
(1995) 01 AHC CK 0118

In the Allahabad High Court

Case No : S.A. No. 32 of 1992, C/W.S.A. No. 94 of 1992

U.P. Co-operative Spinning Mills Federation Ltd.

APPELLANT

Vs

Pukh Raj Mantri

RESPONDENT

Date of Decision : 11-01-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1995) 70 FLR 841 : (1995) 2 LLJ 1101 : (1995) 1 UPLBEC 442

Hon'ble Judges : S.S. Sodhi, C.J.;G.P. Mathur, J

Bench : Division Bench

Advocate : S.N. Upadhyaya and Ramesh Upadhyaya, for the Appellant; Jagdish Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. The controversy here is with regard to the validity of the withdrawal of resignation from service and the consequences thereof.

2. To give the relevant factual background, on October 13, 1982, Pukh Raj Mantri was appointed Manager (Cotton). This appointment was permanent in nature, but it provided for one year's probation. He thereafter took up this appointment, but on July 30, 1983, he tendered his resignation, which was accepted by the Managing Director by his letter of August 3, 1983, wherein it was said that the resignation would be effective from the date when he (Pukh Raj Mantri) is relieved of his post. It was further added that he would be relieved as soon as suitable arrangements are made in his place. Just three days later, however, that is, on August 6, 1983, Pukh Raj Mantri withdrew his resignation. The appellant Federation, however, disregarded the withdrawal of his resignation and proceeded to advertise the post in the newspapers of August 21, 1983. The respondent was eventually relieved from his post on October 18, 1983 and this is what led to the filing of the present writ petition by him seeking reinstatement in service and back wages.

3. The learned single Judge allowed the writ petition of the respondent and directed the appellant Federation to treat his resignation to have been lawfully withdrawn and consequently his services to be taken to be continuous for all purposes except payment to him of arrears of salary. The respondent was directed to be permitted to resume his duty within 15 days of the presentation of a certified copy of the judgment and to be paid his salary with effect from the date thereof. Both the appellant Federation and the respondent now seek to challenge this order in Special Appeal.

4. The appellant Federation sought, in the first instance, to question the maintainability of the writ petition against it on the ground that it was not a State in terms of Article 12 of the Constitution. A similar contention had been raised before and repelled by the learned single Judge. In the circumstances of the case, we do not consider it appropriate to go into this matter now at this stage and prefer instead to deal with the point in issue on merits. This is not, however, to be taken as any expression of opinion on the validity of the objection raised or as an endorsement otherwise, of the view taken by the learned single Judge.

5. As regards the validity of the withdrawal of the resignation of the respondent, the appellant Federation could obviously put forth no plausible ground to challenge it, keeping in view the fact that, according to the order passed on the resignation letter of the respondent it was to be effective from a future date and before that date, the resignation had been withdrawn by the respondent. As is well known, in the absence of any Rules to the contrary, a resignation is effective from the date of its acceptance and if the relevant Rule specifies a particular date, from such date. In the present case, seen in this light, counsel for the appellant Federation was unable to refer to any Rule or provision of law to impute any infirmity to the finding of the learned Single Judge holding that the resignation had been validly withdrawn by the respondent.

6. This brings us to the main, point in contention, namely, the respondent's claim for arrears of salary, consequent upon the termination of his services being held to be contrary to law. The argument being that with the termination of the respondent's services being held to be invalid, he must be deemed to have continued in service and if so it follows that he must be held entitled to his arrears of salary for the period that he was kept out of service. In other words, the respondent was entitled, not merely to reinstatement in service, but also to all his back wages.

7. The answer to the point urged is provided by the judgment of the Supreme Court in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , where in dealing with the case of a Warehouseman, whose dismissal from service was held to be bad in law, as the impugned order had been passed without complying with the rules of natural justice, it was observed;

"..... in matters of employment, while exercising its supervisory jurisdiction

under Article 226 of the Constitution, over the orders and quasi judicial proceedings of an administrative authority-not being a proceeding under the industrial/labour law before an industrial/labour Tribunal culminating in dismissal of the employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court."

Further, "..... Whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the Tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment."

8. Such thus being the settled position in law, no exception can be taken to the impugned judgment of the learned single Judge holding the withdrawal of the resignation of the respondent to be valid and directing his reinstatement in service, but without payment to him of his arrears of salary. The judgment of the learned single Judge is consequently hereby upheld and affirmed and both the Special Appeals are hereby dismissed.

In the circumstances, however, there will be no order as to costs.