
(2005) 08 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 15306 (W) of 2002

Aditya Nath Banerjee

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:

Constitution of India, 1950 — Article 217(1), 309

Citation : (2006) 2 LLJ 74

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Manas Kundu and Sumit Ghosh, for the Appellant; Subrata Roy, Dilip Kr. Kundu and S. Ghosh, for the Respondent

Judgement

Arun Kumar Mitra, J.—The respondent No. 1 is the State Bank of India represented through its Regional Main Office and respondent No. 2 is the Assistant General Manager, Region-IV, Burdwan of the said Bank and respondent No. 3 is the Branch Manager, Kulti Branch, District-Burdwan of the said Bank. The petitioner is an employee of the State Bank of India. The petitioner was originally appointed as a temporary Messenger in the month of March, 1987. Initially, he was: posted at Banachity Bazar Branch at Durgapur. Subsequently, the petitioner was made permanent and as per the averments made in the writ petition the petitioner is residing in the official quarter allotted to the petitioner with: his wife, one son and one daughter.

2. According to the petitioner he was sought to be transferred from Banachity Bazar Branch to Kulti Branch and this caused difficulty to him and his family members inasmuch as his children were studying in Durgapur.

3. The petitioner expressed difficulties before the authority of the Bank and requested withdrawal of the said order but such request of the petitioner was not adhered to. According to the petitioner as a loyal employee he joined Kulti Branch inspite of his difficulties.

4. The petitioner admittedly submitted an application on plain paper for resignation before the respondent No. 3 on October 11, 2001 followed by a reminder to the said authority on November 19, 2001 .

5. Then again the petitioner on being asked by the respondent No. 3, i. e. the Branch Manager by his letter dated December 27, 2001 submitted his resignation before the respondent No. 3 in the prescribed manner on December 28, 2001 through proper channel. Copy of the said application dated December 28, 2001 has been made Annexure-"P 1".

6. The respondent No. 3 by his letter dated April 19, 2002 informed the petitioner that his prayer for resignation had been duly forwarded to the appropriate authority for consideration. By another letter dated May 2, 2002 the respondent No. 3 asked the petitioner to appear for an interview before the respondent No. 2 on May 6, 2002 at 11 a.m. at Zonal Office, Burdwan. The petitioner alleged that he appeared duly in terms of the letter dated May 2, 2002 and before the respondent No. 2 the petitioner narrated his problem.

7. According to the petitioner after such personal hearing and in the light of the advice verbally given to him by the respondent No. 2, the petitioner was seriously considering about withdrawal of his resignation.

8. At this juncture the respondent No. 3 by a letter bearing BM No. 26/35, dated June 12, 2002 intimated the petitioner that the resignation of the petitioner from his service of the Bank has been accepted by the appropriate authority with immediate effect but before leaving the Bank the petitioner was to liquidate the Bank's loan/advances as mentioned therein. The petitioner alleged that it was also written in the said letter that the petitioner would be relieved from the Branch from the close of business on June 15, 2002. According to the petitioner he was directed to sign and return the duplicate copy of the said letter as a token of acknowledgment. The petitioner has annexed a copy of the said letter dated June 12, 2002 as Annexure-"P 2."

9. After the receipt of the letter dated June 12, 2002 the petitioner allegedly intended to. serve a copy of the representation dated June 30, 2002 before the respondent No. 2 through the respondent No. 3 praying for withdrawal of his resignation. The said letter, according to the petitioner, could not be served on June 13, 2002 but the Office of the respondent No. 3 duly received the same on June 14, 2002 i.e. allegedly before the date of resignation becomes effective. The petitioner has annexed to the writ petition a copy of the letter dated June 13, 2002 as Annexure-"P3" therein.

10. According to the petitioner he has duly performed his duty till the close of the business of the Bank on June 15, 2002. At the close of the business the respondent No. 3 served upon: the petitioner a letter dated June 15, 2002 conveying that the date of relieving the petitioner from the service of the Bank at the close of the business on June 15, 2002 in consequence of the resignation having been accepted by the appropriate authority, the petitioner should claim

for the terminal benefits as per norms. The petitioner has "annexed this letter dated June 15, 2002 as Annexure-"P 4".

11. According to the petitioner though he has submitted his representation before the respondent No. 2 through the respondent No. 3 before the date of effect of such resignation but the respondent No. 3 didn't allow the petitioner to perform his duties from June 16, 2002. According to the petitioner he has also not been paid his salary up to June 15, 2002 and the petitioner with his family has also been enjoying the official quarter till date.

12. The respondent No. 3 by a registered letter dated July 4, 2002 conveyed the petitioner that the decision of the appropriate authority regarding the acceptance of his resignation from Bank's service was final. A copy of the said letter dated July 4, 2002 has been made Annexure-"P 5" to the writ petition.

13. The petitioner alleged that thereafter he made a further representation before the respondent No. 2 through the respondent No. 3 for reconsideration of his prayer for withdrawal of his resignation. It appears that the said respondent has ignored the representation. The petitioner has annexed a copy of the letter dated September 4, 2002 which has been made Annexure-"P 6" to the writ petition.

14. According to the petitioner by letter dated June 12, 2002 the effective date of relieving the petitioner from the service of the Bank was fixed from the close of business on June 15, 2002 and as the petitioner before the said effective date has withdrawn his resignation by letter dated June 13, received by the respondent on June 14, the relationship of master-servant between the petitioner and the respondents didn't cease. According to the petitioner in such circumstances the "respondents ought to have allowed the petitioner to continue his service beyond June 15, 2002.

15. The petitioner in the writ petition has alleged that there is no rule and/or policy of the respondent Bank preventing an employee to withdraw his voluntary resignation before such resignation becomes effective and as in the instant case the petitioner withdrew his resignation on June 13, 2002 before the resignation becomes effective on June 15, 2002, the respondent authorities could not deny the petitioner to continue in his service on the ground of acceptance of resignation effective from a future date.

16. The petitioner further submitted that in terms of the letter dated June 12, 2002 he neither liquidated the loan/advances of the Bank nor submitted his claim for terminal benefits in terms of the letter dated June 15, 2002 and accordingly the letter dated July 4, 2002 communicating the decision of the appropriate authority regarding acceptance of resignation has not become final.

17. The petitioner has alleged that since he has performed his duties till the close of the business of the Bank on June 15, 2002 the said factum clearly establishes the existence of relationship of master and servant between the petitioner and

the respondent on that date. Such relationship can't be snatched unilaterally when the petitioner withdrew his application before June 15, 2002. Accordingly the petitioner made following prayers:

A. A writ in the nature of Mandamus commanding the respondents, their agents, servants and/or subordinates to treat the application for resignation of your petitioner dated December 28, 2001 being Annexure "P 1", to this petition as withdrawn and/or cancelled, and to quash, set aside, cancel and/or rescind the purported orders/ decisions of the respondent No. 2 as communicated by the letters of the respondent No. 2 as communicated by the letters of the respondent No. 3, dated June 12, 2002, June 15, 2002 and July 4, 2002 being Annexures "P 2", "P 4" and "P 5" to this petition forthwith;

B. A writ in the nature of Mandamus commanding the respondents, their agents, subordinates and/or servants to treat your petitioner as in continuous employment of the respondent Bank and to pay to your petitioner all consequential benefits forthwith;

C. A writ in the nature of Certiorari directing the respondents, their agents, subordinates and/or servants to transmit before this Hon'ble Court the records of the entire case including the purported decision of the respondent No. 2 as communicated . by the respondent No. 3 in his letters dated June 12, 2002, June 15, 2002 and July 4, 2002 being Annexure "P 2", "P 4" and "P 5" to this petition, so that conscionable justice may be administered by quashing the same.

18. Affidavit-in-opposition has been filed on behalf of the respondent Nos. 1 and 2. The said affidavit-in-opposition to the writ petition has been affirmed by respondent No. 2, Assistant General Manager, Burdwan Zonal Office, Region-IV.

19. In paragraph 2 of the opposition the respondents have stated that the petitioner was appointed in the service of the respondent No. 1 Bank on March 13, 1987 in the post of Messenger and his condition of service was regulated by "Sastry Award".

20. According to the respondents in terms of paragraph 522 of Sastry Award a permanent > employee may leave the service of the Bank by giving one month's notice to the appropriate authority. Employee desirous of leaving the Bank should be asked to liquidate the outstanding loan, if any including housing loan.

21. It has also been stated in the affidavit-in-opposition in paragraph 2 that in the instant case the Assistant General Manager of the State Bank of India, Burdwan Zonal Office Region is the competent authority to consider the application of the petitioner for resignation from the Bank's service. In the same paragraph in sub-paragraph (d) it has been stated that initially, the petitioner submitted application in plain paper for resignation from Bank's service on October 11, 2001 to the Branch Manager, Kulti Branch, the respondent No. 3. The petitioner gave a letter dated November 19, 2001 addressed to the respondent No. 3 by way of a reminder to accept his resignation. The copy of the

said two letters dated October 11, 2001 and November 19, 2001 have been annexed to the affidavit-in-opposition being marked with letter "R- 1" and "R-2" respectively.

22. It has further been stated that since the respondent No. 3 was not the competent authority to accept the said resignation, he forwarded the said letter to respondent No. 2 on November 22, 2001 for necessary action.

23. On December 27, 2001 the Bank authorities asked the petitioner to submit application for resignation in the prescribed form. On December 28, 2001, the petitioner submitted application in the prescribed form.

24. It has been stated by the Bank further that the respondent Bank asked the petitioner to appear before the respondent No. 2 on May 6, 2002 for an exit interview. Accordingly the petitioner duly appeared before the respondent No. 2 on May 6, 2002 at 11 a.m. at the Burdwan Zonal Office and during the interview it was brought to the notice of the petitioner that he had not completed pensionable service. However, he was firm in the desire to resign from the Bank.

25. In the affidavit-in-opposition it has further been stated that the respondent No. 2 after considering the relevant rules and also the application submitted by the petitioner and also considering the desire of the petitioner, which he confirmed in the interview dated May 6, 2002 and further since the notice period of one month from the date of submission of the application for resignation was already over, accepted the resignation on May 27, 2002.

26. It has been categorically stated in paragraph 2(1) of the affidavit-in-opposition that the resignation of the petitioner was accepted on May 27, 2002 with immediate effect and the respondent No. 3 was directed to convey the petitioner about the acceptance of his resignation from Bank's service. Accordingly the Branch Manager, Kulti Branch advised the petitioner through Branch letter No. BM/26/35, dated June 12, 2002 and the same was received by the petitioner on due acknowledgment.

27. The Branch Manager further issued a letter to the petitioner on June 15, 2002 conveying his final release from the Branch consequent to his resignation at the close of business on June 15, 2002 which was duly accepted by the petitioner. The salary till June 15, 2002 was disbursed to the petitioner by way of a Banker's Cheque and the petitioner stands effectively released at the close of business on June 15, 2002.

28. It has further been stated in paragraph 2(o) of the affidavit-in-opposition that a letter was received by the respondent No. 3 on June 14, 2002 from the petitioner wherein it was stated inter alia that "Now, I hereby withdraw my resignation letter submitted to you which may please be acceded to."

29. On behalf of the respondents it has been stated that in the said circumstance the petitioner prayed for writ of mandamus commanding the respondents to treat the application for resignation of the petitioner dated December 28, 2001 which

is Annexure "P1" to the writ petition as withdrawn and to set aside and/or rescind the decision of the respondent No. 2 by the letter dated June 12, 2002.

30. It has been further submitted by the respondents in the affidavit-in-opposition that after acceptance of the resignation the petitioner has no right to withdraw the same. The respondents further stated that the petitioner is occupying the official quarter wrongly though the resignation of the petitioner has been accepted as back as on June 12, 2002 and the petitioner is not entitled to occupy the official quarter allotted to the petitioner after June 12, 2002.

31. It has been further submitted by the respondents that the Bank is entitled to take appropriate steps to recover possession of the official quarter from the petitioner.

32. In the affidavit-in-opposition resignation letter dated October 11, 2001 addressed to the Branch Manager, Kulti Branch has been annexed. Another letter dated November 19, 2001 which is also with reference to resignation has been annexed as Annexure "R 2" to the opposition and a third letter being a memo has been issued by the Branch Manager, Kulti Branch dated May 2, 2002 addressed to the petitioner asking the petitioner to appear for an interview with Assistant General Manager, Region-IV on May 6, at 11 a.m. concerning his resignation has also been annexed being marked as "R3" to the opposition.

33. In the reply the petitioner reiterated his stand taken in the writ petition. The petitioner denied all the allegations made by the respondent Bank authorities made in the affidavit-in- opposition.

34. The learned Counsel for the petitioner submits that before acceptance of the resignation he has withdrawn the same and naturally, the Bank authorities cannot say that the petitioner is not in service.

35. The learned Counsel further submitted that the Bank has stated that resignation has been accepted on June 12, 2002 but the petitioner has been allowed to work after June 12, 2002 up to June 15, 2002 and that goes to show that such allegation on behalf of the Bank authorities that the petitioner's resignation has been accepted is not correct. Reliance has been placed on a judgment reported in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, . The learned Counsel mainly relied on the observations made in paragraph 51 of the said judgment and submitted that prospective resignation can be withdrawn at any time before it becomes effective. The said observations made in paragraph 48 of the said judgment is quoted herein below Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, :

48. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and

constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/ or office, by his own unilateral act of tendering resignation, gives up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hands addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.

36. The learned Counsel for the petitioner relied on another decision reported in Shambhu Murari Sinha Vs. Project and Development India and Another, . The learned Counsel submitted that in this judgment the Hon''ble Apex Court has observed that resignation can be withdrawn before the acceptance becomes effective. The learned Counsel also submitted that in this judgment the Hon''ble Apex Court in paragraph ; 5 has decided as to what would be the effective date. The said observations of the Hon''ble Apex Court made in paragraph 5 of this judgment is quoted hereinbelow at p. 936 of LLJ:

5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated October 18, 1995 was accepted by the respondent Management by their letter dated July 30, 1997, the appellant was not relieved from service and he was allowed to continue in service till September 26, 1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the: appellant had already withdrawn the offer of voluntary retirement vide his letter dated August 7, 1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by three decisions, namely, Balram Gupta Vs. Union of India (UOI) and Anr, ; J.N. Srivastava Vs. Union of India (UOI) and Another, ; Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, in which it was held that the resignation in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs.

37. The learned Counsel for the petitioner thereafter relied on another decision *Aloke Nath Bandopadhyay v. General Manager, Allahabad* 2001 (2) Cal LJ 313. The learned, counsel submitted that this is a judgment delivered by one learned single Judge of this High Court where the learned single Judge observed that under Voluntary Retirement Scheme application by the petitioner, if made then withdrawal of the application before the expiry of the last date is permissible.

38. The learned Counsel for the petitioner submitted that in view of the fact that before acceptance of the resignation the petitioner withdrew his letter of resignation and naturally it cannot be said that the petitioner has tendered resignation from his service and his service is no longer there.

39. The learned Counsel for the petitioner then submitted that by its action the Bank authorities has allowed him to continue and the acceptance of resignation is nothing but afterthought on behalf of the Bank authorities.

40. The learned Counsel for the petitioner further submitted that Bank has allowed the petitioner to occupy Bank's quarter and thereby has also accepted that their claim of acceptance of the resignation is nothing but a mala fide attempt on their part to terminate the service of the petitioner.

41. The learned Counsel for the petitioner therefore, submitted that the petitioner should be allowed to continue with his services and the application for resignation of the petitioner dated December 28, 2001 being Anneuxre-"P 1", be treated as withdrawn and/or cancelled. The learned Counsel for the petitioner mainly submits that the decision of the respondent No. 2 as communicated by the letters of respondent No. 3, dated June 12, 2002, June 15, 2002 and July 4, 2002 being Annexures-"P 2", "P 4" and "P 5" respectively should be cancelled or withdrawn forthwith.

42. The learned Counsel appearing for the Bank authorities on the other hand submitted that the petitioner is an employee of Bank and his service is contractual. It is also the intention which is an important factor to be taken into account. The intention of the petitioner was to submit resignation as would appear from the letters annexed to the affidavit-in-opposition.

43. The learned Counsel for the Bank authorities then submitted that when his resignation has been accepted the petitioner cannot be said to be in service as yet. The acceptance of resignation has been communicated to the petitioner. The learned Counsel for the Bank authorities relied on a decision *State of Punjab Vs. Khemi Ram*, . In this judgment the learned Counsel mainly relied on the observations made where the term "communication" has been defined. The learned Counsel submitted that in the instant case also the communication of the acceptance of resignation has been made.

44. The learned Counsel for the Bank authorities also relied on another decision *Raj Kumar Vs. Union of India (UOI)*, . The learned Counsel submitted that in this judgment the Hon'ble Apex Court observed that after acceptance of a

resignation by the authority, even before communication of the order of acceptance, withdrawal is not permissible. The learned Counsel relied on the observations made by the Hon"ble Apex Court in paragraphs 3 and 5 of this judgment which are quoted hereinbelow at pp. 14 & 15 of LLJ:

3. In this appeal, with certificate granted by the High Court, counsel for the appellant contends that the appellant could, so long as acceptance of the resignation was not communicated to him, withdraw the resignation submitted by him. Counsel invited our attention to a circular memorandum issued on May 6, 1958, under the signature of the Deputy Secretary to the Government of India, Ministry of Home Affairs, setting out the procedure to be followed in dealing with resignation from service. Clauses (c) and (d) of the circular stated:

(c) The competent authority should decide the date with effect from which the resignation should become effective. In cases covered by (b)(i) above, the date, would be that with effect from which" alternative arrangements can be made for filling the post. Where an officer is on leave, the competent authority should decide whether he will accept the resignation with immediate effect or with effect from the date following the termination of the leave. Where a period of notice is prescribed which a Government servant should give when he wishes to resign from service, the competent authority may decide to count the period of leave towards the notice period. In other cases also it is open to the competent authority to decide whether the resignation should become effective immediately or with effect from some prospective date.

(d) A resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective, the officer is no longer in Government service and acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break....

Counsel says that under the instructions issued by the Government of India resignation of an officer from service becomes effective after it is accepted and the officer is relieved of his duties and not till then. But the circular letter has no statutory force. It is not a rule made under Article 309 of the Constitution. It contains merely instructions set out by the Ministry of Home Affairs about the procedure to be followed in respect of resignation from service. Our attention has not been invited to any statutory rule or regulation relating to resignation by members of the Indian Administrative Service, especially as to the date on which the resignation becomes effective.

5. Our attention was invited to a judgment of this Court in State of Punjab Vs. Amar Singh Harika, in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or

otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after, it was communicated to the officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited, by his letter of resignation, determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently, the State of Rajasthan did not immediately implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in -intimating acceptance or in relieving him of his duties.

45. The learned Counsel for the Bank authorities lastly relied on a decision reported in North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar, , and submitted that in this judgment the Hon'ble Apex Court has observed that since there is no rule of the Bank which requires the acceptance of the" resignation to be communicated before the resignation could become effective, the resignation takes effect the moment the same is accepted. The learned Counsel placed reliance on the observations made in paragraphs 14, 17 and 21 of this judgment which are quoted hereinbelow at pp. 841 & 842 of LLJ:

14. In our opinion, both these grounds are unsustainable in law. This Court in Raj Kumar Vs. Union of India (UOI), :

When a public servant has invited by his letter of resignation the determination of his employment, his service normally stands" terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Undue delay, in intimating to the public servant concerned the action taken on the letter of resignation, may justify an inference that the resignation had not been accepted.

17. It is an admitted fact that so far as the appellant- Organisation is concerned, there is no rule which requires the acceptance of the resignation to be communicated before the resignation could become effective. But the Division Bench in appeal has relied upon a consolidated guidelines and instructions issued

by the Government of India vide letter of February 11, 1988 dealing with the subject of acceptance and withdrawal of resignation. We see that these guidelines state that in the case of a resignation which has been accepted by the appointing authority with effect from a future date and if in the meantime the concerned Government servant withdraws his resignation before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. On these guidelines, we do not see any requirement which states that even in cases where the resignation is accepted with immediate effect, the same can be withdrawn before such acceptance is communicated to the Government servant concerned. In the contrary, in our opinion, these guidelines also indicate that the resignation takes effect the moment the same is accepted.

21. As noticed above, in the present case the resignation is dated November 18, 1988 and the same as found by us is accepted on November 18, 1988 itself. The communication was on December 1, 1988 about 13 days thereafter which delay, in our opinion, is not an undue delay so as to make us draw an inference that there has been no acceptance of the resignation. Even the fact that in the meantime the respondent either attended duty or signed the attendance register will be of no assistance to claim his resignation had not taken effect. Even otherwise the appellants have urged that because there was no responsible officer in the headquarters from December 18, 1988 after respondent's resignation was accepted till December 1, 1988 and the respondent took advantage of the same and marked his attendance and such attendance cannot be treated as lawful attendance in view of the acceptance of his resignation on November 18, 1988. We agree with this contention of the appellant.

46. Heard the learned Counsel for the parties and considered their respective submissions. Now, I am to decide two things:

- * whether resignation submitted by the petitioner is accepted before the withdrawal.

- * whether in a prospective resignation withdrawal can be made before the receipt of the communication of the acceptance.

47. Insofar as the first question is concerned from the facts and circumstances of the case it clearly appears that the petitioner submitted resignation through other resignation letter earlier to this letter that is intention was to resign from the job, may be for the reason of his family disturbance or may be for any other reasons but it is a fact or rather it is not denied by the petitioner that the letters annexed to the affidavit-in-opposition which are dated October 11, 2001 and November 19, 2001 were not written by him. In the said letters addressed to the Branch Manager, Kulti Branch the petitioner intended to resign and rather submitted resignation. In a contract the intention of the parties to conclude the contract or to rescind the contract is very much vital or important. Here, from the letters being Annexure "RI" and "R2" to the affidavit-in-opposition of the

Bank it is amply clear that the intention of the petitioner was to resign, whatever may be the cause. It is not to be proved by the Bank as to whether acceptance has been made on a particular date or not, Allowing the petitioner to work for two days thereafter by the Branch Manager also does not prove that the Bank authorities did not accept resignation.

48. Insofar as the second question is concerned, though the learned Counsel for the petitioner relied on the decision reported in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, and submitted the prospective resignation can be withdrawn at any time before it becomes effective and his client's resignation is prospective and the petitioner has withdrawn the same before it was made effective and naturally, there cannot be any resignation but failed to understand as to which date the learned Counsel for the petitioner wants to make an effective date, does he want to mean that June 15, 2002 is the effective date of acceptance of the resignation and prior to that his withdrawal of resignation letter is there or he wants to mean any other date inasmuch as in November also he submitted resignation, though that letter was not addressed to the appropriate authority who can accept the resignation.

49. The learned Counsel for the petitioner also relied on another decision of the Hon"ble Apex Court in the matter of Shambhu Murari Sinha v. Project and Development India (supra), and submitted that here also the Hon"ble Apex Court has said that resignation can be withdrawn before "effective date". Again I fail to understand as to what the learned Counsel intends to signify by saying effective date.

50. It is a fact that the petitioner time to time sent resignation letters and reminders thereof though all not before the appropriate authority. Now, Bank authorities stated through their letter dated June 12, 2002 that the appropriate authority has accepted his resignation with immediate effect and in that letter Bank authorities also stated that he will be relieved from the Branch from the close of business on June 15, 2002. Therefore, acceptance on the part of the Bank can be said to be effective from June 12, 2002. In this regard best reliance can be placed in the judgment reported in North Zone Cultural Centre v. Vedpathi Dinesh Kumar (supra) where the effective date has been denned or clarified and it has also been observed that communication of acceptance of resignation is not a mandatory requirement and the resignation becomes effective from the date of its acceptance and not from the date on which the acceptance is communicated to the employee. In this judgment the Hon"ble Apex Court clarifying the position of communication or defining the word "communication" actually reiterated the stand taken by the Hon"ble Apex Court in the case of State of Punjab v. Khemi Ram (supra).

51. Considering the above position or considering the ratio of the judgments delivered by the Hon"ble Apex Court as referred to above and also getting the instant case tested in the light of the above referred judgments I am of the opinion that the resignation of the petitioner has been duly accepted by the Bank

and the petitioner now cannot ask for reinstatement. The Bank authorities is however, directed to pay off the petitioner all his dues within a period of four weeks from the date of communication of the order.

52. The writ petition is thus disposed of with the above observations and/or directions.

53. There will be no order as to costs.

54. Urgent Xerox certified copy, if applied for, be given to the parties as expeditiously as possible.