

Dev Kumar Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-09-2007

Reported in : 2007(3)WLN309

Judge : H.R. Panwar, J.

Appeal No. : S.B. Civil Writ Petition No. 444/2005

Appellant : Dev Kumar

Respondent : State of Rajasthan and ors.

Judgement :

H.R. Panwar, J.

1. By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents that the petitioner voluntarily retired from police service w.e.f. 30.11.2000 instead of w.e.f. 10.09.2004 vide Annex. 9.
2. I have heard learned Counsel for the parties.
3. The facts and circumstances giving rise to the present writ petition are that the petitioner was appointed on the post of Constable in the Department of Police with the non-petitioners w.e.f. 23.08.1975. After completing the service of more than 20 years of service, he filed an application before the Superintendent of Police, Sirohi under Rule 244(1) of the Rajasthan Service Rules seeking voluntary retirement

w.e.f. 30.11.2000. Till 30.11.2000, the respondents neither accepted the application Annex. 1 filed by the petitioner nor rejected and intimated the rejection to the petitioner. However, the petitioner again filed an application vide Annex. R-9 on 12.01.2001 for voluntary retirement. By order Annex. 9 dt. 10.09.2004, the petitioner was given voluntary retirement w.e.f. 10.09.2004 (A.N.) and the period w.e.f. 29.11.1999 to 10.09.2004 was regularised as leave without pay as for that period the petitioner did not work. Learned Counsel for the petitioner submits that Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 (for short 'the Rules of 1996' hereinafter) provides that when the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall automatically become effective from the date of expiry of the said period.

4. Rule 50 of the Rules of 1996 reads as under:--

50. Retirement on completion of 20 years' qualifying service.

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the appointing authority: Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall automatically become effective from the date of expiry of the said period.

5. Learned Counsel for the petitioner contended that the appointing authority did not refuse to grant the permission to the petitioner for retirement sought by him before the expiry of the period specified in the notice Annex.1 i.e. 30.11.2000. Learned Counsel for the petitioner has relied on a three Judge bench decision of Hon'ble Supreme Court in Tek Chand v. Dile Ram 2001 (1) Supreme 444.

6. In Tek Chand v. Dile Ram (supra), the Apex Court considering the provision of Sub-rule (1) of Rule 48-A which is analogous to Rule 50 of the Rules of 1996 held

that if the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period.

7. A reply to the writ petition has been filed by the non-petitioners and contended that when the petitioner sought the voluntary retirement vide Annex. 1, some departmental inquiries were pending against him and the notice for voluntary retirement Annex. 1 was conditional and therefore, no order was passed on the said notice. However, subsequently, vide Annex. 9, the petitioner was voluntarily retired w.e.f. 10.09.2004.

8. In the instant case, admittedly, the non-petitioner received the notice Annex. 1 sent by the petitioner seeking voluntary retirement w.e.f. 30.11.2000. No order on the said notice was passed inasmuch as the appointing authority did not refuse to grant permission for retirement before expiry of the period specified in the notice Annex.1 and therefore, in view of the proviso to Rule 50 of the Rules of 1996, the retirement of the petitioner shall automatically become effective from the date of expiry of period specified in the notice i.e. 30.11.2000. The decision relied on by learned Counsel for the petitioner squarely covers the case of the petitioner. Merely because the petitioner subsequently filed an application Annex. R-9 dt. 12.01.2001, it cannot be said that the petitioner continued in service after 30.11.2000.

9. Keeping in view the decision of Hon'ble Supreme Court in Tek Chand v. Dile Ram (supra) the writ petition deserves to be allowed.

10. In the result, the writ petition is allowed. The order Annex. 9 is modified to the extent that the petitioner voluntarily retired from service w.e.f. 30.11.2000 (A.N.) instead of w.e.f. 10.09.2004 and is entitled for the consequential benefits. There shall be no order as to costs.