

Nand Keshwar Prasad

Vs

Indian Farmers Fertilizers Cooperative Ltd. and Others

Civil Appeal No. 1956 of 1988

(G. N. Ray, M. Srinivasan JJ)

01.04.1998

ORDER

1. Leave granted.

2. Heard learned counsel for the parties. The appeal is directed against order dated 25-3-1992 passed by the Allahabad High Court in Civil Miscellaneous Writ Petition No. 17386 of 1985. By the impugned judgment, the High Court dismissed writ petition assailing the award passed by the Labour Court, Allahabad in Abahi-V No. 43 of 1984. The said proceedings before the Labour Court arose out of a reference made under Section 4-A of the U.P. Industrial Disputes Act, 1947 for decision of the question whether it was correct and legal not to take on duty their employee N. K. Prasad, Technical/Printing Operator by the employer on 22-1-1984. If not, what gain/relief, the employee concerned is entitled to and with what other detail. By the award dated 12-6-1985, the Labour Court dismissed the said proceedings inter alia on the finding that the employee concerned had tendered resignation voluntarily which was acted upon by the employer and it was appropriate and legal not to take the said employee on duty by the employer and the said employee was also not entitled to any relief.

3. Such award was challenged before the High Court by filing a writ petition which has been dismissed by the High Court. The High Court has indicated that the employee had tendered resignation voluntarily and such resignation had been accepted by the employer who had also forwarded the salary for the period mentioned in the letter of resignation and the employee concerned had also accepted such payment, but had not returned the same even though he disputed the case of voluntary resignation. The High Court was of the view that as the said voluntary resignation had been accepted, the service of the employee had come to an end. Therefore, no interference was called for against the impugned award of the Labour Court.

4. Mr. Agarwal, the learned Senior Counsel appearing for the appellant, has contended that the letter of resignation had not been voluntarily and willingly given by the appellant, but since he was threatened with proposed departmental proceedings he was coerced to submit a letter purporting to be a voluntary resignation on 28-9-1983. But when by the letter dated 30-9-1983, the appellant was informed about the acceptance of the alleged voluntary resignation, he, in writing, protested against such acceptance by contending that such resignation was not voluntarily given by him and such resignation should not be given effect to and he would be permitted to join his duty.

5. Mr. Agarwal has submitted that unfortunately, the Labour Court has come to the finding that the resignation was voluntarily tendered by the appellant. Therefore, the appellant is constrained to proceed on the footing that the letter of resignation had been voluntarily given by him. He has,

however, submitted that even then the appellant had indicated his intention to withdraw the said letter of resignation in no uncertain terms. Mr. Agarwal has submitted that the law is well settled that if a resignation is to take effect from a prospective date and before the expiry of such date, if the person tendering resignation intends to withdraw the same, no effect can be given to such voluntary resignation. Therefore, in any event, such intention having been made known to the authority concerned, the said resignation letter had lost its force before it could become effective. In the aforesaid facts, it was not permissible for the employer to advance the date of resignation and to accept the same from such advanced date.

6. In support of such contention, Mr. Agarwal has referred to the decisions of this Court reported in *Union of India v. Gopal Chandra Misra* ((1978) 2 SCC 301 : 1978 SCC (L&S) 303), *Punjab National Bank v. P. K. Mittal* (1989 Supp (2) SCC 175 : 1990 SCC (L&S) 143 : (1990) 12 ATC 683), *Balram Gupta v. Union of India* (1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246). Relying on the aforesaid decisions, Mr. Agarwal has submitted that on 1-10-1983, namely, three days after the said letter of resignation, the appellant informed the management concerned not to proceed on the basis of the said letter of resignation and to allow him to resume his duties. But the respondent was bent upon to bring to an end the service of the appellant and did not allow him to resume his duties. Such termination of service forced upon the employee being illegal, the Labour Court should have found in favour of the appellant by setting aside the said termination of service.

7. Mr. Agarwal has submitted that unfortunately the High Court has not appreciated the principle of law laid down by this Court in the aforesaid decisions and the High Court had overemphasised the fact that the employee concerned had tendered resignation voluntarily and had not returned the money paid to him for the period covered by the said letter of resignation without appreciating the correct legal position that the letter of resignation became ineffective after the intimation was given by the employee that he intended to resume his duties before the expiry of the period from which the resignation was to be effective.

8. Mr. Shetty, learned counsel appearing for the respondent, has, however, submitted that the employee concerned having apprehended that the departmental proceedings were going to be initiated against him on some serious charges, had voluntarily tendered resignation in writing. Since the said employee decided to resign from the job, the employer, in the facts of the case, did not intend to proceed any further with the proposed disciplinary proceedings but accepted the resignation and also tendered the salary for the entire period referred to in the letter of resignation. Such amount had also been accepted by the employee and he did not even return the same.

9. Mr. Shetty has also submitted that as a matter of fact, the employee concerned, even when in service, had gainfully engaged himself in photocopy business and after his voluntary resignation another person was employed in place of the appellant. Such facts have been stated in the counter-affidavit to the special leave petition, and it has been indicated that in view of such employment of another person, no post is available in which the appellant can be accommodated.

10. Mr. Shetty has submitted that such statements in the counter-affidavit have not been controverted in the rejoinder-affidavit. In this connection, Mr. Shetty has drawn our attention to the observation made by this Court in the decision in *Balram Gupta v. Union of India* (1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246) since relied upon by Mr. Agarwal. It has been observed in the said decision that if the administration had made arrangements acting on the resignation or letter of retirement of the employee to make another employee available for his job, that would be of different consequence. In the facts of that case this Court, however, held that the

appellant informed his decision of withdrawal of letter of resignation immediately and it could not be said that any administrative set-up or arrangement was effected by the employer. Mr. Shetty has, therefore, submitted that the decisions relied on by Mr. Agarwal are distinguishable in the facts and circumstances of the case. It has also been submitted by Mr. Shetty that the remedy under Article 136 of the Constitution is discretionary' and equitable. If justice and equity are found against interference, this Court does not hesitate to refuse interference even if there had been infraction of law. He has submitted that in the facts of the case, the appellant does not deserve any interference from this Court and the appeal should, therefore, be dismissed.

11. After giving our careful consideration to the facts and circumstances of the case, it appears to us that the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date. It has also been held by this Court that it is open to the employee concerned to a withdraw letter of resignation before the same becomes effective.

12. It, however, appears to us that it is not the case of the appellant that though he had tendered resignation voluntarily intending to retire from a prospective date, but later on he had changed his mind and had withdrawn the same before it became effective. Persistently, the appellant's case on the contrary' is that he had not tendered resignation voluntarily and the letter of voluntary resignation was obtained under coercion and by giving out the threat of disciplinary proceeding. The appellant, therefore, intended to resume his duties by asking the authorities concerned not to take notice of the purported letter of resignation. It has, however, been found by the Labour Court on evidence adduced by the parties that the appellant had submitted letter of resignation voluntarily and in the absence of any threat or coercion. Since the appellant did not intimate that he intended to withdraw the letter of voluntary resignation, it cannot be held in the facts of the case, that letter of voluntary resignation was intended to be withdrawn before expiry of the date from which the resignation was to take effect. The appellant on the contrary, took the stand that there was no voluntary resignation on his part but a letter purporting to be voluntary resignation was obtained from him under threat and coercion and such purported resignation letter could not be given effect to. It may also be indicated here that the appellant even did not return the salary received by him from the employer for the entire period, namely, from the date of submission of letter of retirement up to the period from which the resignation was to be effective.

13. The High Court has considered such special features of the case and therefore refused to interfere in the writ petition. In the aforesaid facts and circumstances of the case, we do not think any interference by this Court is called for in exercise of jurisdiction under Article 136 of the Constitution. This appeal, therefore, fails and is dismissed without any order as to costs.

14. The appellant has been permitted by an interim order of this Court to remain in occupation of the quarter which was allotted to him while in service. It has been submitted by Mr. Shetty that for such occupation of the quarter for a number of years, no occupation charge has been paid by the appellant. The appellant should be directed to vacate the quarter and pay occupation charges. Although we have dismissed this appeal but in the facts of the case, we feel that the ends of justice would be met if the appellant is permitted to remain in occupation of the said quarter for a further period of three months from today so that in the meantime he can find out alternative accommodation. We also direct the respondent to pay a sum of Rs. 60,000 ex gratia on vacating such quarter after three months from today. It is made clear that no charge for occupation of the

quarter should be realised from the appellant.