence. Even if on the facts and circumstances another view is possible this Court will not interfere as it does not exercise appellate jurisdiction so as to reappraise the evidence. Reference may be made to the judgment of Hon''ble Supreme Court of India in the case of G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, (2008) 118 FLR 942 : (2008) 7 JT 309 : (2008) 2 LLJ 1071 : (2008) 8 SCALE 665 : (2008) 12 SCC 275 : (2009) 1 SCC(L&S) 661 : (2009) 2 SLJ 28 wherein it was held:-

"15. We have examined the arguments advanced by the learned counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in Trambak Rubber Industries Ltd. case are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an award of an Industrial Court on account of a patent illegality. In Seema Ghosh case this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an award of the Labour Court was justified as the award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr. Dave lay down similar principles and need not be dealt with individually. It will be seen therefore that the interference would be limited to a few cases and as already

noted above, in the case of a patent illegality or perversity. On the contrary, Mr. Sanyal's reliance on Sadhu Ram case is more appropriate to the circumstances herein. It has been observed as under: (SCC p. 158, para 3)

"3. ...The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decide pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management."

16. We are therefore the opinion that in the light of the fact that have come on record we find no perversity or patent illegality in the award of the Industrial Tribunal and on the contrary must appreciate that it has minutely examined the evidence in arriving at its decision. In this view of the matter, it was inappropriate for the learned Single Judge to have reappraised the evidence and come to a different conclusion."

19. In view of the above, no case is made out for interference with the well reasoned award of the Industrial Tribunal. In the result, the writ petition is dismissed.