

(2010) 01 AHC CK 0109

Allahabad High Court

Case No: None

Om Prakash Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 18, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 2 AWC 2101(1) : (2010) 125 FLR 52

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amreshwar Pratap Sahi, J.

Heard Sri Mool Behari Saxena, learned Counsel for the petitioner and learned standing counsel.

2. The petitioner has challenged the order of voluntary retirement dated 20.5.2006 as communicated by Superintendent of Police on 23.5.2008 on the ground that the said action is vitiated inasmuch as there is no provision under the Police Regulations for voluntary retirement and secondly the petitioner had already moved an application for not accepting the said voluntary retirement as he had now recovered from his ailment."

3. The first ground taken need not detain this Court inasmuch as the provisions of Fundamental Rule 56(c) apply and this aspect was dealt with while considering the case of a voluntary retirement of a police official by this Court in the case of Surendra Narain Singh v. Deputy Inspector General of Police, Gorakhpur Range, Gorakhpur and Ors. 1995 ACJ 482 : 1995 (1) AWC 465.

4. The second ground taken is that the application had been moved on account of the ailment and mental disbalance of the petitioner. This was preceded by some

accident and accordingly the application for voluntary retirement was moved on 10.4.2006. A copy of the said application does not indicate any such element of ailment as suggested in the petition. On the contrary, the application was moved on the ground that this was being done on account of his family and social circumstances as a result whereof he is unable to discharge his duties. The letter further recites that the said application was being moved voluntarily seeking retirement.

5. The application which was moved for withdrawing the said application was not filed by the petitioner but by his wife Smt. Meera Sharma alleging that the husband has sought retirement without consulting his family which would result in great hardship.

6. Having considered the aforesaid submissions and perused the records, it is evident that it is the petitioner, who is seeking retirement and not his wife. The consent of the petitioner's wife was not relevant and as a matter of fact, there is nothing to indicate that the petitioner had moved the application for withdrawal. There is no indication of the theory of ailment and mental disbalance in the application moved by the wife. On the contrary it only narrates the consequences that may be faced by the family and that the authority should call upon the petitioner to persuade him to withdraw the application for voluntary retirement.

7. There is no such procedure known to law nor does the letter moved by the wife amount to any withdrawal. The writ petition is supported by allegations that appear to be an afterthought. The petitioner seized to be in service and his relinquishment was accepted in accordance with rules that brought an end to his service.

8. There have been cases in matters relating to resignation where the service was being abandoned under some duress or compulsion and, therefore, the Apex Court ruled that in the event such ingredients are established then the resignation cannot be said to be voluntary. Reference may be had to the case of [Dr. Prabha Atri Vs. The State of U.P. and Others](#),

9. There have been cases where resignation tendered was sought to be withdrawn even before the resignation was accepted where also the Courts have held that where such bilateral act has to be performed for relinquishing of service then certain acts have to be performed before the jural relationship, can be said to have come to an end. Reference may be had to the case of [Mrs. Rabia Sultana Vs. Vice Chancellor, Aligarh Muslim University, Registrar, Aligarh Muslim University, Principal, Dr. Z.A. Dental College, Aligarh Muslim University and Chairman, Conservative Department, Dr. Z.A. Dental College](#),

10. In the instant case, the matter relates to voluntary retirement. The application for voluntary retirement was neither moved under duress nor was its withdrawal sought by the petitioner himself. In such a situation, it cannot be said that the authorities have passed an incorrect or erroneous order. Apart from this, the

petition has been filed after a considerable lapse of more than 3 and a half years which is also an unexplained inordinate delay. Laches, therefore, also add to the misery of the petitioner. The impugned order, therefore, does not call for any interference under Article 226 of the Constitution of India.

The writ petition is, accordingly dismissed.