
(2011) 08 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No. 7105 of 2011 (Arising out of S.L.P. (C) No. 33672 of 2010)

State of U.P. and Others

APPELLANT

Vs

Luxmi Kant Shukla

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 166(3)

Citation : AIR 2011 SC 3528 : (2011) AIRSCW 5082 : (2011) 6 AWC 5691

Supp : (2011) 131 FLR 11 : (2011) 9 JT 204 : (2012) 1 MLJ 522 : (2011) 1 NCC 298 : (2011) 9 SCALE 80 : (2011) 10 SCR 531 : (2011) 8 Supreme 494

Hon'ble Judges : R.V. Raveendran, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : P.P. Rao, Shail Kumar, Dwivedi, AAG, Devendra Upadhyay, Gunnam Venkateswara Rao, Vandana Mishra and Manoj Kr. Dwivedi, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—Leave granted.

2. This is an appeal against the judgment and order dated 16.09.2010 of the Division Bench of the Allahabad High Court, Lucknow Bench, in Civil Miscellaneous Writ Petition No. 05 (S/B) of 2010 (hereinafter referred to as 'the impugned judgment').

3. The facts very briefly are that the Respondent is a member of the Provincial Civil Services of the State of U.P. When he was posted as Special Secretary, Samaj Kalyan Department, Government of U.P. in 2006, he authored a book titled 'Jati Raj'. As the book contained some remarks against national leaders like late Dr. B.R. Ambedkar, the State Government issued a letter dated 11.09.2007 to the Respondent when he was posted as Special Secretary, Dharmarth Karya Department, Government of U.P., requesting him to furnish to the Government a copy of the book. The Respondent instead of furnishing a copy of the book

proceeded on leave and on 12.02.2008 he was placed under suspension in contemplation of the disciplinary proceedings. On 19.02.2008, a charge-sheet containing 16 charges was served on him. The charges against the Respondent were that certain passages in the book 'Jati Raj' written by him were defamatory and derogatory to national leaders and he had hurt the religious sentiments of the people and created hatred amongst various sections of the society. By order dated 19.02.2008, the State Government appointed Shri Vijay Shanker Pandey, the Commissioner, Lucknow Division, as the Enquiry Officer to enquire into the charges.

4. Aggrieved, the Respondent filed Writ Petition No. 256 (SB) of 2008 before the Allahabad High Court, Lucknow Bench, and by an interim order dated 14.03.2008 the High Court stayed the operation of the order of suspension as well as the order appointing the Enquiry Officer. The State Government challenged the order dated 14.03.2008 of the High Court before this Court in SLP (Civil) No. 12749 of 2008 and this Court, while issuing notice in Special Leave Petition, stayed the operation of the order dated 14.03.2008 passed by the High Court. Thereafter, this Court by order dated 14.11.2008 disposed of the SLP with a request to the High Court to dispose of the Writ Petition No. 256 (S/B) of 2008 expeditiously and with the direction that pending such disposal of the writ petition, the State Government was not to take any final decision imposing any penalty on the Respondent. In the meanwhile, as the Respondent did not submit his reply to the charge-sheet, the Enquiry Officer conducted the enquiry ex parte and submitted an enquiry report dated 15.07.2008 holding the Respondent guilty of the charges. The disciplinary authority issued notice dated 05.08.2008 to the Respondent to show cause why the enquiry report should not be accepted. On 01.05.2009, having found that the ex-parte enquiry was violative of principles of natural justice, the disciplinary authority passed an order directing the Enquiry Officer, Shri Vijay Shanker Pandey, to hold the enquiry afresh after giving sufficient opportunity of hearing to the Respondent in accordance with the rules. Writ Petition No. 256 (SB) of 2008 was disposed of by the High Court on 15.05.2009 directing the Enquiry Officer to commence the proceedings afresh from the stage of chargesheet. The Respondent filed a Review Petition No. 115 of 2009, but the High Court dismissed the Review Petition on 26.05.2009.

5. The Respondent then filed his reply to the charge-sheet on 28.05.2009 to the Enquiry Officer, Shri Vijay Shanker Pandey and endorsed a copy of the reply to the Principal Secretary (Appointment Section-II), Government of U.P. requesting him to exonerate him from the charges against him and instead grant voluntary retirement from service under Rule 56 of the U.P. Fundamental Rules, 1942 (for short 'FR 56'). As Shri Vijay Shanker Pandey declined to conduct the enquiry afresh, the State Government by its order dated 01.06.2009 appointed Shri Alok Ranjan, Principal Secretary, Urban Development, as the Enquiry Officer to enquire into the charges against the Respondent. The Respondent submitted his reply to the charge sheet to the new Enquiry Officer, Shri Alok Ranjan on 11.06.2009 and after considering the reply of the Respondent and the material

available on record, the Enquiry Officer submitted his enquiry report on 30.11.2009 to the State Government holding that the charges against the Respondent were proved. While the enquiry report was pending consideration before the State Government, the State Government first considered the request of the Respondent in his representation dated 05.10.2009 for voluntary retirement and by order dated 16.12.2009 intimated the Respondent that his request for voluntary retirement has not been accepted by the State Government.

6. Aggrieved, the Respondent filed Civil Miscellaneous Writ Petition No. 5 (SB) of 2010 in the Allahabad High Court, Lucknow Bench for quashing the order dated 16.12.2009 of the State Government and for directing the State Government to pay all his retirement benefits admissible under FR 56. During the pendency of the Civil Miscellaneous Writ Petition No. 5 (SB) of 2010, the State Government issued a notice dated 05.02.2010 to the Respondent to show cause why the enquiry report dated 30.11.2009 should not be accepted. The Respondent submitted his reply dated 02.03.2010 to the show cause notice and also made a request for being given an opportunity of personal hearing. Personal hearing was granted to the Respondent on 04.06.2010 and the Respondent was dismissed from service by the disciplinary authority by order dated 07.09.2010. Aggrieved, the Respondent filed Civil Miscellaneous Writ Petition No. 1386 (SB) of 2010 on 14.09.2010 before the Allahabad High Court, Lucknow Bench, against the order of dismissal and this Writ Petition is pending consideration before the High Court.

7. On 16.09.2010, the Division Bench of the High Court, by the impugned judgment, quashed the order dated 16.12.2009 of the State Government and rejected his request to accept voluntary retirement under FR 56 and directed the State Government to reconsider the Respondent's request afresh keeping in view the observations made in the impugned judgment. By the impugned judgment, however, the High Court did not in any way interfere with the subsequent order dated 07.09.2010 of the disciplinary authority dismissing the Respondent from service as the order of dismissal was subject matter of challenge in a separate writ petition, Civil Miscellaneous Writ Petition No. 1386 (SB) of 2010, before the Allahabad High Court, Lucknow Bench.

8. Mr. P.P. Rao, learned Counsel appearing for the Appellants, submitted that under Clause (c) of FR 56, a government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of 45 years. He submitted that the Respondent had not served any such notice to the State Government and had only sent to the State Government a copy of his reply dated 28.05.2009 to the Enquiry Officer, Shri Vijay Shanker Pandey, and made an endorsement at the foot of the reply to the Principal Secretary (Appointment Section-II), Government of U.P. that he may be retired from service under FR 56 and he may be granted all service and consequential benefits. He vehemently submitted that such endorsement on a copy of the reply with a request to the appointing authority to grant him voluntary retirement from service was not a notice of voluntary retirement in terms of FR 56. He next submitted that the

proviso to Clauses (c) and (d) of FR 56 clearly provides that the notice given by the Government servant against whom a disciplinary proceeding is pending shall be effective only if it is accepted by the appointing authority and that the proviso does not require that where a disciplinary proceeding is pending against a Government servant, he should be informed of the decision on his request for voluntary retirement before expiry of the notice period. He argued that a close reading of the proviso would show that only where a disciplinary proceeding is contemplated against a Government servant, the Government servant has to be informed before the expiry of the notice period about the decision that his request for voluntary retirement has not been accepted. He submitted that the High Court has, on the contrary, held in the impugned judgment that the Respondent was required to be informed before the expiry of the period of notice about the decision that his request for voluntary retirement has not been accepted.

9. Mr. Rao next submitted that in any case the State Government as the appointing authority has considered the request of the Respondent for voluntary retirement and rejected the same as would be evident from the relevant file and in particular the note dated 26.11.2009 put up by the Under Secretary, Appointment Department and dealt with by the Special Secretary of the Government on 27.11.2009 and by the Principal Secretary of the Department and the Chief Secretary, Government of U.P., on 02.12.2009 and orally approved by the Chief Minister on 08.12.2009 as recorded by the Special Secretary on 08.12.2009. He submitted that the High Court has, however, taken a view in the impugned judgment that as the Chief Minister has not put her signature in the order dated 08.12.2009 rejecting the request of the Respondent for voluntary retirement, the order was not duly authenticated in terms of the Rules of Business. He cited the decision of the Punjab and Haryana High Court in *Bishan Lal Gupta Vs. The State of Haryana and Others*, that an order cannot be called in question merely because the Chief Minister has not put his signature on the official file. He finally submitted that since the State Government has not accepted the request for voluntary retirement made by the Respondent, the Respondent continued in service till he was dismissed by the order dated 07.09.2010.

10. The Respondent, who appeared in-person, on the other hand, submitted that in the copy of his reply dated 28.05.2009 to the Enquiry Officer, which was sent to the Principal Secretary, Appointment Section-II, Government of U.P., he had served a notice to the appointing authority that he may be retired under Clause (c) of FR 56, and all service and consequential benefits may be granted to him under Clause (e) of FR 56. He submitted that this was therefore a notice in terms of Clause (c) of FR 56. He submitted that the High Court has rightly held in the impugned judgment that once the State Government as the appointing authority took a decision and treated the reminder of the Respondent as a request for accepting his voluntary retirement, the State Government cannot now be permitted to take a stand that the request made by the Respondent in the

endorsement dated 28.05.2009 was not a notice of voluntary retirement. He further submitted that Clause (d) of FR 56 clearly provides that the period of notice would be three months. He argued that on the expiry of the three months period from 28.05.2009, the Respondent stood compulsory retired from service. He submitted that the State Government should have informed him about its decision not to accept his voluntary retirement before the expiry of the period of three months notice served by the Respondent. But the State Government did not communicate the decision to the Respondent within the notice period of three months and therefore the Respondent stood compulsory retired from service on expiry of the notice period and he was entitled to the pension and other retirement benefits in accordance with Clause (e) of FR 56. In support of his submissions, he cited the decision of this Court in *Union of India and others Vs. Sayed Muzaffar Mir*,

11. The Respondent next submitted that admittedly the Chief Minister has not put her signature on the proposal not to accept his notice of voluntary retirement and therefore there is No. decision of the State Government not to accept his notice of voluntary retirement. He vehemently argued that Article 166(3) of the Constitution of India provides that the Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of such business, and it does not contemplate delegation of the powers of the Ministers in favour of any officer of the State. He cited the decision of this Court in *Samsher Singh Vs. State of Punjab and Another*, in support of this proposition. He also relied on *Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another*, in which it has been held that a statutory authority cannot pass a statutory order on an oral prayer made by the owner of a property regarding compounding fee. He submitted that the contention of the Appellants that the Chief Minister had orally approved the rejection of the notice of the voluntary retirement of the Respondent should not therefore be accepted by the Court.

12. In our considered opinion, the answer to the question whether the Respondent stood voluntary retired from service before the order of dismissal was passed by the State Government will depend mainly on the precise language of Clauses (c) and (d) of FR 56 and the provisos thereto, which are quoted hereinbelow:

(c) Notwithstanding anything contained in Clause (a) or Clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty-five years.

(d) The period of such notice shall be three months:

Provided that-

(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice, or as the case may be, for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before his retirement;

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice:

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted:

Provided also that the notice once given by a Government servant under Clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

(emphasis supplied)

13. A reading of Clause (c) of FR 56 quoted above would show that when a government servant attains the age of 45 years, the appointing authority as well as the government servant have the option to initiate voluntary retirement and when the government servant chooses to initiate his voluntary retirement, he has to serve a notice to the appointing authority. Clause (d) of FR 56 further provides that the period of such notice shall be three months. There are, however, two provisos to Clause (d): proviso (i) and proviso (ii). These are not relevant for deciding this case. What is relevant is the proviso after proviso (i) and (ii) to Clause (d), which states that notice given by the government servant against whom a disciplinary proceeding is pending or contemplated, shall be "effective only if it is accepted by the appointing authority." In this proviso, however, it is clarified that in the case of a "contemplated disciplinary proceeding" the government servant shall be informed before the expiry of his notice period that it has not been accepted.

14. In the facts of the present case, the disciplinary proceeding was initiated against the Respondent on 19.02.2008, when the charge sheet containing 16 charges was issued against the Respondent and when Shri Vijay Shanker Pandey, the Commissioner, Lucknow Division was appointed as the Enquiry Officer to enquire into the charges. It is only after the initiation of a disciplinary proceeding that the Respondent made a request in the copy of his reply dated 28.05.2009 to the appointing authority to accept his retirement under Clause (c) of FR 56. Thus, even if we treat the request of the Respondent made on 28.05.2009 as the notice of voluntary retirement, we find that on 28.05.2009 a disciplinary

proceeding was pending against the Respondent and as per the language of the proviso, such notice of voluntary retirement would be "effective only if it is accepted by the appointing authority". Therefore, until the appointing authority accepted the request of the Respondent for voluntary retirement, the very notice dated 28.05.2009 for voluntary retirement would not be effective.

15. The High Court, however, has taken the view in the impugned judgment that it was incumbent upon the appointing authority to inform the Respondent before the expiry of the notice period of three months that his request for voluntary retirement has not been accepted and the High Court has therefore directed that a fresh decision be taken by the State Government on the request of the Respondent for voluntary retirement after it found that the Chief Minister had not put her signature in the order rejecting the request of the Respondent for voluntary retirement. This view taken by the High Court, in our considered opinion, is contrary to the plain language of the proviso which states that in the case of "a contemplated disciplinary proceeding" the government servant shall be informed before the expiry of his notice that it has not been accepted. As we have already found, this is not a case of "a contemplated disciplinary proceeding", but a case of disciplinary proceeding which was already pending when the Respondent made the request for voluntary retirement on 28.05.2009 and the finding of the High Court that the Respondent was required to be informed before the expiry of his notice of voluntary retirement that it had not been accepted is erroneous. In view of our finding that in a case where a disciplinary proceeding was pending, the relevant proviso to FR 56(c) and (d) does not require the decision of the appointing authority to be communicated to the Government servant before the expiry of the period of notice of voluntary retirement, it is not necessary for us to examine further whether the order dated 16.12.2009 rejecting the request of the Respondent for voluntary retirement without the signature of the Chief Minister was valid or not.

16. The decision of this Court in *Union of India v. Sayed Muzaffar Mir* (supra) cited by the Respondent does not apply to the facts of the present case. In that case, Rule 1802(b) of the Indian Railway Establishment Code provided that the railway servant could retire voluntarily from service by serving three months notice and a railway servant by his letter dated 22.07.1985 gave a three months notice to the Railways to retire from service. After the three months period expired on 21.10.1985, the order of removal of the railway servant was passed on 04.11.1985. On these facts the Central Administrative Tribunal, New Mumbai Bench, held that since the period of notice of voluntary retirement had expired on 21.10.1985, the order of removal was nonest in the eye of law and this Court did not find any infirmity in the order of the Tribunal. In the present case, the relevant proviso to Clauses (c) and (d) of FR 56 was explicit that in case of a disciplinary proceeding which is pending, the notice of voluntary retirement cannot be "effective" until the appointing authority accepted the notice for voluntary retirement. We have already found that when the request for voluntary retirement was made by the Respondent on 28.05.2009, the disciplinary

proceeding was pending against him. Therefore, the notice of voluntary retirement was not effective until a positive order of acceptance of the notice of voluntary retirement was passed by the State Government.

17. As has been held by this Court in *State of Haryana and Others Vs. S.K. Singhal*, cited by Mr. Rao, that if the right to voluntary retirement is conferred on the employee in absolute terms by the relevant rules and there is No. provision in the rules to withhold permission in certain contingencies, then voluntary retirement will come into effect automatically on the expiry of the period specified in the notice, but if such right to voluntary retirement of an employee, who is under suspension or who is facing disciplinary proceedings, is not conferred in absolute terms but is contingent upon the permission by the appointing authority, the notice of voluntary retirement does not take effect until a positive order is passed by the appointing authority. In this case, we have found that under the relevant proviso to Clauses (c) and (d) of FR 56, the right of a Government servant against whom a disciplinary proceeding is pending to voluntary retire from service is contingent upon the order of acceptance being passed by the appointing authority. Since, No. such order of acceptance was passed by the appointing authority in the present case, the Respondent continued in service even after the period of notice of three months expired in August 2009 and his services were terminated only with the order of dismissal passed on 07.09.2009.

18. In the result, the appeal is allowed and the impugned judgment is set aside and the writ petition (C.M.W.P. No. 05 (S/B) of 2010) challenging the rejection of Respondent's request for voluntary retirement is dismissed. There shall be No. order as to costs.