

(2012) 05 JH CK 0031
In the Jharkhand High Court
Case No : L.P.A. No. 326 of 2011

State of Jharkhand and Another

APPELLANT

Vs

Dhananjay Sharma

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Citation : (2012) 3 JCR 5

Hon'ble Judges : Prakash Tatia, C.J; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : S. Choudhary, GA, R.K. Sahai, JC to GA and P. Chitresh, for the Appellant; S. Gadodia, R. Kumar and G.B. Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The appellant-State is aggrieved against the order dated 11.2.2011 passed in W.P. (S) No. 4837/2002, by which the writ petition of the petitioner-respondent has been allowed, quashing the order of rejection of the prayer for voluntary retirement made by the writ petitioner, vide communication dated 16.5.2002 and of direction to the writ petitioner to join the duties again.

2. The brief facts of the case are that the writ petitioner was an appointee of 14.4.1980 and after completion of 21 years 11 months of service, he submitted an application seeking permission to take voluntary retirement and this application was dated 13.12.2001. The petitioner's said application/notice seeking permission to take voluntary retirement was duly recommended by the then Regional Director to the Secretary to the Government on 17.2.2002. On 16.3.2002, the Joint Secretary gave a letter to the petitioner to furnish requisite information that he has completed requisite period of service. The petitioner responded to the letter of the Joint Secretary dated 16.3.2002 by filing reply on 20.3.2002. On 28.3.2002 the Regional Director gave his no objection for grant of voluntary retirement of the writ petitioner. According to the writ petitioner, as his application was not rejected and the period of 90 days passed, by virtue of 2nd

clause of Clause 7 of the Scheme framed to give effect to the provisions of Rule 74(b) of the Jharkhand Service Code, 2001, the petitioner, after expiry of the period of three months from the date of his application, stands retired and the respondent-Department treated the petitioner to be retired and therefore, gave a letter on 17.4.2002 to the petitioner to hand over the charge to other employee. However, by communication dated 16.5.2002, the petitioner was informed that his prayer for voluntary retirement has been rejected and therefore, he should join the duties.

3. The State submitted that in fact, in Fodder Scam case, an F.I.R. was lodged on 25.10.2000 and during investigation the petitioner was found to be involved in the criminal activities and sanction for prosecution was sought on 7.2.2002, copy of this sanction prayer was placed on record by submitting additional affidavit in this L.P.A. Therefore, learned counsel for the State submitted that the petitioner did not disclose that he was accused in a criminal case while submitting his application for voluntary retirement dated 13.12.2001 and the petitioner's case was under consideration and it was expected that criminal case would be lodged against the petitioner; therefore, in view of Clause ka of Clause 7 of the Voluntary Scheme, the petitioner could not have been retired, nor he could claim the benefit under proviso to Clause 7. It is also submitted that in cases of departmental inquiry or anticipated departmental inquiry or in cases of expected prosecution or where criminal cases had been lodged, the approval of the Minister was required and that was not granted and therefore, the provision of Clause 7 will not also apply in the present case.

4. We considered the submissions of the learned counsel for the parties and perused the relevant scheme for voluntary retirement as well as Rule 74(b) of the Jharkhand Service Code, 2001 and the reasons given by the learned single Judge in the impugned order. As per Rule 74(b)(i), Government employee has been given an option to submit an application for voluntary retirement; however, in Rule 74(b)(i), it is required that this application must be of at least three months in the form of previous notice seeking voluntary retirement. Further it is also provided in Rule 74(b)(i) that requisite qualifying service for seeking voluntary retirement will be 30 years. However, the Government came with the Scheme relaxing the condition of requisite qualifying service of 30 years for grant of voluntary retirement to 20 years of qualifying service. In the Scheme, it is specifically mentioned that the Scheme is for the employees who can seek voluntary retirement and it is their choice and voluntary retirement, under this Scheme, cannot be forced to the employees by the employer. In Clause 7 of the Scheme, it is provided that the Government servants may seek permission to obtain voluntary retirement and exception has been given in Clauses ka and kha of Clause 7 of the Scheme, wherein it has been provided that it is not necessary to accord voluntary retirement to the persons who are facing departmental inquiry and the persons who are expected to be prosecuted or against whom prosecution has already been initiated. Then it has been provided that in the cases falling under the category of Clauses ka and kha, the approval will be

obtained from the concerned Minister and for rest of the cases, the approval will be obtained from the Head of the Department. It will be relevant to mention here that three different designations have been used for different functions in the Scheme of, voluntary retirement and those Officers are the Head of the Department, Minister concerned and appointing authority. Under Clause 7 of the Scheme, work has been assigned to different authorities for passing appropriate orders and Minister concerned is the competent authority, who can pass approval for voluntary retirement, for the cases which are falling under Clauses ka and kha of Clause 7 of the Scheme and for rest of the cases, meaning thereby, except the cases falling under Clauses ka and kha of Clause 7, the Head of the Department is the competent authority to grant approval and that approval itself is not the order of voluntary retirement and it could not have been because such orders can be passed by the appointing authority. Therefore, it has been provided that unless an order of rejection is passed by the appointing authority, the voluntary retirement will take place with exception to it that if the appointing authority fails to pass the order within three months from the date of the application of voluntary retirement, the application shall be deemed to have been accepted obviously by the appointing authority. Therefore, from the various provisions of the Scheme, it is clear that all three processes with respect to dealing with the application of the voluntary retirement, may it be for obtaining report of satisfactory completion of 20 years of service and of any pending departmental inquiry and thereafter obtaining approval from the concerned Minister or from the Head of the Department, as the case may be, are required to be completed within the period of 90 days and if the employer wants to reject the application, it can reject it only within 90 days and after 90 days, the employee stands retired automatically. This is because of the provisions made in the Scheme itself and there may be cases where such deeming clauses are not there. Learned single Judge has considered the judgments delivered covering both sides of the case and rightly reached to the conclusion in the present case that in view of the deeming clause, the petitioner retired from the date of expiry of three months of his application. This fact was even accepted by the State Government as the respondent appointing authority itself gave a letter to the writ petitioner on 17.4.2002 directing him to hand over charge. It is also relevant to mention here that according to the petitioner, in the F.I.R. dated 25.10.2000, his name was not there and even no challan was filed against him till the date when the order dated 16.5.2002 was passed by the respondents or even the charge-sheet of 21.1.2003 came much later after the impugned order, by which petitioner's prayer for voluntary retirement was sought to be rejected. Therefore, even on 15.5.2002, there was no occasion for the Department to pass any order of rejection for the petitioner's voluntary retirement and it could not have been after expiry of 90 days.

In view of the above reasons, we do not find any illegality in the impugned judgment. Thus, this L.P.A. having no merit, is dismissed.