

**(1998) 07 OHC CK 0021**

**In the Orissa High Court**

**Case No : O.J.C. No's. 678 and 4318 of 1998**

Satya Sundar Naik Etc.

APPELLANT

Vs

Industrial Development Corporation of Orissa Ltd. and  
Another

RESPONDENT

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**Date of Decision : 16-07-1998**

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation : (1999) 3 LLJ 715**

**Hon'ble Judges : S.N. Phukan, C.J;C.R. Pal, J**

**Bench : Division Bench**

**Advocate : J. Patnaik, A.A. Das and B. Mohanty, for the Appellant; J.K. Tripathy, B.P. Tripathy and S.N. Mishra, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.N. Phukan, C.J.—By this common judgment and order, we dispose of the aforesaid two writ petitions as the facts and points of law involved in both of them are the same and they were heard together.

2. Both the petitioners were employees of Kalinga Iron Works, opposite party No. 2, which is a unit of Industrial Development Corporation of Orissa Ltd., opposite party No.1, a Corporation wholly owned by the Government and hence a State within the meaning of Article 12 of the Constitution, which fact is not disputed. To reduce manpower and to achieve optimum utilisations of manpower in the context of declining financial position of the units under the Corporation, a voluntary retirement scheme of employees was introduced by the Corporation, which was published on July 30, 1997, vide Annexure-A to the counter affidavit filed in OJC No. 678 of 1998. According to the scheme, employees were asked to exercise their option within August 31, 1997. The scheme was, however, subsequently extended till December 31, 1997.

3. Petitioner in OJC No. 678 of 1988 exercised his option on August 29, 1997.

According to this petitioner, the option was exercised hastily as he had eight years of service left. Thereafter, due to family need, he submitted an application for withdrawal of his option on December 30, 1997, vide Annexure-5. But his option was accepted and he was asked to go on retirement with effect from January 31, 1998, vide Annexure-6. According to the petitioner, in the letter exercising option, he indicated that it may be effected from February 1, 1998.

4. Petitioner in OJC No. 4318 of 1998 exercised his option on August 30, 1997. But he withdrew the same on December 30, 1997 as he had eight years of service left and there was pressing family need to continue in service. However, his option was accepted and he was asked to go on voluntary retirement under the above scheme with effect from March 31, 1998.

5. In the counter filed in OJC No. 678 of 1998, the factual position has not been disputed but it has been stated that the date of voluntary retirement with effect from January 31, 1998 was specified by the petitioner in his application, copy of which is available at Annexure-C/1 to the counter. It may be stated here that the copy of the application was not annexed to the writ petition. According to the opposite parties, as many as 23 employees of executive cadre including the present petitioners exercised their option under the voluntary retirement scheme. Thereafter, the period of the scheme was extended on the request of the employees union till December 31, 1997. A committee was duly constituted to verify the cases of all the 23 employees and the committee recommended names of 21 persons for acceptance, vide Annexure-E. The recommendation was accepted by the Managing Director (opposite party No. 1) who is the competent authority, on November 28, 1997. The decision was duly communicated to the Executive Director, Kalinga Iron Works (opposite party No. 2) on November 29, 1997. As per the scheme, after acceptance the option became final and irrevocable. Regarding withdrawal of option by the petitioner, it has been stated that it was sent by registered post on December 31, 1997, which was received by opposite party No. 2 only on January 2, 1998. Since by that time the option had already been accepted, question of its withdrawal did not arise. The petitioner was on commuted leave with effect from December 26, 1997, followed by two days of earned leave. He was also on earned leave on December 24 & 25, 1997. As the petitioner was on leave, the communication accepting his option was sent to his official quarter on January 1, 2 and 3, 1998, but it could not be served due to his absence. It was ultimately served on January 5, 1998, January 4, 1998 being a Sunday. It has also been stated that the petitioner has various other activities and his economic status is well off.

6. In the counter affidavit filed in O.J.C. No. 4318 of 1998, it has specifically been stated that the alleged letter indicating withdrawal of option, vide Annexure-2, was never received by opposite party No. 2, and the document has been manufactured only for the purpose of this case. Same statements have been made regarding acceptance of option by the Managing Director on the recommendation of the committee. It has also been stated that the option

became final after it was accepted.

7. In the counter filed in O.J.C. No. 678 of 1998, the opposite parties have clearly stated that the scheme was introduced with a view to reducing manpower and to achieve optimum utilisation of manpower, instead of taking resort to other methods like retrenchment. On perusal of the scheme, we find that it is beneficial to the employees. Our attention has been drawn to paragraph-8 of the scheme, where it has been clearly mentioned that the opposite parties reserve the right to accept or reject any application for voluntary retirement, and such a decision taken once shall be final.

8. It is not disputed that the voluntary retirement scheme was introduced by the opposite parties. The scheme is not attacked on the ground of it being anti-labour. It is not disputed that both the petitioners exercised their option to go on voluntary retirement under the above scheme. From the records we find that the letter of withdrawal of option by the petitioner in O.J.C. No. 678 of 1998 was sent by registered post on December 31, 1997, though prior to that his option had already been accepted. No rejoinder has been filed denying the averments made in the counter. Regarding the petitioner in O.J.C. No 4318 of 1998, it has been categorically stated that the letter withdrawing option dated December 31, 1997 was never received by the opposite parties. No rejoinder has been filed challenging this statement made in the counter. Even if we accept the statement of the petitioners, we find that the letters of withdrawal were sent after the option was accepted by the Managing Director.

9. On behalf of the petitioners, various decisions have been cited. We may now refer to them.

In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, , it was held that the general principle regarding resignation 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 operative when it operates to terminate the employment or the office tenure of the resignor. It was further held that normally the tender of resignation becomes effective and the service or office-tenure of the resignor is terminated when it is accepted by the competent authority.

In *Balram Gupta Vs. Union of India (UOI) and Anr*, , the appellant, on completion of 20 years of service, sent a letter seeking voluntary retirement with effect from March 31, 1981. He wrote that the notice period of three months be treated from January 1, 1981. By order dated January 20, 1981 he was allowed to retire voluntarily from service prospectively with effect from the afternoon of March 31, 1981. However, on January 31, 1981 he withdrew the notice. It was held by the Apex Court that once the notice was given, it became operative immediately, if it was received by the Government and automatically brought about the dissolution of contract after the expiry of the notice period. The dissolution would be brought about only on the date indicated, i.e., March 31, 1981. Reference was made to

the Pension Rules regarding withdrawal of notice of voluntary retirement. As in that case retirement was to take effect on a subsequent date and the withdrawal was long before that, it was held that the appellant had locus standi (sic.).

In Punjab National Bank Vs. P.K. Mittal, , the respondent was a permanent officer of the bank. He sent a communication to the Bank of which he purported to resign from a future date adding that the date of receipt of the letter should be treated as the date of commencement of notice period. But the bank informed by a letter that his resignation was accepted with immediate effect by waiving the condition of notice. Therefore, it was held that issuance of such a letter from the bank was without jurisdiction. It was laid down by the Apex Court that resignation of the employee would have become effective only on the expiry of three months from the date of receipt of the notice or from the date he wished to resign.

10. We sum up the law as follows:

(i) In 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 office-tenure of the resignor.

(ii) Normally, the tender of resignation becomes effective and the service or office-tenure of the resignor is terminated when it is accepted by the competent authority.

(iii) If resignation of an employee was to take effect on a subsequent date and withdrawal was long before that date, acceptance of resignation is illegal.

(iv) If in the resignation letter it is stated that the letter may be taken as a notice for the required period, by waiving that period of notice resignation cannot be accepted.

11. Coming to the facts of the present cases, we find from records and also from the counter affidavit that after the committee recommended the names of 21 officers for giving the benefit of the scheme of voluntary retirement, it was accepted by the Managing Director on November 29, 1997. Therefore, acceptance of the voluntary retirement became final. We may state here that in the letter accepting voluntary retirement it was clearly stated that it was to take effect from the afternoon of January 31, 1998. Therefore, on acceptance of the voluntary retirement, it operated to terminate the employment or office-tenure of both the petitioners.

12. It has been urged on behalf of the petitioners that acceptance of option is irrelevant before the date when the voluntary retirement would become effective. But, this submission cannot be accepted as in the letter itself it was clearly stated that the option would be effective from January 31, 1998. We may state here that the statement of the petitioner on O. J.C. No. 678 of 1998 that his option for voluntary retirement was to be effective from February 1, 1998 has no

basis. In fact, the petitioner has not annexed the letter. However, the opposite parties have annexed the same to the counter affidavit as Annexure-C /1.

13. For the reasons, stated above, both the writ petitions have no merit and they are accordingly dismissed. The stay orders stand vacated. No costs.