

CONSTITUTIONAL WRIT

Present: The Hon'ble Justice Jayanta Kumar Biswas

Judgement on- 26.04.2010

W P NO- 13886(W) OF 2004

Dr. Asim Kumar Saha

V

Konnagar Municipality & Ors

Points:

Voluntary retirement: - Whether the Municipality is under an obligation to treat unconditional resignation as an offer for voluntary retirement. - Model Pension Rules

Facts:

The petitioner appointed in the post of Medical Officer, P. C Dispensary and Konnagar Matrisadan-O- Sishumongal Pratisthan. By a letter dated June 10, 2000 the Chairman of the Municipality called upon the petitioner to show cause why disciplinary proceedings should not be initiated against him for neglect of duty.

After considering the petitioner's reply, the Chairman issued an order for suspending the petitioner with immediate effect. Thereafter on 29.07.2000 the Chairman revoked the suspension and directed the petitioner to report on duty at once. Instead of reporting for duty the petitioner submitted a resignation letter and in the said letter the petitioner also asked the municipality for payment of all dues alongwith 18% interest. That was rejected by The Chairman of the Municipality. Hence this writ petition.

HELD-

For voluntary retirement permission of the Municipality was necessary, but for resignation prior permission of the Municipality was not necessary. It is not that the Municipality informed the petitioner that his resignation was not accepted. There is no merit in the case that the resignation was not accepted. Para-13

It is evident from the petitioner's letter dated July 29, 2000 that his resignation was unconditional expressing his clear intention to resign. He call upon the Municipality to pay him all dues. In the facts and

circumstances of the case Court cannot accept that the Municipality was under an obligation to treat the petitioner's resignation as an offer for voluntary retirement. Para 21 and 22

CASES CITED

AIR1997 SC 565-- Union of India & Ors V Lt Col P S Bhargava

AIR1997 SC2268 --- Arikaravula Sanyasi Raju V Branch Manager, State Bank of India , Visakhapatnam(A. P) & Ors.

(2003)1 SCC 701----- Dr. Prabha Atri V State of U.P & Ors.

Mr Sadhan Chowdhury

Ms. Rini Bhattacharyya

----- for the petitioner

Mr Debabrata Karan----- for the State

The Court:

The petitioner in this art. 226 petition dated August 20, 2004 is seeking a mandamus quashing the letter of the Chairman, Konnagar Municipality dated April 29, 2003, Annexure P8 at p.43, and commanding the Municipality and its officials to pay him all benefits with 18 per cent interest treating his resignation as a voluntary retirement.

2. By a letter dated December 31, 1976 the Municipality appointed the petitioner to the post of Medical Officer, P.C. Dispensary and Konnagar Matrisadan-O-Sishumongal Pratisthan. By an order dated January 8, 1977 the Special Officer & Deputy Secretary (Ex-officio), Department of Health & Family Planning, Public Health Branch, Government of West Bengal approved the petitioner's appointment under s.66(2) of the Bengal Municipal Act, 1932.

3.The Model Pension Rules for Employees of the Local Bodies in the State of West Bengal issued by the Local Government and Urban Development Department of the Government of West Bengal under Memo No. 12/C-9/P2P3/81(104) dated April 16, 1982 provided that resignation tendered by the employee or dismissal or removal of the employee would entail forfeiture of past service and consequent loss of right to pension.

4. By a letter dated June 10, 2000 the Chairman of the Municipality called upon the petitioner to show cause why disciplinary proceedings should not be initiated against him for neglect of duty. After considering the petitioner's reply dated June 13, 2000 the Chairman issued an order dated June 14, 2000 suspending the petitioner with immediate effect. Then by an order dated July 29,

2000 the Chairman revoked the suspension and directed the petitioner to report for duty at once.

5. Instead of reporting for duty the petitioner submitted a resignation letter dated July 29, 2000, the contents whereof are as follows:-

“Received your letter No. A/D/M/N/28 staff 612 in which you have withdrawn the suspension order and requested me to join immediately. Due to this suspension I had severe mental injury and mental torture and social humiliation.

Due to diverse weighty causes and consideration I am unable to work any further with your municipality and hence I submit my resignation from the post of- “Surgeon Superintendent” of Konnagar Matri Sadan-O-Sishu Mangal

Pratisthan, Konnagar, Hooghly.

Please arrange for payment of all my dues and oblige.”

6. It appears from a letter of the Chairman of the Municipality dated April 29, 2003 that by a letter dated April 22, 2003 the petitioner asked the Municipality to pay him pension and gratuity. In his letter dated April 29, 2003 addressed to the petitioner, the Chairman of the Municipality stated that in view of the resignation tendered by the petitioner and the provisions of the Model Pension Rules dated April 16, 1982, the petitioner was not entitled to pension and gratuity.

7. The petitioner submitted a representation dated February 13, 2004 claiming as follows. Since he had to resign under unavoidable circumstances, and was of the impression that he had not forgone his legitimate claims and dues for pension and gratuity, he was entitled to those benefits. He “resigned from the service not from the claims and dues.” His resignation letter should be treated as an application for voluntary retirement.

8. The Municipality's case is this. In terms of the Model Pension Rules applicable to the Municipality the petitioner, having tendered resignation, was not entitled to any pension and gratuity. He did not resign from service under any voluntary retirement scheme; nor did he apply to the Municipality seeking permission to resign from service. At the relevant time pension was payable to

the employees of the Municipality under the Model Pension Rules dated April 16, 1982, not under the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, as claimed by the petitioner.

9. Mr Roy Chowdhury, counsel for the petitioner, has argued as follows. The petitioner was not asked to resign. He voluntarily resigned, and hence the provisions of the Model Pension Rules providing that resignation tendered by an employee would entail forfeiture of his past service, making him ineligible for

pension, were not applicable to the case. The resignation was only tendered; it was never accepted. There is a distinction between a voluntary resignation and a resignation tendered in compliance with an order of the employer.

10. Mr Roy Chowdhury has relied on r.34A of the West Bengal Service Rules Part I and the decisions in *Union of India & Ors. v. Lt. Col. P.S. Bhargava*, AIR 1997 SC 565; *Arikaravula Sanyasi Raju v. Branch Manager, State Bank of India*,

Visakhapatnam (A.P.) & Ors., AIR 1997 SC 2268; and *Dr. Prabha Atri v. State of U.P. & Ors.*, (2003)1 SCC 701.

11. I am unable to see how the provisions of r.34A of the West Bengal Service Rules, Part-I can apply to the case. Admittedly they apply to a Government employee and the petitioner was not a Government employee. He was an employee of the Municipality.

12. The petitioner's own case is that he resigned from service on July 29, 2000. There is no merit in his contention that he "resigned from the service and not from the claims and dues." It is beyond comprehension how he could resign from his claims and dues. His ineligibility for pension under the Model Pension Rules was the statutory consequence of his resignation from service.

13. I am unable to see how the resignation could be dubbed a voluntary retirement. For voluntary retirement permission of the Municipality was necessary, but for resignation prior permission of the Municipality was not

necessary. It is not that the Municipality informed the petitioner that his resignation was not accepted. There is no merit in the case that the resignation was not accepted.

14. On the facts, I am unable to accept the argument that the Municipality could not apply the provisions of the Model Pension Rules providing for forfeiture of the petitioner's past service and consequent disentitlement to pension. I do not see how the decisions relied on are relevant to the questions involved in this case.

15. In *Union of India & Ors. v. Lt. Col. P.S. Bhargava*, AIR 1997 SC 565, their Lordships of the Supreme Court were examining whether an army officer earning pension and other benefits must forfeit them on his resigning from the job, and after considering the provisions of regs.3 and 16 of the Pension Regulations for the Army their Lordships held that cases of voluntary resignation of officers were not covered by them.

16. This decision has been relied on in support of the contention that a case of voluntary resignation falls in a distinct class of resignation to which the provisions providing for forfeiture of past service of the employee tendering resignation do not apply. I am unable to say that the decision supports the proposition.

17. In *Arikaravula Sanyasi Raju v. Branch Manager, State Bank of India, Visakhapatnam (A.P.) & Ors.*, AIR 1997 SC 2268, their Lordships of the Supreme Court were examining whether the appellant therein was entitled to the benefit of r.22 of the State Bank of India Service Rules providing that a member would be entitled to pension on retiring from the Bank's service after having completed 20 years pensionable service irrespective of the age he shall have attained at his request in writing.

18. Their Lordships held that the rule providing for pension to an employee permitting to go on voluntary retirement was not applicable to an officer who was removed from service for misconduct. The decision has no application to this case.

19. In *Dr. Prabha Atri v. State of U.P. & Ors.*, (2001)3 SCC 701, their Lordships were examining whether a letter of Dr Prabha dated January 9, 1999, in which she said that if the authority was not inclined to withdraw the letter dated January 8, 1999 placing her under suspension, then she would have no option left but to tender her resignation with immediate effect, was actually her resignation letter.

20. Their Lordships held that on the facts the letter could not be construed to convey any spontaneous intention to give up or relinquish office to constitute a resignation. In the process their Lordships said that to constitute a resignation it must be unconditional and with an intention to operate as such.

21. It is evident from the petitioner's letter dated July 29, 2000 that his resignation was unconditional expressing his clear intention to resign. He call upon the Municipality to pay him all dues.

22. In the facts and circumstances of the case noted hereinbefore, I am unable to accept a case that the Municipality was under an obligation to treat the petitioner's resignation as an offer for voluntary retirement.

23. As to the petitioner's claim for gratuity, Mr Roy Chowdhury has said that the petitioner was entitled to gratuity under the Payment of Gratuity Act, 1972. No such case has been stated in the petition. Under the circumstances, I only say that if the petitioner is of the view that he is entitled to gratuity under the Payment of Gratuity Act, 1972, then he is free to proceed according to the provisions thereof.

For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)