

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 7th February, 2011

+ **W.P.(C) 8182/2007**

JASWANT SINGH Petitioner

Through: Ms.Monica Kapoor, Advocate.

versus

UOI & ORS. Respondents

Through: Ms.Saroj Bidawat, Advocate with
Asstt.Cmdt.Bhupinder Sharma, BSF.
None for Ms.Birmati, Added Respondent.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Vide order dated 22.12.2000 petitioner has been visited with the penalty of dismissal from service on the ground that w.e.f. 4.1.2000 he has absented from duty without reasonable cause.

2. Relevant facts are that petitioner's request for being voluntarily retired submitted on 2.2.1999 was accepted by the competent authority on 17.2.1999 intimating petitioner that the acceptance would be effective from 30.4.1999 and that petitioner's name would be struck off the strength of the Unit w.e.f. 30.4.1999 (AN). It was directed that the petitioner would be entitled to admissible pensionary benefits and for which it was directed that he should complete the codal formalities; one of which was to furnish 4 copies of a joint passport size photograph with his wife.

3. The petitioner informed that he could not furnish a joint photograph with his wife and informed the Commandant the reason thereof; being his wife having deserted him.
4. The authorities insisted that pension would be released only if petitioner submitted a photograph of himself and his wife.
5. Petitioner was a patient of tuberculosis and this appear to be the reason why he sought voluntarily retirement and we note that the department was aware of his suffering from tuberculosis for which a special diet was sanctioned for him effective from 12.1.1999.
6. On 30.3.1999 petitioner once again informed the Commandant that he could not submit any photograph in which his wife was by his side i.e. a joint photograph. On 31.3.1999 the Commandant directed petitioner to submit a joint photograph with his wife.
7. What the petitioner did was to obtain a joint photograph with another woman and submit the same.
8. It is apparent that the petitioner did so for the reason he was ill-advised to do so. Coming from a rural background and working as a Head Constable, petitioner thought 'who would detect if he submitted a photograph of himself and another woman'.
9. On 26.4.1999 a 'No Dues Certificate' was issued to the petitioner. He deposited the kit issued to him but unfortunately for him somebody reported against him and on 29.4.1999 it was communicated to the petitioner that his request for voluntary retirement was withdrawn. It was informed to him that for having submitted a joint photograph with a lady who was not his wife, departmental action would be taken against him.
10. No salary was released to the petitioner thereafter. The reason appears to be that in the accounts department it came to be recorded that the petitioner would be retired w.e.f. 30.4.1999; a decision which was revoked on 29.4.1999.

11. Be that as it may, the petitioner claims that he neither got his salary nor special diet and was left with no option but to go to his village and after an ex-parte inquiry was conducted the penalty as afore-noted was levied upon him.

12. We note that there are various orders passed in the instant writ petition attempting a settlement between the petitioner and his wife. They were referred to mediation. Mediation failed.

13. When the matter was assigned to this Bench, we had attempted a settlement on 4.2.2011 i.e. last Friday. Petitioner's wife was present in Court and had agreed to certain suggestions but today we find she and her counsel not appearing in the Court. Learned counsel for the petitioner states that the wife of the petitioner does not desire any settlement.

14. We may note that the wife of the petitioner has no role to play in the context of the existing litigation. The settlement which was attempted was that if the writ petition would succeed, the pension which the petitioner would receive could be appropriated between the husband and wife and this would have brought an end to the litigation between the two, which they are fighting before a Matrimonial Judge in Haryana.

15. Be that as it may, our job is to decide the instant writ petition and which we do.

16. At the core of the matter would be the issue: whether having accepted petitioner's request for voluntary retirement and the effective date for petitioner's retirement being 30.4.1999, could the department have withdrawn the consent given a day prior i.e. on 29.4.1999?

17. Whereas there is enough case law to support the proposition that before the resignation becomes effective, the Government servant can withdraw the same, no case law has been cited to us which holds to the contrary i.e. that even the department can

withdraw the acceptance of a request submitted by the employee seeking voluntary retirement.

18. That apart, what led the department to withdraw petitioner's request for being voluntarily retired is the stated wrong committed by the petitioner in submitted a joint photograph with another woman and informing the department that the said woman was the wife of the petitioner.

19. We have noted the facts hereinabove which bring out that the petitioner repeatedly requested the department to process his pension papers without insisting on his submitted a joint photograph with his wife. He gave the reason. The reason was the estrangement between him and his wife. The department did not agree. To get over the problem, the petitioner got himself photographed with another woman. His intention has to be seen. He never intended to cheat the department or anyone. He was only attempting, in his own humble way, to overcome a bureaucratic problem.

20. Of course what he did was wrong. But intention always plays a very important role in considering the penal consequences of the wrongful act.

21. Now, on the issue of desertion, suffice would it be to state that having processed petitioner's case for being voluntarily retired, it is obvious that the accounts department would not have processed the case of the petitioner for payment of salary post 1.5.1999 inasmuch as the petitioner had to be relieved from service on 30.4.1999. As noted hereinabove, petitioner was admittedly a patient of tuberculosis and for which a special diet was sanctioned to him. Post 30.4.1999 he lost the same.

22. What else could the petitioner do under the circumstances but to go to his village so that he could at least eat a meal or two each day and keep the body and soul together?

23. The peculiar facts of the instant case compel us to hold that the petitioner had no intention to abscond. He got caught within the pincers of law and his failing health. Coming from a rural background somebody gave him a wrong advice to tide over a problem. Wrong which he committed is without any criminal intent.

24. Thus, we dispose of the writ petition quashing the impugned order terminating the services of the petitioner and grant a declaration that the petitioner be treated as having voluntarily retired w.e.f. the afternoon of 30.4.1999.

25. Since the wife of the petitioner has refused even before this Court to get herself jointly photographed with the petitioner we issue a direction to the respondent to process the entitlement of the petitioner for pension, without a joint photograph of the petitioner with his wife.

26. We note that the petitioner's wife has got a maintenance order in her favour which is being honoured by the petitioner. We may incidentally note that when petitioner's wife appeared last Friday she had admitted before us that she was living in the same ancestral house in which petitioner resides. Her real sister is married to the brother of the petitioner. The ancestral land in the village measure about 19 acres and produce from 2.5 acres is directly handed over to her. This is as per an agreement arrived at between the parties, which has been brokered by the village Panchayat.

27. In any case, the wife of the petitioner would be entitled to enforce her right of maintenance through the medium of a civil court, if petitioner disobeys the same.

28. The writ petition accordingly stands disposed of by issuing the declaration and the directions as given in para 24 above with further directions that the arrears of pension and other terminal dues, minus any interest, would be calculated and paid to the

petitioner within a period of 12 weeks from today. Future pension would be paid as per the pension rules.

29. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 07, 2011
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