

(2001) 04 CAL CK 0034
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction (Appellate Side) C.O. No. 9122 (W) of 1996

Sisir Kumar Dutta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2001) 2 CALLT 178 : (2002) 92 FLR 372

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mr. Niranjan Ganguly and Mr. Ujjal Kr. Das, for the Appellant; Mr. Arnava Ghosh and Mr. Sudhangshu Sil, for the Respondent

Judgement

M.H.S. Ansari, J.—Though several reliefs have been prayed for at the time of hearing, they have been confined to the prayers "c" and "d" as on 31st January, 2001 petitioner attained the age of superannuation. The prayers "c" and "d" read as under:

"(c) To issue a writ of and/or writ in the nature of Mandamus declaring that the Respondent-Authority was bound to accept the resignation of the petitioner in accordance with Law and thereby release him from the service of the Corporation for joining other concerned.

(d) To issue a writ of and/or writ in the nature of Mandamus commanding the concerned Respondent or Respondents to pay damages to the petitioner by way of making good the financial loss suffered by him for not being released from the service of the Corporation either under the scheme of voluntary retirement or upon acceptance of his utter of resignation dated 6th of December, 1995."

2. Facts to the extent relevant for purposes of enquiry in the matter on hand are as under.

3. The petitioner had joined as Deputy General Manager (Purchase) under

National Textile Corporation (W.B.A.B.O.) hereinafter referred to as respondent corporation on 7th January, 1981. He served the respondent corporation in various capacities during his tenure of service. It is the case of the petitioner that he became entitled to be considered for promotion in the post of General Manager on completion of his three years as Deputy General Manager. According to the petitioner, he was entitled to such promotion to the aforesaid post of General Manager in the year 1984. However, petitioner was not promoted while according to the petitioner several persons including some direct recruits were granted such promotions including Sri S.K. Saha, S.N. Tripathi and several others who are said to be Juniors to the petitioner were appointed. The petitioner had been transferred which according to him was a defunct unit at Gaya and was asked to report for his duties even without being allowed joining time therefore on 1st July, 1995. The petitioner made an application for availing of the Joining time from 3rd of July to 10th July, 1995 and came to Calcutta. During his stay at Calcutta, petitioner fell ill and sought extension of medical leave. According to the petitioner, he came to know that his leave for the period from 11.7.95 to 10.9.95 was duly sanctioned. On 5th December, 1995, the petitioner received a letter dated 27th November, 1995 asking the petitioner to appear before a Medical Board on 11th December, 1995 at 10.30 a.m. According to the petitioner, there is no provision of law whereby the petitioner could be compelled to appear before the Medical Board. The petitioner states that left without any choice, petitioner was compelled to tender his resignation from the service of the corporation by a letter dated 6th November, 1995 recording therein his specific grievances as the reasons behind taking the aforesaid decision for such resignation. In reply, the petitioner was informed by a letter-dated 16/24th November 1995 that his resignation could not be accepted on the ground of contemplated disciplinary action against him.

4. In the affidavit-in-opposition filed on behalf of the respondents, the allegations have been traversed. It has been specifically denied that the unit at Gaya is a defunct unit. It has further been denied that the petitioner was denied the joining time as alleged during the period 13th December, 1994 to 1st July, 1995. The petitioner had very poor attendance out of 199 days of his tenure. The petitioner was physically present for only 25 days. The petitioner used to leave Headquarters and place of posting without express order from the competent authority despite being advised in writing not to leave Headquarters without permission. As regards the leave application of the petitioner, it is stated that since the petitioner was not reporting for duties on the ground of sickness, two officers were sent to the residence of the petitioner on 31st July, 1995 to enquire about his health. They were informed by the wife of the petitioner that he was taken away by his brother to the latter's residence at New Delhi. Even the medical team sent to the residence of the petitioner on 7th September, 1995 was informed that the petitioner was still in Delhi. The petitioner was thereafter directed to appear before the Medical Board constituted by the Deputy Director of Health Service, West Bengal on 11th December, 1995 on which date the

petitioner failed to turn up.

5. It is the contention of the learned counsel for the petitioner that resignation took effect upon its submission to the competent authority and in any event there was no impediment in law for accepting the same. It is further contended that refusal to accept the same and for the reasons, the same was not accepted is illegal and arbitrary.

6. The learned counsel for the petitioner has relied upon the Judgments of the Supreme Court in *Moti Ram Vs. Param Dev and another*, .

7. In order to constitute a complete and operative resignation, there must be the intention to give up or relinquish the office and concomitant act of its relinquishment. The act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it (See: *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*,). If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in present. In cases where the act of relinquishment is of bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office and in such a case, the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

8. What offices held under Constitution of India, which can be relinquished by, unilateral act of the office and acceptance of resignation is not required was declared by the Supreme Court in paragraph 16 of the judgment in *Moti Ram's* case (*supra*).

9. In the very same Judgment at paragraph "17", it has also been declared that a contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer.

10. In *Moti Ram's* case, (*supra*), reference has also been made to the Judgment of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, which related to an employee of a Government Company jointly and wholly owned by the Central Government and two State Governments therein it was observed as under;

"A resignation by an employee would, however, normally require to be accepted

by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work, which is urgent or important, and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee (at p. 1619 of AIR)."

11. In the instant case, the petitioner is an employee of a Government owned company and, therefore, the act of relinquishment has to be construed as of a bilateral character. The resignation letter to take effect would require to be accepted by the employer. Non-acceptance thereof has to be for valid reasons. In Central Inland Water Transport Corporation's case (supra), It has been declared that an employer can also refuse to accept the resignation when there is a disciplinary enquiry pending against the employee. In such a case, it was declared, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an enquiry. The petitioner's resignation in the instant case was refused on the specific ground that a disciplinary enquiry is contemplated against him.

12. Learned counsel for the petitioner sought to distinguish the said judgment on the ground that there was no enquiry pending when the resignation was submitted to the respondents. In contemplation of an enquiry, the resignation could not have been refused, it was contended.

13. The statements in the judgment in Central Water Inland Water Transport Corporation's case, (supra), are only illustrative. In the matter on hand, the reason has been stated in the latter refusing to accept the resignation of the petitioner. The reason being that a departmental enquiry was contemplated against the petitioner. In my view, such reason cannot be said to be either illegal or arbitrary. Where a disciplinary enquiry is contemplated the employer would, in my view, be justified in not accepting the resignation of an employee.

14. For the reasons aforesaid, reliance by the learned counsel for the petitioner upon the judgment in *Manjushree Pathak v. The Assam Industrial Development Corporation Ltd. & Ors.*, reported in 2000(6) Supreme 98 is misplaced. The said case related to voluntary retirement under golden handshake scheme. The employee had applied for voluntary retirement under the said scheme and the recommending authority had recommended the concerned authority for acceptance of such retirement under the scheme. The scheme also contemplated immediate retirement on submission of voluntary retirement application. Despite representations by the employee, no action was taken nor acceptance/refusal was communicated to the petitioner. Instead a show cause notice was issued why action should not be taken for alleged misconduct of indulging in political

activities while in service. The Supreme Court in that case held that the respondent corporation before it being an authority coming within the purview of Article 12 of the Constitution could not abdicate its duty to act reasonably and fairly in exercise of the discretion. It was further held that the authority was required to have exercised its discretion as per the scheme if not immediately at least within a reasonable time. The non-response to the representations made by the petitioner and issuance of show cause notice by the respondent corporation subsequently when there was no infirmity or impediment in considering and accepting the application for voluntary retirement, it was held such action was only to deprive the appellant therein of the benefit flowing from the acceptance of the voluntary retirement under the said scheme. Such is not the case on hand. The petitioner was informed of the reasons while refusing to accept the letter of resignation within a reasonable period and without undue delay. The resignation in the instant case was not under any such voluntary retirement scheme which contemplated immediate retirement on submission of voluntary retirement application.

15. For the reasons aforestated, I find no legal infirmity in the impugned order rejecting/refusing the letter of resignation on the ground of disciplinary proceedings contemplated against the petitioner. Prayers "c" accordingly is liable to be rejected and consequently prayer "d" as well.

The writ application is accordingly dismissed, however, without any order as to costs.

Let urgent Xerox certified copy of this judgment and order be furnished to the parties, if applied for on priority basis.

16. Application dismissed