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**SooperKanoon Citation :** [sooperkanoon.com/520652](http://sooperkanoon.com/520652)

**Court :** Jharkhand

**Decided On :** Jul-10-2006

**Reported in :** 2007(1)BLJR249; [2006(4)JCR254(Jhr)]

**Judge :** Permod Kohli, J.

**Appeal No. :** C.W.J.C. No. 776 of 1999(R)

**Appellant :** Dukhan Ram

**Respondent :** Heavy Engineering Corporation Ltd. and ors.

**Advocate for Def. :** R. Mukhopadhaya, Adv.

**Advocate for Pet/Ap. :** Dilip Jerath and; S.N. Pd., Advs.

**Disposition :** Petition allowed

**Judgement :**

**Permod Kohli, J.**

1. Petitioner was serving with respondent No. 1, a Government of India Corporation. Respondent No. 1 sponsored Voluntary Retirement Scheme for its employees. Petitioner applied for voluntary retirement on 31.10.1996. His application remained pending. Petitioner having a second thought, withdrew his request for voluntary retirement by his application dated 31.7.1997. That

application also remained pending. Government of India, Ministry of Industry vide its memorandum dated 19.5.1998, enhanced the age of retirement of the employees of public sector undertakings from 58 years to 60 years. In the meanwhile, petitioner sought medical leave w.e.f. 1.4.1998 and was to join on expiry of leave after 16.5.1998. While he was on medical leave, respondents passed an order dated 4.5.1998, retiring the petitioner from service by accepting his request for voluntary retirement. It is alleged that even this order was not communicated to him. Petitioner approached respondent-Corporation to rejoin his duty on 18.5.1998 when he was informed that he has already been retired from service w.e.f. 4.5.1998. Petitioner has challenged the order dated 4.5.1998 in this petition on the ground that retirement order is illegal and contrary to law. According to the petitioner, he had withdrawn his request for voluntary retirement by an application dated 31.7.1997. When he applied for withdrawal of his request for voluntary retirement, respondents had not taken any decision to retire him and thus the impugned Order retiring him from service is not sustainable in law. It is further contended on behalf of the petitioner that he is also entitled to benefit of enhancement of retirement age from 58 years to 60 years and the impugned order deprived him of this benefit. Accordingly, petitioner has prayed for quashment of the impugned order and for his continuance in service till the age of 60 years or in the alternative to give benefit of voluntary retirement scheme treating his age of retirement as 60 years. No counter-affidavit has been filed and hence the factual averments made in the writ petition remained un rebutted.

2. Petitioner has placed on record a copy of the memorandum dated 19.5.1998, issued by the Ministry of Industry, Department of Public Enterprises, Government of India, whereby decision was taken to enhance age of retirement for employees of Central Public Sector Enterprises from 58 years to 60 years. A copy of the request letter of the petitioner withdrawing his earlier request for voluntary retirement is also on record. In the order impugned in this petition, it is mentioned that request of the petitioner for voluntary retirement under the HECL Voluntary Retirement Scheme, 1990 has been accepted with immediate effect and petitioner was ordered to be released from Corporation on 4.5.1998 i.e the date of passing of this order. No reference is made to the application of the petitioner withdrawing his request for voluntary retirement in the impugned order and in absence of

counter/reply, there does not seem to be any valid reason for non-consideration or non-acceptance of the request of the petitioner made by application dated 31.7.1997 withdrawing his request for voluntary retirement. Therefore, it can be safely concluded that respondents have passed the order discharging the petitioner from service giving him voluntary retirement without considering his later request. In absence of any reply, it can also be concluded that there are no valid reasons for rejecting the application of the petitioner dated 31.7.1997. Learned Counsel appearing for the respondents has referred to a judgment of this Court in C.W.J.C. No. 670 of 1999(R) decided on 31.3.2003. In this case, writ petition was dismissed on two grounds (1) being belated application and (2) the writ petitioner had accepted the retirement compensation under the Voluntary Retirement Scheme. In the present case, petitioner filed this petition on 19.3.1999 and there is nothing on record to show that he has accepted voluntary retirement compensation. Otherwise also this petition was admitted in 1999 and it is too late in the day to throw this petition on the question of laches. Question which requires determination by this Court is 'whether the voluntary retirement of the petitioner after withdrawal of his earlier request for retirement is justified.' There is no dispute that petitioner withdrew his request for voluntary retirement before it could be accepted.

3. In the case of Union of India v. Wing Commander T. Parthasarathy (2001)<sup>1</sup> Supreme Court Cases 158 Hon'ble Supreme Court held a request for premature retirement which required the acceptance of the competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before it became so complete.

4. In the case of Bank of India v. O.P. Swarnakar : (2003)ILLJ819SC Hon'ble Supreme Court while considering the right of an employee to withdraw the request for voluntary retirement under the Voluntary Retirement Scheme formulated by the Banks held as under:

The submission of the learned Attorney-General that as soon as an offer is made by an employee the same would amount to resignation in praesenti cannot be accepted. The Scheme was in force for a fixed period. A decision by the authority

was required to be taken and till a decision was taken, the jural relationship of employer and employee continued and the employees concerned would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of the fact that it was come into force at a later date and that too subject to acceptance thereof by the employer.

5. Similarly in the case of Srikantha S.M. v. Bharath Earth Movers Ltd. : (2005)8SCC314 resignation of the employee was accepted by the Company on 4.1.1993 and he was ordered to be relieved on that date. However, he was informed by a subsequent letter that he would be relieved after office hours i.e. 15.1.1993. In the meanwhile, he was granted casual leave also. Petitioner by subsequent letter withdrew his resignation on 8.1.1993. Admittedly, he was not allowed to continue after 15.1.1993. Hon'ble Supreme Court held that employee was entitled to withdraw his resignation even after his acceptance when a jural relationship between the employer and the employee continued before his resignation was withdrawn. Hon'ble Supreme Court set aside the acceptance of resignation order and directed payment of benefits to the employee till he attained superannuation.

6. In view of the law laid down in catena of judgments, including referred to above, order of voluntary retirement of the petitioner dated 4.5.1998 impugned in his petition is not sustainable in law and is hereby quashed.

7. Since this petition was filed in the year 1999 and petitioner must have attained the age of superannuation, he cannot be reinducted into the service at this belated stage. Petitioner has also made an alternative prayer for treating his service up to the age of 60 years and payment of compensation for voluntary retirement taking into consideration the age of retirement as 60 years. This petition is accordingly allowed and direction is issued to the respondent-Corporation to pay the compensation to the petitioner treating his age of retirement as 60 years. Let all the benefits payable to the petitioner be paid within a period of three months. No order as to costs. Petitioner shall be entitled to statutory interest as payable under Rules for such of the retiral benefits like gratuity and provident fund and interest on

the delayed payment of compensation amount at the rate of 6% w.e.f. the date he was retired on 4.5.98 till the amount is actually paid.

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