

Balmukund Oriya Vs. State

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Court : Orissa

Decided On : Oct-08-1969

Reported in : AIR1970Ori130

Judge : G.K. Misra, C.J. and ;R.N. Misra, J.

Acts : [Constitution of India](#) - Article 311

Appeal No. : O.J.C. No. 231 of 1967

Appellant : Balmukund Oriya

Respondent : State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R. Mohanty, Adv.

Disposition : Application dismissed

Judgement :

G.K. Misra, C.J.

1. Facts may be stated in brief. On 1-3-1963 the petitioner was promoted to the post of Head Assistant in the Sambalpur Collectorate. On 22-9-63 he applied for three months earned leave with effect from 20-10-63 to go on pilgrimage, but the leave was not granted. He made an application on 8-2-1964 (which has not been

made an Annexure), to grant leave for eight months preparatory to retirement, in case earned leave was not granted. On 26-2-1964 earned leave for three months was granted but the petitioner could not avail of the same as no reliever was available. On 15-4-1964, in annexure B addressed to the Collector of Sambalpur the petitioner stated;

'In the circumstances, it is requested that my application dated 8-2-64 may be treated as a notice for my retirement and I may be allowed to proceed on leave preparatory to retirement, for a period of 12 months from the date of my relief... I would further request you to grant me a copy of the orders refusing to allow me to proceed on leave on private affairs so as to allow me an opportunity to take up the matter with higher authorities.'

On 30-4-1964 (Annexure C) the Collector of Sambalpur passed the following order;

'Sri Balmukund Oriya. Accountant, District Treasury Sambalpur. is granted leave on average pay for 4 months preparatory to retirement, from the date of his relief as he has notified his intention to retire from service in his application dated 8-2-64. The order permitting him to retire shall be issued separately.'

Thus, the petitioner was granted 4 months leave and was permitted to retire on the expiry of his leave as requested by him, On 17-7-64 (Annexure D) the petitioner filed an appeal to the Revenue Divisional Commissioner, Northern Division. Sambalpur. Therein he asserted that in his application dated 8-2-64, he made a conditional prayer to relieve him immediately to proceed on pilgrimage as otherwise it would not be possible, in his old age, to undertake such pilgrimage. He made a prayer that the Commissioner should direct the Collector to treat the leave which was being availed of by the petitioner as leave on private affairs, instead of as leave preparatory to retirement. On 28-8-1964 (Annexure F) the petitioner filed another application before the Collector of Sambalpur asking for leave on half average pay for a further period of four months with effect from 1-9-1964, On 31-8-1964 (Annexure E) the Collector passed the order of retirement of the petitioner with effect from 1-9-1964 after the expiry of leave preparatory to retirement. On 7-9-1964 (Annexure G) the petitioner filed an appeal before the

Minister Revenue Department against the order of the Collector dated 30-4-1964. Therein he prayed that a direction be issued to the Collector to treat the leave that the petitioner was availing of as leave on private affairs and to grant him extension of leave. On 6-2-1965 (Annexure H) the petitioner filed an application before the Revenue Divisional Commissioner praying for a direction to the Collector to transmit the appeal petition to him with the relevant records. A copy of this application was also submitted to the Collector for information and necessary action. Therein he clearly stated:

'I revoke my option to retire before attaining the age of my compulsory retirement. Necessary orders may kindly be passed and communicated to me early.'

On 20-10-1965 (Annexure I) the Additional District Magistrate, Sambalpur intimated to the petitioner that the Revenue Divisional Commissioner rejected the petitioner's appeal filed on 17-7-1964. On 29-12-1965 the order of the Revenue Department was communicated to the petitioner, along with the forwarding letter. The relevant portion of the order runs thus:

'Government have also been pleased to order that Sri Oriya (petitioner) should be granted leave for 12 months preparatory to retirement under Rule 161 of the Orissa Service Code, Volume I, with effect from 1-5-1964. ie. the date from which he had actually gone on leave and should be deemed to have retired from service from the date on which the leave expires.'

2. The position, therefore, is that the Collector's order directing the retirement of the petitioner from service was confirmed, but so far as leave was concerned the Collector's order granting 4 months leave was modified and in all he was given 12 months' leave preparatory to retirement.

3. The petitioner assails the order of the Collector and the Government directing him to retire on the ground that leave was due to him and he was entitled to take leave on private affairs, and that before the final order accepting his offer to retire was passed, he revoked his offer to retire and that, therefore, the order of Government retiring him was illegal.

4. Law is now well settled that an officer is entitled to revoke his resignation or offer of retirement before its acceptance by the appropriate authority. See *Rajkumar v. Union of India*, AIR 1969 SC 180. The petitioner's case is that he revoked his offer of retirement before the final order accepting his offer to retire was passed. Factually the petitioner is correct, but the principle involved is somewhat different. Initially the petitioner had applied for leave on private affairs. That leave was not granted. Even though leave was granted subsequently, the petitioner could not avail of the same, as no reliever was available. It was at that stage that the petitioner exercised his option to retire and asked for leave preparatory to retirement. The grant of leave preparatory to retirement was, therefore, integrally intertwined with the exercise of the option to retire. Though the leave was due to the petitioner he was not entitled to the same as a matter of right. The authority competent to grant leave conferred the benefit on the petitioner acting on the petitioner's offer; to retire. If such an offer had not been expressed the leave might have been refused by the competent authority. The two features operate simultaneously and one cannot be dissociated from the other. The petitioner cannot retract from the obligation and exercise the right integrally connected with the performance of that obligation. He cannot be allowed to approbate and reprobate.

On the aforesaid analysis, the principle that offer of resignation or option to retire can be revoked before its acceptance, has no application to the present case.

In the result the writ application fails and is dismissed, but, in the circumstances there will be no order as to costs.

R.N. Misra, J.

5. I agree.