
(2010) 07 MP CK 0077

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 297 of 2006

Sanjay Victor

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Citation : (2011) 128 FLR 478 : (2011) ILR (MP) 598 : (2011) 1 MPHT 203 : (2010) 4 MPLJ 584

Hon'ble Judges : S.S. Kemkar, J;S.K. Seth, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

This intra Court appeal has been directed against the order dated 6-2-2002 passed by Single Bench of this Court in W.P. No. 188 of 2002.

Brief facts, necessary for disposal of this appeal are that the Appellant was working on the post of Security Guard in M.P. Police Housing Corporation (for short, "the Corporation"). In pursuance to the Voluntary Retirement Scheme floated by the Corporation on the basis of a decision taken by the State Government to close down the Corporation, the Appellant submitted an application seeking voluntary retirement. In the said application he incorporated a condition that his application for voluntary retirement should be considered only in the event of closure of the Corporation and not in the event of amalgamation/re-organization or Transfer. The said application submitted by the Appellant was accepted by the Corporation vide order dated 28-11-2001 (Annexure P-7) w.e.f. 7-12-2001.

The case of the Appellant is that till the order dated 28-11-2001 and even till today, the Corporation has not been closed down by the State Government and in the circumstances, acceptance of his application for voluntary retirement was illegal. It is also his case that prior to his actual date of release from

employment, which was 7-12-2001, as per the acceptance letter dated 28-11-2001 he had already submitted a letter dated 6-12-2001 (Annexure P-8) seeking withdrawal of his proposal of voluntary retirement and prayed for giving him an opportunity to serve. However, his prayer was not acceded to and he has been retired on the basis of the said order dated 28-11-2001 w.e.f. 7-12-2001. Feeling aggrieved the Appellant had filed a W.P. No. 188 of 2002 before this Court.

The said Writ Petition No. 188/2002 was dismissed on 6-2-2002 in limine. Challenging the said order dated 6-2-2002 passed by learned Single Judge, this Writ Appeal has been filed.

The contention of Shri S.C. Bagadiya, learned Senior Counsel for the Appellant is that the Appellant had submitted a letter dated 6-12-2001 (Annexure P-8) for withdrawal of his application for voluntary retirement a day prior to his date of release in the circumstances, the Corporation should not have acted upon the order dated 28-11-2001 (Annexure P-7) which was to take effect on 7-12-2001. He submits that because the actual date of release of the Appellant was 7-12-2001 and till then the jural relationship of employee and employer between the Appellant and Respondent Corporation did not come to an end, the Appellant had locus poenitentia to withdraw his proposal for voluntary retirement. He argued that Appellant's application was a conditional one and the Corporation having not been closed, the impugned order date 28-11-2001 is contrary to the Scheme for voluntary retirement.

Shri D.D. Vyas, learned Senior Counsel for the second Respondent-Corporation argued that in view of a clear Clause No. 3, contained in the Voluntary Retirement Scheme (Annexure P-5), the option exercised by the Appellant could not have been taken back by him. He submits that the Appellant having taken new grounds in writ appeal by amending writ petition, this writ appeal may be dismissed directing the Appellant to file fresh petition. In the alternative he submits that writ petition being dismissed in motion hearing without issuing notice to the Corporation, the matter be remanded to learned Single Judge for fresh decision. He also placed reliance on the order passed by a Division Bench of this Court in the case of M.P. Police Housing Corporation and Another Vs. Anil Pradhan and Another, decided on 10-4-2007. He further submits that in the similar circumstances a W.P. No. 1040 of 2002 filed by Smt. Babita Francis was dismissed by a learned Single Judge vide order dated 30-9-2002. The L.P.A. No. 347 of 2002 filed against the said order was also dismissed by a Division Bench of this Court vide order dated 2-12-2002.

Heard Learned Counsel for the parties and perused the record.

True it is that the writ petition against which this writ appeal has been filed was dismissed in limine. However, in this writ appeal, the Division Bench vide order dated 24-7-2008 allowed the application for amendment filed by the Appellant permitting the Appellant to amend the writ petition in the presence of the Senior

Counsel for the Respondent/Corporation. The learned Senior Counsel appearing for the Corporation sought leave to file counter affidavit to the writ petition. Thereafter, the return of the writ petition was filed. Before filing of the return the detailed reply to the queries of the Court was also filed by the second Respondent-Corporation on 4-2-2003. Thereafter an affidavit was filed by the Appellant and an additional affidavit was also filed on 8-4-2008. In the circumstances, taking note of the fact that the pleadings are completed in the matter and it would be futile exercise to remit the matter before the Single Bench, we have heard the matter on merits.

On a deep scrutiny of the averments made by the parties, it is revealed that the second Respondent-Corporation was neither closed down on the date when the Appellant's application for voluntary retirement was accepted, nor has been closed as on date. It is not disputed that the Appellant's application for voluntary retirement was accepted on 28-11-2001 w.e.f. 7-12-2001. The Appellant's letter dated 6-12-2001 (Annexure P-8) clearly reveals that prior to the end of jural relationship between the Appellant and the second Respondent-Corporation, the Appellant had submitted a letter to withdraw the application for voluntary retirement. In somewhat identical circumstances the Supreme Court in the case of Shambhu Murari Sinha v. Project and Development India Ltd. and Anr. 2002 AIR SC 1165, after considering the various judgments of Supreme Court including the case of Balram Gupta Vs. Union of India (UOI) and Anr, has laid down the law that even if application for voluntary retirement of an employee is accepted by Management, he can withdraw his option for voluntary retirement before he has actually released from service. The jural relationship of employee and employer will continue till his date of actual release from service. The employee having sent letters withdrawing his voluntary retirement before his actual date of release from service which is an effective date, the withdrawal of resignation is valid. The employee has locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end. The Management cannot refuse to accept the letter of withdrawal of resignation of employee before the jural relationship of employee and employer came to an end. Similarly, in the case of J.N. Shrivastava v. Union of India and Anr. AIR 1999 SC 1579, the Supreme Court has held that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement.

In the case of D.K. Burman v. M.P. Police Housing Corporation Ltd. and Anr., decided on 17-10-2005 : 2006 (III) MPWN 82, while allowing the writ petition the learned Single Judge noticed that while deciding the case of Smt. Babita Francis (supra), there was no decision of Cabinet not to close the Corporation. Even otherwise in the case of Smt. Babita Francis (supra), the Division Bench while dismissing the LPA in motion hearing did not consider the effect of withdrawal of resignation, if made prior to the end of jural relationship and,

therefore, the order in the case of Smt. Babita Francis (supra), cannot be applied to this case. In the case of M.P. Police Housing Corporation and Anr. v. Anil Pradhan and Anr. (supra), on which strong reliance has been placed by learned Senior Counsel for the second Respondent-Corporation, the Division Bench noticing the fact that the employee has already accepted and received amount payable to him under the Scheme, refused to grant any relief in his favour seeking withdrawal of his resignation and permitting him to join the services. Whereas in the present case, there is an un-controverted affidavit on record filed by the Appellant stating therein that he did not receive any amount on the basis of the resignation offered by him. In the circumstances, the said order passed in Anil Pradhan s case (supra), has also no application to the facts of the case.

Having regard to the aforesaid, we are of the view that the Appellant having submitted an application (Annexure P-8) on 6-12-2001, a day prior to his effective date of retirement, which was 7-12-2001 as per the acceptance letter dated 28-11-2001 (Annexure P-7) issued by the Corporation the jural relationship of employer and employee was continuing when the Appellant submitted letter dated 6-12-2001 (Annexure P-8) seeking withdrawal of his voluntary retirement. The said letter being submitted before the date of actual release from service his prayer ought to have been accepted by the Corporation. Having not done so, the second Respondent-Corporation has committed an error in not allowing the Appellant to withdraw his resignation.

Thus, having regard to the law laid down by the Supreme Court in the case of Shambhu Murari Sinha (supra), we allow this appeal by quashing the order dated 28-11-2001 (Annexure P-7) as also the order passed by learned Single Judge and direct the second Respondent-Corporation to reinstate the Appellant with consequential benefits. No order as to costs.