

**OJC NO. 4851 OF 2002**

## Petitioners

-versus-

## Opposite Parties

For opp.party - M/s J.M.Mohanty, D.Samal,  
N.K. Das and K.C.ishra

**THE HONOURABLE MR. JUSTICE I.M. QUDDUSI  
AND  
THE HONOURABLE MR. JUSTICE PRADIP MOHANTY**

Date of judgment : 23.12.2005

2. The brief facts of the case are that the opposite party was working as Head Clerk in Kendriya Vidyalaya Sangathan. While working as such, he being disgusted with the repeated orders of his transfer made a representation to the petitioners on 04.10.2001 indicating his option that unless his grievances with regard to transfer, etc. are considered, the said representation be treated as notice for his voluntary retirement under Rule 48-A of

Central Civil Services (Pension) Rules, 1972 (for short, “the Rules”). After receipt of the so-called notice for voluntary retirement, the petitioners accepted the same within 15 days of tendering of the notice. Thereafter, the opposite party approached the Tribunal by filing the aforesaid O.A. with a prayer for quashing the order accepting his so-called notice for voluntary retirement and for reinstatement. The Tribunal, by the impugned order, observed that the opposite party could not have asked for going on voluntary retirement without putting the Department to a notice of three months. It also observed that no reasoned order has been passed by the authorities in accepting the notice for voluntary retirement and hence quashed the order of voluntary retirement. Aggrieved, the petitioners have approached this Court.

3. The case of the petitioners is that after receipt of the notice dated 04.10.2001 for voluntary retirement under Rule 48-A of the Rules, they have accepted the same on 19.10.2001, i.e., within fifteen days of tendering the notice. They have rightly done so as per Rule 48-A (3-A)(b) of the Rules, for which no fault can be found with them.

4. Mr. Ashok Mohanty, learned Senior Advocate appearing for the petitioners, submitted that the impugned order is illegal, without jurisdiction and the Tribunal has erred in law in setting aside the order accepting the voluntary retirement of opposite party no.1. He further submitted that the petitioners are competent to pass such order under Rule 48-A (3-A)(b), which provides that the authorities can consider and curtail the period of notice of three months if they are satisfied that such curtailment will not cause any administrative inconvenience.

5. On the other hand, Mr. J. Mohanty, learned counsel appearing for the opposite party, supported the order of the Tribunal quashing the order of voluntary retirement.

6. To appreciate the rival contentions of the parties, it is necessary to refer to Rule 48-A of the Rules, the relevant portion of which is extracted hereinbelow:-

**“48-A. Retirement on completion of 20 years’ qualifying service –** (1) At any time after a Government servant has completed twenty years’ qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:

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xx

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(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor.

(b) On receipt of a request under Clause (a) the Appointment Authority, subject to the provisions of Sub-Rule 2, may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months with the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

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xx”

From the above provision, it is crystal clear that three months notice is necessary for voluntary retirement. Only in exceptional circumstances, and on a request being made by the employee concerned giving reasons therefor, the authorities can waive or curtail the three months notice if they are satisfied that the curtailment of the period of notice will not cause any administrative inconvenience subject to the condition that the Government servant shall not apply for commutation of his pension within three months.

7. A bare reading of the notice goes to show that it is not a notice under Rule 48-A (3-A)(a), rather it is a representation wherein the opposite party-employee has made so many grievances

including his transfers. Being disgusted with the repeated orders of transfer, he has made the representation and has also mentioned that unless his grievances are redressed, the same be treated as a notice under Rule 48-A. That means, it was not a voluntary one; rather it appears to be a conditional one. In other words, the notice was the outcome of frustration and disgust. In view of this peculiar nature of notice, the authorities should have been careful and circumspect before accepting the same. But, as it appears, instead of exercising the power in a diligent manner, the authorities have hurriedly accepted the notice without assigning any reason as to why such acceptance was made before completion of three months. The order of the authorities accepting the voluntary retirement is not in terms of rule 48-A(3A)(b) of the Rules. Therefore, the Tribunal has committed no illegality, infirmity or manifest error of law in setting aside the said order.

8. In the result, this writ petition has no merit and is accordingly dismissed. No costs.

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**Pradip Mohanty, J.**

**I.M.QUDDUSI, J.**            I agree.

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**I.M.Quddusi,J.**

Orissa High Court, Cuttack  
 December 23, 2005 / *Samal*