

(2015) 12 MP CK 0003

Madhya Pradesh High Court (Indore Bench)

Case No: WP No. 8751/14

Rajani Bhavsar

APPELLANT

Vs

M.P. Pollution Control Board

RESPONDENT

Date of Decision: Dec. 18, 2015

Hon'ble Judges: Prakash Shrivastava, J.

Bench: Single Bench

Advocate: Rahul Sethi, Learned Counsel, for the Appellant; Preeti Waghmare, Learned Counsel, for the Respondent

Judgement

Prakash Shrivastava, J.

Heard finally with consent.

2. This writ petition has been filed by petitioner challenging the order dated 29/12/2012 accepting the petitioner's application for voluntary retirement/resignation.

3. The facts in brief are that the petitioner was appointed as Stenographer Grade III on 2/4/1992 in respondent Pollution Control Board and was later on promoted as Stenographer Grade II. Since the petitioner was not keeping well, therefore, she had submitted the application for voluntary retirement on 16/10/12. Thereafter on 5/11/12 the petitioner had applied for withdrawal of the application for voluntary retirement and said application for voluntary retirement has been treated to be resignation from service and respondents vide the impugned order dated 29/12/12 have accepted the application and treated the petitioner to be resigned from service w.e.f. 16/10/12.

4. Learned counsel for petitioner submits that petitioner had submitted the application for voluntary retirement and before its acceptance she has withdrawn it, therefore, the respondents are not right in subsequently passing the impugned order and accepting it as resignation from service with retrospective effect.

5. Counsel for the respondents have supported the impugned order.

6. I have heard the learned counsel for parties and perused the record.

7. The undisputed facts are that the petitioner on 16/10/12 had sent the letter for voluntary retirement alongwith cheque for one month's salary. Annexure R-2 enclosed with the reply reveals that the application in format No. 28 in terms of Rule 42(1)(a) of MP Civil Services (Pension) Rules, 1876 was submitted seeking voluntary retirement on completion of 20 years of service. No decision on the said application was taken and in the meanwhile petitioner had made the application dated 5/11/12 for withdrawal of her earlier application dated 16/10/12 seeking voluntary retirement. The application dated 16/10/12 was forwarded by the Regional Officer to the Principal Secretary of the Pollution Control Board. Thereafter the impugned order dated 29/12/12 was passed by the Board treating her earlier application dated 16/10/12 to be the resignation letter and accepting it w.e.f. 16/10/12.

8. The aforesaid facts clearly demonstrate that before acceptance of the application dated 16/10/12 the petitioner had already applied for withdrawal of the said application. That apart, the application dated 16/10/12 was made by petitioner seeking voluntary retirement from \service in terms of MP Civil Services (Pension) Rules, 1876. The stand of respondents is that there is no voluntary retirement scheme available in the department. In these circumstances they were not justified in treating the application for voluntary retirement as letter of resignation specially when the same was already withdrawn before its acceptance.

9. The record further reveals that against the impugned order dated 29/12/12 the petitioner had preferred an appeal before the State Government and the Principal Secretary of Aavas and Paryavaran Vibhag had examined the matter and had sent the communication dated 29th June 2013 to the Principal Secretary of the Board (Annex.P-11) recording following conclusions:

10. In spite of the aforesaid favourable recommendation, the Board has not taken any decision in the case of petitioner till now nor the appeal has been disposed of.

11. The Supreme court in the matter of [Balram Gupta Vs. Union of India \(UOI\) and Anr](#), has held that till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae and undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. This court in the matter of Ganpatlal Was v. State of Madhya Pradesh reported in 2010 ILR 1900 in a case where an application for voluntary retirement made in terms of the Rules 42 of 12. the Pension Rules was withdrawn before acceptance has held as under:

"Having heard learned counsel for the parties and after considering the provision contained in Rule-42 of the Pension Rules as also law laid down in the case of Balram Gupta v. Union of India and another (supra), Jauhari v. Madhya Pradesh Laghu Udyog Nigam Maryadit, Bhopal (supra), Director General, Employees State

Insurance Corporation & Another v. Purshottam Malani (supra) and Jaggannath Prasad v. M.P. State Electricity Board & others (supra). I am of the view that this petition deserves to be allowed. Admittedly the petitioner had submitted an application dated 07.11.2006 seeking voluntary retirement w.e.f. 07.02.2007 in Form-28 by giving three months notice as per the requirement of Rule 42(1)(a) of the Pension Rules. Before the intended date of voluntary retirement he submitted an application dated 02.12.2006 for withdrawal of the said application. However, as would be clear from the note-sheet Annexure R-11 the petitioner's prayer of withdrawal of the application for voluntary retirement was rejected and for the first time on 07.02.2007 the respondents served upon the petitioner the order dated 09.11.2006 accepting his application for voluntary retirement. The prayer of the petitioner was rejected by the respondents observing no sufficient ground exists to allow the petitioner to withdraw his application for voluntary retirement. On going through the application dated 02.12.2006 it is revealed that the petitioner did assign the reasons for withdrawal of his application for voluntary retirement. It was stated by the petitioner that in the interest of the future of his family he wants to withdraw his prayer for voluntary retirement. The reason for withdrawal was a justified reason and in all fairness keeping in view the powers vested in it under Rule 42 (2) of the Pension Rules the fourth respondent ought to have allowed the prayer of withdrawal of application for voluntary retirement made by the petitioner.

3. In some what similar facts and circumstances in the case of Balram Gupta v. Union of India & another (supra) the Supreme Court had allowed such prayer for withdrawal with a direction to put back in job the employee with all consequential benefits. It was observed by the Supreme Court:--

"Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at the subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus."

It was further observed that:--

"Approval is not ipse dixit of the approving authority who has the statutory authority must act reasonably and rationally. What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the Government from withholding the withdrawal".

The Supreme Court also observed that:--

"In the circumstances of the case, it must be held that there was no valid reason for withholding the permission by the Government. It must be held further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards

continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of the flexibility is required, and if such flexibility does not jeopardise Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement."

Having regard to the aforesaid, I am of the view that the petitioner having submitted the application seeking withdrawal of the application for voluntary retirement much before the effective date of his voluntary retirement and having regard to the reasons stated by him seeking withdrawal of the application for voluntary retirement the fourth respondent ought to have allowed his prayer for withdrawal of the application for voluntary retirement more particularly when it is not the case of the respondents that acceptance of application for voluntary retirement of the petitioner would jeopardise the administration. In not allowing the prayer so made and in allowing the application for voluntary retirement the respondents have committed gross illegality. The action of the respondents in 1904 [Anandi Prasad Dwivedi and Another Vs. State of M.P.](#), contrary to Rule-42 of the Pension Rules and the law laid down in cases referred to above.

4. ACCORDINGLY the petition is allowed the impugned order dated 09.11.2006 (Annexure P-10) and the further proceedings on the basis of the said order and the decision taken vide Annexure R-II are quashed. The petitioner is directed to be reinstated in service with consequential benefits. Parties to bear their own costs. Petition allowed."

12. Same is the view taken by the Division bench of this court in the matter of [Director General, Employees' State Insurance Corporation and Another Vs. Puroshottam Malani](#), .

13. Considering the aforesaid position in law and taking note of the fact that the petitioner had applied for voluntary retirement and admittedly there was no provision for voluntary retirement in the respondent Board and before any decision could be taken on the said application, the petitioner had withdrawn the application and also considering the fact that respondents subsequently have treated the said application to be letter of resignation without the petitioner's consent and accepted it though it was withdrawn, I am of the opinion that the impugned order dated 29/12/12 cannot be sustained and is hereby set aside. The respondents are directed to continue the petitioner in service. However, considering the circumstances of the case, it is directed that though the seniority of petitioner will be maintained but the petitioner will not be entitled to salary for this period attracting the principle of no work no pay.

14. C.c. as per rules.