

RA-CW-20-2023
IN
CWP-4216-2015

1

RA-CW-20-2023
IN
CWP-4216-2015

Malkeet Singh
vs.
State of Punjab and others
Date of Decision:- 23 .02.2023
Reserved on : 15.02.2023

Present:- Mr. G.S.Bal, Sr. Advocate with
Mr. Narinder Singh,
Mr. J.S.Randhawa, Advocates for the
review applicant/petitioner

Mr. R.S.Pandher, Sr.DAG, Punjab

1. On 10th January, 2023, the writ petition was dismissed with
the following order:-

“The petitioner prays for issuance of a writ in the nature of certiorari to quash the orders dated 07.07.2014 as well as 04.06.2013.

The relevant facts, in brief, are required to be noticed.

The petitioner on being appointed as a mathematics teacher, joined on 06.08.1997. His family members were residing in Canada at that point in time. He applied for three months of Ex-India Leave. He was called upon to give undertaking that if he did not return back to India and join the service, his undertaking shall be treated as the resignation by the department. The petitioner did not come back and join. Thus, his undertaking has been treated as resignation by the concerned authority.

Keeping in view the aforesaid facts, no ground to issue the writ as prayed for, is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.”

2. An application under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 has been filed to seek review of the order on the ground that the learned senior counsel representing the petitioner, who was to assist the Court, was busy before some other Bench on the day on which the matter was finally heard.

3. Keeping in view the aforesaid facts, the writ petition has been, once again, heard at length. The relevant facts, in brief, are required to be noticed.

4. The petitioner was appointed as Maths Master in the Department of Punjab School Education on 06.08.1997. He claims that his wife and children were living in Canada and therefore, he applied for three months ex-India leave from 02.07.2011 to 30.09.2011, which was duly sanctioned. At the time of sanction, he was forced to give an undertaking, in the shape of an affidavit, *inter-alia* stating that in case, he does not join back his duty, on the expiry of his leave period, the same may be treated as his resignation and no dues shall be payable to him. He further claims that during the leave period, he fell seriously ill in Canada and on diagnosis, it was found that he is suffering from severe renal failure and both his kidneys are damaged.

5. It is claimed that he underwent dialysis for the first time, in February, 2012, whereas, he underwent bypass heart surgery in July, 2013. While being in Canada, he applied for further grant of leave vide letter dated 06.06.2012 from back date i.e from 1st October, 2011 to 31st March, 2013. On 06.05.2013, a public notice was issued in the

RA-CW-20-2023

IN

CWP-4216-2015

3

newspaper by the Secretary-cum-Director General, School Education, Punjab, taking note of the fact that a large number of the Punjab Government School Teachers have absented themselves from their duties, which is causing a hindrance in imparting proper education to the students. Hence, all such teachers were called upon to show cause, within a period of 15 days, failing which they shall be treated to have abandoned their respective jobs.

6. The petitioner replied to the said notice vide communication dated 16.05.2013 however, on 06.06.2013, the affidavit submitted by the petitioner at the time of sanction of his initial ex-India leave was treated as his resignation and he was deemed to have resigned.

7. The petitioner filed CWP No.21362 of 2013, which was disposed of on 25.09.2013, while directing the respondents to decide the petitioner's representation.

8. In compliance, the Principal Secretary, Education Department Schools, Punjab, has passed a detailed speaking order on 07.07.2014, which is the subject matter of challenge in the present writ petition.

9. Heard the learned senior counsel representing the review applicant and with his able assistance perused the paperbook. Learned senior counsel submits that when the petitioner was about to return back to India, he was diagnosed with acute renal failure, which compelled him to change his programme and extend his stay in Canada. He further submits that the petitioner submitted an application dated 06.06.2012 in

this regard, which should have been accepted. It is submitted that the petitioner has attached the evidence to prove that he underwent regular dialysis as well as a heart bypass surgery in July, 2013. Hence, the respondents are not justified in deeming the petitioner's affidavit as his resignation.

10. This Court has heard the arguments of the learned senior counsel representing the petitioner/review applicant and analysed the same. To recapitulate the facts, it is evident that the petitioner was granted ex-India leave for a period of three months i.e July, August and September, 2011. On 03.06.2011, he submitted a self declaration alongwith an affidavit that if, on the expiry of the period of his sanctioned leave, he does not join back his duties, the affidavit may be treated as his resignation. The petitioner sent a request in this regard, for the first time, on 06.06.2012. There is no reason as to why the petitioner did not send any such representation or application in September or October, 2011. Moreover, from a perusal of Annexure P-6, produced by the petitioner, it is evident that the petitioner was admitted in hospital on 31.01.2013 and certain surgical interventions were made on him. He was discharged on 08.02.2013.

11. It is also evident that the petitioner attained the age of superannuation on 31.10.2014. Though he claims that he should be deemed to have voluntarily retired, however, the authority has considered the request and declared the same as the petitioner did not complete 20 years of service which is a compulsory requirement. The

RA-CW-20-2023
IN
CWP-4216-2015

5

petitioner has only produced a document written by Dr.Amrik Bassi, stating that the petitioner is diagnosed with renal failure, in September, 2011.

12. The petitioner has failed to produce any record before the month of June, 2012 to prove that he started undergoing dialysis promptly on detection of the alleged illness.

13. This Court, in the exercise of its power of judicial review, can intervene only if it is proved that the action of the respondents is per se arbitrary or suffers from perversity or illegality.

14. In the facts of the present case, this Court does not find that the petitioner has made out a case for interference. Hence, no ground to review the order dated 10.01.23 is made out.

15. Dismissed.

23.02.2023
rekha

(ANIL KSHETARPAL)
JUDGE