

# SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs.

Sudarshana Chatterjee

C.A.No.9300 of 2019

(R.Banumathi and A.S.Bopanna,JJ.,)

10.12.2019

## JUDGMENT

**R.Banumathi,J.,**

SLP(C)No.10087 of 2019

1. Leave granted.

2. Appeal arising out of SLP(C) No.10087 of 2019 has been filed by the appellants against the judgment dated 24.08.2018 passed by the High Court of Judicature at Allahabad in Writ-A No.65084 of 2015 in and by which the High Court has quashed the order dated 01.04.2015 passed by the appellants denying retiral benefits to the respondent on account of her having joined the service in Chhattisgarh Institute of Medical Sciences and the High Court directed the appellants to pass fresh order in accordance with law in the light of observations made by the High Court. Appeal arising out of SLP (C) No.10542 of 2019 has been filed against the interim order dated 15.03.2019 passed in Writ-A No.3884 of 2019 whereby the High Court directed the Principal Secretary, Department of Medical Education and Training to appear in-person and explain how the claim of the respondent has been rejected by order dated 04.01.2019 despite judgment of the High Court dated 24.08.2018.

3. Briefly stated facts of the case are that the respondent was appointed to the post of Lecturer (Anesthesia) vide appointment order dated 25.03.1982 and she joined at Motilal Nehru Medical College, Allahabad. While working on the post of Lecturer (Anesthesia) at Motilal Nehru Medical College, Allahabad, the respondent on 20.09.2003 sought a no-objection certificate (NOC) from the appellants in order to apply for the post of Associate Professor (Anesthesia) at Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur. Pursuant to her applying to CIMS, the respondent received an appointment letter dated 22.04.2004 from CIMS. Upon getting appointed at CIMS, the respondent sent a leave application dated 30.04.2004 addressed to the Secretary, Medical Education Department seeking sanction of leave for two years without pay for joining on the post of Reader in the

Department of Anesthesia at CIMS. Though her leave application was pending consideration, the respondent joined as Lecturer in the Anesthesia Department, CIMS on 15.06.2004. The respondent made another application for grant of one month earned leave on 23.07.2004 by citing the reason “personal work”. The said application was considered and leave was sanctioned vide order dated 07.08.2004 by granting the respondent earned leave from 23.07.2004 to 22.08.2004. The respondent remained in the service of the appellants till 22.08.2004; thereafter she has not resumed duty with the appellants. It is stated that the respondent was drawing salary from two State Governments i.e. State of UP and also from CIMS-State of Chhattisgarh.

4. The respondent again sent a leave application on 01.02.2005 seeking grant of leave preparatory to retirement from 23.07.2004 to the date of retirement i.e. 30.09.2006 (26 months 7 days). The respondent also sought for permission to work as Associate Professor at CIMS during the leave period and also sought for grant of allowance in this behalf. On 02.01.2006, the respondent sent an application seeking voluntary retirement citing personal reasons. According to the respondent, none of her applications were replied to by the appellants.

5. After retiring from CIMS, the respondent sent a letter to the Secretary, Department of Medical Education, Government of UP on 02.11.2012 seeking payment of gratuity, pension and leave encashment due on retirement (i.e. on 30.09.2006). In this letter, it was submitted by the respondent that she had applied for the post of Reader at CIMS through the proper channel and had also applied for NOC from the Government/appellant. According to the respondent, she repeatedly applied for NOC. As there was no response, the respondent had no option but to leave the UP Medical Services and join the services at CIMS in June, 2004.

6. The appellants rejected the request of the respondent vide reply dated 01.04.2015 observing that the respondent accepted the post at CIMS without obtaining approval/NOC from the competent authority and without getting her leave sanctioned. In light of her working elsewhere, without leave having been granted and there being no provision with regard to ex-post facto grant of leave and approval for working elsewhere, the request of the respondent was found to be not acceptable.

7. Being aggrieved, the respondent filed Writ A. No. 65084 of 2015 seeking issuance of writ of certiorari for quashing the order dated 01.04.2015 and also seeking issuance of writ of mandamus directing the appellants to sanction and pay all retiral benefits of the respondent along with arrears and also interest.

8. When the said writ petition was pending, vide order dated 16.02.2016, the appellants rejected the application of the respondent seeking voluntary retirement and payment of retiral benefits. In the said order, the appellants observed that the respondent without approval from the State Government, left the services in the State of UP and joined another service in State of Chhattisgarh - CIMS. The appellants held that after joining another service, the respondent no longer remains in the service of the State of UP and as per the

rules, the respondent is not entitled to get the retiral benefits on attaining the age of superannuation.

9. The writ petition filed by the respondent in Writ A. No.65084 of 2015 was allowed by the High Court vide impugned judgment dated 24.08.2018. The High Court observed that Rule 73 of the Fundamental Rules of the Financial Handbook has no application to the facts of the present case. The High Court opined that it is not a case where the respondent had remained absent without leave or had overstayed her leave and the respondent throughout submitted her leave applications requesting permission for grant of leave to join CIMS and when no action was taken, the respondent applied for leave without pay and she actually sought voluntary retirement and that was also never considered by the appellants. Pointing out that the respondent had been submitting her leave applications from 2004 onwards, the High Court concluded that the services of the respondent in Motilal Nehru Medical College could not have been ignored for the purpose of pension/notional pension and on those findings, the High Court quashed the order dated 01.04.2015. The High Court remitted the matter to the Principal Secretary, Medical Education and Training Department, Government of Uttar Pradesh to examine the case of the respondent again and pass fresh orders in accordance with law. Though the High Court has directed the State to examine the case of the respondent in accordance with law, the High Court directed that the examination of the case of the respondent should be in the light of the observations made by the High Court in the impugned order dated 24.08.2018.

10. Aggrieved by the decision dated 24.08.2018, the appellants filed the appeal arising out of SLP(C) No.10087 of 2019 before the Supreme Court contending that the impugned judgment suffers from patent error in finding that the respondent is entitled for retiral dues from the appellant-State of UP, when in fact, the respondent had joined the service of CIMS and got promoted there and eventually retired therefrom upon attaining the age of superannuation. According to the appellant-State, the respondent never returned to resume her service with the appellant-State of UP after 22.08.2004 (up to which date, her leave was sanctioned by the appellants) and even prior to thereon, she had joined the service of the State of Chhattisgarh - CIMS on 15.06.2004. As per Fundamental Rules 67-68 as applicable to the employees of the appellant-State, leave cannot be claimed as a matter of right and the case of the respondent is “abandonment of her service” and in such a situation, there is no question of her becoming entitled to voluntary retirement. Contention of the appellant is that the High Court erred in holding that the respondent is entitled to voluntary retirement merely on account of having submitted her application to that effect in the light of the judgment of the Supreme Court in State of Uttar Pradesh and others v. Achal Singh (2018) 17 SCC 578 wherein the Supreme Court held that under Rule 56 as applicable in the State of UP, notice of voluntary retirement does not come into effect automatically on the expiry of the three months period. It was held that under the rule, the appointing authority has to accept the notice for voluntary retirement or it can be refused on permissible grounds.

11. SLP(C) No.10087 of 2019 was filed on 05.04.2019 with a delay of 134 days. Even before the SLP was filed by the appellant- State challenging the impugned judgment of the

High Court in Writ A. No.65084 of 2018 dated 24.08.2018, the respondent had initiated contempt proceedings in Contempt Application (Civil) No.6822 of 2018 against the officers of the appellant-State alleging wilful disobedience of the impugned judgment of the High Court dated 24.08.2018. The High Court entertained the contempt petition and in view of the contempt proceedings, the appellants passed the order dated 04.01.2019 whereby the claim of the respondent was considered afresh and the same was rejected by passing a speaking order. The contempt petition was disposed of by the High Court vide order dated 31.01.2019 observing that the order dated 04.01.2019 passed by the Principal Secretary, Department of Medical Education and Training has given rise to a fresh cause of action and that the “direction contained in the order dated 24.08.2018 has been given effect to upon passing of the order dated 04.01.2019” and accordingly, closed the contempt proceedings.

12. Challenging the order dated 04.01.2019, the respondent filed Writ A. No.3884 of 2019. In the said writ petition, the High Court passed the order dated 15.03.2019 wherein the High Court observed that the order dated 04.01.2019 could not have been passed since the order rejecting the request for voluntary retirement already stood quashed in terms of the judgment in Writ A. No.65084 of 2015 rendered inter-parties. Being aggrieved, the appellants have preferred appeal arising out of SLP(C) No.10542 of 2019 before the Supreme Court on 20.04.2019.

13. Ms. Aishwarya Bhati, learned Senior counsel appearing for the appellants submitted that when in the Writ A. No.65084 of 2015, the High Court has directed the authorities to consider the case of the respondent afresh and in accordance with law, the order dated 04.01.2019 having been passed in accordance with law, the High Court was not right in directing the Principal Secretary to be present and explain as to how the appellants proceeded to reject the claim of the respondent which already stood quashed in terms of the judgment rendered inter-parties in Writ A. No.65084 of 2015. It was submitted that the approach of the High Court in directing the personal appearance is contrary to the well-settled principles as held in *Shri N.K. Janu, Deputy Director, Social Welfare Forestry Division, Agra and others v. Lakshmi Chandra*<sup>1</sup> wherein the Supreme Court inter alia held that the practice of summoning officers to court is not proper and does not serve the purpose of administration of justice. Drawing our attention to the various leave applications and the order passed by the appellants, the learned Senior counsel submitted that pursuant to the appointment letter issued from CIMS on 22.04.2004, the respondent had joined in CIMS even in June, 2004. The learned Senior counsel further submitted that the High Court erred in ignoring the conduct of the respondent and was not right in holding that the respondent is entitled to voluntary retirement merely on account of her submitting applications. Lastly, it has been contended that the entire conduct of the respondent has throughout been to mislead and misrepresent the facts and in her applications submitted to the appellants even after she joined the service at CIMS, she had deliberately been representing herself as “Associate Professor, Motilal Nehru Medical College, Allahabad” which she did solely in order to give the impression that she was still in the service at Allahabad.

14. Mr. Kuriakose Varghese, learned counsel for the respondent submitted that the respondent is aged 65 years and due to her old age, after completing 22 full years of service with the appellant- State, she wanted to shift to Chhattisgarh where she could live with her daughter and work at CIMS and in spite of number of applications, letters and representations seeking permission from the appellants to join service in CIMS, the respondent could not obtain permission from the appellants. Drawing our attention to various leave applications submitted by the respondent, the learned counsel has submitted that since the respondent has not received any reply from the authorities, she had no other option except to join the services of the Institution-CIMS, Bilaspur on 15.06.2004. The learned counsel further submitted that the appellants vide order dated 15.12.2005 have superannuated the respondent with effect from 30.09.2006 which still remains valid and the appellants are estopped from taking a contrary view about the service of the respondent by contending that the respondent has abandoned the service of the appellants. The learned counsel further submitted that in CIMS, Regular Pension Scheme ceased to operate from 2004 and any employee who joined the service after 01.01.2004 was not entitled for Old Pension Scheme. It was submitted that since the respondent had the leave to her credit and it is not a case of “absence” or “overstay”, the High Court rightly directed the appellants to sanction and pay all the retiral benefits and the impugned orders do not warrant interference.

15. We have heard learned counsel for both the parties and considered the contentions and perused the impugned judgment and materials on record.

16. The High Court, with due respect, in our view, did not keep in view that even though the respondent’s leave application dated 30.04.2004 was pending consideration, the respondent on her own went and joined CIMS on 15.06.2004 and this has been suppressed by the respondent. It is also pertinent to note that after joining CIMS and working in CIMS, the respondent made another application for grant of one month earned leave on 23.07.2004 by citing the reason “personal work”. This application came to be sanctioned vide order dated 07.08.2004 by granting the respondent earned leave from 23.07.2004 to 22.08.2004. In this manner, the respondent remained in the service of two State Governments i.e. State of UP and State of Chhattisgarh-CIMS and she is alleged to have drawn salary from both the State Governments for the period from June, 2004 to October, 2004. The High Court, in our view, did not keep in view the conduct of the respondent. The High Court appears to have proceeded merely on the ground that no orders came to be passed on the leave applications filed by the respondent.

17. Be that as it may, in Writ A. No.65084 of 2015, though the High Court directed the State Government to pass fresh orders in accordance with law, while directing the State Government to pass fresh orders in accordance with law, the High Court, in our view, was not right in putting restrictions upon the appellants by saying that the fresh orders will have to be passed in the light of the observations made by the High Court. In such view of the matter, we are of the view that the order passed by the High Court dated 24.08.2018 cannot be sustained and is liable to be set aside.

18. While disposing Writ A. No.65084 of 2015, the High Court directed the Principal Secretary (Medical Education and Training Department), Government of U.P. to examine the case of the respondent and pass fresh orders in accordance with law. Accordingly, the Principal Secretary has passed the order on 04.01.2019 whereby the claim of the respondent was considered afresh and the same was rejected by passing a speaking order. The respondent filed Writ-A No.3884 of 2019 challenging the order dated 04.01.2019. While entertaining the said writ petition of the respondent, vide the impugne order dated 15.03.2019, the High Court observed that the order dated 04.01.2019 could not have been passed since the order dated 01.04.2015 was already quashed by the High Court by finding that the respondent is entitled to pension and further for adjustment of the period of her absence from the Motilal Nehru Medical College, Allahabad till the time of her joining CIMS against such leave as may be available to her account and for voluntary retirement. The High Court has observed that in the light of its earlier order dated 24.08.2018, the order dated 04.01.2019 could not have been passed and directed the Principal Secretary (Medical Education and Training Department), Government of U.P. to appear before the court and explain.

19. The High Court, in our view, was not right in directing the Principal Secretary to appear in the court and explain the reason for passing the order dated 04.01.2019. Observing that merely because an order has been passed by the officer, it does not warrant the personal presence of the officer in the Court and summoning of officers to the Court and eventually affect the public at large, in *Shri N.K. Janu, Deputy Director Social Forestry Division, Agra and Others v. Lakshmi Chandra(Supra)*, the Supreme Court held as under:-

“22. Having said so, we find that the High Court was not justified in passing orders from time to time to secure presence of the officers. The officers of the State discharge public functions and duties. The orders are generally presumed to be passed in good faith unless proved otherwise. The officers pass orders as a custodian of public money. Therefore, merely because an order has been passed, it does not warrant their personal presence. The summoning of officers to the court to attend proceedings, impinges upon the functioning of the officers and eventually it is the public at large who suffer on account of their absence from the duties assigned to them. The practice of summoning officers to court is not proper and does not serve the purpose of administration of justice in view of the separation of powers of the Executive and the Judiciary. If an order is not legal, the Courts have ample jurisdiction to set aside such order and to issue such directions as may be warranted in the facts of the case.”

The above observation squarely applies to the case in hand. When Writ-A No.65084 of 2015 was disposed of directing the Principal Secretary to pass orders in accordance with law, the Principal Secretary considered the matter afresh and passed the speaking order dated 04.01.2019. Merely because the Principal Secretary has passed the said order, the High Court, in our view, was not right in directing the presence of Principal Secretary in the Court and explain as to the reasons in passing the said order dated 04.01.2019. The

impugned order dated 15.03.2019 passed in Writ A. No.3884 of 2019 is set aside and the appeal arising out of SLP(C) No.10542 of 2019 is allowed.

20. In the result, the impugned order dated 24.08.2018 passed by the High Court of Allahabad in Writ-A No.65084 of 2015 is set aside and the appeal arising out of the SLP(C) No.10087 of 2019 is allowed. The impugned order dated 15.03.2019 passed by the High Court in Writ-A No.3884 of 2019 directing the presence of Principal Secretary (Medical Education and Training Department), Government of U.P. is set aside and the appeal arising out of SLP(C) No.10542 of 2019 is allowed. The High Court shall take up Writ-A No.3884 of 2019 and afford sufficient opportunities to both the parties and proceed with the matter in accordance with law without being influenced by any of the findings recorded by the High Court in Writ-A No.65084 of 2015. Parties shall bear their respective costs.

Judgment Referred.

<sup>1</sup>(2019) 6 SCALE 0236