

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 3023 of 2013

1. Union Of India through The Secretary, Ministry Of Communication & Information Technology, Department Of Posts Dak Bhavan, New Delhi
2. The Chief Postmaster General C.G. Circle, Raipur C.G. 492001

---- Petitioners

Versus

Jugal Kishor Tiwari S/o Late Hanuman Prasad Tiwari Aged About 59 Years Superintendent, Postal Store Depot, C.G. Circle, Raipur-01, R/o Qt. No. MIG (G+1), Ph-II, No.93, Housing Board Colony, Kabir Nagar, Tatibandh, P.O. Tatibandh, Raipur (CG) 492001

---- Respondent

For Petitioners:
For Respondent:

Shri N.K. Vyas, Advocate
Shri Ratan Pusty, Advocate

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Acting Chief Justice

24/03/2015

The present application assails the order dated 5.2.2013 in O.A. No.1134/2011 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur. The Tribunal allowed the application holding that the Respondent was deemed to have retired w.e.f 11.10.2011 after expiry of three months from 10.7.2011 on which date he gave he gave his application for voluntary retirement. Directions were further given that his retiral dues be reckoned after deducting the salary earned by him from 11.10.2011 till his scheduled superannuation on 30.6.2012 when he was formally relieved from service.

2. Learned counsel for the Petitioner submits that the Tribunal has grossly erred in law by holding that the Respondent stood automatically retired on expiry of three months notice period under Rule 48(1) of The Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Rules') in the

facts of the present case. He submits that the Respondent even after 10.10.2011 kept going to work and is therefore deemed to have waived his request for voluntary retirement. The Respondent cannot simultaneously contend that he stood retired after expiry of three months notice period and yet continued to go to office and earn salary by working. The request for voluntary retirement was rejected expressly on 15.11.2011 which was challenged before the Tribunal. The Respondent continued to work till his scheduled date of superannuation on 30.6.2012. The Tribunal has therefore grossly erred in holding that the Respondent is deemed to have retired on 10.10.2011. In the facts of the case, the actual date of cessation of service shall be 30.6.2012 due to superannuation and not voluntary retirement.

3. Learned counsel for the Respondent submitted that under Rule 48(1), there was no need for a formal acceptance of the request for voluntary retirement as expressly required under Rule 48. The Respondent was therefore deemed to have retired on expiry of the notice period on 10.10.2011. Since no formal communication was made, the Respondent continued to go to work. It does not and cannot amount to waiver of his claim for deemed retirement accrued under the statute after the notice period.

4. Reliance was placed on AIR 1978 Supreme Court 1109 (B.J. Shelat vs. State of Gujrat and others) and a Bench decision of the Allahabad High Court in 2011 (8) SLR 177 (Chandra Bahadur Pandey vs. State of Uttar Pradesh and others).

5. We have considered the submissions on behalf of the parties. The ratio of a case cannot be culled out divorced from the facts of the case. The decision rendered in a particular case has to be appreciated and understood in the background in which it came to be delivered. There can be no ratio devoid of the facts of the case.

6. The Respondent contends that he stood relieved from service pursuant to his request for voluntary retirement after expiry of three months of the notice period. Simultaneously, he contends that he continued to go to work thereafter as no formal communication of acceptance was made. The stand of the Respondent is an anachronism and self-contradictory. Had he stopped going to office after 10.10.2011, issues for consideration may have been fundamentally different.

7. Voluntary retirement was a statutory right. A statutory right can be waived as distinct from the a fundamental right which cannot be a waived. Waiver can be either express implied or by conduct. In the present case, the Respondent by his conduct in going to office after 10.10.2011 leaves us satisfied that he waived his application for voluntary retirement dated 10.7.2011. The rejection of his request by the Petitioner on 15.11.2011 was not empty formality. The communication of rejection which was made the cause of action was itself superfluous in view of the waiver by the Respondent of his application for voluntary retirement. His attending office during the notice period of three months for voluntary retirement and thereafter, are completely different issues.

8. If the Respondent continued to go to work after 10.10.2011, drew his salary and finally superannuated on 30.6.2012 by relinquishing charge, he cannot blow hot and cold simultaneously by claiming that he stood retired after the expiry of the notice period on 10.10.2011 and effectively left service on the date of superannuation. A person can leave service on only one date and not on two dates.

9. In B.J. Shelat (supra), the facts appear to be completely different. The Petitioner had stopped going to work after expiry of the notice period for voluntary retirement. Likewise, in Chandra Bahadur Pandey (supra), the

Petitioner had stopped going to work after expiry of the notice period for voluntary retirement and the Respondent had paid him salary for some period voluntarily without work. The case is again distinguishable on its own merits.

10. We are of the considered opinion that the Tribunal exceeded its jurisdiction by holding that the Respondent was deemed to have retired on 10.10.2011, directing adjustment of salary earned after that date with retiral dues. The order dated 5.2.2013 is unsustainable and is set aside.

11. At this juncture, Learned Counsel for the Respondent submits that alternatively a direction may be issued to conclude the pending departmental proceedings expeditiously.

12. Let the departmental proceedings be concluded preferably within a period of six months from the date of receipt of production of copy of this order provided the Respondent himself cooperates.

13. The Writ Petition is allowed.

(Navin Shiha)
ACTING CHIEF JUSTICE

(P. Sam Koshy)
JUDGE