

CASE NO.:
Appeal (civil) 34 of 2004

PETITIONER:
Himmat Singh

RESPONDENT:
State of Haryana & Ors

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

This appeal is directed against a judgment and order dated 14.07.2003 passed by the High Court of Punjab & Haryana in CWP No.14261 of 2000 dismissing the writ petition filed by the Appellant herein questioning an order dated 24.08.2000 by reason whereof his offer for voluntary retirement was accepted.

The Appellant was appointed as a Constable in Haryana Police. In 1992, he was promoted as Head Constable. He allegedly had been on unauthorized leave. The Station House Officer made a report to the superiors about his behaviour and conduct. He was placed under suspension, whereafter a departmental proceeding was initiated against him. During the pendency of the said enquiry, according to the Appellant, when he was called to the office of the Superintendent of Police on 29.05.2000, filed an application wherein he, inter alia, expressed his intention to go for voluntary retirement with effect from 31.08.2000 in the following terms :

"Most respectfully I want to bring in your kind notice that on 19.8.1999 at about 9 P.M. I received an VT on wireless set from previous worthy S.P. Shri O.P. Singh IPS Hisar that, three unknown culprits covering their mouth riding on an matiyala scooter round up these.

2. That at that time I was present along with police party near Puspa Complex near Dabra Chowk Hisar.

3. That above culprits come on above scooter towards ply over the turned in sector 13A Hisar Shopping Center I covered these in Sector 13 while running behind these might right leg gone in sewerage dip and I got fracture.

4. That on 19.8.99 I was admitted in G.H. Hisar remained in G.H. Hisar up to 4.10.1999 and got 15% disability on 1.3.2000. I am still under treatment.

5. That now I feel lackness in my right leg and now I want to go on retirement from 31.08.2000."

Allegedly, thereafter he was absolved of the charges framed against him in the departmental proceedings. He despite reinstatement in service allegedly was not allowed to perform any duty. Indisputably, by an order dated 24.08.2000, the offer of the Appellant for voluntary retirement was accepted, which reads thus :

"HC Himmat Singh No.852/HSR is hereby permitted to proceed on voluntary retirement w.e.f. 31.8.2000 A.N. i.e. after the expiry of notice period." .

The Appellant, however, contends that he had withdrawn the said offer on 24.08.2000 itself by filing an application which was forwarded to the Superintendent of Police by the Lines Officer, Police Lines, Hisar.

The Appellant filed a writ petition before the Punjab and Haryana High Court praying, inter alia, for the following reliefs :

"i) issue a writ in the nature of certiorari calling for the records of the respondents concerning the passing of the order retiring the petitioner and after perusal of the same, order retiring the petitioner be quashed and the petitioner be allowed to continue in service.

ii) it is further prayed that an application which the petitioner sent through Line Officer who has forwarded to the Supdt. Of Police on 24.08.2000 be allowed with all consequential reliefs and the petitioner be allowed to continue in service till the age of superannuation."

A Division Bench of the High Court before issuing rule nisi went through the records and opined that the contention raised by the Appellant that he had withdrawn the offer of voluntary retirement on 24.08.2000 may be correct. Pursuant to a direction issued by a Division Bench of the said court, the then Superintendent of Police as also the Lines Officer affirmed their respective affidavits.

We may furthermore notice that the Appellant in the writ petition raised a serious allegation that he had been assaulted by the Fifth Respondent on 24.08.2000, who forcibly obtained an acknowledgment from him on the order of retirement although no copy thereof was handed over to him. He while acknowledging the same made the following endorsements therein :

"Sir,

Noted and application already for withdrawal/cancellation sent to your office today.

Sd/- Himmat Singh, HC/SJL
P.S. HSR. 24.8.2000"

The said allegation of the Appellant had specifically been denied and disputed by the Fifth Respondent in his aforementioned affidavit in the following terms :

"That in the order dated 18/24.8.2000, the deponent specifically mentioned that the petitioner would be permitted to proceed on voluntary retirement w.e.f. 31.8.2000 i.e. after the expiry of the notice period, therefore, the deponent was very well aware of the fact that as per the provisions of the Rules the application of the petitioner for seeking voluntary retirement could be allowed after the expiry of the notice period."

It was further pointed out :

"That some of the above-mentioned facts and circumstances and orders passed by the deponent in the case of the petitioner have deliberately been not brought on record by the petitioner to suppress the material facts from this Hon'ble Court and with a view to play fraud upon the Court. The story of the petitioner is totally belied from the fact that he has himself sworn an affidavit duly signed by him, dated 1.9.2000, that he has proceeded on voluntary retirement, whereas in the present writ petition his own case is that he had made an application on 24.8.2000 for withdrawal of the voluntary retirement. It has been further mentioned by the petitioner that his letter dated 24.8.2000 was signed by the Line Officer, Police Lines, Hisar. It is respectfully submitted that though the records pertaining to the present case have been kept in the custody of this Hon'ble Court and the alleged application dated 24.8.2000 is almost 2 years 9 months old, the deponent most humbly submit from his memory that he has never received such an application dated 24.8.2000 from the petitioner in person. In fact, had the petitioner made any such application he would have never sworn the affidavit dated 1.9.2000 and would have at least made a mention or in the alternative would have made a mention of the said application dated 24.8.2000 in the said affidavit. Had the alleged application dated 24.8.2000 been presented by the petitioner to the competent authority i.e. the deponent, there was no reason for the deponent to not consider the same because in the order dated 18/24.8.2000 passed by the deponent it was clearly indicated that the voluntary retirement of the petitioner would come into effect w.e.f. 31.8.2000 i.e. after the period of the notice period."

It had further been averred :

"\005In fact, it seems that the petitioner has deliberately tried to mislead this Hon'ble Court by not only casting very serious allegations of mala fide against the deponent but also not producing before this Hon'ble Court relevant orders passed by the competent authority i.e. the deponent and other material facts such as the affidavit of the petitioner dated 1.9.2000. It seems that the allegations of malafide against the deponent do not originate from the facts verified by the petitioner but may have originated from the improper legal advice given to him in as much as there as not only been a deliberate attempt on behalf of the petitioner to suppress material facts and circumstances, the petitioner may also have been fully aware of the fact that if true facts are brought to the notice of the Court, the petition filed by the petitioner may not have been entertained. To prejudice the mind of this Hon'ble Court, therefore, the petitioner has chosen a very novel method i.e. firstly to make material suppression of facts and play fraud upon this Hon'ble Court and secondly to allege malafides against the deponent to prove his case. It is clear that the allegation of malafide have not originated from the actual facts and circumstances."

The Lines Officer pursuant to the said directions affirmed an affidavit

before the High Court stating :

"1. That I was working as Lines Officer, Police Lines, Hisar on 29.5.2000. An application for seeking retirement w.e.f. 31.8.2000 was submitted by HC Himat Singh (Petitioner) which was forwarded by the deponent on the very same day and handed over to the petitioner on his request which was submitted by him personally before the then Superintendent of Police, Hisar-Sh. Sandeep Khirwar, I.P.S.

2. That similarly an application for cancellation of voluntary retirement dated 24.8.2000 addressed to the Superintendent of Police Hisar as put up before me by the petitioner and the same was also forwarded and handed over to petitioner by me on his personal request on the same day."

The High Court on consideration of the entire matter was of the opinion that the contentions of the Respondents are correct holding :

"\005it is not possible for us to record a finding of fact that the petitioner actually communicated the application dated 24.8.2000 withdrawing the request for retirement to the Lines Officer, Police Lines, Hisar, for onward communication to the Superintendent of Police, Hisar\005"

Upon taking into consideration the affidavit affirmed by the Appellant on 01.09.2000 wherein he categorically stated that he had requested to proceed on voluntary retirement w.e.f. 31.08.2000, the High Court opined :

"On the basis of the aforesaid affidavit submitted by the petitioner, it is contended that the petitioner has concocted a story so as to get out of his earlier request for voluntary retirement. The original of the aforesaid affidavit has been produced in Court along with the official record. It reveals that the stamp paper on which the affidavit was submitted was purchased from the stamp vendor by the petitioner himself. The aforesaid affidavit was duly notarized by a notary public. The particulars of the notary public, reveal his identity as Sh. Ram Swaroop Singh Dhanda, Advocate, Hisar, Learned counsel for the petitioner could not dispute the purchase of the stamp paper on which the affidavit has been sworn, or the submission of the aforesaid affidavit by the petitioner himself. If the petitioner actually executed the aforesaid affidavit (which has also been attached to the written statement as Annexure R-3), and submitted it to the authorities for consideration, there can hardly be any doubt that the petitioner ever withdrew his request for voluntary retirement. In fact the aforesaid factual position demonstrates that the petitioner has maneuvered official record to project an incorrect factual position so as to obtain a favourable order from us."

The High Court also rejected the contention of the Appellant that he had been coerced to apply for voluntary retirement.

Mr. Mahabir Singh, the learned counsel appearing on behalf of the Appellant, would submit that having regard to the fact that the Lines Officer, Hisar, had clearly stated in the affidavit that the letter of withdrawal of the offer of voluntary retirement had been handed over to him, it was his duty to make an entry therefor in the requisite register in terms of clause 12.55 of

the Punjab Police Rules, 1934. He was furthermore in accordance with the said rules required to make an entry thereof, in the appropriate register showing that the same had been taken back by the Appellant. The said rule reads thus :

"22.55.Register No. V. -The correspondence register shall be maintained in two parts in Form 22.55. Each part shall contain 400 pages.

(1) In Part I shall be entered a brief abstract of all reports and orders received at the police station and of all letters and replies dispatched which are not entered in any other book.

(2) When any entry is made in the receipt columns the corresponding dispatch column shall be left blank for the reply and vice versa.

This register is a receipt and dispatch register and is not meant as a record of the full correspondence. Correspondence received and not meant to be forwarded or returned shall be filed in monthly files. These shall be destroyed after two years.

(3) In Part II the receipt and return of processes shall be entered.

Processes include \026

- (a) Summonses to appear or to produce.
- (b) Warrants of arrests.
- (c) Search warrants
- (d) Orders of proclamation, attachment, injunction or otherwise under sections 87, 88, 95, 99, 133, 140, 143, 144 and 145, Code of Criminal Procedure.

Warrants in all non-cognizable criminal cases and summonses in non-cognizable criminal cases in which Government is the complainant are served through the police.

On the last day in each month a statement giving the following information shall be entered in the daily diary and sidelined in red ink :-

- (a) The number of warrants remaining un-executed at the end of the previous month, received and executed during the current month and remaining unexecuted at the end of it.
- (b) Similar information regarding summonses in cognizable and non-cognizable cases.
- (c) Similar information regarding other processes.

At the end of the year any statistics required shall be compiled from such entries in the daily diary."

Having regard to the findings of fact arrived at by the High Court, we are of the opinion that the said contention is wholly misconceived. If the Appellant had taken back his application for withdrawal of resignation after submitting the same to the Lines Officer; the question of making any entry

thereabout in the register would not arise. Alleged non compliance of the said rule relating to maintenance of records furthermore has not been raised by the Appellant either in the writ petition or in the special leave petition. Such a question admittedly was also not raised at the hearing before the High Court. We, therefore, cannot permit the Appellant to raise the said contention before us for the first time.

Mr. Mahabir Singh then contended that the High Court did not deal with the averments made in the writ petition that the Fifth Respondent was biased and in this connection our attention was drawn to ground no.7 of the writ petition.

The said contention again has no force. Such a contention has been raised only in 'the grounds' and the contents thereof have not been verified. In the grounds of a writ petition only a question of law can be raised and not a statement of fact. No statement has been made in the body of the writ petition. The statement made in the said grounds was also not verified in accordance with the writ rules. Despite the same, as we have noticed hereinbefore, the Fifth Respondent in his affidavit denied or disputed the contents thereof. Whether the statement of the Appellant or the Fifth Respondent was correct or not could not ordinarily be decided in a writ proceeding. It is well known that in a writ petition ordinarily such a disputed question of fact should not be entertained. The High Court arrived at a finding of fact on the basis of affidavit evidence.

We agree with the said findings of the High Court.

Furthermore, as has been rightly held by the High Court, that the Appellant was not entitled to any relief in view of his conduct as he suppressed material facts.

For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed accordingly with costs. Counsel's fee assessed at Rs.10,000/-.