

P. KRISHNA MURTHY

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v.

THE COMMNR. OF SERICULTURE ANDHRA PRADESH,
& ANR.

(Civil Appeal Nos. 5897-5898 of 2014)

JULY 01, 2014

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[JAGDISH SINGH KHEHAR AND M.Y. EQBAL, JJ.]

Service Law – Voluntary Retirement – Non-acceptance of withdrawal of voluntary retirement – Challenged to – Disciplinary proceeding pending against employee on charges of gross negligence in discharge of duties – Employee seeking permission to retire – Acceptance of permission – However, subsequent request by employee to permit him to continue in service, rejected – Meanwhile, conclusion of disciplinary proceeding by imposing punishment of 25% cut in pension amount of the employee – In appeal, said order set aside by the Commissioner – Grant of pensionary benefits to employee – After lapse of two years, employee seeking reinstatement in service – Tribunal directing the employee to continue in service till he attains superannuation – Writ Petition thereagainst, allowed by High Court – Held: Justified – High Court rightly concluded that the employee filed an appeal before the State Government against the order of cut in pension as a retired employee and he himself stated that he had submitted the pension proposals for fixation of pension – Thus, the employee cannot be allowed to proceed further, that too after expiry of two years seeking reinstatement in service taking the benefit of the order passed by the State Government – A.P. Revised Pension Rules, 1980.

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Disciplinary proceedings were initiated against the appellant-employee on the charge of gross negligence in discharge of duties. During pendency, the appellant filed

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A an application seeking permission to retire from service
w.e.f. 1.5.2004. By order dated 4.3.2004, the appellant was
permitted to retire w.e.f. 1.5.2004. Before expiry of the said
date, appellant submitted another application requesting
the authorities to permit him to continue in service and
B to revoke the order dated 4.3.2004. The authority rejected
the application on 28.4.2004. Thereafter, disciplinary
proceeding concluded and the Commissioner passed an
order imposing punishment of 25% cut in pension
amount of the appellant on the ground of gross
C negligence in discharging duties. The appellant
challenged the said order. The State Government set
aside the order passed by the Commissioner. The
appellant after two years filed another application seeking
issuance of order for reinstatement. The State
D Government rejected the application. However, in appeal,
the tribunal directed the respondent to allow the appellant
to continue in service till he attained the age of
superannuation. Aggrieved, the respondents filed a writ
petition. The Division Bench of the High Court set aside
the order passed by the tribunal. Hence, the instant
E appeals.

Dismissing the appeals, the Court

F HELD: 1.1. The appeal against the order of 25% cut
in pension, the State Government considered it
sympathetically and allowed the appeal and set aside the
order of imposing penalty and directed to drop the
proceedings against the appellant, who is a retired officer.
After his request for revocation of withdrawal of voluntary
retirement was finally rejected, the appellant instead of
G challenging the said order filed several representations
for release of the pensionary benefits. The said
representations were considered and the eligible
pensionary benefits were drawn and paid to the appellant
in 2004 and 2005. Taking advantage of the leniency
H shown by the Government in the order passed in appeal

on 3.4.2004, the appellant took a chance to move an application after two years i.e. on 27.4.2006 requesting the authorities for reinstatement in service. [Para 14] [917-E-G]

1.2. The High Court in the impugned order rightly concluded that the appellant preferred an appeal before the State Government against the impugned order of cut in pension as a retired employee and he himself stated that he has submitted the pension proposals for fixation of pension. Furthermore, having regard to the fact that the appellant did not assail the order rejecting his application for revocation of pension at any time rather he proceeded and assailed only the order of 25% cut in pension. Hence, the appellant cannot be allowed to proceed further, that too after expiry of two years seeking reinstatement in service taking the benefit of the order passed by the State Government. Thus, there is no error in the impugned order. [Para 15, 16] [918-A-D]

Balram Gupta v. Union of India and another 1987 Supp SCC 228; *J.N. Srivastava v. Union of India and another* (1998) 9 SCC 559 – distinguished.

Case Law Reference:

1987 Supp SCC 228	Referred to	Para 15
(1998) 9 SCC 559	Referred to	Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No 5897-5898 of 2014.

From the Judgment and Order dated 03.07.2008 in WP No. 18423/2007, WP No. 18697/2007 of the High Court of A.P. at Hyderabad.

Bina Madhavan, S. Udaya Kumar Sagar, Shivendra Singh (for Lawyers's Knit & Co) for the Appellant.

A A.T.M. Rangaramanujam, D. Mahesh Babu, Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, B. Ramakrishna Rao, Aditya Jain for the Respondents.

The Judgment of the Court was delivered by

B **M.Y. EQBAL, J.:** 1. Leave granted.

2. These appeals are directed against the judgment and order dated 3.7.2008 passed by Andhra Pradesh High Court in Writ Petition No. 18423 of 2007 and 18697 of 2007 whereby the High Court set aside the common order dated 9.4.2007
C passed by Andhra Pradesh Administrative Tribunal at Hyderabad in O.A. No.6325 of 2006 and O.A. No.7370 of 2006.

3. The facts of the case lie in a narrow compass.

D 4. The appellant at the relevant time was working as Superintendent in the office of Commissioner of Sericulture at Hyderabad. According to the appellant, sometime in the year 2003, his wife fell sick with onset of menopause stage and mental imbalance and became unable to move. On the
E allegation against the appellant that he neglected in discharging his duties, a disciplinary proceeding was initiated on 18.1.2004 and a charge memo was issued. On 3.2.2004, appellant submitted a representation requesting the respondent authorities to permit him to retire from service w.e.f. 1.5.2004.
F On the basis of said representation, the appellant was permitted to retire from service w.e.f. 1.5.2004 and an order to that effect was issued by the Commissioner, Sericulture dated 4.3.2004.

G 5. In purported exercise of power of Rule 43 (1) of Andhra Pradesh Revised Pension Rules, 1980, the appellant's case was that vide application dated 15.4.2004 he requested the authorities to permit him to continue in service till age of superannuation and to revoke the order issued on 4.3.2004. The said application was rejected by the Commissioner, Sericulture vide order dated 28.4.2004. In the meantime, the
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Commissioner, Sericulture passed an order on 29.7.2004 A
imposing punishment of 25% cut in the pension amount of the
appellant on the charges of gross negligence in discharging
duties. The appellant challenged the said order dated
29.7.2004 by filing an appeal before the State Government. The
said appeal was allowed by the State Government vide order B
dated 3.4.2006 and the order of Commissioner, Sericulture
imposing 25% cut in pension amount was set aside. After the
said order was passed by the State Government, the appellant
filed another application on 27.4.2006 seeking issuance of
appropriate order for his reinstatement. However, the said C
application/representation was rejected by the Government
vide order dated 1.9.2006. The appellant challenged the said
order before the Administrative Tribunal by filing O.A. No. 6325
of 2006. In the said O.A. an interim order was passed by the
Tribunal directing the Appellate Authority of the respondent to D
reconsider the case of the appellant for reinstatement. Pursuant
to the said direction, the Government considered the case of
the appellant and finally passed an order on 24.11.2006 holding
that the request of the appellant for reinstatement cannot be
considered.

6. Aggrieved by the said order dated 24.11.2006, the E
appellant filed another O.A. No.7370 of 2006 before the
Administrative Tribunal. The Tribunal finally heard both the
applications being O.A. No.6325 of 2006 and O.A. No.7370
of 2006 and passed a common order setting aside the order F
dated 4.3.2004 issued by the Commissioner, Sericulture
permitting the appellant to retire from service w.e.f. 1.5.2004
and also set aside the order dated 28.4.2004 and 24.11.2006
and directed the respondent to allow appellant to continue in
service till he attains the age of superannuation. The aforesaid G
common order was finally challenged by the respondents
before the High Court by filing writ petition. The Division Bench
of the Andhra Pradesh High Court by impugned order allowed
both writ petitions being W.P. Nos. 18423 of 2007 and 18697

A of 2007 and set aside the order passed by the Tribunal.
 Allowing the writ petitions, the High Court observed as under:-

B “7. It appears that the respondent has filed an appeal with
 the prayer that the order imposing the penalty of 25% cut
 in pension may be set aside to enable him to submit his
 pension papers to the Accountant General, Andhra
 Pradesh, Hyderabad. This is not disputed by the counsel
 appearing for the respondent. The prayer itself reveals that
 the respondent has not sought for reinstatement into
 C service, but to set aside the said penalty for submitting the
 pension papers. Thus, the appeal is preferred in the
 capacity of the retired employee and the Government vide
 its G.O. Rt. No.302 Agri. & Coop. (Vig.II) Department,
 dated 3.4.2006 have set aside the order of punishment.
 D The respondent himself has stated that he had submitted
 the pension proposals to the Deputy Director of Sericulture,
 Hyderabad, for fixation of the pension. Apart from this, the
 respondent sought reinstatement in service, two years after
 the penalty was set aside, which obviously is to circumvent
 the lapses on his part. In the foregoing circumstances
 E especially the prayer in the appeal and also the conduct
 of the respondent, we are of the view that the impugned
 order is liable to be and is accordingly set aside.”

F 7. We have heard learned counsel appearing for the
 parties.

G 8. Ms. Bina Madhavan, learned counsel appearing for the
 appellant put heavy reliance on the decision of this Court in the
 case of *Balram Gupta v. Union of India and another*, 1987
 Supp SCC 228, and submitted that the instant case is squarely
 covered by the ratio laid down in Balram Gupta’s case. Learned
 counsel submitted that there cannot be unilateral termination of
 service and the employee is at liberty to withdraw his notice of
 H voluntary retirement any time before 1.5.2004, and the order
 of rejection dated 28.4.2004 passed by the Commissioner,
 Sericulture was clearly contrary to the principle laid down in the

aforesaid case. Learned counsel submitted that the principle laid down in Balram Gupta case was finally approved by this Court in the case of *J.N. Srivastava v. Union of India and another*, (1998) 9 SCC 559, but the High Court has not correctly appreciated the law laid down by this Court in the aforesaid decisions and if the impugned order of the High Court is allowed to stand it would virtually put a seal of approval on the unfair and illegal conduct of the respondent authorities. Learned counsel lastly submitted that merely because of having accepted the retirement benefit, the appellant was not stopped from challenging the non-acceptance of his withdrawal notice of voluntary retirement.

9. Mr. A.T.M. Rangaramanujam, learned senior counsel appearing for the respondent contended that the request for voluntary retirement was accepted and the same was communicated to the appellant. Learned senior counsel submitted that when the disciplinary proceeding was pending against the appellant on the charges of gross negligence in the discharge of his duties, he submitted an application on 3.2.2004 seeking voluntary retirement. The said request of the appellant was examined and he was permitted to retire. When the subsequent request of the appellant for withdrawal of voluntary retirement was declined in accordance with Rule 43 of A.P. Revised Pension Rules, 1980 and the disciplinary proceeding was finally concluded by imposing penalty of 25% cut in pension, the same was challenged in appeal before the State Government. In the said appeal, the appellant did not pray for reinstatement in service. On the contrary, the appellant filed several representations relating to the pensionary benefits. All the representations were considered and the eligible pensionary benefits were drawn and paid to the appellant. Lastly, the learned senior counsel contended that the appellant filed the appeal after a lapse of about two years for setting aside the punishment order and not for reinstatement in service.

10. Before going into the facts of the present case, we

A would like to discuss the decision of this Court relied upon by the appellant.

B 11. In *Balram Gupta's* case (supra), the appellant while working as an accountant sought voluntary retirement from the service by letter dated 24th December, 1980. Acting on the basis of the said letter, by an order dated 20th January, 1981, the appellant was allowed to retire voluntarily from service prospectively with effect from the afternoon of March 31, 1981. In the meantime, however, on the alleged persistent and personal request from the staff members, the appellant had changed his mind and consequently by letter dated January 31, 1981 withdrawn his notice of voluntary retirement and requested the authorities to treat the letter of voluntary retirement as cancelled. The said request of the appellant was not allowed and he was relieved by an order dated 31st March, 1981. The appellant challenged the said order before the High Court stating that the said order was illegal and invalid. The Delhi High Court dismissed the appellant's writ petition on the ground that the rules enabled the Government servant to withdraw his application for voluntary retirement only with the approval of the Government. The High Court found no reason to interfere with the order. From these facts, this Court, after considering the earlier decisions, held that the notice of voluntary retirement by the employee can be withdrawn at any time before retirement becomes effective notwithstanding any Rule providing for obtaining of specific approval of the concerned authority as a condition precedent to the withdrawal notice.

G 12. In *J.N. Srivastava's* case (supra), this Court followed and relied upon the decision rendered in *Balram Gupta's* case (supra) and put the same view that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. It is further held that once the request for cancellation of voluntary retirement was rejected by

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the authority concerned and the retirement came into effect, the employee had no choice but to give up the charge of the post to avoid unnecessary complications. For better appreciation, the relevant portion of para 3 of the said decision is quoted herein below:-

“3. The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect from 31-1-1990. It is true that this proposal was accepted by the authorities on 2-11-1989. But thereafter before 31-1-1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India (1987 Supp.SCC 228). In view of the aforesaid decision of this Court it cannot be said that the appellant had no *locus standi* to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the

A appellant had no choice but to give up the charge of the
 post to avoid unnecessary complications. He, however,
 approached the Tribunal with the main grievance centering
 round the rejection of his request for withdrawal of the
 voluntary retirement proposal. The Tribunal, therefore,
 B following the decision of this Court ought to have granted
 him the relief. We accordingly, allow these appeals and set
 aside the orders of the Tribunal as well as the order of the
 authorities dated 26-12-1989 and direct the respondents
 to treat the appellant to have validly withdrawn his proposal
 C for voluntary retirement with effect from 31-1-1990. The net
 result of this order is that the appellant will have to be
 treated to be in service till the date of his superannuation
 which is said to be somewhere in 1994 when he
 completed 58 years of age.”

D 13. So far as the instant case is concerned, the admitted
 facts which are not in dispute are as under: -

The appellant’s application dated 3.2.2004 requesting the
 authorities to permit him to retire from service with effect from
 E 1.5.2004 was allowed vide order dated 4.3.2004 and he was
 permitted to retire from service w.e.f. 1.5.2004. Before the
 expiry of the aforesaid date, the appellant submitted another
 application dated 15.4.2004 requesting the authorities to
 permit him to continue in service and to revoke the order issued
 F on 4.3.2004. The said application was considered by the
 authority concerned and finally rejected on 28.4.2004. Curiously
 enough the said order dated 28.4.2004 was not challenged by
 the appellant before any authority or any forum. After about three
 months, the disciplinary proceedings was concluded and on
 G 29.7.2004, the authority passed an order imposing punishment
 of 25% cut in the pension amount of the appellant on the ground
 of gross negligence in discharging duties. The said order dated
 29.7.2004 was, however, challenged by filing an appeal before
 the State Government. In the said memo of appeal, the appellant
 has not whispered or challenged the legality and validity of the
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order dated 28.4.2004 rejecting the request of the appellant for withdrawal of order of voluntary retirement. In the said memo of appeal, the appellant only assailed the order of penalty of 25% cut in pension on various reasons including his wife's ailment and his performance in service. In the memo of appeal, the appellant made the following prayer:-

"In the above circumstances, I humbly request your highness to kindly consider my appeal petition mercifully on humanitarian grounds and set aside the final order issued in the Proc.RC. No.194/2004-B2, dtd. 29.7.2004 and recognize my track of my entire service rendered in the department without receiving even a single memo and save me and my family from the mental tension and provide relief by issuing favourable orders duly setting aside the orders of imposing of 25% cut on pension permanently to enable me to submit my pension papers to the AGAP, HYD for which act of kindness my whole family will remain grateful to the Government."

14. The aforesaid appeal against the order of 25% cut in pension, the State Government considered it sympathetically and allowed the appeal and set aside the order of imposing penalty and directed to drop the proceedings against the appellant, who is a retired officer. It is also worth to mention here that after his request for revocation of withdrawal of voluntary retirement was finally rejected, the appellant instead of challenging the said order filed several representations for release of the pensionary benefits. The said representations were considered and the eligible pensionary benefits were drawn and paid to the appellant in 2004 and 2005. Taking advantage of the leniency shown by the Government in the order passed in appeal on 3.4.2004, the appellant took a chance to move an application after two years i.e. on 27.4.2006 requesting the authorities for reinstatement in service.

15. In these factual backgrounds of the instant case, we are of the considered opinion that the principles laid down in

- A *Balram Gupta's case and S.N. Srivastava's case* (supra) are not applicable and are distinguishable. The High Court in the impugned order has rightly come to the conclusion that the appellant preferred appeal before the State Government against the impugned order of cut in pension as a retired employee and he himself stated that he has submitted the pension proposals for fixation of pension. Besides the above, we are further of the opinion that having regard to the fact that the appellant did not assail the order rejecting his application for revocation of pension at any time rather he proceeded and assailed only the order of 25% cut in pension. Hence, the appellant cannot be allowed to proceed further, that too after expiry of two years seeking reinstatement in service taking the benefit of the order passed by the State Government.

- D 16. In the aforesaid circumstances, we do not find any error in the impugned order passed by the High Court. There is no merit in these appeals, which are accordingly dismissed with no order as to costs.

Nidhi Jain

Appeals dismissed.