

(2004) 12 GAU CK 0003

Gauhati High Court

Case No: WP (C) No. 2196 of 1999

Shahjada Saleem

APPELLANT

Vs

Assam State Electricity Board
and Others

RESPONDENT

Date of Decision: Dec. 16, 2004

Citation: (2005) 3 GLR 109 : (2005) 1 GLT 472

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: N. Korkataki, for the Appellant; B.D. Das, SC, for the Respondent

Final Decision: Dismissed

Judgement

Ranjan Gogoi, J.

Whether the letter dated 11.3.1997 submitted by the writ petitioner is an offer of voluntary retirement or one of resignation is the moot question that would call for an answer from the Court in the present writ application. The validity of the office order dated 29th March, 1997 accepting the offer of relinquishment of service by the petitioner as an act of resignation would depend on the answer that the Court would provide to the question posed.

2. The petitioner, at the relevant point of time, was serving as an Assistant Executive Engineer in the Assam State Electricity Board. He was granted Earned Leave for 90 days with effect from 25.1.1996 to 23.4.1996. However, the earned leave sanctioned for the period from 4.4.1996 to 23.4.1996 was cancelled by the authority and thereafter, the petitioner submitted a letter dated 11.3.1997 stating that he is tendering his resignation with effect from the date the leave was not granted and that the said resignation may be accepted immediately. In the letter dated 11.3.1997 against the subject, however, the words "voluntary retirement" were mentioned. The Personnel Manager of the Board by an office order dated 29.3.1997 accepted the resignation of the petitioner with effect from 4.4.1996, Thereafter, the petitioner took the stand before the Board that his letter dated 11.3.1997 was an act of

voluntary retirement made under the voluntary retirement scheme in force as circulated by the Board's memorandum dated. 7.9.1993. On that basis, terminal benefits were claimed by the petitioner. The claim of the petitioner having been negative by the Board, the instant approach to the writ jurisdiction has been made by the petitioner.

3. I have heard Mr. N. Borkakati, learned counsel for the petitioner and Mr. B.D. Das, learned counsel appearing on behalf of the respondent-Board.

4. Mr. Borkakati, learned counsel for the petitioner has urged that the subject captioned in the letter dated 11.3.1997 is a "voluntary retirement" and, therefore, though the word "resignation" has been used in the said letter dated 11.3.1997, this Court must construe the offer of relinquishment made by the petitioner to be in the nature of voluntary retirement and not one of resignation. Learned counsel has argued that notwithstanding the language used in the letter dated 11.3.1997, as the subject mentioned is voluntary retirement, the real intent of the petitioner was to offer to go on voluntary retirement and, therefore, the authorities should be directed to recall the impugned acceptance of the petitioner's resignation and treat the petitioner to have gone on voluntary retirement. On that basis, the authority ought to be further directed to confer all terminal benefits due to the petitioner in terms of the scheme of voluntary retirement in force. Reliance in this regard has been placed on an Apex Court judgment in the case of [Dr. Prabha Atri Vs. The State of U.P. and Others](#),

5. Refuting the arguments advanced on behalf of the petitioner, Mr. B.D. Das, learned counsel for the Board by placing reliance on the affidavit filed by the respondents, has submitted that the letter dated 11.3.1997 contains an unambiguous and unequivocal intent to resign from service and in view of the clear expression of the intention of the petitioner to resign, no fault can be found with the action of the respondents in accepting the petitioner's resignation with effect from 4.4.1996. As the petitioner has resigned and such resignation has been accepted, no question of grant of any terminal benefits under the voluntary retirement scheme can and does arise, contends the learned counsel for the Board.s

6. The rival submissions advanced on behalf of the parties have been duly considered. A reading of the letter submitted by the petitioner on 11.3.1997 would clearly go to show that the petitioner had in unambiguous terms tendered his resignation with effect from the date on which his earned leave was refused, i.e. 4.4.1996 and pressed upon the authority to accept the resignation immediately. In the letter dated 11.3.1997, the petitioner had also clearly stated that he has no financial liability or responsibility to the Board, which fact appears to have been mentioned in the letter so as to point out to the authority that there was no hindrance in acceptance of the petitioner's resignation which was requested to be done with immediate effect. Merely because, under the heading of subject, the words "voluntary retirement" have been used, it cannot be understood that the

intent of the petitioner was to submit an offer to go on voluntary retirement. The intent must be understood from the clear language used in the letter dated 11.3.1997 and in the said letter, the petitioner having, in clear terms, tendered his resignation with effect from an earlier date, it is difficult for this Court to construe the letter dated 11.3.1997 in the manner suggested by the learned counsel for the petitioner. The reliance placed in the case of Dr. Prabha Atri (supra) does not appear to be well founded inasmuch as in the aforesaid case, the concerned employee had submitted a conditional offer to resign which was held by the Apex Court not to amount to an act of resignation. In the present case, the letter dated 11.3.1997 does not indicate any condition subject to which the offer of relinquishment of the remaining period of service of the petitioner was made. As already held, it is an unambiguous, unconditional and unequivocal offer to resign and the same having been accepted, no infirmity can be found by the Court in the action impugned.

7. For all the aforesaid reasons, I find no good ground to interfere with the order dated 29.3.1997 impugned in the present writ application. The writ application consequently has to fail. It is accordingly dismissed but having regard to the facts and circumstances of the case, there shall be no order as to costs.