
(2010) 07 SHI CK 0208
In the High Court Of Himachal Pradesh
Case No : LPA No. 128 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Hukam Singh

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Citation : (2010) 07 SHI CK 0208

Hon'ble Judges : Kurian Joseph, C.J;Kuldip Singh, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The Union of India the Appellant is the Respondent No. 1 in CWP No. 1681 of 2007. The writ petition was filed with the following prayers:

(i) That the Respondents may kindly be directed to count 35 days leave period as in service for the purpose of completion of qualifying service for grant of pension.

(ii) The Respondents may kindly be directed to grant pension to the Petitioner from the due date alongwith interest @ 18% per annum, keeping in view the length of service rendered by the Petitioner in the Respondents department.

2. The learned Single Judge having perused the records came to the conclusion that the writ Petitioner had not in fact tendered the resignation and it was held that there was no resignation in terms of the rules and he should be deemed to be in service. Hence a declaration was given that the Petitioner should be taken and superannuated from service on attainment of 58 years of age and he should be entitled to all consequential benefits.

3. Heard learned Assistant Solicitor General of India and also Mr. Ashok Sharma, learned Counsel appearing for the writ Petitioner. There is no dispute that there was 35 days of leave to the credit of the Petitioner as on the date of the alleged tendering of the resignation. There is a serious dispute with regard to the tendering of resignation by the writ Petitioner. It is seen that he had applied for leave and to that extent there is no dispute also and as on that date the

Petitioner was only short of 22 days for the qualifying service of 20 years for pension. It does not even appeal to the common sense that a person who had 35 days of leave to his credit would tender resignation when the shortage for qualifying service of pension was only 22 days. Suffice to say that it does not appear to be either rational or reasonable in having accepted the resignation and terminated the Petitioner from service in such circumstances. We have also found from the records that Petitioner himself had submitted a representation seeking the benefit of earned leave to his credit for deciding the qualifying service. We do not think that the matter should be left again for decision by the authorities, in view of the prolonged litigation..

4. The stand taken by the learned Single Judge, we are afraid cannot be justified in the facts and circumstances of the case. The declaration that the Petitioner shall be deemed to have continued in service till his date of normal superannuation was not even their relief sought in the writ petition. But at the same time, the interest of justice demands that equitable relief should be granted to the writ Petitioner, on the well settled principles of equity, justice and good conscience, in the peculiar facts of the case as stated above. In the above circumstances, the judgment of the learned Single Judge is set-aside and writ petition and LPA are disposed of as follows:

The writ Petitioner shall be deemed to have been permitted to retire from service on the expiry of 35 days of leave which the writ Petitioner had to his credit. The retirement benefits shall be calculated on that basis. The eligible pension and other benefits shall be disbursed to the Petitioner on the basis of the retirement as above. The arrears of pension shall carry interest at the rate of 6% with effect from 1.1.1989 till the date of disbursement. The Petitioner will present himself before the Group Centre, CRPF, Bantalab, Jammu on 23.8.2010 with records and certificate required for the grant of pension and within six weeks thereafter benefits as above shall be disbursed to the Petitioner.