
(2023) 08 GAU CK 0077

Gauhati High Court

Case No: Writ Petition (Civil) No. 5641 Of 2022

Sourav Baruah

APPELLANT

Vs

State Of Assam And 4
Ors

RESPONDENT

Date of Decision: Aug. 31, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Central Civil Services (Pension) Rules, 1972 - Rule 48A(2)

Citation: (2023) 08 GAU CK 0077

Hon'ble Judges: Sanjay Kumar Medhi, J

Bench: Single Bench

Advocate: P C Dey

Final Decision: Allowed

Judgement

1. Heard Shri PC Dey, learned counsel for the petitioner whereas the Department of Agriculture is represented by Ms. R. Bora, learned Standing

Counsel.

2. The extraordinary jurisdiction of this Court conferred by Article 226 of the Constitution of India is being sought to be invoked by the petitioner, who

has put to challenge an order dated 04.08.2022 passed by the Director of Agriculture by which the application for voluntary retirement has been

rejected. The principal ground of such rejection is that the petitioner did not have the eligibility criteria of having completed 20 years of service.

3. Before going to the issue which has arisen for determination, the basic facts of the case can be put in a nutshell in the following manner.

4. The petitioner was appointed as an LDA on 26.10.1986 and was posted in the Office of the Executive Engineer, Jorhat Division of the Agriculture

Department, Government of Assam. He was transferred to Dibrugarh in the year 2002. However, he had suffered from tuberculosis and accordingly

had applied for medical leave. It is the case of the petitioner that his application for extension of medical leave was however not granted and therefore

having no other alternative on 29.03.2007, the petitioner has submitted an application for voluntary retirement. The said application was not responded

to by the Department and on the other hand, a disciplinary proceeding was initiated by issuing a show-cause notice dated 08.02.2011. The crux of the

two charges is with regard to unauthorized absence from 01.10.2002 till 01.01.2010 and it has further been alleged that in spite of notice being

published in the newspaper, the petitioner did not resume his duties.

5. The said show-cause notice was replied to by the petitioner on 21.02.2011 whereafter an enquiry was conducted and a report was submitted on

31.10.2011 whereby the charges were held to be proved. The petitioner was thereafter issued a second show-cause notice on 09.11.2011 on the

acceptability of the enquiry report which was also replied to by the petitioner on 15.03.2012.

6. At that stage, the petitioner had approached this Court by filing WP(C)/5567/2018 wherein the entire disciplinary proceeding was put to challenge.

7. This Court vide an elaborate judgment and order dated 30.05.2022 had however set aside the entire disciplinary proceeding and had directed the

authorities to consider the application for voluntary retirement within 8(eight) weeks. Pursuant thereto, an exercise was conducted which has

culminated in the Speaking Order dated 08.02.2022 whereby the application for voluntary retirement has been rejected. As already recorded above,

the primary ground of rejection is non-completion of 20 years of service.

8. Shri Dey, learned counsel for the petitioner has submitted that the disciplinary authority has committed manifest error in law in rejecting the

application which is in the teeth of the observations made by this Court in the judgment and order dated 30.05.2022 passed in the aforesaid

WP(C)/5567/2018 instituted by the petitioner also. He submits that the period of 20 years appears to have been calculated only up to 2002 whereas

the application for voluntary retirement was submitted in the year 2007 by which time, the petitioner had already completed 20 years of service. The

learned counsel for the petitioner has drawn the attention of this Court to the relevant part of the judgment and order dated 30.05.2022 wherein this

Court had come to a definite finding that the petitioner had completed 20 years of service and therefore it is submitted that the said issue should not

have been re-opened. Therefore, Shri Dey, learned counsel for the petitioner accordingly submits that the impugned Speaking Order dated 04.08.2022

is liable to be set aside and a direction be given passing appropriate orders accepting the voluntary retirement of the petitioner.

9. In support of his submission, Shri Dey, learned counsel for the petitioner has placed reliance upon the following case laws-

i. (1977) 4 SCC 441 [Dinesh Chandra Sangma Vs. State of Assam and Ors.]

ii. 1995 Supp (1) SCC 76 [Union of India Vs. Syed Muzaffar Mir]

iii. 2019 (1) GLT 138 [Tai Nikio Vs. State of Arunachal Pradesh & Ors.]

iv. 2019 (4) GLT 297 [Altaf Hussain Laskar Vs. State of Assam & Ors.]

v. WP(C)/3838/2022, judgment and order dated 02.05.2023 [Dr. Prabhas Chandra Sarma Vs. State of Assam and Ors.]

10. In the landmark case of Dinesh Chandra Sangma (supra), which had arisen from this High Court, the Hon'ble Supreme Court has held as

follows:

“17. The High Court committed an error of law holding that consent of the Government was necessary to give legal effect to the voluntary

retirement of the appellant under F. Rule 56(c). Since the conditions of F. Rule 56(c) are fulfilled in the instant case, the appellant must be held to have

lawfully retired as notified by him with effect from August 2, 1976.”

11. In the case of Syed Muzaffar Mir (supra), the Hon'ble Supreme Court had reiterated the law laid down in the case of Dinesh Chandra

Sangma (supra).

12. In the case of Tai Nikio (supra), this High Court has held as follows:

“31. In view of the above discussions particularly, in view of the mandate of the proviso to Sub-Rule 2 of Rule 48-A of the CCS (Pension) Rules,

this court holds that since the appointing authority of the petitioner has not refused to grant him permission for retirement before the expiry of the

period stipulated in the said notice, his retirement has become effective from the date of expiry of the said period.”

13. In the case of Altaf Hussain Laskar (supra), this High Court has laid down as follows:

“22. As far as the law is concerned, it is now well settled that that if any employee seeks to go on voluntary retirement and submits an application

by submitting to the competent authority, unless rejected by the competent authority within a period of three months from the date of application or the

date which has been chosen by the employee to be the effective date of voluntary retirement, the voluntary retirement sought will be deemed to come

into operation on the expiry of three months or the date chosen by the employee after expiry of three months of the date of submission of

application.”

14. In the case of Dr. Prabhas Chandra Sarma (supra), this High Court has followed the law laid down by the Supreme Court in the case of Dinesh

Chandra Sangma (supra) and Sayed Muzaffar Mir (supra) by observing that there is no room for doubt that once an application for voluntary

retirement is received by the authorities, subject to fulfillment of the conditions laid down in FR 56 (c), the same will take effect automatically on

completion of the notice period and there would be no requirement for communicating acceptance of such application by the Government.

15. Per contra, Ms. Bora, learned Standing Counsel, Agriculture Department makes a valiant attempt to defend the action of the respondent which

has rejected the application for voluntary retirement. It is submitted by her that the petitioner was unauthorizedly absent from 2002 and in spite of

notice being published in the newspaper, he did not attend office and therefore, the calculation has to be done only up to 2002 in which case the

petitioner does not meet the minimum requirement of having 20 years of qualifying service. The learned Standing Counsel, by referring to the affidavit-

in-opposition dated 18.05.2023 has submitted that the impugned Speaking Order was preceded by an enquiry order dated 01.08.2022, as per which, the

aforesaid findings were arrived at and therefore the said Speaking Order does not suffer from any infirmity.

16. Ms. Bora, learned Standing Counsel lastly submits that this Court while allowing the earlier writ petition being WP(C)/5567/2018 vide judgment

and order dated 30.05.2022 had directed consideration of the application of voluntary retirement which has been done and having found that the

petitioner did not meet the requisite qualification with regard to the minimum length of service, the order has been passed. She submits that since the

order is based on the relevant considerations, the same does not warrant any interference and accordingly, it is submitted that the writ petition be

dismissed.

17. In support of her submission, Ms. Bora, learned Standing Counsel has placed reliance upon the following case laws-

i. (2008) 10 SCC 115 [C. Jacob Vs. Director of Geology and Mining]

ii. (2013) 10 SCC 253 [Vijay S. Sathaye Vs. Indian Airlines Ltd.]

18. In the case of C. Jacob (supra), the Hon'ble Supreme Court has laid down as follows:

“12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send

any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he

cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby

deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.Ã¢â¬â€œ

19. In the case of Vijay S. Sathaye (supra), the HonÃ¢â¬â€œble Supreme Court has held as follows:

Ã¢â¬â€œ12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his

resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when

absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end

automatically without requiring any order to be passed by the employer.Ã¢â¬â€œ

20. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been

carefully examined.

21. There is no dispute to the proposition of law advanced by the learned Standing Counsel of the Department, who has also relied upon the decision

of the HonÃ¢â¬â€œble Supreme Court on the point of unauthorized absence. The HonÃ¢â¬â€œble Supreme Court has laid down that any Government servant

who abandons his service in spite of being notified, cannot be treated to have continued in service. While there cannot be any second opinion regarding

the aforesaid principles laid down by the HonÃ¢â¬â€œble Supreme Court, what is of importance in this case is that the issue regarding allegation of

unauthorized absence was already the subject matter of challenge in the earlier writ petition filed by the petitioner, namely, WP(C)/5567/2018. In the

said judgment and order dated 30.05.2022, while the disciplinary proceeding which was initiated on the principal allegation of unauthorized absence

was set aside, this Court, in paragraph 10 had recorded to the following findings:

Ã¢â¬â€œ10. From the enquiry report dated 31.10.2011, it is seen that the petitioner was absent from duty since 01.10.2002 continuously and as per the said

enquiry report, the petitioner had last drawn his regular pay in the month of June, 2002 and that he was sanctioned leave for the months of July,

August and September, 2002 and accordingly, the enquiry officer, in his report had stated that no pay was found to be disbursed to the petitioner after

September, 2002. The learned standing counsel for the Agriculture Department has not been able to demonstrate from the service rule applicable to

the petitioner that if an employee voluntarily absents himself from duty from a particular date, such an employee can be treated as a person who is not

in service. In absence of any materials in this regard, even if the contention of the respondents is accepted that on 29.03.2007 when he had applied for

voluntary retirement, the petitioner did not have 20 years of qualifying service, nonetheless, during the pendency of the disciplinary enquiry against the

petitioner, there can be no doubt that the petitioner had completed 20 years of service, taking into account the stand of both sides that the petitioner

had joined service on 07.11.1986.

22. Though Ms. Bora, learned Standing Counsel may be correct in contending that ultimately the Director of Agriculture, Assam was left to take a

decision on the application for voluntary retirement dated 29.03.2007 of the petitioner, such consideration is essentially required to be made by

following observations made by this Court in the judgment as the said part of the judgment is only a consequential direction after recording the findings,

as would appear from the other part of the judgment. It is also not in dispute that the Department did not file any appeal or review qua the said

judgment and order and accordingly the same has attained finality and therefore, there cannot be any second opinion on the issue that the charge of

unauthorized absence stood obliterated. That being the position, the said issue could not have been re-opened by the authorities which however

appears to have been done from a reading of the impugned Speaking Order dated 04.08.2022. The said order appears to have been based upon a

fresh enquiry report dated 01.08.2022 which has been annexed to the affidavit-in-opposition as Annexure-1 in which, the entire issue regarding the

allegation of unauthorized absence has not only been sought to be re-opened but also findings which are in the teeth of the observation and finding of

this Court in the judgment and order dated 30.05.2022 have been made. In the conclusion of the said report submitted by the Joint Director of

Agriculture, a finding has been arrived at to the effect that as per the entry in the service book of the petitioner, he seems to be unauthorizedly absent

from 01.10.2002 in the Office.

23. In the opinion of this Court, such findings not only unwarranted but also appears to be contemptuous in view of the clear findings of this Court in

the earlier judgment and order dated 30.05.2022 which, as observed above, has attained finality.

24. This Court is of the unhesitant opinion that scope of passing the final orders pursuant to the direction of this Court in its judgment and order dated

30.05.2022 was a limited one which was to be exercised by taking into consideration the observations and findings of the Court in which the allegation

of unauthorized absence was interfered with and the entire disciplinary proceeding was set aside.

25. As regards the issue of voluntary retirement, the law is well settled by a catena of decisions of the Hon'ble Supreme Court as well as this

High Court which has been mentioned above. Even the case of Vijay S. Sathaye (supra), cited by the Department rather comes to the aid of the

petitioner. However, this Court is not even required to go to the said aspect as the said issue has been conclusively determined in the earlier round of

litigation by this Court in its judgment and order dated 30.05.2022.

26. In view of the above, this Court is of the opinion that a case for interference is made out and accordingly the impugned Speaking Order dated

4.08.2022 passed by the Director of Agriculture is set aside. The appropriate authority is accordingly directed to pass immediate orders of accepting

of voluntary retirement of the petitioner in terms of the findings and observations made in the earlier judgment and order dated 30.05.2022 passed in

WP(C)/5567/2018. The aforesaid exercise is to be carried out and completed within a period of 45(forty five) days from today.

27. It is needless to state that the authorities are also required to consider the aspect of post retirement benefits which would accrue to the petitioner in

accordance with law.

28. The writ petition is accordingly allowed.

29. No order, as to cost.