

petition under section 13 of the Act for the reason that parties to the litigation had already arrived at a settlement on August 27, 1978, whereby they had severed their marital relationship completely after returning to each other the various articles which had been given or presented to them at the time of their marriage, about three years earlier. I, however, do not feel the necessity of going into this aspect of the matter any further for the short reason that no material to that effect has been brought on the records of these proceedings. In any case, if the respondent can depend on such a settlement or compromise, she has to prove the same during the course of regular proceedings for divorce. This, however, may be stated that the appellant stoutly denies the genuineness and the validity of any such settlement or compromise claimed to have been effected between the parties.

For the reasons recorded above, I allow this appeal and while setting aside the impugned order, dated May 7, 1981, also set aside the *ex parte* decree granted against the appellant under section 13 of the Act on March 12, 1979 and direct the trial Court to proceed to decide the same on merits in accordance with law. The parties through their counsel are directed to appear before the lower Court on January 5, 1983.

N.K.S.

Before S. S. Sandhwalia, C.J. & S. S. Sodhi, J.

AMIN CHAND,—Petitioner.

versus

THE STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 1779 of 1982.

December 8, 1982.

Government instructions on voluntary retirement—Clause V—Government employee serving a notice for voluntary retirement and then seeking to withdraw the same—Government instructions permitting withdrawal of the notice only with the approval of the appropriate authority—Such employee—Whether still entitled to withdraw the notice before its expiry.

Held. that the right of a Government employee to seek voluntary retirement or to thereafter withdraw such a request are

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matters concerning his conditions of service which are governed by the relevant rules. If the relevant rule is, as set out in clause V of the Government instructions, withdrawal of the request for voluntary retirement can obviously be not claimed as a matter of right but subject to the two conditions set out therein. In other words, the Government employee having exercised the right of seeking voluntary retirement under the relevant provisions of the Government instructions was also bound by the other terms thereof. He could not, thus, claim an unfettered right of withdrawing his request for voluntary retirement. In terms of clause V, withdrawal of the request for voluntary retirement is subject to the approval of the appropriate authority. (Para 7).

Petition Under Articles 226 of the Constitution of India praying that this Hon'ble Court may please to issue a writ of certiorari, mandamus, or any other suitable Writ, direction or order directing the respondents :—

- (i) to produce the complete records of the case;
- (ii) to quash order at annexures P. 5 and P. 6 ;
- (iii) it be declared that the petitioner still continues in Government service ;
- (iv) the petitioner may also be granted all the consequential reliefs like seniority, arrears of salary, annual increments etc. ;
- (v) any other relief may also be granted, which this Hon'ble Court may deem fit and proper in the circumstances of the case; and
- (vi) the costs of the petition may also awarded to the petitioner.

Manmohan Singh, Advocate, for the Petitioners.

B. S. Gupta, Advocate, for A.G. Haryana.

JUDGMENT

S. S. Sodhi, J.

(1) The challenge in this Writ Petition is to the petitioner's retirement from service despite the withdrawal by him of his request seeking such retirement.

(2) The petitioner, who was employed as Head Revenue Clerk in the Irrigation Department of the Haryana Government

sought voluntary retirement from service under the relevant government instructions contained in their letter No. 1/2(27)-79-IPRI dated August 1, 1980 (Annexure P-1). The request for voluntary retirement was made by his letter of March 3, 1981 (Annexure P-2) which was reiterated on September 8, 1981, when he wrote another letter (Annexure P-3) seeking retirement, this time specifying December 31, 1981 as the date with effect from which he sought such retirement.

(3) Later, however, before any orders had been passed on the petitioner's request for retirement, he changed his mind and on December 3, 1981 wrote to the Executive Engineer concerned that he had withdrawn his request for retirement from service. The withdrawal of the petitioner's request for voluntary retirement was not approved by the government and the petitioner was so informed by the letter of December 28, 1981 (Annexure R-1) which also stated that he would be relieved from his post with effect from December 31, 1981 and consequently the petitioner stood retired from service from that date.

(4) According to Mr. Manmohan Singh, counsel for the petitioner, the position in law is well settled that if withdrawal of the notice seeking voluntary retirement is sought by a government employee while he is still in service the government has no option, but to grant him the requisite permission. In support he cited the judgment of the Supreme Court in *Jai Ram v. Union of India* (1). In dealing with the case of a government employee who had sought voluntary retirement and had later asked to rejoin duty while on leave preparatory to retirement, it was held that he must be allowed to do so. It was observed "it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so long as he continues in service and not after it has terminated."

(5) The main reliance was placed upon the recent judgment of Tandon J., in *Anand Parkash v. The State of Haryana & another* (2). Anand Parkash, an Architect, in the department of Architecture, Haryana sought voluntary retirement from service

(1) A.I.R. 1954 S.C. 584.

(2) Crp. 3929 of 1981, decided on May 12, 1982.

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with effect from February 28, 1981. This request was acceded to by an order passed on February 19, 1981. On February 24, 1981, however, the petitioner, pleading a change in circumstances, sought a withdrawal of his request for voluntary retirement. He was not permitted to do so. Following *Jai Ram's* case (supra) it was held that the petitioner had a right to withdraw his request for voluntary retirement before the date of his retirement. The order of government declining permission to the petitioner to withdraw his request for voluntary retirement was consequently quashed.

(6) The point canvassed and the authorities cited in support thereof are clearly of no avail to the petitioner in the present case. The matter here stands squarely covered by the relevant government instructions as contained in Annexure P-1, clause (v) of which reads as under:—

“A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appropriate authority provided the request for such withdrawal is made before the expiry of the notice.”

In the terms of this provision, withdrawal of the request for voluntary retirement is subject to the approval of the appropriate authority. It is this aspect of the case which distinguishes it from the authorities cited and relied upon by the counsel for the petitioner. Admittedly no such rule or provision governed the matter in those cases. It is thus not open to the petitioner to contend that withdrawal of his request for voluntary retirement was available to him as of right.

(7) The right of a government employee to seek voluntary retirement or to thereafter withdraw such a request are matters concerning his conditions of service which are governed by the relevant rules. If the relevant rule is, as set out in clause (v) of Annexure P-1, withdrawal of the request for voluntary retirement can obviously be not claimed as a matter of right, but subject to the two conditions set out therein. In other words, the petitioner having exercised the right of seeking voluntary retirement under the relevant provisions of Annexure P-1 was also bound by the other terms thereof. He could not thus claim an unfettered right of withdrawing his request for voluntary retirement.

(8) The impugned order was next sought to be assailed on the ground that the order (Annexure R-1) whereby his request to withdraw his prayer for voluntary retirement was declined was not a speaking order as no reasons were mentioned therein for declining it. A challenge was also made on the ground that this order had been passed without any opportunity being granted to the petitioner of being heard. There is no substance in either of these contentions. No challenge has been made in this petition to the validity of clause (v) of the instruction contained in Annexure P-1. The action taken in the present case was clearly in accordance with the terms thereof. The consequences that have accrued to the petitioner are of his own choosing. Having sought to avail of the benefit of these instructions, he thereby rendered himself liable to be bound by the terms thereof. No question of the grant of any hearing arises in such a situation, it deserves note that no *mala fides* or extraneous considerations are imputed or said to have played any role in the passing of the impugned order. There is also no warrant to infer any infirmity in the impugned order merely on the ground that no reasons have been set out therein for declining the request of the petitioner. The setting out reasons in such an order was clearly not occasioned by the circumstances here.

(9) In the result it must be held that no invalidity or illegality attaches as to the impugned order declining permission to the petitioner to withdraw his request for voluntary retirement. This writ petition is consequently hereby dismissed. In the circumstances, however, there will be no order as to costs.

S. S. Sandhwalia, C.J.—I agree.

N.K.S.

Before D. S. Tewatia, J.

FARIDABAD COMPLEX ADMINISTRATION, FARIDABAD,—
Petitioner.

versus

MOR LAL and another,—Respondents.

Civil Writ Petition No. 5247 of 1975.

December 10, 1982.

Industrial Disputes Act (XIV of 1947)—Section 33(2)(b)—Services of a workman terminated—Industrial dispute raised and pending adjudication—Employer re-employing the workman and discharging him the second time for misconduct—Such workman—Whether entitled to the protection of section 33(2)(b)—Section 33(2)(b)—When attracted.