

SUPREME COURT OF INDIA

Chand Mal Chayal

Vs

State of Rajasthan

Civil Appeal No. 1496 of 2005

(H. K. Sema and P. K. Balasubramanyan, JJ)

13.09.2006

JUDGMENT

H. K. SEMA, J.

The challenge in this appeal is to the order dated 24-9-2003 passed by the Division Bench in Special Appeal (writ) No. 707 of 2002. By the aforesaid order the Division Bench set aside the order dated 17-9-2002 passed by the learned single Judge directing the respondent Government to pass an order within a period of one month to facilitate the re-employment of the writ petitioner (the appellant herein) from 4-11-1992. The learned Single Judge further directed that the appellee shall not be entitled to the benefits which he agreed to forego by submitting undertaking dated 22-3-1993.

Background facts:

2. The appellant was a Reader/Court Master in the Magistrate Court. He is stated to be member of Scheduled Caste. To contest the election held in 1990 he tendered his resignation on 27-1-1990 which was accepted on 28-1-1990. The appellee was thereafter relieved from the post on 29-1-1990. He in fact filed nomination as a candidate but subsequently withdrew on 2-2-1990. By a petition dated 12-2-1990 addressed to the District Judge he prayed for retaining the post which was rejected by the District Judge. Thereafter, it appears that he filed a writ petition before the High Court which was disposed for conducting an enquiry. An enquiry committee was constituted on the

administration side. The committee submitted its report on 26-6-1991. We are not concerned with all these. Suffice it to say that after exchanging various correspondences between the Government and the High Court his request for re-employment was finally rejected by a Government order dated 5-6-1999. Aggrieved thereby he preferred writ petition and the same was disposed of with the direction as noticed above. Aggrieved by the direction of the learned Single Judge the State Government filed an appeal registered as Special Appeal (Writ) No. 707/2002 which was allowed by the impugned order. Hence the present appeal.

3. By now it is well settled principle of law that an incumbent is entitled to withdraw his resignation before the acceptance. Once his resignation is accepted there is no jural relationship between the employee and the employer and the employee cannot claim for withdrawal of the resignation nor reinstatement in the post. In the present case, it is not very clear in the application submitted by the appellant on 12-2-1990 the prayer of the appellant, but it would be clear from various correspondences between the High Court and the Government that he seeks for re-employment. The above being the settled position of law, we have repeatedly requested the learned senior counsel for the appellant to show us as to whether there is any provision in service rule providing for re-employment after the resignation has been accepted. This is more so because from the various correspondences issued by the Financial Department and the Administrative Department that there is no such provision in service rules for re-employment.

4. Referring to the judgment of the learned single Judge. Learned senior counsel for the appellant contended that there was a circular of 19-5-1979 issued by the Government which shows that in such circumstances permission may be given to take back in service even after the acceptance of resignation by the employer. It would appear that on the basis of the said circular the learned single Judge was of the view that the request of the appellant for re-employment was rejected without application of mind. In other words without considering the circular dated 19-5-1979. The learned Single Judge also referred to instances that (1) Shri Ganga Ram. LDC, (2) Shri Hindu Singh. UDC and (3) Shri Atma Ram who submitted their resignations and were relieved, were given re-employment after six months. According to the learned Single Judge a discriminatory treatment is meted out to the appellant and, therefore, violative of Article 14 of the Constitution.

5. With regard to the circular dated 19-5-1979 the contention has been raised by the respondent before the Division Bench of the High Court that the said circular has been withdrawn by another circular dated 6-2-1982. It is, however, contended by Mr. M.R. Calla learned senior counsel appearing for the appellant that no such contention has been brought to the notice of the appellate. The respondent also has filed a counter-affidavit in this appeal. In paragraph 17 of the counter-affidavit the respondent specifically referred to the order dated 19-7-1979 and contended that the circular dated 19-5-1979 was withdrawn by the Government vide order dated 6-2-1982. The appellant has not controverted the statement made in paragraph 17 of the counter-affidavit. Therefore, the statement made in paragraph 17 that the circular 19-5-1979 has been withdrawn by the Government on 6-2-1982 remains uncontroverted.

6. The relevant rules covering the subject is Rajasthan Sub-ordinate Courts Ministerial Establishment Rules, 1986 (in short the Rules). In the said Rules there is no such provision for re-employment after the resignation is tendered by the employee and accepted by the employer. Mr.

Calla learned senior counsel for he appellate, however, referred to us the Rajasthan Service Rules, 1951. He particularly referred to Rule 212 which deals with condonation of interruptions and note 2 appended to the said Rules. First of all we are of the view that the said Rules are not applicable in the facts of this case. Rule 212 is under part VIII of the Rules which deals with the pension rules. The condonation of interruption as enjoined in the Rule 212 has been defined in Rule 210 of the Rules. Rule 210 of the Rules deals with interruption in service entails forfeiture of past service. Interruption has been defined as (a) Authorised leave of absence, (b) Unauthorised absence in continuation of authorised leave of absence so long as the office of the absentee is not substantively filled, if his office is substantively filled the past service of the absentee is forfeited, (c) Suspension where it is immediately followed by reinstatement, whether to the same or different office, or where the officer dies or is permitted to retire or retired while under suspension.

7. Therefore, the condonation of interruption in Rule 212 read with note 2 appended thereto is related to the interruption of various leave of absence, unauthorized absence and suspension and it does not deal with resignation more particularly after acceptance of resignation. In other words. The tendering of resignation and acceptance of resignation does not come within the purview of Rule 212 which deals with condonation of interruptions.

8. We have already noted that resignation of the appellate has been accepted and therefore, the appellant how cannot claim as a matter of right to be re- employed. No writ of mandamus can be issued directing the re-employment of the appellant. Secondly, there is no rule dealing with the re-employment after resignation is accepted in the relevant Rules. Rules 212 read with note 2 appended thereto referred to by the learned senior counsel for the appellant are not applicable in the facts of this case.

9. In the result, the appeal being devoid of merit is accordingly dismissed.

J