



Serial No.03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.537/2018

Date of Order: 14.02.2019

Shri Birendra Koch Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Appearance:

For the Petitioner/Appellant(s) : Mr. D.K.D. Choudhury, Adv
For the Respondent(s) : Mr. R Deb Nath, CGC

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	No

1. Petitioner after serving for a period of 16 years as Constable No.8896083 18th Battalion, Birpur, District Supaul, Bihar had submitted an application dated 26.08.2003 in terms whereof tendered resignation, in response whereof, respondent No.3 vide Memorandum No.18Bn/1-28/BPR/Resignation/03/13095-96 dated 09.10.2003 informed the petitioner that he should have served three months notice, that being so he has been informed that his resignation would be accepted w.e.f. 23.11.2003 (AN) i.e. after expiry of requisite three months.

2. Respondent No.2 Commandant vide Order No.18th Bn/1-28/RESIGN/03/15844-55 dated 26.11.2003 has conveyed that w.e.f. 23.11.2003, at his request, he has been released on resignation from service as such, has been struck off from the strength of the Battalion.

3. Smti. Prabina Koch wife of the petitioner had submitted an application to the Commandant (respondent No.2) on 07.02.2004 with a request not to accept the resignation letter dated 26.08.2003 submitted by her husband Shri Birendra Koch.

4. The wife of the petitioner filed WP (C) No.180 (SH) of 2006 before the Gauhati High Court as it was for Meghalaya also at that time,



same was dismissed vide judgment dated 26.11.2008 on the ground i.e. it is not clear as to whether the petitioner therein Smti. Probina Koch was the wife of the petitioner because in official record of the Constable her name was not entered, as such, petitioner has no locus standi.

5. Smti. Probina Koch filed a review petition in the year 2011 before the Gauhati High Court projecting therein that she has obtained a marriage certificate issued by the Headman (GB). The review petition was dismissed as being untenable however it was left open to the review petitioner to approach the respondent authorities concerned with the marriage certificate dated 15.11.1995 for consideration of the same. As a result whereof Smti. Probina Koch had submitted an application on 15.10.2012 addressed to the respondents No.1 and 2 with a request to sanction pensionary benefits along with arrears with interest @10% per annum. In response whereof vide Memorandum dated 06.11.2012, she has been informed by the respondent-Commandant that her husband had resigned from service at his own will, pension provision is not admissible as per rule.

6. Smti. Probina Koch (wife of the petitioner) again submitted an application to the respondents on 28.05.2018 projecting therein that the resignation tendered by her husband was bad because her husband was suffering from mental disease. Furthermore, resignation had been accepted on 23.11.2003 (AN). Three months notice would expire in the midnight of 23.11.2003 and end on 24.11.2003. In response whereof respondent-Commandant vide his letter No.18th Bn/Estt/E-1/06/Court Case/17-18/8161 dated 05.08.2018 has informed her that the representation to review resignation and grant of pension to Birendra Koch do not seem to be within the rules/provision. She has also been informed that an amount of Rs.1065/- sent to her under Staff Benevolent Fund is not a part of pensionary benefits under CCS (Pension) Rules, 1972. Furthermore, it has been made clear to her that her husband had resigned after rendering 16 years of service, minimum 20 years qualifying service is required for being eligible for pensionary benefits other than invalidation pension and death case. A letter has also been sent to her for remittance of Rs.1065/-.



7. Shri Birendra Koch with a design to maintain this writ petition has submitted an application to the respondents projecting therein that his resignation letter should not have been accepted for completion of mandatory three months notice period as a day begins from one midnight and ends on the next. Finally has claimed payment of full salary at the rate of Rs.40,000/- till the date of filing the representation dated 05.12.2018 i.e. for a period of 170 months amounting to Rs.75 lakhs along with 9% interest.

8. Now the petitioner has filed this instant petition with a prayer to quash the letter dated 05.08.2018 as has been sent to Smti. Probina Koch (petitioner's wife) and resignation accepted on 26.11.2003. Furthermore to command the respondent No.2 to pay and release immediately the salary w.e.f. 23.11.2003 along with arrears, current salary and interest @9% per annum.

9. Petition at its threshold was taken up for consideration, such type of petition I am afraid if can be entertained, it is totally a frivolous litigation for the reasons to follow.

(i) Petitioner admittedly had joined as a Constable and served for 16 years. No doubt he has been suffering from disease but he himself had submitted a written resignation on 26.08.2003. The Deputy Commandant (respondent No.3) had informed him vide his Memorandum dated 09.10.2003 that he should have served three months notice, however, resignation will be accepted w.e.f. 23.11.2003. Thereafter, the order accepting resignation had been issued on 26.11.2003. The order of resignation has not been challenged for 15 long years except that his wife (Smti. Probina Koch) had entered into correspondence as referred to above that too w.e.f. 07.02.2004 when she had submitted an application with a request that the resignation of her husband may not be accepted. When the resignation was already accepted as is clear from the order dated 26.11.2003 issued by the Commandant she had filed a writ petition which according to her husband (petitioner) was filed by her on his advice same is mentioned in para 8 of the memo of the petition. That petition was filed in the year



2006 and dismissed on 26.11.2008 then review petition was also dismissed in the year 2011.

(ii) Petitioner with the object of taking a u-turn has submitted an application on 05.12.2018 to the respondents with a design so as to come out of long delay of 15 years in not challenging the order of resignation. Once the petitioner has consciously submitted his resignation, he had consciously advised his wife to file writ petition in the year 2006. How can he explain the delay in not challenging the order dated 26.11.2003 in terms whereof his resignation was accepted and was struck off from the strength of the Battalion?

10. Pension cannot be claimed on two grounds:

- (i) Petitioner had rendered only 16 years of service while qualifying service is 20 years; and
- (ii) Petitioner has been out of service continuously from the year 2003 so cannot claim salary for last 15 years when he had voluntarily resigned from the post.

11. Petition is not worth to be maintained because:-

- (i) The petition is hit by delay and laches;
- (ii) Petitioner has consciously submitted his resignation; and
- (iii) Wife of the petitioner on the advice of the petitioner had filed earlier petition in the year 2006 challenging same resignation order.

12. Thus, petition for the stated facts and reasons is dismissed.

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
14.02.2019
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