

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8291/2019
[@ SLP [C] NO.12890/2018]

DR. KIRAN JADHAV IPS

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

O R D E R

Leave granted.

The law and rules must be enforced. However, law cannot be divorced from equity and compassion, more so, when a specific jurisdiction has been confirmed on this Court under Article 142 of the Constitution of India to do complete justice. We feel the present case is one where these aspects are germane.

The appellant joined the Indian Police Service in 1991. The troubles of the appellant arose 16 years after he had joined the service by which time his service record was unexceptionable. His application for earned leave dated 10.9.2007 was not sanctioned and the appellant tendered his resignation on 24.09.2007. The appellant remaining absent, explanations were called for from him. The appellant withdrew his resignation on 20.07.2013 but he was informed that as and when he would join duty his request for the extraordinary leave would be considered thereafter. A show cause notice was also issued to the appellant and vide order dated 16.12.2014, the appellant was deemed to have resigned w.e.f. 19.09.2007. Thus, almost a period of seven years went by in this process.

Our attention has been drawn to a communication dated 19.05.2014 addressed by the Principal Secretary, Government of Uttar Pradesh to the appellant seeking his reply about "voluntary retirement/resignation" and the date of acceptance of resignation from the Indian Police Service. In response, he reiterated the request for withdrawal of voluntary resignation.

The appellant approached the Central Administrative Tribunal, Mumbai Bench and after detailed examination, the Tribunal opined that the absence of the appellant from the duty for a period exceeding five years as deemed resignation was illegal and set aside as it is not in accordance with rules. While doing so, the Tribunal granted following relief:

"55(b) the respondents are, therefore, directed to consider and grant leave admissible to be applicant for the period from 20.09.2007 onwards till he reports for joining. As per original record produced by respondents applicant is having 300 days Earned Leave and 356 days Half pay Leave to his credit as on 01.09.2007. After adjusting leave due as above, rest of the period of absence shall be treated as Leave without pay/Extra Ordinary Leave."

Insofar as the prayer for treating the appellant as having voluntarily retired on 16.12.2014, for the same the appellant was given the option to make a representation.

The High Court, however, interfered with the order of the Tribunal vide impugned judgment dated 26.02.2018.

We have heard learned counsel for the parties keeping in mind the conspectus of the reason recorded for issuing notice by this Court on 04.07.2018 i.e. that the appellant may be permitted to

seek voluntary retirement in place of deemed resignation now imposed.

It is pointed out that a young son of the appellant suffered from blood cancer at the relevant stage of time in the year 2008 and ultimately had to be taken for treatment to London. The fortunate part is that he got over the disease. The wife of the appellant, who is also a Doctor, also suffered from Thyroid cancer while the father of the appellant developed Laryngitis cancer. Thus, at the relevant period of time three members of the family of the appellant were detected with the disease of cancer and naturally that would have been greatly troubling the appellant which possibly explains his vacillations and the communications addressed by him.

We put to learned counsel for the appellant as to what could be the appropriate relief in this situation and learned counsel for the appellant states that if the relief granted by the Tribunal as extracted aforesaid is granted the appellant can then be eligible for voluntarily retirement as otherwise it would not be within the rules.

We are inclined to exercise our jurisdiction under Article 142 of the Constitution of India and thus, consider it appropriate that the appellant should be granted the benefit as set out in para 55(b) of the relief clause of the Tribunal and on that basis the request of the appellant for voluntary retirement be considered as per rules but in effect, the appellant would thus be treated as voluntarily retired as he fulfills the parameters for the same in terms aforesaid.

The consequential monetary benefits, whatever they may be would thus be made available to the appellant within a period of three months from today.

The appeal is accordingly disposed of in terms aforesaid leaving the parties to bear their own costs.

.....J.

[SANJAY KISHAN KAUL]

.....J.

[K.M. JOSEPH]

NEW DELHI;

OCTOBER 25, 2019.

ITEM NO.43

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 12890/2018

(Arising out of impugned final judgment and order dated 26-02-2018 in WP No. 12203/2017 passed by the High Court Of Judicature At Bombay)

DR. KIRAN JADHAV IPS

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 25-10-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Yatindra Singh, SR. Adv.
Mr. Arvind Gupta, AOR
Mr. Prakash Gautam, Adv.
Mr. Pema Chowang, Adv.
Mr. Peeyush Kumar Kamal, Adv.

For Respondent(s) Ms. Pinky Anand, ASG
Mr. Devashish Bharukha, Adv.
Mr. Piyush Beniwal, Adv.
Ms. Kirti Dua, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

[Signed order is placed on the file]