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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 12, 2015

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W.P.(C) 8157/2013, CM No.17216/2013

VINOD KUMAR ARORA

..... Petitioner

Through: Mr. Ashwani Kumar, Adv. with
Ms.Iti Sharma, Adv.

versus

RASHTRIYA SANSKRIT SANSHTAN AND ORS

..... Respondent

Through: Mr.S.Shekhar, Adv. with Mr.Amitesh
Kumar, Adv. for R1 and R2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (Oral)

1. The writ petition has been filed by the petitioner challenging the office orders dated October 31, 2013 and December 6, 2013, whereby, the petitioner's request for voluntary retirement was accepted with effect from December 8, 2013 and further, his request vide letters dated November 25, 2013, December 3, 2013 and December 5, 2013 for withdrawal of notice dated September 9, 2013 has been rejected.

2. The brief facts are, the petitioner, while working as Section Officer in

the respondent Nos. 1 & 2-Organization submitted a notice for voluntary retirement of three months on September 9, 2013, is a effective from December 8, 2013. On October 31, 2013, an office order was issued by the respondents whereby it was communicated to the petitioner that his notice for voluntary retirement on completion of three months has been accepted and he would stand voluntary retired with effect from December 8, 2014. In the meantime, the petitioner submitted a letter dated November 25, 2013, expressing himself to continue to serve the respondent Nos. 1 and 2 further and withdrawing his notice dated September 9, 2013. The said letter was followed by letters dated December 3, 2013 and December 5, 2013 with similar request, permitting him to withdraw the notice of voluntary retirement.

3. The respondent Nos. 1 and 2, vide their order dated December 6, 2013 did not accede to the request of the petitioner for withdrawing the notice for voluntary retirement dated September 9, 2013. The reasons stated therein are as under:

“(I) Shri Arora was posted earlier at Bhopal campus during 2012-2013 for a period of over one year and his performance during the period was not reported to be useful/ productive as most of the time he kept himself away from workplace availing leaves which also culminated in his transfer back to Delhi

office but he remained dissatisfied here also as per his own letter dated 09.7.2013 as indicated in succeeding para.

(II) Shri Arora had earlier also through his letter dated 09.7.2013 to the Vice Chancellor expressed his dissatisfaction and desired to get himself detached from employment at this Sansthan as evident from his representation dated 09.07.2013 which inter alia contained various other issues also as stated therein by him. The said notice was accepted by competent authority through its letter dated 25.11.2013-,i.e. after lapse of about 53 days after the said notice and there was no initiative from Shri Arora to withdraw the same before it was accepted and therefore became effective.

(III) In order to find replacement for Shri Arora, the Sansthan has made all alternative arrangements and as such services of Shri Arora cannot longer be fruitfully utilized by Sansthan.

(IV) As per provisions made under rules no 48(2) of CCS(pension) Rules as applicable, a Govt Servant who has elected to retire under this rule and has given necessary intimation to that effect to the Appointing authority, shall be precluded from withdrawing his election subsequently except with specific approval of such authority. Obviously there can be no any case for such consideration if the notice was already accepted and retirement became effective. Therefore once the notice under said rule for VRS given cannot be withdrawn without 'specific approval of the authority concerned. Further it cannot be withdrawn after acceptance for obvious reasons that it will at first instance involve withdrawal of his own acceptance by the competent authority to make the notice open for withdrawal by the concerned employee. Thus the accepted notice cannot be withdrawn under the circumstances explained above, More over the competent authority has failed to find any other fair and just reasons which could be given overriding consideration in favour of Shri Arora to withdraw the acceptance of notice already granted to him and to subsequently permit withdrawal of notice by Shri Arora

Having taken the above facts and all other relevant factors into account the Competent Authority has decided that Shri Arora cannot be permitted to withdraw his notice and the Office Order no. 541 dated 31.10.2013 issued to Shri Arora shall remain unchanged. Accordingly, Shri Arora Shall stand retired voluntarily on 08.12.2013(AN) which being Sunday, Shri Arora shall relinquish his duties today i.e. on 06.12.1^3 after handing over the documents /charge held with him to his senior In Charge Dr. Chhotibai Meena, Asstt. Professor”.

4. By the same order, it was directed that the pensionary benefits of the petitioner shall accordingly be settled as per the Rules. It is at this stage, the petitioner has approached this Court by way of the present writ petition.

5. It is the case of the petitioner in the writ petition that the petitioner having withdrawn the notice for voluntary retirement before the voluntary retirement could actually come into effect, the respondent Nos. 1 and 2 could not have retired the petitioner and settled the pensionary dues.

6. On the other hand, learned counsel appearing for the respondent Nos. 1 and 2 would submit that since the request of the petitioner for acceptance of voluntary retirement was accepted on October 31, 2013, the petitioner could not have withdrawn his request for voluntary retirement, even though, the same was effective from December 8, 2013. He would rely upon the judgment of the Supreme Court in the case reported as **2003 (3) SCC 393, P.Lal Vs. Union of India and Ors.**

7. Having considered the pleadings and heard the learned counsel for the parties, this Court is of the view that this issue is no more res-integra. The Supreme Court in the cases reported as *Balram Gupta Vs. Union of India and Anr., 1987 (Suppl.) SCC 228*, *Shambu Murari Sinha Vs. Project & Development India and Anr., 2000 (5) SCC 621* and *J.N.Srivastava Vs. Union of India & Ors., 1998 (9) SCC 559* has settled the issue inasmuch it has been held that it is always permissible for an employee even though, request for voluntary retirement has been accepted by employer, to withdraw the same before the last date of notice period.

8. Insofar as the judgment referred to and relied upon by the learned counsel for the respondent Nos. 1 and 2 in *P.Lal's case (supra)* is concerned, the same would not be applicable to the facts of this case. In the said case, the respondent No. 3 before the Supreme Court i.e. the employee, had made his letter dated May 5, 1993 to be allowed to retire voluntarily with immediate effect. He had also deposited an amount of Rs. 30,870/- in lieu of three months' notice. As per the respondent No. 3 i.e. the employee, the effective date was for him to seek voluntary retirement was the date when he gave the application i.e. May 5, 1993. Even though, the Government of India accepted the request of the employee on March 2,

1995, permitted the respondent No. 3 to be retired with effect from May 1993 itself, it was under those circumstances, the Supreme Court held, the moment the Government of India accepted notice, their retirement became effective. In the case in hand, it is conceded position that the petitioner had given his request for voluntary retirement effective from December 8, 2013. Even though, the respondent Nos. 1 and 2 had accepted the request for voluntary retirement, but the same was with effect from December 8, 2013. In view of the settled position of law, as referred to above, the petitioner was within his right to withdraw the notice for voluntary retirement before the effective date i.e. December 8, 2013. Further, the reasons given in the order dated December 6, 2013 are not sustainable. That apart, the reasoning in para III of the said order is also vague. The petitioner is liable to succeed in the present case and the orders dated October 31, 2013 and December 6, 2013 are set aside. I note that this Court had stayed the operation of the orders/memorandums dated October 31, 2013 and December 6, 2013. I have been told that on the strength of the stay order, the petitioner is continuing with the respondent Nos. 1 and 2. Further, I have been informed by the learned counsel for the petitioner that pursuant to the order/memorandum dated December 6, 2013, the retirement dues have been

paid to the petitioner. He also states that the petitioner had made several representations, calling upon the respondent No. 1 to take back the retirement dues which according to him, have not been taken by the respondent No. 1. In view of the aforesaid position, the petitioner is called upon to refund the pensionary benefits, which he had received pursuant to the decision of the respondent Nos. 1 and 2 to retire him voluntarily, within a period of 10 days from today.

9. I further note that this Court, in its order dated December 20, 2013 noted the fact that after the voluntary retirement was given effect to, the petitioner remained out of service for a period of ten days.

10. Learned counsel for the petitioner states that on the strength of the order of this Court, the petitioner could join the duties on December 23, 2013. Suffice to state, the petitioner shall be entitled to the wages between December 9, 2013 till December 22, 2013, which shall be paid to him along with the salary for the month of August, 2015.

11. The petition is accordingly allowed. No costs.

V. KAMESWAR RAO, J

AUGUST 12, 2015/akb