

State of Orissa

Vs

Balakrushna Sathpathy

Civil Appeal No. 5369 of 1992

(J.S. Verma, N. Venkatachala JJ)

14.12.1992

JUDGMENT

1. Delay condoned. Leave granted.

2. The respondent was a Land Acquisition Officer. He was compulsorily retired in public interest w.e.f. 30-11-1987 under Rule 71(a) of the Orissa Service Code, by State Govt. Notification dated 30-10-1987, the material part of which is as under: -

"In exercise of the powers conferred by subrule (a) of Rule 71 of the Orissa Service Code, the State Government do hereby retire Shri Bala Krushna Satapathy, a member of the O.A.S. Class-II at present Land Acquisition Officer. Phulbani, who has completed the age of fifty years in public interest with effect from 30-11-87. He shall be paid three months pay and allowances in lieu of three months' notice."

By Order of the Governor,

B. C. Patnaik,

Secretary to Government."

3. Pursuant to the above Notification, the Office of the Collector, Phulbani, sent a letter dated 28-11-1987 to the respondent, as under: -

"Government in Revenue Department in their notification No. 2079-R dated 30-11-87 have retired you from Government service with effect from 30-11-87. The notification has been served upon you. You are requested to receive the 3 months advance pay as sanctioned by the Government on account of compulsory retirement, from the Nisarath Office, Collectorate, Phulbani."

4. It appears that the income-tax dues were deducted at the source while making the payment of three months pay and allowances to the respondent.

5. The respondent challenged his compulsory retirement before the Tribunal. By the impugned order, the Tribunal has quashed the order of compulsory retirement on the ground that deduction of income-tax at source was infraction of the requirement of Rule 71 (a) of the Orissa Service Code. Hence this appeal by special leave.

6. Rule 71(a) of the Orissa Service Code is as under :-

"The appropriate authority may also require any Officer to retire in public interest any time after he has completed thirty years qualifying service or attained the age of 50 years, by giving a notice in writing to Government servant at least three months before the date on which he is required to retire or by giving three months' pay and allowances in lieu of such notice."

7. The short question is whether deduction of the income-tax at source while making payment of three months pay and allowances is an infraction of Rule 71(a) which invalidates the order of compulsory retirement. We do not think it to be so.
8. The Rule requires three months prior notice to be given or payment of three months pay and allowances in lieu of such notice. In other words, the alternative mode prescribed of payment of the amount in lieu of three months notice, when adopted, entitles the Government servant to get that amount, but the validity of the order of compulsory retirement does not depend on its prior full payment as a pre-requisite. The only right of the Government servant under such an order is to get the amount of three months pay and allowances in lieu of such notice, and no more. This is the manner in which similar provisions have been construed in *Raj Kumar v. Union of India*, (1975) 3 SCR 963 : (AIR 1975 SC 1116) and *Union of India v. Arun Kumar Roy*, (1986) 1 SCR 136: (AIR 1986 SC 737).
9. Assuming, deduction of the income-tax at source could not be made, the only right of the respondent is to get the deficit amount, but the order of compulsory retirement is not invalidated for that reason. Since the appellant has offered to pay the deficit amount, deducted as tax, from the amount paid to the respondent, it is unnecessary in the present case to decide the question whether the deduction was rightly made.
10. Consequently, the appeal is allowed and the impugned order of the Tribunal is set aside. No costs.

Appeal allowed.

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