
(1989) 05 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 1896 of 1981

Sankar Prasad Dhar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1989) 2 OLR 142

Hon'ble Judges : S.C. Mohapatra, J;R.C. Patnaik, J

Bench : Division Bench

Advocate : Ganeswar Rath and P.K. Rath, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—In this application under Article 226 of the Constitution of India, Petitioner has assailed the order of the District judge, Sundargarh, retiring him from service with effect from 1st June, 1969.

2. Petitioner was the Sheristadar in the office of the District judge, Sundergarh, with effect from 1-4-1978. In February, 1969, he applied for permission to have Sundargarh by availing 2nd Saturday and Sunday the 10th and 11th February, 1969 to go to his village for negotiating marriage of his daughter. District judge having refused permission in view of pendency administrative matters, Petitioner, made an application on 9-2-1979 to permit him to voluntarily retire since he had completed 31 years service. When the application was pending, he application on 22-2-1979 for availing earned leave from 1-3-1979 to 15-4-1979 on account of illness of his wife and to perform marriage of his daughter. Before he proceeded on leave, Petitioner was called upon by the District judge to intimate if he desired to be relieved on retirement on completion of three months from the date of application or within a shorter period. Petitioner first requested for time but later intimated on 28-2-1979 to treat his application for voluntary retirement dated 9-2-1979 as three months notice and to relieve him on completion of the notice

period. Thereafter, Petitioner filed an application for earned leave from 1-3-1979 to 31-5-1979 and the same being allowed availed the same. While on leave, communication dated 6-3-1979 was issued to the Petitioner that his application dated 9-2-1979 is treated as a notice for voluntary retirement and as such he would retire on 31-5-1979 in the afternoon. In the forenoon of 31-5-1979, Petitioner joined his duties and filed an application to continue in service by permitting him to withdraw the notice dated 9-2-1979. However, on 1-6-1979, he was intimated that by Office Order dated 6-3-1979 he has been treated to be retired with effect from the afternoon of 31-5-1979 and as such, he is to handover the charge to his successor. Against this order, Petitioner preferred an appeal on 22-6-1979 which having been rejected this writ application has been filed.

3. Only question on the aforesaid facts that arises for consideration is whether Petitioner has right to withdraw that notice for voluntary retirement before it takes effect.

4. Employment of a Government servant comes to an end by attaining age of superannuation. Termination of service by the employer as a disciplinary measure or otherwise by acceptance of the desire of the employee not to have the relationship of employer and employee any further or by death of the employee. Employment by the Government is a contract but on appointment, the employee acquires a status. State Government has been given power to make rules in relation to the conditions of service of the employees under Article 309 Proviso of the Constitution in absence of legislation to that effect. Orissa Service Code, 1939 as amended from time to time is such a set of rules having statutory force. In Rule 71(3) it is provided that before attaining age of superannuation, State Government can retire an employee under certain conditions and an employee has also been given right to voluntarily retire under certain conditions.

5. Resignation and expression of desire to voluntarily retire come within the category of bringing an end to the relationship of employer and employee which would be subject to acceptance by the employer. Same principle would be applicable in both the cases. Only difference is that in case of resignation, employee is not entitled to post-termination benefits from the employer whereas in case of voluntary retirement such employee is entitled to the benefits of service rendered by him as per rules like pension and gratuity etc.

6. Although in the decision reported in *Jai Ram Vs. Union of India (UOI)*, on facts the voluntary retirement sought for by an employee was not interfered with; it was observed:

It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so as long as he continues in service and not after it has terminated....

7. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, . the resignation and voluntary retirement were tested to be similar for the purpose of considering the question of its withdrawal by the employee. It was observed:

It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resigner. The general rule is equally applicable to Government servants and constitutional functionaries....

8. Petitioner gave notice on 9-2-1979 and District Judge accepted the same on 6-3-1979 to be effective prospective from 31-5-1979 afternoon. Before the order accepting the notice became effective, Petitioner intimated his withdrawal of the notice. There was no scope for the District Judge to obstruct the same and accordingly, I am inclined to hold that refusal of the District Judge to permit the Petitioner to join cannot be sustained which is accordingly, quashed.

9. Intimation from the High Court that appeal by the Petitioner against the order of the District Judge has been rejected contains no reason; No counter affidavit has been filed by the Registrar of this Court indicating the grounds which weighed with the appeal committee of this Court for rejecting the appeal. In the circumstances, order of the appeal committee cannot be sustained which is accordingly, quashed.

10. In view of the aforesaid discussion, there can be no escape from the conclusion that Petitioner shall be deemed to be continuing in service till he attained the age of superannuation at the age of 58 years.

With this finding, the question of service benefits to the Petitioner arises for consideration.

11. Sentimental behaviour and confrontation with the appointing authority are the two main circumstances for the Petitioner to give notice of the voluntary retirement. He is mainly responsible for the trouble he invited. In the circumstances, I am inclined to hold that Petitioner is entitled to pay at the rate he was last drawing for rest of the period of his service and gratuity shall be paid at that rate. However, increments and others allowances shall be computed for calculating pension payable to the Petitioner.

12. In the result, writ application is allowed. No costs. Requisites for issue of writ shall be filed within a week.

R.C. Patnaik, J.

13. I agree.

Writ application allowed.