

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 21746 of 2013

Pankaj Kumar Sinha
Vs.
Coal India Limited & Ors.

For the petitioner : Mr. Gobinda Chaudhuri
Mr. Bikash Chaudhuri

For the respondent : Mr. Pradip Kumar Dutta, Sr. Advocate
Bank : Mr. Susanta Pal
Mr. Pradipta Basu

Heard on : 10.10.2023

Judgment on : **10th October, 2023.**

Raja Basu Chowdhury, J:

1. The dispute in the present writ application centers around acceptance of resignation tendered by the petitioner.
2. It is the petitioner's case that he was employed with the Coal India Limited and was posted at various units of Central Coalfields Limited. According to the petitioner, the conditions of service, *inter alia*, permit both the employer and the employee to

walk out of the contract of employment, by serving on each other, three months' notice or three months' pay, in lieu thereof.

3. In usual course the petitioner had tendered his resignation to the Chairman-cum-Managing Director, Central Coalfields Limited on 25th August, 2006 and by such letter while expressing his willingness to deposit the notice pay had requested the respondents to clarify the exact quantum be deposited on account of the notice pay. According to the petitioner, the said resignation was tendered through proper channel.
4. In response to the petitioner's application, the General Manager, Central Coalfields Limited, by a communication in writing dated 29th August, 2006, while referring to the petitioner's letter of resignation, had called upon him to deposit an amount equivalent to three months basic, plus dearness allowance (DA) as per the rule, against notice pay.
5. The petitioner claims that in compliance of the aforesaid direction issued by the General Manager, Central Coalfields Limited, the petitioner had deposited a sum of Rs.1,10,196/- towards three months' basic plus DA and while enclosing the receipt issued by the Central Coalfields Limited, the last pay slip, had forwarded the same to the General Manager, Central Coalfields Limited by his communication in writing dated 31st August, 2006, for them to take further action in this regard.

6. Despite depositing the notice pay and despite communicating the same to the General Manager, no steps having been taken, the petitioner by a communication in writing dated 12th October, 2006 had requested the Director (Pers), Central Coalfields Limited to expedite the process of acceptance of his resignation. The same was followed up by another communication dated 12th November, 2006, whereby he stated that on account of the inordinate delay in acceptance of the resignation, the said letter be treated as relinquishment of the charge with effect from 14th November, 2006.
7. Records reveal that by a communication in writing dated 11th December, 2006, the petitioner was informed by the General Manager of Central Coalfields Limited that till such time, the resignation was not accepted he cannot be treated to have relinquished the charge.
8. Inasmuch as there was a complete silence from the respondents as regards the acceptance of the petitioner's resignation letter, the petitioner by a further communication in writing dated 21st March, 2007 had requested the General Manager, Central Coalfields Limited to expedite the process of acceptance of his resignation letter and to release his terminal benefits.
9. In response to the petitioner's communication by a notice dated 24th March, 2007, the Personnel Manager (EE) informed the petitioner that Coal India Limited till date had not conveyed to

them, the acceptance of the petitioner's resignation. The said letter was followed up by a further communication in writing dated 12th April, 2007 issued by the General Manager, intimating that the matter was put up before the competent authority as regards the issue of resignation of the petitioner, who did not agree to accept the resignation of the petitioner from the post of Superintendent of Mines, in terms of the provisions contained in the Clause 15.3 of Common Coal Cadre and hence, his absence from duty was to be treated as unauthorized absence.

10. The petitioner was completely shocked to receive the aforesaid memo. In such circumstances, the petitioner by a letter in writing dated 8th July, 2007 made a representation to the General Manager Central Coalfields Limited, intimating him that the provisions of Clause 15.3 of Common Coal Cadre cannot be read in isolation so as to defeat the legitimate right of the petitioner to tender his resignation and as such, by such letter once again requested him to expedite the process of acceptance of his resignation and to release his terminal benefits.
11. Unfortunately, the General Manager by a communication dated 8th October, 2007 forwarded the petitioner with a memorandum of charge dated 30th August, 2007.
12. Immediately, upon receipt of the aforesaid communication, the petitioner by notice in writing dated 5th December, 2007 had responded to the charge sheet and had called upon the

Chairman-cum-Managing Director, Central Coalfields Limited to forthwith withdraw the said illegal memorandum, which according to the petitioner had been issued in gross misuse of executive powers.

13. Unfortunately for the petitioner the respondent no.4 instead of withdrawing the memorandum of charge dated 30th August, 2007 issued another charge-sheet on the petitioner on the ground of his unauthorised absence with effect from 15th November, 2006 on 17th January, 2008.
14. By an order dated 7th March, 2008, the respondent no.4 on the basis of an *ex parte* enquiry held the petitioner guilty in respect of the charge-sheet dated 30th August, 2007 and inflicted minor penalty of withholding one increment for one year, without cumulative effect.
15. The petitioner says that subsequently, better sense having prevailed with the respondent no.4, by an office order dated 11th/15th February, 2011 the petitioner was exonerated from the charges levelled against him in connection with the memorandum of charges dated 17th January, 2008 and still later, by an office order dated 26th April, 2012 on the basis of an approval dated 28th March, 2012, issued by the competent authority, the petitioner was communicated the acceptance of his resignation by the competent authority with effect from 15th February, 2011. Accordingly, the petitioner was advised to hand

over company's article/quarters under his possession and obtain "no due" certificate.

16. Mr. Chaudhuri, learned advocate representing the petitioner submits that pursuant to and in terms of the aforesaid order, in the year 2013, by a communication in writing dated 9th January, 2013 the competent authority informed the petitioner with regard to sanction of 4,14,685.96p towards gratuity payable to the petitioner, *inter alia*, by recording that a sum of Rs.11,894.40p shall stand adjusted towards penalty on account of withholding of one increment vide order dated 7th March, 2008.

17. Mr. Chaudhuri submits that notwithstanding the petitioner not being at fault the respondents had illegally deducted from the petitioner, an amount of Rs.11,894.40p from the petitioner's gratuity on the basis of the purported punishment of withholding of one increment vide order dated 7th March, 2008. According to Mr. Chaudhuri, the aforesaid act does not have sanctioned in law, especially in the light of the fact that the petitioner had tendered his resignation in the year 2006 and had complied with all formalities, however, it was on account of failure on the part of the respondents that the process of acceptance of resignation was delayed.

18. Mr. Chaudhuri, however, submits that by reason of the petitioner being treated to be in service upto 15th February, 2011, the petitioner is entitled to notional benefits for the entire period although, he

candidly submits that the petitioner cannot be entitled to actual pay for the said period since, the petitioner admittedly did not discharge his duties.

19. *Per contra*, Mr. Dutta, learned senior advocate representing the respondents submits that the provisions of the Common Coal Cadre specifically provide that only upon acceptance of resignation that any employee can be discharged. In this case for whatever reason the acceptance letter was issued on 26th April, 2012. Since, the respondents did not accept the petitioner's resignation, it was obligatory for the petitioner to report for duty which he did not. The petitioner having not reported for duty it was incumbent upon the respondents to take steps in the matter which they did. By referring to the order dated 11th February, 2011 it is submitted that the petitioner had, however, been exonerated of the charges leveled against him with regard to the memorandum dated 17th January, 2008. He submits that the respondents are not interested to stand in the way of disbursement of terminal benefits in favour of the petitioner. Mr. Dutta, submits that if any amount is found due and legally payable to the petitioner, the same shall be disbursed in favour of the petitioner.

20. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioner had tendered his resignation by a communication in writing dated 25th August, 2006 and by such letter while

expressing his readiness and willingness to deposit the mandatory three months notice pay, had requested the respondents to clarify the amount required to be paid by him. It appears that the General Manager, taking cognizance of the letter of resignation issued by the petitioner by a communication in writing dated 25th August, 2006 had informed the petitioner that the petitioner would be required to deposit an amount, equivalent to his basic plus DA of three months as per the rule against the notice pay. In compliance of the aforesaid direction, the petitioner had duly deposited a sum of Rs.1,10,196/- towards the notice pay period, which was equivalent to three months basic plus DA. The factum of aforesaid deposit along with the receipt issued by the Central Coalfield Limited, cash department, his last pay slip indicating his basic pay and the dearness allowance, were forwarded to the General Manager of Central Coalfields Limited by his communication dated 13th August, 2006, for them to take further action. Despite appropriating the aforesaid amount and despite acting on the basis of the resignation tendered by the petitioner, the respondents did not conclude the process and kept the same pending.

21. Interestingly, the respondents also proceeded to enquire against the petitioner, by issuing two separate charge-sheets and by treating the petitioner to have unauthorizedly absented himself. A departmental enquiry was not only initiated but

proceeded ex parte and a punishment also appears to have been inflicted upon the petitioner. Later on better sense having prevailed, the petitioner was exonerated in respect of the charge-sheet dated 17th January, 2008, by an office order dated 11th February, 2011. Incidentally, the respondents nearly after six years from the date of the petitioner tendering his resignation and depositing notice pay had purported to take action in respect of the petitioner's letter of resignation and had communicated the same to the petitioner by a notice in writing dated 26th April, 2012. Only thereafter, the petitioner was disbursed his terminal benefits. Having thus, retained the petitioner on its rolls, in my view, the respondents are bound to extend all benefits including the pay revision that may be applicable to the petitioner. However, taking into consideration the fact that the petitioner did not actually work with the respondents, the petitioner shall not be entitled to the actual monetary benefit but all his terminal benefits would be computed by treating the petitioner to be in continuous service upto the date of acceptance of his resignation i.e. 15th February, 2011 and the petitioner shall be all entitled to notional benefits only.

22. In the aforesaid facts as noted above, the respondents are directed to recompute the terminal benefits payable to the petitioner on the basis of the direction contained herein and

disburse the same in favour of the petitioner within a period of 8 weeks from the date of communication of this order.

23. It is made clear that the respondents shall be obliged to make payment of interest on gratuity at the rate of 10 per cent per annum as is statutorily payable for the period from the date of acceptance of the resignation till such time the same is actually been paid. While computing the gratuity the respondents shall also ignore the undertaking given by the petitioner vide letter dated 3rd May, 2012 towards adjustment of an amount of Rs.11,896.40p towards penalty for withholding of one increment issued against him by an order dated 7th March, 2008, since, admittedly during this period no enquiry could have been conducted against the petitioner on account of unauthorized absence as the petitioner had already tendered his resignation and the respondents had already acted on the basis thereof, though formal acceptance thereof, was pending. This apart in the light of the order dated 11th February, 2011 and on the basis of the reasoning provided therein, the order dated 7th March, 2008 whereby a penalty of withholding of one increment for one year without cumulative effect, had been inflicted on the petitioner cannot be sustained and the same is accordingly set aside and quashed.

24. With the aforesaid observations/direction the writ application, stands disposed of.

25. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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