

Before V. Ramaswami, C.J. and D. V. Sehgal, J.

ANIL KUMAR,—Petitioner.

*versus*

FOOD CORPORATION OF INDIA AND ANOTHER,—Respondents.

Civil Writ Petition No. 6202 of 1987.

November 23, 1987.

*Constitution of India, 1950—Article 226—Arrears of salary claimed for the period between withdrawal of resignation and date of being allowed to rejoin duty under order of Court—Consequential reliefs prayer for but not specifically granted—Prayer—Whether can be deemed to have been rejected—Contempt Petition on ground of non-payment of consequential reliefs dismissed—Fresh writ petition filed for release of arrears—Alternative remedy of suit available—Claim—Whether can be allowed in a petition under Article 226.*

*Held*, that even if the judgment of the High Court did not give any specific direction with regard to consequential reliefs but had directed the employer to allow the employee to resume duty, it cannot be said that the prayer for consequential reliefs should be deemed to have been rejected. Once it is held that resignation is no longer valid after it was withdrawn the result is that the resignation shall be deemed to have been not in force at any time and the employee shall be deemed to have been in service from the date on which he withdrew his resignation to the date he was allowed to rejoin duty. Consequential order that he is entitled to arrears of salary need not be specifically mentioned. It is a claim which flows from a relief of deemed declaration that he had been in service and, therefore, he shall be deemed to have worked and is entitled to salary for that period. (Para 1).

*Held*, that though the employee had the remedy of a regular suit, in such a case, as the present one, the Court should not direct him to file a separate suit for the arrears of salary. Even the earlier order shall be deemed to have given the relief. The Court must enforce its earlier order whether by a writ petition or in the nature of contempt petition. (Para 2).

*Held*, that the order dismissing application for contempt cannot be treated as res-judicata as having not been decided on merits. (Para 2)

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*Petition under Articles 226/227 of the Constitution of India praying that a writ of mandamus, certiorari or any other suitable writ, order or direction be issued directing the respondents :*

- (i) to produce the entire records before this Hon'ble court;
- (ii) a writ of mandamus be issued directing the respondent-authorities to make the payments of arrears of salaries etc. for the period he was illegally kept out of job by them alongwith interest at the rate of 18 per cent per annum;
- (iii) the Hon'ble Court may grant any other relief which is deemed just and fit in the circumstances of the present case;
- (iv) the petitioner be exempt from filing the certified copies of the Annexures attached with the petition;
- (v) the condition of serving advance notices of the writ petition on the respondents be dispensed with;
- (vi) costs of the writ petition be also awarded to the petitioner. Subhash Ahuja, Advocate, for the Petitioner.

G. C. Garg, Sr. Advocate with Rajan Gupta, Advocate, for the Respondents.

#### JUDGMENT

V. Ramaswami, C.J.—

(1) The petitioner was employed with the respondent-Corporation since 1969. He submitted his resignation on 19th February, 1982. However, he withdrew the resignation on 26th April, 1983 and wanted to rejoin duty on the ground that his resignation had not been accepted uptill 26th April, 1983. The respondent-Corporation did not permit the petitioner to rejoin contending that he had already resigned. The question of the validity of the resignation and his entitlement to work in the respondent-Corporation was the subject-matter of Civil Writ Petition No. 1408 of 1985. In that writ petition a Division Bench of this Court held that since the resignation had not been accepted, the petitioner was entitled to withdraw the same and the withdrawal was effective and, therefore, the refusal of the Corporation to permit him to rejoin duty was not valid. With these observations, the writ petition was allowed and the respondent-Corporation was directed to allow the petitioner to resume his duties. The order of the Division Bench is dated 13th September, 1985 and it is not in dispute that the petitioner joined

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service again on 15th October, 1985. Thereafter, he claimed salary for the period from 26th April, 1983 to 15th October, 1985, the date on which he was allowed to rejoin his duty. Since the respondent-Corporation was not willing to pay the back-wages, the petitioner filed C.O.C.P. No. 266 of 1986 and that petition was dismissed on 21st November, 1986 with an observation that the prayer did not fall within the domain of contempt petition, and that he could seek appropriate remedy. Thereafter, the petitioner filed C.M. No. 634 of 1987 praying for release of the arrears of salary for the said period from 26th April, 1983 to 15th October, 1985. Relying on certain observations of the Supreme Court in *State of Uttar Pradesh v. Shri Brahm Datt Sharma and another* (1), another Bench of this Court dismissed that application holding that after the disposal of the writ petition civil miscellaneous applications are not maintainable, and that the petitioner was permitted to pursue any other remedy that may be open to him in consequence of the decision rendered in C.W.P. No. 1408 of 1985. Thereafter, the petitioner has filed this writ petition praying for a suitable direction to the respondent-Corporation to release the arrears of backwages. The learned counsel for the respondent-Corporation contended that though there was a specific prayer in C.W.P. No. 1408 of 1985 requesting for consequential reliefs flowing from the writ petition such as arrears of pay, increments, seniority etc., the judgment did not give any direction in this regard and, therefore, that prayer should be deemed to have been rejected. We are unable to agree with this contention of the learned counsel for the respondent-Corporation. Once it is held that the resignation was no longer valid after it was withdrawn on 26th April, 1983, the result is that the resignation shall be deemed to have been not in force at any time and the petitioner shall be deemed to have been in service from 26th April, 1983 to 15th October 1985, for which period the salary is claimed. The consequential order that he is entitled to arrears of salary need not be specifically mentioned. It is a claim which flows from the relief of a deemed declaration that he had been in service and, therefore, he shall be deemed to have worked and is entitled to salary for that period.

(2) The next submission of the learned counsel for the respondent Corporation was that in view of the dismissal of C.M. No. 634

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(1) A.I.R. 1987 S.C. 943.

of 1987, the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution. We are unable to agree with this submission of the learned counsel also. The order in that application cannot be treated as *res judicata* as having not been decided on merits. The learned Judges only stated that petitioner should pursue any other remedy that may be open to him, and he has filed this writ petition under Article 226 of the Constitution. It may also be seen that the decision in *Shri Brahm Datt Sharma's case* (supra) is of no assistance to the learned counsel for the respondent as the prayer in the case in hand is to direct the respondent to comply with the directions given in the writ petition itself. That was a case where originally the dismissal of the Government servant was questioned under Article 226 of the Constitution. That writ petition was allowed on the ground that the principles of natural justice had been violated. Though on merits nothing could be stated, the said violation invalidated the order of dismissal. Accordingly, the order of dismissal was quashed though without any further direction. The dismissed Government servant retired from service and the Government initiated fresh disciplinary proceedings under Articles 470(b) of the Civil Service Regulations. When the show-cause notice was issued to show cause as to why the pensionary benefits could not be rejected or reduced, the petitioner filed an application in the High Court purporting to one arising out of an earlier writ petition. That application was allowed by the High Court. When the State Government went to the Supreme Court, the learned Judges held that the civil miscellaneous application was not maintainable. This was done on the ground that the writ petition earlier filed challenging the order of dismissal had been finally disposed of and nothing remained pending before the High Court. The earlier writ petition was not dismissed on merits but on the ground that there was some violation of the principles of natural justice in that the report of the Inquiry Officer had not been communicated to the petitioner therein. In those circumstances, the Supreme Court held that the petitioner could not question the same in a miscellaneous application as arising out of the earlier petition. But that is not the case here. The only other remedy which he could have availed was to file a regular suit claiming the arrears of salary, but though he had that remedy we are not satisfied why on the facts and circumstances of this case we should direct him to file a separate suit for arrears of salary. Even the earlier order shall be deemed to have given the relief. We must enforce that order whether by way of writ petition or in the nature of a contempt petition. We accordingly allow this writ petition

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and direct the respondent-Corporation to release the arrears of salary for the period from 26th April, 1983 to 15th October, 1985. It goes without saying that if he is entitled to the relief prayed for, the deemed increments and promotions etc., shall also be given to the petitioner.

(3) The relief above granted shall be given to the petitioner within a period of two months from today. If the relief is not given within this period, interest at the rate of 12 per cent per annum will accrue on the amount due for the period subsequent to two months.

R.N.R.

*Before J. V. Gupta, J.*

KRISHAN LAL,—*Petitioner.*

*versus*

DES RAJ,—*Respondent.*

*Civil Revision No. 2022 of 1987.*

November 24, 1987.

*East Punjab Urban Rent Restriction (Amendment) Act (II of 1985)—Sections 13 A and 18 A—Application for ejection under section 13 A—Summons issued in prescribed form—Limitation for filing application seeking leave to defend—Application filed beyond the period provided in summoning—Fixation of such period—Validity of such fixation.*

*Held,* that if no period of 15 days as such is prescribed for making an application for obtaining the leave of the Controller to contest and it is left open to the tenant to move such an application as and when it is convenient to him, it will be violative of the language used in the summons. It may be that the period of 15 days was not provided under section 18A as such but the form of the summons has been specified in sub-section (2) of section 18 A of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 in Schedule II. Thus the said form will be deemed to be a part of sub-section (2) of section 18 A of the Act. The last para of the summons duly reiterates the provisions of sub-section (5) of section 18-A of the Act, which provide, that the Controller may give to the tenant leave to contest the application if the affidavit filed by the