

04.12.2023
Item No.7
Ct. No.7
KS

W.P.A. 3951 of 2009
Anagha Gupta
Vs.
Union of India & Ors.

Md. Shahjahan Hossain
Mr. Prithwiraj Biswas

.....For the Petitioner

1. Petitioner has prayed for a direction upon the respondent authorities to release the provident fund accumulation, gratuity, accumulated leave salary and other terminal benefits together with interest thereon.
2. Petitioner claims that leave was sanctioned in his favour till October 31, 2004 and due to personal reasons, he could not join service after the leave period for which he tendered his letter of resignation dated July 4, 2005.
3. Petitioner claims that though such resignation was duly accepted by the authorities, but the provident fund accumulation, gratuity, leave salary as well as the other terminal benefits have not been released in favour of the petitioner.

4. The learned advocate appearing on behalf of the petitioner places reliance upon Rule 35 of the Shipping Corporation of India Limited Rules and Regulations, more particularly, Clause (h) and (i) thereof in support of his contention that a member has a right to leave service of the employer and upon leaving such service shall be entitled to receive the aforesaid benefits.
5. None appears for the respondents. No accommodation has been sought for either.
6. Record reveals that the authority of the Shipping Corporation of India Limited upon receipt of the resignation letter from the petitioner requested the petitioner to send copies of all the pages of CDC/Passport vide letter dated 11th July, 2005. It further appears that the authorities by a subsequent letter dated July 7, 2007 requested the petitioner to declare that he had not taken up any employment elsewhere and send all the pages of his passport/CDC duly attested for verification, since he was on unauthorized and unpaid leave since October 31, 2004.

7. It further appears from the reply given by the Shipping Corporation of India Limited vide letter dated July 28, 2008 to the letter of the petitioner dated May 10, 2008 that the petitioner sailed with M.T. ISERE from November 9, 2004 before his resignation letter was received by the Shipping Corporation of India Limited on July 11, 2005.
8. The learned advocate appearing for the petitioner in course of his argument, however, could not controvert the said factual position. In the said letter dated July 28, 2008, the authority of the Shipping Corporation of India Limited observed that if one joins anywhere else before completing the notice period, his service would be terminated from the day he was on leave without pay, since he cannot be working in two organizations at the same time. It is also not in dispute that the petitioner was on leave without pay with effect from October 31, 2004.
9. By a letter dated 9th February, 2008, the service of the petitioner from Shipping Corporation of India Limited was terminated with effect from 31st October, 2004 without terminal benefits as per

INSA-MUI agreement. Such termination of service of the petitioner from Shipping Corporation of India Limited vide letter dated February, 9, 2008 have not been challenged by the petitioner in this writ petition.

10. The learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in the case of *Sanjay Jain Vs. National Aviation Company of India Limited* reported at *AIR 2019 (SC) 268* in support of his contention that the resignation letter shall be deemed to have been accepted after expiry of the notice period. In the said reported decision, it was observed that the act of relinquishment may take a different forms or assume a unilateral or bilateral character depending on the nature of office and the condition governing it. It was further observed that a contract employment, however, stand on a different footing, wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. The said reported decision, is of no assistance to the petitioner, as it is evident

from the materials on record that the petitioner did not comply with the directions issued by the Shipping Corporation of India Limited from time to time in order to process/accept his prayer for resignation.

11. That apart, since the service of the petitioner has already been terminated, as observed hereinbefore, this Court is not inclined to grant any relief, as prayed for by the petitioner.

12. It appears from the order dated March 25, 2009 that the petitioner has already received an amount of Rs.4,91,413.61, which was due and payable to the petitioner towards full and final settlement of his provident fund account.

13. For all the reasons, as aforesaid, the writ petition stands dismissed.

14. There shall be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)