



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE SIXTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO: 30881 OF 2013

Between:

1. Dr.Koduri Siva rama Prasada Rao S/o Ranga Rao Hindu, Retired Reader (Resigned), R/o. Flat T.F.2, H.No.21-60/121, Pearl Residency-III, Kakarinagar, N.A.D. Visakhapatnam.

...PETITIONER(S)

AND:

1. The Government of Andhra Pradesh Rep. by its The Commissioner of Collegiate Education, Nampally, Hyderabad.
2. The Regional Joint Director of Collegiate Education O/o. The Commissioner of Collegiate Education, Government Arts College Campus, Rajahmundry, East Godavari District.
3. The Principal Government Degree College, Main Road, Tanuku, W.G.District.
4. Secretary and Correspondent S.V.K.P. & Dr. K.S.Raju Arts & Science College, Penugonda, rep. by its Managing Director Dr. K.Ramachandra Raju, Penugonda, W.G.District.
5. The Principal S.V.K.P. & DR.K.S.Raju Arts & Science College, Penugonda, W.G.District.

...RESPONDENTS

Counsel for the Petitioner(s): B VEERA SWAMY RAJU

Counsel for the Respondents: GP FOR EDUCATION

The Court made the following: ORDER



***HON'BLE SRI JUSTICE RAVI NATH TILHARI**
+WRIT PETITION No.30881 OF 2013

%06.07.2022

#Dr.Koduri Siva rama Prasada Rao,
S/o.Ranga Rao, Hindu, aged about 57
years, Retired Reader (Resigned),
R/o. Flat T.F.2, H.No.21-60/121,
Pearl Residency-III, Kakarinagar,
N.A.D. Visakhapatnam.

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4. Secretary and Correspondent, S.V.K.P. & Dr.K.S.Raju Arts & Science College, Penugonda, rep. by its Managing Director Dr. K.Ramachandra Raju, Penugonda, West Godavari District.
5. The Principal, S.V.K.P. & Dr.K.S.Raju Arts & Science College, Penugonda, West Godavari District.

....Respondents/Respondents.

!Counsel for the petitioner
^Counsel for the respondents

: Sri M.Dielhi Babu
: Sri K.V.Raghuveer, learned GP for Education for respondent Nos.1 to 3
Sri S.S.Varma, learned counsel for respondents 4 and 5



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>Head Note:

? Cases referred:

1. State of Jharkhand and others vs. Jitendra Kumar Srivastava and another
2. Senior Divisional Manager, Life Insurance Corporation of India Limited and Others vs. Shree Lal Meena
3. Union of India vs. Abhiram Verma



HIGH COURT OF ANDHRA PRADESH

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....Respondents/Respondents.

DATE OF JUDGMENT PRONOUNCED: 06.07.2022.



SUBMITTED FOR APPROVAL:
THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

RAVI NATH TILHARI, J



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.30881 of 2013

JUDGMENT:-

1. Heard Sri M.Dielhi Babu, learned counsel representing B.Veera Swamy Raju, learned counsel for the petitioner and Sri K.V.Raghuveer, learned Government Pleader for Education representing the respondent Nos.1 to 3. There is no representation from the side of the respondent Nos.4 and 5.

2. This writ petition under Article 226 of the Constitution of India has been filed with the prayer to issue Writ of Mandamus directing the respondents to treat the petitioner's resignation as voluntary retirement and consequentially fix his pension and all other benefits attached to the post of 'Reader' and to pay the same to the petitioner.

3. The petitioner was appointed as Lecturer in Zoology on 10.10.1984 in S.V.K.P. & Dr. K.S.Raju Arts and Science College (in short 'the college'). The college was admitted into grant in aid from 03.12.1986. Later on, the petitioner was promoted as a 'Reader' in Zoology from 01.01.1996. The petitioner on 02.02.2008 submitted resignation, which was accepted by the college management on 15.02.2008 and the petitioner was relieved with effect from 02.02.2008.

4. In response to the petitioner's application dated 14.01.2011 under Right to Information Act, 2005 (for short "the Act"), he was informed *vide* proceedings dated 10.06.2011 (Ex.P7) that resignation from a service or post entails forfeiture of past service



and therefore his request for sanction of pensionary benefits was not feasible of compliance.

5. On 05.09.2013, the petitioner submitted representation dated 05.09.2013 to the 4th respondent requesting to make payment of his arrears since 2006 onwards until his resignation i.e. upto 02.02.2008, which was followed by other representations including the one dated 27.08.2013.

6. Later on, by representation dated 16.07.2013, Ex.P3, the petitioner requested respondent No.4 to convert his resignation into voluntary retirement with effect from 02.02.2008, so that he may get the pensionary benefits.

7. Sri M.Dielhi Babu, the learned counsel for the petitioner submits that the petitioner rendered almost 22 years of service and was eligible for grant of pension on such period of service. Pension is not bounty but property under Article 300-A of the Constitution of India of which there could be no deprivation and to enable the petitioner to get the pensionary benefits, his resignation deserves be converted into voluntary retirement. He has placed reliance in the case of ***State of Jharkhand and others vs. Jitendra Kumar Srivastava and another***¹.

8. Learned counsel for the petitioner next submits that the acceptance of the resignation by the management of the college was improper, as in the official meeting, dated 15.02.2008, the Vice President of the college management signed the 'minutes' in place of President without any authorization and sufficient number of members of the management had not signed.

9. Sri K.V.Raghuveer, learned Government Pleader submits that the petitioner voluntarily submitted resignation on

¹ (2013) 12 SCC 210



02.02.2008, which was accepted by the management of the college, the competent authority on 15.02.2008. After more than five (05) years of the acceptance, the petitioner submitted the application to convert the 'resignation' into voluntary retirement but there is no provision under the rules for such conversion. He submits that the resignation entails forfeiture of the past services for pensionary benefits under the Rule 26 of the Andhra Pradesh Revised Pension Rules, 1980, (in short the Pension Rules 1980) except in those cases, where it is tendered, to take up another employment permanent or temporary under the Government with proper permission, which is not the petitioner's case.

10. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

11. The point for consideration is as follows:-

“whether the petitioner's resignation after its acceptance can to be legally allowed to be converted into voluntary retirement?”

12. Undisputedly, the petitioner submitted resignation on 02.02.2008, which was accepted by the college management on 15.02.2008 with effect from 02.02.2008. It was also duly communicated to the Commissioner of Collegiate Education, Government of Andhra Pradesh on 18.02.2008 (annexed to the counter affidavit), by the Secretary & Correspondent, S.V.K.P. & Dr. K.S.Raju Arts and Science College/respondent No.4.

13. Learned counsel for the petitioner, upon a query made to him, if the order of acceptance of the petitioner's resignation was ever challenged, submits that the same was not challenged.

14. In the absence of any challenge to the order of acceptance of the resignation, the submission advanced by the petitioner's



counsel that the acceptance of resignation was not proper on the grounds urged, requires no consideration.

15. Besides, nothing has been brought on record to substantiate that the management was not competent to accept the resignation. Any rule, relating to the quorum or the authorization etc. has also not been brought on record. Resignation was accepted on 18.02.2008 w.e.f 02.02.2008, and it was after more than five (05) years that the representation was filed to convert the resignation into voluntary retirement. The Writ Petition was also filed in the year 2013 for the same prayer but without challenging the order of acceptance of resignation, which acceptance is not disputed.

16. Now, coming to the point under consideration, learned counsel for the petitioner could not place any service rule permitting conversion of the resignation into voluntary retirement.

17. In service jurisprudence, the expression “voluntary retirement” and “resignation” convey different connotations. Though voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service, but they operate differently. One of the basic distinctions is that in the case of resignation, it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Another distinction is that in the case of resignation, normally retiral benefits are denied, but in the case of voluntary retirement, the same is not denied. In the case of resignation, permission or notice is not mandated, while in the case of voluntary retirement, permission of the employee is a requisite condition.



18. In **Senior Divisional Manager, Life Insurance Corporation of India Limited and Others vs. Shree Lal Meena**², the Hon'ble Apex Court held as under in paragraph Nos.22 and 23, which are reproduced:-

22. *The principles in the context of the controversy before us are well enunciated in the judgment of this Court in RBI v. Cecil Dennis Solomon {2004 9 SCC 461 : 2004 SCC (L&S) 737}. On a similar factual matrix, the employees had resigned some time in 1988. The RBI Pension Regulations came in operation in 1990. The employees who had resigned earlier sought applicability of these Pension Regulations to themselves. The provisions, once again, had a similar Clause of forfeiture of service, on resignation or dismissal or termination. The relevant observations are as under: (SCC pp. 467-68, paras 10-11)*

"10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general Rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal [(1989 Supp (2) SCC 175 : 1990 SCC (L&S) 143] on interpretation of

² (2019) 4 SCC 479



Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra [(1978) 2 SCC 301 : 1978 SCC (L&S) 303] it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.

11. On the contrary, as noted by this Court in Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] while the Government reserves its right to compulsorily retire a government servant, even against his wish, there is a corresponding right of the government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship.”

23. *In our view, the aforesaid principles squarely apply in the facts of the present case and the relevant legal principles is that voluntary retirement is a concept read into a condition of service, which has to be created by a statutory provision, while resignation is the unilateral determination of an employer-employee relationship, whereby an employee cannot be a bonded labour.*

19. Recently, in **Union of India vs. Abhiram Verma**³, the Hon’ble Apex Court reiterated that there is distinction between the

³ (2021) SCC Online SC 845



“resignation” and “voluntary retirement”. A person can resign at any time during his service, however, an officer cannot ask for premature/voluntary retirement unless he fulfills the eligibility criteria. It is relevant to reproduce the paragraph Nos.33 and 34 as follows:-

“33. *Even, there is a distinction between the “resignation” and “voluntary retirement”. A person can resign at any time during his service, however, an officer cannot ask for premature/voluntary retirement unless he fulfils the eligibility criteria.*

34. *This Court had an occasion to consider the distinction between “resignation” and “voluntary retirement” in the case of [Senior Divisional Manager, LIC v. Shree Lal Meena](#), reported in (2019) 4 SCC 479, which has been subsequently followed by this Court in the case of [BSES Yamuna Power Ltd. \(supra\)](#). In paragraph 22, it is observed and held as under:*

“22. The principles in the context of the controversy before us are well enunciated in the judgment of this Court in [RBI v. Cecil Dennis Solomon](#) [[RBI v. Cecil Dennis Solomon](#), (2004) 9 SCC 461: 2004 SCC (L&S) 737]. On a similar factual matrix, the employees had resigned sometime in 1988. The RBI Pension Regulations came in operation in 1990. The employees who had resigned earlier sought applicability of these Pension Regulations to themselves. The provisions, once again, had a similar clause of forfeiture of service, on resignation or dismissal or termination. The relevant observations are as under: (SCC pp. 467-68, paras 10)

“10. In service jurisprudence, the expressions “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary....”



20. In view of the aforesaid pronouncement of the Hon'ble Apex Court as also in the absence of any service rule permitting conversion of resignation into voluntary retirement, the prayer of the petitioner to convert his resignation into voluntary retirement cannot be granted.

21. Next submission of the learned counsel for the petitioner is that the pension is not bounty and a person cannot be deprived of his pension, which is his property under Article 300-A of the Constitution of India, placing reliance upon the judgment of the Hon'ble Apex Court in the case of **Jitendra Kumar Srivastava (supra)**.

22. In **Jitendra Kumar Srivastava (supra)**, the Hon'ble Apex Court held that the right to receive pension is recognized as a right in property. It has also been held that a person cannot be deprived of this pension without the authority of law. Paragraph No.16 of the judgment upon which reliance is placed by the learned counsel for the petitioner reads as under:-

“16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property”. Article 300-A of the Constitution of India reads as under:

“300-A. Persons not to be deprived of property save by authority of law:- No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administration instruction cannot be countenanced.”



23. **Jitendra Kumar Srivastava (supra)** is of no help to the petitioner, firstly, because that is not a case of resignation and secondly, in view of the law laid down, as reproduced above, the deprivation can be by an authority of law. Authority of law, in the present case, is the Andhra Pradesh Revised Pension Rules, 1980 of which Rule 26 specifically provides that resignation from a service or post entails the forfeiture of past service.

24. Rule 26 of the Andhra Pradesh Revised Pension Rules, 1980, provides as under:-

“26. Forfeiture of service on resignation:- (1)
Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

25. Rule 26 (1), specifically provides that resignation from a service or post entails forfeiture of past service and consequently does not qualify for pensionary benefits. Therefore, when the petitioner retired the pension rules being applicable the consequences are forfeiture of past service under Rule 26 of the Pension Rules 1980.

26. The proviso to Rule 26 (1) of the Pension Rules 1980, which provides that the resignation shall not entail forfeiture of past service, if it has been submitted to take up, with proper



permission, another appointment, whether temporary or permanent, under the Government, where the service qualifies, is not attracted, as it is not the petitioner's case that resignation was submitted to take up with proper permission another appointment fulfilling the conditions as mentioned in the proviso.

27. In **Abhiram Verma (supra)**, the Hon'ble Apex Court referring to BSES Yamuna Power Limited, reiterated that while pension schemes do form beneficial legislation in a delegated form, a beneficial construction cannot run contrary to the express terms of the provisions. The issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. Therefore, an employer, who has tendered the resignation has to suffer the consequences. Paragraph No.35 of **Abhiram Verma (supra)** is reproduced as under:-

35. The law laid down by this Court in the case of Shree Lal Meena (supra) has been reiterated by this Court in the subsequent decision in the case of BSES Yamuna Power Ltd. (supra) and in the subsequent decision, this Court also considered the observations made in paragraph 26 in Shree Lal Meena (supra) that while pension schemes do form beneficial legislation in a delegated form, a beneficial construction cannot run contrary to the express terms of the provisions. It is further observed that the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. Therefore, having tendered the "resignation", the respondent has to suffer the consequences and now cannot be



permitted to take 'U' turn and say that what the respondent wanted was "premature retirement" and not "resignation".

28. For all the aforesaid reasons, I do not find any merit in the writ petition which deserves to be dismissed.

29. There is, however one aspect of the matter. Vide representation dated 05.09.2013, Ex.P1 to the petition, the petitioner requested, respondent No.4 to pay his arrears since 2006 onwards until his resignation upto 02.02.2008. In the counter affidavit, it has been admitted as also during arguments, learned Government Pleader submitted that due to revision of scales w.e.f. 01.01.2006 in terms of G.O.Ms.No.14, Higher Education Department, dated 20.02.2010, the payment of arrears for the period from 01.01.2006 to 02.02.2008 deserves consideration for which, it is the responsibility of the 4th respondent, as per the eligibility and applicability of the G.O.Ms.No.14, dated 20.02.2010.

30. Learned counsel for the petitioner submits that the arrears for the period aforesaid have yet not been released. If it is so, the respondents deserve to be directed to release the arrears for the period w.e.f 01.01.2006 to 02.02.2008 subject to the petitioner's eligibility and applicability of G.O.Ms.No.14, Higher Education Department, dated 20.02.2010, if the same has not been released and there is no other legal impediment.

31. Accordingly, it is provided that the respondent Nos.4 and 5 shall look into the aspect of the matter as in Para No.30 (supra). If any arrears w.e.f 01.01.2006 upto 02.02.2008 (the date of acceptance of resignation), are payable to the petitioner under the G.O.Ms.No.14, Higher Education Department, dated 20.02.2010, the petitioner is permitted to file a fresh representation before the



respondent Nos.4 and 5, upon which out of them the competent authority shall pass a reasoned and speaking order, within a period of two (02) months from the date of production of the copy of this judgment/order before those authorities.

32. Except for the direction in Paragraph No.31 as above, the writ petition is dismissed.

33. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

Date: 06.07.2022
SCS



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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WRIT PETITION No.30881 of 2013

Date: 06.07.2022

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