

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.T. ASHA

W.P. No.8685 OF 2019

- 1 Union of India
Rep. by The General Manager Integral Coach
Factory Chennai - 600 038
- 2 The Chief Personnel Officer
Integral Coach Factory Chennai - 600 038
- 3 The Principal Chief Mechanical Engineer
Integral Coach Factory
Chennai - 600 038 ... petitioners

Vs

- 1 The Registrar
Central Administrative Tribunal Madras
Bench Chennai - 600 104
- 2 P.R.Subrahmanian ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari call for the records of the 1st respondent / Tribunal in O.A.No.310/00653 of 2018 dated 03.10.2018 and quash the same.

For petitioners : Mr.M.Vijay Anand

For 2nd respondent : Mr.R.Pandian

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O R D E R
(made by K.K.SASIDHARAN, J.)

Introduction :-

Whether the employee of the Integral Coach Factory is entitled to withdraw the voluntary retirement notice within the prescribed period of ninety days, or to put it otherwise, whether the employer is empowered to reject the withdrawal notice solely on the ground of its acceptance notwithstanding

the fact that the time for withdrawal has not expired, is the core issue that arises for consideration in the Writ Petition filed by the Union of India represented by the Integral Coach Factory, Chennai.

The facts:-

2. The 2nd respondent joined the Railway Service as Assistant Loco Pilot. The entry was on 1 July 1986. The 2nd respondent was later absorbed as Junior Engineer, Mechanical. The 2nd respondent was ultimately promoted as Senior Mechanical Engineer in the year 2013. His age of retirement on superannuation is 31 May 2025. The 2nd respondent, due to family circumstances, submitted an application for voluntary retirement from service on 6 October 2017. The 2nd respondent requested the Railways to relieve him from duty with effect from 6 January 2018. It was a notice of three months as provided under the rules for Voluntary Retirement.

3. The family problems faced by the 2nd respondent appears to have been solved at the instance of elders, resulting in submitting an application by him for withdrawing the request for voluntary retirement. The letter of withdrawal was given on 2 December 2017. The withdrawal letter was given one month before the expiry of the notice period.

4. The second petitioner by communication dated 6 December 2017, called upon the 2nd respondent to indicate the reasons for withdrawal of his application for voluntary retirement. The 2nd respondent submitted a detailed explanation on 12 December 2017. However, the second petitioner by communication dated 22 December 2017 informed the 2nd respondent that the Competent Authority has not accepted the request for withdrawal of the letter of voluntary retirement. The 2nd petitioner forwarded a copy of the order passed by the Competent Authority rejecting the request for withdrawal of the application for voluntary retirement to the 2nd respondent.

5. The 2nd respondent filed original application before the Central Administrative Tribunal in O.A.No.310/00129/2018 challenging the order passed by the Competent Authority. Since reasons were not given in the said order, the Tribunal directed the Competent Authority to consider the matter afresh and pass a speaking order. The first petitioner passed an order dated 28 April 2018, once again rejecting the request for withdrawal of application for voluntary retirement. The order was challenged before the Tribunal in O.A.No.310/00653/2018. The said order was considered by the Tribunal and ultimately, the original application was allowed. Feeling aggrieved by the order dated 3 October 2018, the petitioners have come up with this intra court appeal.

Submissions:-

6. The learned Standing Counsel for the petitioners submitted that even before the withdrawal of the application given by the 2nd respondent for voluntary retirement, the Competent Authority passed orders accepting the request. According to the learned counsel, once the request for voluntary retirement is accepted, it would not be possible for the Competent Authority to entertain the request for withdrawal of the earlier request.

7. The learned counsel for the 2nd respondent took us through the materials available on record. The learned counsel also placed reliance on the decision of the Hon'ble Supreme Court in J.N.Srivatsava vs. Union of India and another, 1998(9) SCC 559. The learned counsel contended that even before the expiry of the notice period, the 2nd respondent submitted application for withdrawal of his initial request for voluntary retirement. According to the learned counsel, it was only due to certain family circumstances, the application for voluntary retirement was submitted. Since the issues were settled at the instance of elders, the 2nd respondent submitted an application for withdrawing his request for voluntary retirement. The learned counsel submitted that the request was within the cut off period and as such, the railways was not correct in rejecting the application. The learned counsel contended that the Tribunal was perfectly correct in directing the petitioners to accept the application for withdrawal of request for voluntary retirement and the consequential direction for payment of the salary for the intervening period by treating the interregnum period as time spent on duty.

Analysis:-

8. The 2nd respondent submitted an application for voluntary retirement on 6 October 2017. The applicant was expected to give three months notice for voluntary retirement. The guidelines and circulars issued by the Railways permits a railway employee to withdraw the application for voluntary retirement within the statutory period of three months.

9. The 2nd respondent appears to have submitted an application for voluntary retirement due to certain issues. Since all such issues were solved, by letter dated 2 December 2017, he requested the railways to permit him to withdraw the application for voluntary retirement. General Manager, Integral Coach Factory by communication dated 6 December 2017, called upon the 2nd respondent to furnish reasons for his withdrawal of application for voluntary retirement. It is a matter of record that the 2nd respondent has given necessary particulars with regard to the burning issues which made him to submit the application and the subsequent events relating to the resolution

of those issues.

10. The Competent Authority considered the representation submitted by the 2nd respondent pursuant to the direction given by the Tribunal in O.A.No.310/00129/2018 and observed that reasons were not given while giving application for withdrawal of the request for voluntary retirement.

11. There is absolutely no merit in the reasons given by the Competent Authority in its letter dated 28 April 2018. It is a matter of record that the 2nd respondent was asked to give reasons which made him to make the application for withdrawal of his earlier application for voluntary retirement. The explanation given by the 2nd respondent contained details that made him to submit the application for voluntary retirement and the change of circumstances subsequently due to resolution of the issues.

12. The petitioners have no case that the application for withdrawal of the earlier application was given only after the statutory period. It is a matter of record that more than one month before the expiry of the period prescribed for acceptance, the 2nd respondent submitted application for withdrawal.

13. (a) The issue regarding submission of application for voluntary retirement and withdrawal of it before the expiry of the notice period came up for consideration before the Hon'ble Supreme Court in J.N.Srivastava vs. Union of India and another, 1998 (9) SCC 559.

(b) The Hon'ble Supreme Court made it very clear that even after accepting the application for voluntary retirement, it is open to the employee to submit request for withdrawal of the application.

The Supreme Court said:-

3. ... It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement.

14. In view of the factual and legal position as indicated above and the law laid down by the Supreme Court in J.N.Srivatsava, we are of the view that the Central Administrative Tribunal was justified in setting aside the order passed by the second petitioner rejecting the application for withdrawal of the request for voluntary retirement.

15. The next question is as to whether the Tribunal was correct in directing the petitioners to treat the period of absence during the interregnum as "time spent on duty".

16. There is no dispute that the 2nd respondent was out of work during the interregnum. The Tribunal was therefore not correct in directing the petitioners to pay salary for the entire period in question treating the interregnum period as time spent on duty.

17. We modify the direction given by the Tribunal for treating the interregnum period as time spent on duty. We direct the petitioners to pay salary to the 2nd respondent from 3 October 2018, taking into account the date of disposal of the original application by the Tribunal. In short, the period from 3 October 2018 shall be treated as time spent on duty. We direct the petitioners to permit the 2nd respondent to join duty forthwith on production of a copy of this order.

18. The Writ Petition is allowed in part as indicated above. No costs. Consequently, W.M.P.No.9228 of 2019 is closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

The Registrar
Central Administrative Tribunal - Madras
Bench Chennai - 600 104

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W.P. No.8685 OF 2019

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