

08-06-2022
ct no. 13
Sl. 24
sp

WPA 10169 of 2019

Subimal Patra

-Versus-

The State of West Bengal & Ors.

Mr. Samiran Giri

....for the petitioner

Mr. Ashis Guha,

Mr. Naren Ghosh Dostidar

.....for the State

Supplementary affidavit of service filed in Court today, is taken on record.

The petitioner claims retiral dues for having allegedly served in Mahisagote Sahid Smriti Vidyamandir, Contai, Purba Medinipur.

It appears from the records that by an order dated November 21, 2017, the President, West Bengal Board of Secondary Education, has ordered that the unauthorized absence of the petitioner for continued long period from 1998 to 2004 and again from January 10, 2007 till November 2017, cannot be regularized and the petitioner is treated to have resigned from the service. The order remains unchallenged.

The question of any pensionary benefit or retiral dues to the petitioner, therefore, does not and cannot arise.

It is now a well-settled proposition of law that resignation from service leads to forfeiture of the entire service unless rules contrary thereto are available. Forfeiture of service leads to forfeiture of pension, as there is no qualifying service. Reference in this regard may be made to the case of **Reserve Bank of India & Anr. vs. Cecil Dennis Solomon & Anr.** reported in **(2004) 9 SCC 461**, wherein the Supreme “ Court noted as follows:

*“10. In service jurisprudence, the expressions “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In *Punjab National Bank v. P.K. Mittal* [1989 Supp (2) SCC 175 : 1990 SCC (L&S) 143 : (1990) 12 ATC 683 : AIR 1989 SC 1083] on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In *Union of India v. Gopal Chandra Misra* [(1978) 2 SCC 301 : 1978 SCC (L&S) 303] it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.”* (emphasis added)

If the D.I. of Schools had addressed any communication to the petitioner asking to submit documents of pension, the same is of no consequence since it is contrary to the law of the Board.

In that view of the matter, no relief can be granted to the petitioner.

Hence, WPA 10169 of 2019, shall stand dismissed.

Interim orders, if any, shall stand vacated.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)