

(2013) 03 AHC CK 0114

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1855 of 2000

Union of India

APPELLANT

Vs

R.A. Pandey

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 ADJ 663 : (2013) 5 ALJ 671 : (2013) 3 AWC 2846

Hon'ble Judges : Zaki Ullah Khan, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Qamar Hasan Rizvi and I.H. Farooqui, for the Appellant; R.U. Pandey, Ashok Kumar Pandey and Ram Lagan Mishra, for the Respondent

Judgement

1. Heard learned Standing counsel appeared on behalf of the petitioner and Shri Ram Lagan Mishra learned counsel for the respondent. Instant writ petition has been preferred under Article 226 of the constitution of India against the impugned order dated 28.8.2000 (Annexure -1 to the writ petition) passed in O.A. No. 879 of 1993 by Central Administrative Tribunal, Lucknow whereby application moved by the claimant respondent has been allowed with regard to voluntary retirement,

2. The brief facts of the present controversy relates to the circumstances when petitioner has moved an application on 14.5.1993 seeking voluntary retirement w.e.f. 31.8.1993. However, claimant respondent withdrawn the application with regard to voluntary retirement on 27.8.1993. According to the petitioner's counsel, it was accepted on 26.8.1993. Claimant-respondents had approached the Tribunal with the prayer that since, application was moved for withdrawal of voluntary retirement before 31.8.1993 and even after acceptance master and servant relationship continues up to 31.8.1993, there was no option before the petitioner except to accept the withdrawal application moved by the claimant-respondent on 27.8.1993. It was pleaded before the Tribunal that since, the claimant was in service up to 31.8.1993, the withdrawal application moved by

the respondent before 31.8.1993 should have been accepted and application for voluntary retirement should be treated as withdrawn. The tribunal had relied upon Apex Court judgments in Balram Gupta Vs. Union of India (UOI) and Anr, , followed by one another judgment in Balbir Singh Negi Vs. Union of India (UOI) and Others, .

3. In the case of Balram Gupta (supra) their Lordship of Hon''ble Supreme Court held that an application may be withdrawn before the intended date of voluntary retirement,

4. In the case of Balbir Singh Negi (supra) Hon''ble Supreme Court reiterated that till master and servant relationship is effective an application may be withdrawn. The relevant portion from the judgment of Balbir Singh Negi (supra) is reproduced as under:

The learned counsel for the petitioner sought to rely upon the judgment of this Court in Balram Gupta v. Union of India, in which this Court had held that a Government servant after making the application but before it becomes effective and the relation ship of master and servant ceases to operate, is entitled to withdraw the resignation.

5. In the present case, admittedly, the claimant-respondent had moved an application for voluntary retirement w.e.f. 31.8.1993, hence, it was incumbent upon the petitioner to consider the claimant's application dated 27.8.1993 keeping in view the fact that by that date master and servant relationship persists. Application for withdrawal should have been allowed by the petitioner. The judgment and order passed by the learned tribunal seems to be based on well appreciation of law on the issue involved.

6. However, so far as, question of salary is concerned, since, the claimant-respondent had not discharged duty, he seems to be not entitled for payment of arrears of salary for the period when respondent had not discharged duties.

7. Shri Ram Lagan Mishra learned counsel for the respondent submits that claimant was restored in service in pursuance the judgment of tribunal and continued in service up to till the age of superannuation i.e., on 30.11.2007.

8. The impugned order dated 28.8.2000 is liable to be modified and is modified to the extent that the claimant-respondent is not entitled for arrears of salary for the period when he was not in job but for all other purposes, the claimant respondent shall deem to be in service and post retiral dues shall be assessed in accordance to rules. Tribunal's order stands modified accordingly. Writ petition disposed of accordingly.