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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7895 OF 2016

Captain Rajesh Kumar Agarwal

...Petitioner

Versus

The State of Maharashtra Thru
Additional Chief Secretary & Anr.

...Respondents

Mr. Bhushan Arvind Bandiwadekar for the Petitioner.

Mr. S.S. Panchpor, AGP for Respondent No.1 – State.

CORAM : K.K. TATED &
R.I. CHAGLA, JJ.
DATE : 19TH MARCH, 2021

ORDER :

1. Heard learned Counsel for parties.
2. By this Writ Petition filed under Article 226 and 227 of the Constitution of India, the Petitioner is challenging the order dated 19th November, 2015 passed by the Respondent No.1 addressed to Respondent No.2 followed by the communication dated 16th December, 2015 addressed to the Petitioner by the Respondent No.2, whereunder the request of the Petitioner for reinstatement in service as the Chief Port Officer, Class I in the office of the Respondent No.2 came to be rejected. The

Petitioner made following prayers in the Petition, which read thus:-

a) Rule be issued and record and proceedings be called for.

b) By an appropriate order, direction or writ, this Hon'ble Court may be pleased to quash the impugned order dated 19th November, 2015 passed by the Respondent No.1 and addressed to the Respondent No.2, followed by the communication dated 16th December, 2015 addressed to the Petitioner by the Respondent No.2, where-under the request of the Petitioner for reinstatement in service as the Chief Port Officer, Class-I in the office of the Respondent No.2 came to be rejected and accordingly the Petitioner be granted all the consequential service benefits.

c) By an appropriate order, direction or writ, this Hon'ble Court may be pleased to hold and declares that on account of failure of the Respondent No.1 to accept the alleged conditional resignation letter dated 29th June, 1996 submitted by the Petitioner, Class - I, the withdrawal of the said resignation vide letter dated 24th July, 1996 by the Petitioner became effective and accordingly the Petitioner be held to be deemed to be in the Government Service for all legal and practical purpose, with direction to the Respondents to forthwith reinstate the Petitioner in service with all the consequential service benefits.

d) Pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay the execution, operation and implementation of the impugned orders dated 19th November, 2015 and 16th December, 2015 passed by the Respondent Nos.1 and 2 respectively and thus to allow the Petitioner to function as the Chief Port Officer, Class - I.

e) Interim and ad-interim relief in terms of prayer clause (d) be granted.

f) Cost of this petition be provided for.

g) Any other order in the interest of justice and kindness be passed as and when necessary.

3. The learned Counsel for Petitioner submits that the Respondent appointed the Petitioner by appointment order dated 12th January, 1996 as Chief Port Officer, Class - I. He submits that because of some difficulties and harassment, the Petitioner tendered his resignation dated 26th June, 1996. He submits that immediately thereafter the Petitioner realized his mistake and therefore he vide his letter dated 24th July, 1996 made application for withdrawal of his resignation. He submits that inspite of the letter dated 26th June, 1996, the Petitioner was prevented from attending his duty. He submits that the main contention of the Petitioner is that, the Respondent failed to communicate to the Petitioner about acceptance of his resignation. Hence there is no resignation. He submits that even the letter dated 1st July 1996 of the Respondent (Exhibit C Page 32 of the Petition) clearly shows that the Respondent handed over charge to Mr. P.B. Bhosale on temporary basis till further orders. He submits that as and when the Petitioner approached the Respondent, they restrained the Petitioner

from doing his duty. Not only that, the Petitioner made several representations to the Respondents for allowing him to join his services but same were not decided by them.

4. The learned Counsel for Petitioner submits that the Petitioner by his letter dated 9th June, 1997 called upon the Respondent to allow the Petitioner to join the services. He submits that when the Petitioner made several representations to the Respondent dated 1st June, 2015, 15th June, 2015, 4th September, 2015 and 27th November, 2015, Respondents by order dated 19th November, 2015 and letter dated 16th December, 2015 rejected the same. He submits that bare reading of order dated 19th November, 2015 shows that Respondent rejected Petitioner's representations only on the ground that the Petitioner filed his application / representations for reinstatement after more than 19 years.

5. Learned Counsel for the Petitioner submits that the basic issue involved in the present Petition is that the Respondent failed and neglected to accept his resignation He submits that the Respondent never communicated to the Petitioner about acceptance of the resignation therefore, there is no question of holding that the Petitioner resignation was accepted by the

Respondent. In support of his contention, the learned Counsel for the Petitioner relied on the judgment of this Court in *Ligia G. Godinho Vs. Speaker, Legislative Assembly, Goa*¹ Paragraph 3 of the said judgment reads thus:-

In the result, we partly allow the writ petition and direct the respondents to reinstate the petitioner forthwith in the service. However, in the present circumstances of the case, we do not think it is appropriate to order payment of back wages to the petitioner as prayed for because the petitioner was restrained from continuing her services not on account of mala fide exercise of powers of the respondents. It appears that the respondents are under the impression that once the resignation is received by them, it takes effect forthwith. They seem to have the impression that the petitioner cannot withdraw the resignation when the resignation is in process of acceptance. We think, on account of such a misconception of law, the respondents did not allow the petitioner to continue in service. In that circumstance, we do not find any reason to order back wages to the petitioner for the period during which she did not actually work. However, the petitioner is entitled to the continuity of her service and other benefits, including fixation of pay with increments upto date. Rule made absolute in the above terms. Writ petition partly allowed.

6. Learned Counsel appearing for the Petitioner also relies on the Apex Court judgment in the case of *Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia*². Paragraph 7

¹ 1997(1) Mh.L.J. Pg.130.

² (1997) 4 Supreme Court Cases 280

reads thus:-

It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and , therefore, the appellant has no right to withdraw the scheme subsequently.

7. Learned Counsel appearing for the Petitioner submits that the Apex Court in the matter of ***Power Finance Corporation (Supra)*** held that the jural relationship of employer and employee continued till the employee is relieved of the duty, after acceptance of the voluntary resignation. On the basis of this submissions, the learned Counsel for the Petitioner submits that this Hon'ble Court be pleased to allow the present Writ Petition.

8. Learned Counsel for the Petitioner submits that though the delay and laches not explained in the Petition, but same is placed on record by the Petitioner by way of Affidavit

separately. He submits that there is no question of any delay or latches on the part of the Petitioner to file present Writ Petition in this Court. Because the Respondent rejected his representations by order dated 19th November, 2015 and the present Petition was filed immediately thereafter on 30th January, 2016. Therefore, there is no question of holding that there is any delay and / or latches on the part of the Petitioner in filing the present Writ Petition. He further submits that in the interest of justice this Hon'ble Court be allowed present Petition and direct the Respondent to reinstate the Petitioner at his original post with all the consequential service benefits.

9. On the other hand, learned AGP appearing for the State vehemently opposed the present Petition. He submits that admittedly in the present proceedings, the Petitioner tenders resignation dated 26th June, 1996 and thereafter the Respondents immediately by their letter dated 1st July, 1996 (Exhibit C Page 32 of the Petition) handed over charge to one Mr. P.B. Bhosale. He submits that it is specifically stated in the said letter that in view of the resignation given by the Petitioner they handed over charge to Mr. Bhosale. He further submits that instead of challenging the action taken by the

Respondents, the Petitioner made several representations only till filing of present matter. The Petitioner started making representations from 1st June 2015 whereas resignation was tendered on 26th June, 1996. He submits that this itself shows that the Petitioner waited more than for 19 years to make appropriate application to the Respondent. He submits that when the Respondents rejected Petitioner's request / representations by their order dated 19th November, 2015 and communication dated 16th December, 2015, the Petitioner filed a present Petition before this Court on 30th January, 2016. In any case the Petitioner approached to the Court for reliefs after more than 19 years from the date of resignation. He submits that the modus operandi adopted by the Petitioner shows that the Petitioner has filed Writ Petition immediately on rejection of representation which was after 19 years from the date of resignation. He submits that Respondent by their order dated 19th November, 2015 and communication dated 16th December, 2015 rejected Petitioner's representation and thereafter Petitioner has filed the present Writ Petition on 30th January, 2016. In support of his contention the learned AGP relied upon judgment of the Apex Court in the case of *C. Jacob*

*Vs. Director of Geology and Mining & Anr.*³ He specifically relied upon paragraphs 8, 9 and 10 of the judgment, which read thus:-

“8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation.”

“9. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any ‘decision’ on rights and obligations of parties. Little do they realize the consequences of such a direction to ‘consider’. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all

3 (2008) 10 Supreme Court Cases 115

by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the latches gets obliterated or ignored."

"10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

10. The learned AGP submits that in this case also, the Petitioner approached to the Court on the basis of withdrawal of his resignation after more that 20 years. He submits that in the case in hand, the Petitioner tendered resignation on 26th June, 1996 and thereafter he never attended the office. Even bare reading of the Petition shows that the Petitioner has failed

to disclose any cogent reason for approaching this Court after more than 19 years from the date of tendering resignation dated 26th June, 1996. He submits that the authorities relied upon by the Petitioner are not applicable in the facts of the present case. He submits that the Respondents by their letter dated 1st July, 1996 (Exhibit -C page 32 of the Petition) handed over additional charge to one Mr. P.B. Bhosale immediately on receipt of Petitioner's resignation. On the basis of these submissions, learned AGP submits that there is not question of entertaining the present Writ Petition which is filed after more than 19 years from the date of resignation and same is required to be dismissed with costs.

11. Heard both the sides at length. Admittedly, in the present proceedings, the Petitioner tendered his resignation on 29th June, 1996. Thereafter though he has sent his letter dated 24th July, 1996 of withdrawal of resignation, he never pursued the same. It is to be noted that the Petitioner had not taken any legal action against the Respondents to protect his rights immediately. Thereafter, he made representations by letters dated 1st June, 2015, 15th June, 2015, 4th September, 2015 and 27th November, 2015. When the representations were

rejected by the Respondents by their order dated 19th November, 2015 and communicated to the Petitioner by their letter dated 16th December, 2015, then he filed present Writ Petition. This conduct of the Petitioner fully covered by the judgment of the Apex Court in the matter of *C. Jacob (Supra)*.

12. The contention of the Petitioner that the resignation was not accepted by the Respondent is also not acceptable because it is specifically stated in Respondents' letter dated 1st July, 1996 that they have handed over extra charge to the Mr. P.B. Bhosale on the basis of the resignation of Petitioner. Apart from that the Petitioner failed to take any action immediately to that effect.

13. In view of the above submissions and facts and latches on the part of the Petitioner to approach the Court, we do not find any substance in the present Writ Petition. Hence following order:-

a) Writ Petition stands rejected.

b) No order as to costs.

[R.I. CHAGLA J.]

[K.K. TATED, J.]