

## Shiva Kant Jha @ S.K. Jha Vs Hindustan Steel Works Construction Ltd. and Others

**Court:** Jharkhand High Court

**Date of Decision:** Aug. 5, 2003

**Acts Referred:** Constitution of India, 1950 " Article 226

**Citation:** (2004) 1 JCR 349

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** Baban Lal, for the Appellant; R.S. Majumdar, for the Respondent

**Final Decision:** Allowed

### Judgement

Tapen Sen, J.

In this Writ Application the petitioner prays for issuance of a writ of nandamus commanding upon the respondents to pay

retiral and other legal dues to the petitioner and further, to release him from service with effect from 31.01.1999 by accepting his offer to

voluntarily retire from service in terms of the letter dated 12.10.1999 issued by Senior Manager (Personnel) addressed to the petitioner. The

petitioner further prays for quashing the letter dated 3.4.2000 as contained in Annexure-11 addressed to the petitioner and issued by the Group

General Manger informing him that in supersession of all previous correspondence, the request of the petitioner for voluntary retirement from the

service of the Company with effect from 31.01.1999 has not been accepted by the Company.

2. The short facts which are necessary to be taken note of are that in the year 1969 the petitioner was appointed as a Junior Assistant of the

respondent No. 1 for their unit at Bbkaro Steel City. He was promoted from time to time the last of which being in the year 1996 to the post of

Manager (Public Relations). According to the petitioner, the respondent No. 1 Company introduced a Voluntary Retirement Scheme for purposes

of reducing the manpower and thereby making the Company economically viable. The petitioner has further stated that out of 14,000 employees,

4,000 have already voluntarily retired under the said scheme and out of 7,000 employees of Bokaro Unit, 2400 were released under the said

Scheme. According to the petitioner, he also opted to voluntarily retire with effect from 31.10.1999 and therefore he filed an application to that

effect on the printed format supplied by the Company on 8.9.1999. The petitioner has stated that after verification and clearance from the vigilance

and the other departments and after being fully satisfied, the respondent No. 3 (Group General Manager) recommended and forwarded the

application to the competent authority at Calcutta for acceptance. Thereafter the Chairman-cum-Managing Director, being also fully satisfied

accepted his offer to retire with effect from 31.10.1999 and accordingly a letter was prepared in the name of the petitioner through the Group

General Manager on 12.10.1999 being letter No. HO/PF (04521)/4044/N-2311 informing the petitioner that his request for voluntary retirement

had been accepted by the Management and that he would retire from the services of the Company with effect from the afternoon of 31.10.1999

subject to vigilance and disciplinary clearance. At paragraph 14 of the Writ Application, the petitioner has stated that the above mentioned letter

was not officially given to the petitioner, but nevertheless he could get a copy of the same subsequently from the Calcutta Office which did not

obtain any receipt from the petitioner.

3. This paragraph, i.e., paragraph 14 of the Writ Application has been answered at paragraph 24 of the counter affidavit wherein the respondents

have stated that the letter/order dated 12.10.1999 was not communicated to the petitioner considering pending matters of serious nature and the

respondent No. 3 was duty bound to see that all such matters were settled both in the interest of the Company as also in the interest of the

employees and in public interest. It has further been stated that when the order was not communicated, the petitioner has obtained a copy of the

same in a fraudulent way and the same is not expected from an executive like the petitioner and in any event such conduct on his part is not

appreciable under the Rules of the Company.

4. The petitioner has further stated that since the respondents and especially the Group General Manager (respondent No. 3) was not releasing the

aforementioned letter, he therefore, wrote to him on 26.12.1999 vide Annexure-3 wherein he demanded that the same be released and/or handed

over to him so that he may be able to voluntarily retire. A similar letter was again sent on 1.11.1999 but nothing happened. Thereafter the

petitioner left Bokaro Steel City and went to Delhi for some urgent work. In the meantime on 29.10.1999 while referring to his letter dated

26.10.1999 i.e., Annexure-3, the Group General Manager wrote to the petitioner informing him that his application for voluntary retirement was

still in process and that there were other ""impending matter which required to be cleared before conveying acceptance"". It appears that yet another

letter being in reply to the demand of the petitioner made on 1.11.1999 (Annexure-4) the Group General Manager again wrote 2.11.1999

informing the petitioner that it was once again being confirmed that he had been duly informed that he was not being released under the Voluntary

Retirement Scheme with effect from 31.10.1999 and that his absence from duty would be unauthorized and therefore he was asked to immediately

join. In reply to the aforementioned letter the petitioner wrote on 8.11.1999 (Annexure-7) and sent a fax informing the Group General Manager

that he was out of Bokaro Steel City till 15th November, 1999 and therefore he may be allowed earned leave and that he would be absenting till

resumption of his duty. On 22.11.1999 the petitioner again wrote to the Group General Manager wherein he stated that as per advise of the

management and also being law abiding, he had joined his duties on 19.11.1999 after returning with a hope that the management would appreciate

his views and release him under the Voluntary Retirement Scheme since the same had already been accepted vide letter dated 12.10.1999. Copy

of the aforementioned letter is Annexure-8 to the Writ Application. Getting no response, the petitioner again sent a representation on 5.1.2000 by

Annexure-9 addressed to the Chair man-cum-Managing Director whereafter he again wrote to the Group General Manager and a copy thereof

was sent to the Chair man-cum-Managing Director by letter dated 6.3.2000 (Annexure-10). It is thereafter that on 3.4.2000 the Group General

Manager informed the petitioner that the application for voluntary retirement had not been accepted by the Company. In the counter affidavit a

stand has been taken that Annexure-2 was conditional and that it was never served upon the petitioner. They have further stated that the petitioner

has obtained a copy of the order (Annexure-2) in a fraudulent way which is not ""appreciable"" and thus his conduct is ""questionable"". This has been

stated at paragraph 8 of the counter affidavit. They have further stated that the order of acceptance of voluntary retirement dated 12.10.1999 may

not be given effect to in the light of the preliminary submissions aforesaid, i.e., submissions to the effect that the petitioner has obtained the same

fraudulently and that it was a conditional letter.

5. In the instant case therefore, what has to be seen is the effect of Annexure-2 because that is the sheet-anchor of the case of the petitioner. By

Annexure-2, i.e., letter dated 12.10.1999 the Head Office at Calcutta through the Group General Manager, Bokaro Steel City purported to have

informed the petitioner that his application was accepted. However, the aforementioned letter also informed that this would be subject to

vigilance/disciplinary clearance.

6. The fact about the existence of the aforementioned letter has not been denied by the respondents in their counter affidavit. All that they have said

is that it was never served upon the petitioner and his conduct in procuring a copy thereof was not appreciated by the Company.

7. The relevant Rules/Scheme for voluntary retirement has been brought on record by Annexure-18 and 19 and the same disclose that an

employee will be entitled to terminal payments only when his offer for voluntary retirement is accepted. In the instant case acceptance of the offer is

to be found in Annexure-2 which is the letter dated 12.10.1999. While the petitioner asserts that this letter is the letter of acceptance, the

respondents on the other hand did not dispute the existence of this letter and all that they have to say is at paragraphs 8 and 24 of their counter

affidavit where they say that the conduct of the petitioner in obtaining a copy of the same in a fraudulent manner was not expected from an

executive like the petitioner and such conduct was not also appreciated. The respondents have also not stated anywhere that vigilance/disciplinary

clearance was not given. Moreover, when that letter was handed over to the petitioner, he immediately wrote to the Group General Manager on

26.10.1999 by Annexure-3 wherein he pointedly referred to the said letter and demanded that the same be given to him. In other words the

petitioner opened the eyes of the respondents with regard to the existence of the aforementioned letter of acceptance and yet the respondent went

on delaying the matter on one pretext or the other and finally rejected his application by the impugned communication dated 3.4.2000 as contained

in Annexure-11. Surprisingly they did not even bother to make any statement or comments with regard to the earlier letter and while refusing to

accept the petitioner's offer they did not assign any reasons as to why the Company had not accepted his offer. It would be relevant to mention

that under Clause 4.2 of the Scheme, the competent authority has the right not to grant voluntary retirement for reasons to be recorded in writing

but such reasons have not been given as to why the Company, though it fit to pass an order which was diametrically opposite to the earlier order of

acceptance, i.e., Annexure-2. In the case of Tek Chand Vs. Dile Ram, , the Hon"ble Supreme Court of India has held that voluntary retirement

becomes effective from the date of expiry of the period specified. In the instant case, the notice period came to an end on 31.10.1999.

8. In answer to the point of the respondents that Annexure-2 was never communicated, Mr. Babun Lal has cited the judgment passed by the

Hon"ble Supreme Court of India in the case of North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar, , wherein the Hon"ble

Supreme Court has held that non-communication of acceptance does not make the resignation in operative. Thus even if Annexure-2 was not

communicated yet it does not make the offer for voluntary retirement in operative because that letter was very much in existence and its contents

have not been denied and by that letter the offer of the petitioner had been accepted.

9. Mr. R.S. Majumdar, learned counsel appearing for the respondents has submitted that the letter dated 12.10.1999 was conditional and it was

subject to vigilance and disciplinary clearance. However, from the documents brought on record, it has nowhere been pointed out in the counter

affidavit that either the vigilance Or disciplinary clearance was not given. All that they have to say is at paragraph 25 wherein while dealing with the

matter relating to others, the respondents have stated that the petitioner should not compare his case with others. They have further stated that

upon clearance of their pending matters, the cases of others were considered and released upon clearance of pending matters, but considering the

seriousness of the matter, the petitioner's acceptance of voluntary retirement, as decided by the competent authority, was not implemented. No

specific statement has been given to the effect that the vigilance/disciplinary clearance were not given in relation to the petitioner. On the contrary,

vague statements have been given.

10. Mr. R.S. Mazumdar has drawn attention of this Court to a judgment of the Hon'ble Supreme Court in the case of Vice Chairman and

Managing Director v. AP-SIDC and Anr. reported in AIR 2003 SCW 2989. That case does not apply to the facts of this case, because in that

case the acceptance was communicated and thereafter the employee sought withdrawal. Mr. Mazumdar further relies upon a judgment of the

Supreme Court in the case of Bank of India etc. and others, reported in AIR 2003 SCW 313 in support of the contention that the Voluntary

Retirement Scheme is only an invitation to offer and that application filed by the employees being only an offer, the same could have been

withdrawn before it was accepted. In the instant case, the acceptance was there and it is not a case that the petitioner wanted withdrawal. On the

contrary, after acceptance the respondents started dilly-dallying with the matter and the petitioner went on harping and reminding them about the

existence of the letter dated 12.10.1999. None of the respondents have ever told him that this letter was not in existence or that it was a

fake/forged letter. In that view of the matter, none of the two judgments cited by Mr. Mazumdar comes to the rescue of the respondents.

11. Thus, the inescapable conclusion that this Court must arrive at is that the letter dated 12.10.1999 was a stark reality and it had been issued, but

for reasons best known to the concerned officers, it was not served upon the petitioner. It is true that in all cases of cessation and/or termination of

employment, the same comes into operation from the date of actual service of the order and not from the date of issuance thereof. But in the instant

case, this Court is compelled to take the view that the petitioner having obtained a copy of the said letter, promptly informed the Group General

Manager and sent copies of this letter to the Chairman-cum-Managing Director by Annexure-3 (i.e., letter dated 26.10.1999) wherein he informed

them specifically about the existence of the said letter. The respondents could very well have told him that such a letter did not exist, but instead of

doing so, they merely informed by their letter dated 26.10.1999 that they were in receipt of his letter dated 26.10.1999 and that the application

submitted by him is ""yet to be released to him conveying acceptance of the Company"" This was the extent of their reply. In that view of the matter,

when the petitioner himself gave specific information about the letter dated 12.10.1999 and there being no denial by the respondents, it will be

deemed that he was in receipt of the same and such receipt- was obviously therefore prior to 31.10.1999. For the reasons stated therefore, the

respondents later on cannot be allowed to suddenly turn around and pass an order totally contrary to their earlier order of acceptance.

12. In that view of the matter, it must be held that the letter of acceptance dated 12.10.1999 attained finality and therefore, any action taken by the

respondents enforcing the petitioner to work after such acceptance amounts to forced labour and therefore the petitioner to that extent, over and

above the terminal benefits arising out of his voluntary retirement, would also be entitled to salary and other emoluments for the period he was

forced to work after the date of acceptance of his offer, i.e., 12.10.1999 till 14.2.2002, i.e., the date when he reached 58 years of age as was

communicated to him by Annexure-21, i.e., the letter dated 26/27.8.2001 as contained in the supplementary affidavit filed by the petitioner. In this

context reference may be made to the case of N. Ram Reddy v. Union of India, reported in 2002 Lab IC 52 (AP).

With the aforementioned observations, the Writ Application stands allowed and the impugned order is quashed. The respondents will act

accordingly. No order as to costs.