

Yashpal Singh Vs. State and Others

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Court : Jammu and Kashmir

Decided On : Jul-24-2015

Judge : Dhiraj Singh Thakur & Janak Raj Kotwal

Appeal No. : LPASW No. 146 of 2003, MP No. 1 of 2015, 216 of 2003

Appellant : Yashpal Singh

Respondent : State and Others

Judgement :

Dhiraj Singh Thakur, J.

1. The present Letters Patent Appeal has been preferred against the judgment and order dated 13-6-2003 passed in SWP No. 1077 of 2000 whereby the writ Court has dismissed the writ petition filed by the petitioner.

2. At this stage, it is necessary to give the material facts in brief in the light of which the present controversy has arisen.

3. The petitioner came to be selected as a Watcher by the Selection Committee in the Department of Forest and consequent thereto, an order of appointment dated 5.8.1997 was passed by the Chief Conservator of Forests, Jammu.

Although no period was prescribed in the order of appointment, requiring the appointees to join, yet it is admitted that the petitioner did not join pursuant to his

selection and appointment and for the first time came forward to submit his joining report on 20.3.1998.

The reason reflected in the writ petition for not joining immediately after the issuance of the letter of appointment is stated to be the ill-health of the petitioner, who claims to have remained under treatment from 3.8.1997 to 1.5.1999. To buttress and support this assertion, the petitioner also annexed with the petition a certificate issued by an Assistant Surgeon from the department of State Health Services.

4. The stand of the official respondents as is reflected from the reply on record is that since the petitioner did not report to join his duties immediately after the issuance of the letter of appointment, the order of appointment lived its life and the petitioner cannot in law claim any benefit therefrom.

5. It is stated that the petitioner for the first time reported for joining his duties on 20.3.1998 and prayed that the effect be given w.e.f., 5.8.1997. This request having been refused, the petitioner took back his joining report, which was submitted and it was only on 16.8.1999 that the petitioner yet again approached the respondents with the request for allowing him to join the post. This request was yet again referred to the Director, Forest Protection Force, which was refused and hence the petition.

6. The writ court having heard the matter dismissed the writ petition vide judgment and order dated 13.6.2003 on the ground that since the petitioner had not joined his services pursuant to his selection and appointment within a reasonable period of time from the date of issuance of said appointment letter, the petitioner's right of appointment was lost. It is this judgment and order that has been challenged in the present letters patent appeal.

7. Learned counsel for the appellant urged before us that the petitioner having been permitted to join on 20.3.1998 in the office of the respondents, the right of the petitioner to work against the said post could not have been denied. It was urged that there was no question of taking back his joining report, which was submitted on 20.3.1998 and continued to remain on the records of the

respondents.

8-9. It was also urged that since there was no joining period prescribed, the petitioner could have joined even later and that only because the petitioner joined late, which was due to certain circumstances beyond his control on account of his illness, the refusal on the part of the respondents to permit him to discharge his duties was unreasonable.

Heard counsel for the parties.

10. Admittedly, the petitioner-appellant herein did not join immediately after the issuance of the letter of appointment dated 5.8.1997 and for the first time, came to submit his joining report on 20.3.1998 i.e., after a lapse of more than six months. Assuming there was no period prescribed in the letter of appointment, requiring the appointees to join and report for their service within a stipulated time, yet the appointees ought to have come forward to submit their joining reports within a reasonable time after the issuance of such letters of appointment.

11. It appears from the response filed by the State that the other candidates selected in the same process of selection had come forward and submitted their joining reports by 30.8.1997. The assertion of learned counsel for the appellant that the petitioner/appellant herein could not join immediately after the issuance of the letter of appointment was on account of his ill-health is also vague and general.

12. The memo of petition filed by the appellant does not reflect as to what was the nature of illness nor can it be comprehended from the certificate produced by him from Assistant Surgeon of the State Health Department. Even the certificate appears to have been procured only with a view to somehow carve out a case of illness and furnish a ground to the petitioner on which he could sustain his case in the present petition. For all intents and purposes, the petitioner appears to have voluntarily abandoned his right of appointment by not submitting his joining report immediately after the issuance of the letter of appointment.

13. In *Buckingham and Carnatic Co. Ltd. v. Venkatiah and anr*, AIR 1964 SC 1272, the Apex Court observed as under:-

"Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf."

14. In *M/s Jeewanlal (1929) Ltd., Calcutta v. Its Workmen*, AIR 1961 SC 1567, the Apex Court held as under:-

"...there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee."

15. In *State of Haryana v. Om Parkash and anr*, (1998) 8 SCC 733, a distinction was drawn between a case of termination where there had to be positive action on the part of the employer against a case of abandonment, which was held to be a consequence of a unilateral action by the employee.

16. In *Vijay S. Sathaye v. Indian Airlines Ltd and Ors*, (2013) 10 SCC 253, the Apex Court reiterated the aforementioned view by placing reliance upon AIR 2000 SC 2198, *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association and Anr.*, AIR 2000 SC 2783, *Aligarh Muslim University and ors. v. Mansoor Ali Khan*, AIR 2006 SC 2304, *V.C. Banaras Hindu University and ors. v. Shrikant and* (2009) 9 SCC 462, *Regional Manager, Bank of Baroda v. Anita Nandrajog*.

17. Applying the aforementioned principles of law in the facts and circumstances of the present case, we have no doubt in holding that the petitioner by not submitting his joining report immediately after the receipt of the issuance of the letter of appointment had intended to abandon his right to the post against which he was selected. Having abandoned that right, the petitioner could not have subsequently come forward to submit his joining report after a lapse of more than seven months of the issuance of the letter of appointment.

18. The mere ministerial act of submitting his joining report in the office of the respondents as late as on 20.3.1998 would not by itself create a right in the

petitioner neither could the petitioner on that basis alone claim that his appointment should be deemed to have survived on account of submission of such a joining report. In any case, the fact as to whether the petitioner took back his joining report submitted on 20.3.1998 is a question, which is disputed and hence cannot be gone into by this court.

19. Learned counsel for the appellant placed reliance upon 1996 SLJ 311, Ashwani Kumar v. Union of India to support the proposition that appointment order made after proper selection cannot be cancelled after the appointee has joined. However, the aforementioned judgment is inapt and does not apply to the facts of the present case.

20. Be that as it may, we do not see any reason to interfere with the findings arrived at by the learned Single Judge. The appeal is found to be without merit and is accordingly dismissed along with connected applications.

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