

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S). No. 1755 of 2023

Anil Kumar Sharma

..... **Petitioner**

Versus

1. Jharkhand State Forest Development Corporation through its Managing Director-cum-Additional Principal Chief Conservator of Forests, Ranchi.
2. Development Commissioner-cum-Chairman, Board of Directors, Jharkhand State Forest Development Corporation, Ranchi.
3. State of Jharkhand through Secretary, Department of Forest, Climate and Environment Change, Govt. of Jharkhand, Ranchi.

..... **Respondents.**

CORAM: HON'BLE DR. JUSTICE S.N.PATHAK

For the Petitioner : Mr. Indrajit Sinha, Advocate

Mr. Vipul Poddar, Advocate

For the Respondents : Mr. Rupesh Singh, Advocate

07/ 26.09.2023 Heard the parties.

Prayers made

2. In the instant writ petition prayer has been made for quashing the order dated 18.01.2023, issued by Additional Principal Chief Conservator of Forest-cum-Managing Director, Jharkhand State Forest Development Corporation whereby the representation of petitioner for withdrawal from Voluntary Retirement Scheme and reinstatement in services has been rejected.

Petitioner has further prayed for direction upon the respondents to reinstate him to the post of Forest Produce Inspector/ Range Officer, Jharkhand State Forest Development Corporation Ltd., Ranchi Division from the date of his 1st representation dated 24.11.2020, after considering his withdrawal from Voluntary Retirement Scheme.

Factual Matrix

3. The facts of the case lies in a narrow compass. Initially, the petitioner was appointed as Forest Produce Inspector/ Range Officer, Bihar State Forest Development Corporation in the year 1987 by the erstwhile State of

Bihar and after bifurcation of the State, he was allocated the Jharkhand cadre. During course of his employment, he was transferred to various places where he discharged his duties diligently and successfully and rendered 33 years of unblemished service. Thereafter, the petitioner while he was posted as Range Officer, Ranchi opted for Voluntary Retirement Scheme by his letter dated 27.07.2020. The request of the petitioner was accepted by the respondent-Department by order No. 42 dated 01.10.2020. Though the request for voluntary retirement scheme was accepted by the respondent-Department, the petitioner was not discharged from his services on account of the following reasons:-

- i) The order No. 42 dated 01.10.2020, by which the request of petitioner was accepted, did not mention any effective date of voluntary retirement, as such the date of retirement of the petitioner cannot be determined.
- ii) Since there was no relieving order by the respondents, therefore, the relationship of the employer and employee is still subsisting. There is no change in the status quo so far as relationship of employer-employee between the petitioner and respondent-Department is concerned.
- iii) The retiral benefits have not been extended to the petitioner. In fact, the petitioner has not applied for the retiral benefits including pension, gratuity, etc.

4. Thus, considering the aforesaid facts and circumstances, before the effective date of retirement as also before the lapse of three months from the date of acceptance of application of the petitioner for voluntary retirement, the petitioner made another application on 24.11.2020 stating inter alia therein that he wants to withdraw his request for voluntary retirement and further requested for reinstatement of his services. When no heed was paid, the petitioner made further representations on 12.08.2021 and 25.08.2021 requesting the concerned respondents to consider the request of the petitioner for withdrawal from voluntary retirement and further to reinstate the petitioner to the post of FPI/ Range Officer. When

despite repeated request and representation, no action was taken on behalf of concerned respondent, the petitioner made a detailed representation on 23.09.2021 and further, on 10.10.2021, requesting therein for withdrawal of the voluntary retirement of the petitioner.

5. After repeated requests and reminders, the respondents conveyed the petitioner that his matter may be considered and be enlisted in the agendas of the upcoming Board Meeting. However, no concrete action was taken on the part of the concerned respondents. Even after passing of more than three months, when no positive result came out from the side of the respondents, then the petitioner filed an application (under the Right to Information Act), 2005 in the respondent-Department seeking information with respect to reinstatement matter. In reply to the same, the respondents informed the petitioner that the matter of petitioner was taken up as item No. 44/12 in 44th Board Meeting of the Department held on 01.11.2021, in which it was observed that the petitioner may continue as before, till his date of superannuation, and the period of absence may be regularized from the leaves due to him.

6. It is the further case of the petitioner that despite repeated requests and representations, the respondents have failed to take any action and have deliberately withheld the reinstatement of the petitioner to the post of Range Officer, Ranchi. Hence, the petitioner was compelled to file writ petition being W.P.(S). No. 2552 of 2022, which was disposed of by this Court vide order dated 19.07.2022 with a direction to the respondents concerned to consider the case of petitioner in light of judgment cited therein as also taking into account the legal opinion of learned Advocate General, Jharkhand and pass a speaking order, assigning valid and concrete reasons for consideration/ non-consideration of the case of petitioner regarding reinstatement, in accordance with law, within a period of four weeks. Thereafter, the petitioner preferred a fresh representation on 31.08.2022 annexing all the relevant documents, judgments and requested for his reinstatement in services.

7. However, when no action was taken by the respondents (even upon passing of the order by this Court and even after seeking legal opinion from the learned Advocate General), the petitioner preferred a Cont. Case (C). No. 12 of 2023 and after filing the said contempt case, the respondents hurriedly initiated a proceeding on the representation of the petitioner and called him on 18.01.2023 to place his case. Thereafter, the Additional Principal Chief Conservator of Forests-cum-Managing Director, Jharkhand State Forest Development Corp. passed a reasoned order on 18.01.2023 whereby the representation of the petitioner for withdrawal from voluntary retirement scheme and reinstatement in service has been refused.

Hence, the petitioner has been constrained to knock the door of this Court.

Submissions of learned counsel for the petitioner

8. Mr. Indrajit Sinha, learned counsel appearing for the petitioner strenuously urges that the reasoned order has been passed without considering that earlier the respondent No. 1 himself had brought the agenda of reinstatement of petitioner in the 44th Board Meeting of the department dated 01.11.2021 and in the said board meeting, it was observed that the petitioner may be continued with service as before till his date of superannuation and the period of absence may be regularized from the leaves due in his account. Further, it was mentioned that there are 30 FPI working against 45 sanctioned post while there are 45 ranges in JSFDC Ltd. There is shortage of employees in JSFDC a part of which can be addressed by allowing continuation of the petitioner with respondent-Department. Learned counsel further argues that from perusal of impugned order, it is evident that the learned Advocate General, in his legal opinion, has mentioned that petitioner can be taken back into the service. Learned counsel further argues that before passing the impugned order, the concerned respondents have failed to appreciate that petitioner has not applied for retiral benefits as he requested for reinstatement in the service. Hence, the reasons in the impugned order regarding non-grant of retiral benefits is not relevant. Learned counsel further argues that the respondents

have failed to appreciate that the VRS was tendered by the petitioner for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct relating to his services and the request for withdrawal of the VRS has been made as a result of material change in the circumstances which originally compelled him to opt for voluntary retirement. The respondents have also failed to appreciate the fact that petitioner has not been discharged from service as yet and the relationship of employer-employee is still subsisting between the petitioner and the respondent-Department.

9. In furtherance to his arguments, Mr. Sinha submits that severance notice to the employees is an important ingredient in a case of voluntary retirement. In the instant case, there was no notification regarding date of retirement by the State and as such, it was not a shut and close case, rather, it was open for the respondents to reconsider the case of petitioner. Further, it was argued that voluntary retirement is not retirement under scheme, it is under Statutes and as such, there must be relieving order and it cannot be said to be automatic. In absence of any relieving order, the case was still open for the respondents to reconsider the request of the petitioner that too in view of the repeated representations of the petitioner.

10. To buttress his argument, Mr. Sinha, learned counsel for the petitioner places heavy reliance on the following judgments:

- (I) Balram Gupta Vs. Union of India & Anr. [1987 (Supp.) SCC 228];
- (II) Power Finance Corp. Ltd. Vs. Pramod Kumar Bhatia [(1997) 4 SCC 280];
- (III) J.N. Srivastava Vs. Union of India & Anr. [(1998) 9 SCC 559]; &
- (IV) Nirmal Verma Vs. MCD & Anr. [ILR (2005) I Delhi 398].

Submissions of learned counsel for the Respondents

11. Per contra, counter-affidavit has been filed. Learned counsel for the respondents justifying the impugned orders submits that it is a settled proposition of law that the order passed by the Writ Court in the first round of litigation cannot be expanded beyond the relief which was granted by the Court in the first writ petition. Although the petitioner has moved this Court with a new cause of action i.e. for quashing of order dated 18.01.2023, but

in sum and substance, the relief sought by the petitioner in the instant writ petition is same and similar to the relief sought for in the first round of litigation. Learned counsel further argues that the petitioner, in his application for grant of voluntary retirement, had indicated his personal reasons for the same and had not disclosed in his application that he intended to contest elections. However, in the present writ petition, the petitioner has brought the fact on record that he had applied for voluntary retirement for contesting elections. Learned counsel further argues that after acceptance of application of petitioner for voluntary retirement, the responsibilities of the petitioner was handed over to one Shri Prasoon Kumar, Forest Produce Inspector vide office order No. 44 dated 07.10.2020 and the said Prasoon Kumar has taken the charge of petitioner w.e.f. 09.10.2020. Under such circumstance on the acceptance of voluntary retirement offer by the petitioner, and subsequently, on taking over his charge by Prasoon Kumar, the services of the petitioner with respondent-Department stood ceased. Learned counsel further argues that since the application of petitioner for voluntary retirement has been accepted by the respondent-Department vide order No. 42 dated 01.10.2020, the relationship of employer-employee between the petitioner and the respondent-Department stood terminated on the date of acceptance of his application for voluntary retirement in light of the provisions of Jharkhand Service Code. Learned counsel further argues that existence of one or other vacant post does not entitle the petitioner for reinstatement unless the law so permits, particularly, Rule 74 of the Jharkhand Service Code.

12. Learned counsel further argues that on account of acceptance of voluntary retirement of the petitioner, it is not compulsory to carry out a formal exercise of issuance of relieving order, which is natural fallout of acceptance of offer of voluntary retirement. Learned counsel further argues that so far as the retiral benefits are concerned, the same are paid under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Under such circumstance, the petitioner is obligated to submit his papers for disbursement of retiral benefits in the prescribed format which are to be

processed by the erstwhile employer and forwarded to the competent authority for releasing the benefits like, pension, gratuity, etc.

13. Mr. Rupesh Singh, learned counsel for the respondent-Corporation, in course of his argument, brings to the notice of the Court that petitioner made an application dated 24.11.2020 for withdrawal from voluntary retirement earlier opted by him. Rule-74 of the Jharkhand Service Code clearly emphasizes that three months' notice is required. It has been further argued that petitioner had no legal right under the Rules to make such application. Learned counsel places heavy reliance on the judgment pronounced in the matter of **Panchanan Jha Vs. State of Bihar & Ors.**, reported in (1992) 1 PLJR 314.

Findings of the Court

14. Having heard the parties across the bar and upon perusal of the documents brought on record, this Court is of the considered view that the case of the petitioner needs consideration for the following facts and reasons:

- I. The respondent-authorities in its 44th Board Meeting had taken a decision in favour of the petitioner and was of the view to withdraw the voluntary retirement opted by the petitioner. It was also resolved that an opinion in this regard was also obtained from the learned Advocate General.
- II. From reply of the application filed by the petitioner under Right to Information Act, it transpires that learned Advocate General in his opinion had specifically observed that if the petitioner has not accepted the benefits of voluntary retirement, his case can be reconsidered and continuance of service may be permitted.
- III. However, the respondent-authorities neither considered the recommendation of the Board Meeting nor the opinion of learned Advocate General.
- IV. It was only after filing the contempt case by the petitioner that hurriedly, an order was passed by the respondents refusing the claim of the petitioner.

- V. The facts remain that in absence of any notice/ notification regarding relieving of the petitioner, the relationship of employer-employee does not come to an end.
- VI. The petitioner had not taken any benefit of the voluntary retirement, rather, he was waiting for a decision in his favour as in absence of any notification his relieving, it cannot be said that petitioner was voluntarily retired and it was a shut and close case.

15. Before delving deep into the facts and the legal issues, it would be proper to examine Rule-74 of the Jharkhand Service Code, which reads as under:

“74. (a) The State Government may require any Government servant who has completed twenty one years of duty and twenty five years of total service calculated from the date of his first appointment to retire from Government service, if it considers that his efficiency or conduct is not such as to justify his retention in service. Where any Government servant is so required to retire no claim to... any special compensation shall be entertained.

(b) (i) Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least three months previous notice, in writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government.

Provided further that in case of officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi) under the Rule making authority of the Chief Justice, no. such officer and servant under suspension shall retire from service except with the specific approval of the Chief Justice.

(ii) The appointing authority concerned may after giving a Government servant at least three month's previous notice in writing, or an amount equal to three month's pay and allowance in lieu of such notice, require him in public interest, to retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or

on any date there after to be specified, in the notice.

(iii) A Government Servant who retires voluntarily is required to retire in public interest under this rule on attaining the age of 50 years, or completing qualifying service of 30 years, shall be entitled to retiring pension and death-cum-retirement gratuity.”

16. Similar issue fell for consideration before the Hon’ble Delhi High Court in case of **Nirmal Verma Vs. MCD & Anr.**, reported in **ILR (2005) I Del. 398**, the relevant para of which reads as under:

“15. It would, thus, be seen that in the cases cited above and as also in Durgesh Mohanpuria's case which is the latest case processed after the petitioner's case, the respondents have taken a consistent position that legally it is permissible for them to allow withdrawal of resignation after its acceptance and have followed the practice of restoration of service. In the petitioner's case also accordingly, there is no ground made out for adopting a different yardstick or contrary legal submission to defeat the petitioner's case. Petitioner had also within a month of the acceptance of her resignation and within a week of her losing the election requested for being permitted to withdraw the resignation in accordance with Rule 26(4) of CCS Pension Rules. It is not the case of respondents that petitioner was not having a good record or had been guilty of any misconduct or impropriety or it being a case of any doubt on the integrity etc. Denial of reinstatement in service to the petitioner and not treating the petitioner at par with others in the absence of any distinguishing feature, renders the respondent's action arbitrary and tantamounts to denial of equality as guaranteed under Article 14 of the Constitution of India. Reference in this regard may be made to Sengara Singh v. State of Punjab Reported at (1983) 4 SCC 225.

The impugned orders are accordingly not sustainable. Writ of certiorari is issued quashing orders dated 31.5.2002, Annexure P-1 and order dated 10.3.2003 Annexure P-2. As noted earlier petitioner's resignation had been accepted on 4.3.2002 and she had sought withdrawal of the same on 1.4.2002 Upon failing to get any administrative relief in representation, petitioner filed writ petition in May, 2003.

In view of the foregoing discussion, the petitioner's request for withdrawal of resignation is liable to be processed and allowed on the same basis and the legal position as adopted by respondents in the cases noted earlier. The intervening period is also liable to be treated

as “dies non” as per their precedent. Respondents to process the petitioner's case and pass necessary orders within one month from today.”

Further, the Hon'ble Apex Court in case of **Balram Gupta Vs. Union of India & Anr.**, reported in **1987 (Suppl.) SCC 228**, has held as under:

“9. Learned Counsel appearing for the appellant contended before us that this rule was bad as violative of the Fundamental Rights of citizens. Challenge to the rule was however not made before the High Court on this ground. He, however, contended that if the rule be read as consistent with the constitutional requirements of reasonableness which is a well accepted rule of construction, then the Government could not withhold approval to the withdrawal of resignation without any rhyme or reason. The counter-affidavit filed in this proceeding by Shri Majgaonkar, who is Respondent 2 in this appeal reveals very little as to why the sanction was withheld. It is stated in para 5 of the said affidavit that it was not in the knowledge of the respondent as to what prompted the appellant to request the withdrawal. 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. In this respect the government affidavit certainly lacks candour. In appropriate cases where the Government desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the Government to state those reasons. There may be hundred and one situations where a situation or opportunity like this may be used by the Government to ease out a disgruntled or reluctant or troublesome employee. It was further stated that there were guidelines which were laid down by the OM No. 24(57)-E-V-32 dated 24-12-1952 for considering and deciding in the matter of accepting or refusing the withdrawals of notices of voluntary retirement. What part of the guidelines was violated by the appellant was not indicated or spelled out in the said affidavit. We would advert to certain guidelines and examine if these were violated later. It is only stated that the application for withdrawal was considered in the light of the said guidelines and the request was turned down appropriately. It was further stated that the notice of termination of service or of retirement is a unilateral act whereby the officer communicates his intention to dissolve the contract of service and unlike resignation it operates

without the consent of the other party. It is, therefore, submitted that once notice was given it became operative immediately, if it was received by the government and automatically brought about the dissolution of contract after the expiry of the notice period. We are unable to accept this submission and this position. The dissolution would be brought about only on the date indicated i.e. 31-3-1981; up to that the appellant was and is a government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation.

12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set-up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.”

Further, in the case of **Power Finance Corp. Ltd. Vs. Pramod Kumar Bhatia**, reported (1997) 4 SCC 280, has held under:

“3. The admitted position is that the respondent, while working in the appellant-Corporation, had applied for voluntary retirement, pursuant to the scheme framed by the Corporation to relieve the surplus staff. Initially, by proceedings dated 20-12-1994, the Corporation accepted his resignation subject to the clearance of the

outstanding dues. The acceptance was to be given effect from 31-12-1994. By letter dated 6-1-1995, he requested for deduction of a sum of Rs 37,521.20 out of the outstanding dues. He also requested thus:

“I once again request you that the formal relieving order relieving me from PFC w.e.f. 31-12-1994 be handed over to me immediately. My service period for which ex gratia is payable be informed to me and my dues be paid immediately.”

4. Based thereon, it is contended by Mr P.P. Rao, learned Senior Counsel for the appellant, that acceptance of the voluntary retirement of the respondent was a conditional one. He himself understood that unless he is relieved of the duties after payment of outstanding dues, the voluntary retirement does not become effective. In the meanwhile, realising the mistake committed by the appellant for effecting the voluntary retirement scheme which does not apply to the Corporation since there is no surplus staff, the appellant withdrew the scheme. Therefore, there was neither the scheme nor a concluded order of voluntary retirement of the respondent relieving him from the duties. The High Court, therefore, is not right in holding that the order dated 20-12-1994 created vested right in the respondent and the same cannot be divested by subsequent orders.

7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently.”

17. It is now settled legal position that unless the employee is relieved from the duty after acceptance of the offer of voluntary retirement or resignation, the jural relationship of employer-employee does not come to an end.

18. The judgment relied upon by the learned counsel for the respondents does not come to his rescue rather, it helps the petitioner. Para-15 of the judgment passed by the Hon'ble Patna High Court in case of **Panchanan Jha Vs. State of Bihar & Ors. (supra)**, as relied upon by the learned upon by learned counsel for the respondent-Corporation reads as under:

“15. In my view this submission has only got to be stated to be rejected. A similar situation arose in Union of India v. Gopal Chandra Mishra [(1978) 2 SCC 301 : A.I.R. 1978 S.C. 694], where Satish Chandra, J., of the Allahabad High Court had written to the President of India on 7 May, 1977, that he was resigning from the office of Judge of the High Court of Judicature at Allahabad. The resignation was to take effect from 1 August, 1977. Before the date mentioned in the letter of Justice Chandra, he withdrew his letter of resignation by writing to the President of India on 15 March, 1977. Question arose whether Justice Sri Chandra's resignation must be taken as effective and that the withdrawal of the resignation was of no consequence. On 1 August, 1977, Gopal Chandra Mishra, an advocate of the Allahabad High Court filed an application under Art. 226 of the Constitution contending that the resignation, dated 7 May, 1977, which had been duly communicated to the President of India, was final and irrevocable and Sri Chandra ceased to be a Judge of Allahabad High Court with effect from 7 May, 1977, or at any rate from 1 August, 1977. A Special Bench of Five Judges allowed the application by majority of 3 against 2. The High Court held that resignation once tendered to the President in terms of proviso A to Art. 217 of the Constitution was irrevocable and that the subsequent letter withdrawing the resignation was inconsequential. The Union of India as well as Chandra, J. (as he then was), filed appeal against the judgment to the Supreme Court, The Supreme Court held that where a Judge had prescribed a particular date from which his resignation would be effective and if the Judge withdraws his resignation before that date comes to pass, the resignation will not take effect as the act of resigning office is not complete before the fixed date. The authority of the Supreme Court in the above case must apply to the present case as well. Every civil servant is entitled to resign and demit office but if he withdraws his resignation before it has been accepted or has taken effect it would be open to the civil servant to withdraw it, and set the resignation at naught. The petitioner having

withdrawn his resignation before the fixed date did not debar himself from withdrawing his offer of resignation.”

19. In the instant case, the resignation of the petitioner was never notified and there was no severance in the relationship of employer-employee and the benefits of voluntary retirement were never accepted nor extended to the petitioner. In absence of all these ingredients, it can comfortably be said that it was open for the respondents to reconsider the case of petitioner for continuance into the service.

20. As a sequitur to the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, the order dated 18.01.2023, issued by Additional Principal Chief Conservator of Forest-cum-Managing Director, Jharkhand State Forest Development Corporation whereby the representation of the petitioner for withdrawal from Voluntary Retirement Scheme and reinstate him in services has been rejected, is hereby quashed and set aside.

21. Upon quashment of the impugned order, it is open for the respondents to allow the petitioner to withdraw himself from the Voluntary Retirement Scheme and by reinstating his service, extending him all the consequential benefits, for which he was entitled for, in accordance with law.

22. Resultantly, the writ petition stands allowed.

(Dr. S.N. Pathak, J.)