

(2009) 11 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 6164 (S/B) of 1986

Ashok Gyan Prakash Sharma

APPELLANT

Vs

U.P. Electronics Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Companies Act, 1956 — Section 617

Citation : (2010) 3 AWC 3215

Hon'ble Judges : Sibghat Ullah Khan, J;Anil Kumar, J

Bench : Division Bench

Advocate : Ashok Gyan Prakash Sharma, Party - In - Person, for the Appellant;
Sanjay Bhasin, for the Respondent

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan and Anil Kumar, JJ.—Heard Sri Ashok Gyan Prakash Sharma (Petitioner in person) who is now an advocate of this Court and Sri Sanjay Bhasin learned Counsel for the Respondents.

2. In this petition, a prayer has been made for quashing of the order dated 1.8.1986 by which the Petitioner's resignation from the post of Senior Assistant Manager (Commercial), Uptron Capacitor Limited had been accepted.

3. The factual matrix of the present case, as submitted by the Petitioner, are to the effect that the Petitioner was initially appointed on the post of Store Keeper in U.P. Electronics Corporation limited on a probation period and thereafter he was confirmed with effect from 30.12.1979 and by order dated 4.9.1982, he was promoted to the post of Assistant Manager (Stores) and thereafter with effect from 1.7.1984 he was promoted as Senior Assistant Manager (Commercial).

4. The relations between the Petitioner and other officials of the Corporation were not cordial and in this regard he had made a complaint to the higher authorities. On 1.8.1986, when he went to the office to discharge his duties on the post in question at about 1 p.m., he received a telephonic call from the

General Manager of Uptron Capacitor Limited where he was working and discharging his duties as Assistant Manager (Commercial) to meet him immediately in his office.

5. Accordingly, he met the said authority where he was compelled to write resignation letter. Ultimately, he submitted the resignation letter on the same day which was immediately accepted by General Manager of Uptron Capacitors Limited, a copy of which has been annexed as Annexure-17 to the writ petition.

6. The order dated 1.8.1986, passed by the General Manager, Uptron Capacitors Limited by which the Petitioner's resignation had been accepted, was challenged before this Court by means of present writ petition on the ground that the authority who had accepted the same, was not the competent to accept the order of resignation as such the impugned order dated 1.8.1986 was without jurisdiction and nullity, further the same had been obtained under duress and compulsion from the Petitioner and after submitting the same, he had requested for withdrawal of his resignation letter which was not accepted in arbitrary manner.

7. Sri Sanjay Bhasin, learned Counsel for the Respondents, in rebuttal, has submitted that the Petitioner's appointment as Store Keeper in connection with the Capacitors Project of the U.P. Electronics Corporation Limited, Lucknow on 21.11.1978 and at the time of his appointment as Store Keeper, the Capacitors was in the project stage and the Subsidiary Company known as Uptron Capacitors was in the offing.

8. Later on, the Uptron Capacitor Limited was registered as Government Company under the provision of Section 617 of the Company Act, 1956 with effect from 13.3.1979. As such the services of the Petitioner was transferred as Store Keeper in Uptron Capacitors Limited and was confirmed by order dated 11.1.1980, passed by the Project Manager with effect from 30.12.1979 so the Petitioner was an employee of the Uptron Capacitors Limited and not of the U.P. Electronics Corporation Limited.

9. It has further been submitted by the learned Counsel for the Respondents that on 1.8.1986 due to personal and domestic circumstances, the Petitioner had submitted his resignation in his own hand writing from the post of Senior Assistant Manager (Commercial) which was accepted on the same day by the General Manager of Uptron Capacitors Limited, who was competent authority to do so, in view of the resolution dated 7.7.1986, passed by the Board of Directors of the Uptron Capacitors Limited, by which the General Manager (K. D. Bhargava) was authorized to exercise the said power. In this regard, he has relied on the relevant portion of the said Resolution, the relevant portion of which is quoted below:

In exercise of the powers vested in me I hereby sub-delegate to Sri K. D. Bhargava, General Manager, Uptron Capacitors Limited the following powers:

(i) Recruitment: Recruitment of personal (including appointment and confirmation) against approved manpower budgets in the non-executive and executive cadre upto the level of Dy. Manager based on the recommendations of the Selection committee duly constituted ;

(ii) Resignation: Full power to accept resignation for all non- executive "and executive cadre upto the level of Dy. Manager ; and (iii) Disciplinary Action: Pending inquiry full powers to suspend and to impose all kinds of punishments to any person in the non-executive and executive cadre upto the level of Dy Manager in consultation with the Personnel Department and in accordance with the rules and regulations of the Company.

This supersedes the power earlier delegated to him. K. Bhushan Director-in-Charge"

10. As such the submission made by the Petitioner that the General Manager of the Uptron Capacitors Limited was not authorized to accept the resignation of the Petitioner, was incorrect and wrong.

11. Sri Bhasin has further submitted that after acceptance of the resignation letter, retiral dues were paid to the Petitioner which was accepted and received by him on 7.8.1986 without any protest, the details of which were given under:

Gratuity Rs. 12,572.30

E.L. Encashment Rs. 8,035.80

Salary for July and one day in August Rs. 2,244.85

Pay for notice period Rs. 8,680.50

Rs. 31,533.45

Less Rs. 9,035.85

Total Rs. 22,497.60

12. Further, the Petitioner had also wrote a letter on 4.8.1986 requesting therein that the amount due towards C.P.F. account (both employer and employee share) may be given to him at an early date and in this regard he further on 11.8.1986 wrote a letter to the Secretary, C.P.F., U.P.L.C.,10 Ashok Marg, Lucknow, which is quoted below:

It is to certify that I, Ashok G. Sharma, Senior Assistant Manager (Com) is not in any service and not intend to serve in future. I wish to invest my C.P.F, Fund in the business of my son at Dehradun in Monoplast Enterprises, Salakini Dehradun and start partnership with my son.

13. Accordingly, the amount due towards C.P.F. Rs. 36,827 was paid to the Petitioner on 21.8.1986 which he had acknowledgment vide receipt dated 21.8.1986, a copy of which had been annexed as Annexure-B8 to the counter-

affidavit without any protest.

14. As such once the Petitioner had submitted his resignation letter on his own hand writing which was accepted by the General Manager of the Uptron Capacitors Limited, who was competent to accept the same and the amount whereof, as stated above, had been paid and accepted by him then he had no right to withdraw the resignation letter from the post in question. In these circumstances, the Petitioner could not challenge the order of resignation and the same was perfectly valid and in accordance with law.

15. We have heard the Petitioner in person and Sri Sanjay Bhasin learned Counsel for the Respondents and perused the record.

16. We propose to deal the rival contention as advanced by the parties a little later and first of all, it will be appropriate to consider the circumstances in which the resignation submitted by an employee can be withdrawn.

17. The word "Resignation" in relation to an office connotes the act of giving up or relinquishment of the office. To relinquish office means to cease to hold office or to lose hold of the office. Therefore, it means that the employees wants to sever his relation from the employer without any riders and then only it would amount to resignation.

18. Corpus Juris Secundum Vol. 77 page 311 defines the words "resign" and "resignation" as under:

"Resign": To give up ; to surrender by a formal act ; to yield ; to relinquish ; to give up one's office or position ; to withdrawn from. The word "resign" in its ordinary and usual sense, imports a voluntary act, and has been held not to include the act of one whose continuance in a position has been terminated by death or by induction into the armed forces under the Selective Service Act.

"Resignation": It has been said that "resignation" is a term of legal art, having legal connotation which describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not duress, and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession, or position.

19. In Words and Phrases (permanent Edn.) Vol. 37 at page 473, the word "Resign" denoting voluntarily act, relinquish to give up, surrender by formal out, yield, relinquish, give up ones" office or position, or withdraw from it. Further at age 436 the word resignation has been defined as:

To constitute a "resignation", it must be unconditional and with an intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office.

20. Black's Law Dictionary Sixth Edition, page 1310 defines the resignation as formal renouncement or relinquishment of an office. It must be made with

intention of relinquishing the office accompanied by act of relinquishment. It is said that *resignatio est juris proprii spontanea refutatio*, i.e., resignation is spontaneous relinquishment of one's own right thus the term of resignation implies voluntarily surrender of the position by a person resigning and acting freely not under duress and it becomes effective when the authority competent to make appointment accept it.

21. Moreover the resignation must be unambiguous and where an ambiguous letter of resignation is submitted, the authority should write to the employee to explain or clear the ambiguity instead of proceeding to accept the same. Further, the resignation becomes absolute when it is accepted by the appointing authority date of communication of acceptance to him is not material.

22. Once the appointing authority accepts the resignation submitted by the Government servant, it becomes absolute and cannot be withdrawn thereafter. The date on which he was informed of the such acceptance is not material for the purpose till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant has *locus poenitentiae* but not thereafter.

23. Hon"ble Supreme Court while considering the meaning of the word "resigning office" in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, held as under:

In the general juristic sense, also the meaning of "resigning office" is not different, There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (see, e.g. American Jurisprudence, 2nd Edition Volume 15A, page 80) although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting as under from the office. Indeed the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same event.

Further, in para 42 of the aforesaid judgment the Hon"ble Apex Court approving the principle of withdrawal before the relationship of the employer and the employee held as under:

The general principle that emerges from the foregoing conspectus is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office post, an intimation in writing sent to the ; competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specific date, can be withdrawn by him at any time before it becomes effective, i.e., before it effects termination of the tenure of the office/post or the employment.

24. In the case of P. Kasilingam Vs. P.S.G. College of Technology, Hon''ble Supreme Court has held that:

It may be conceded that it is open to a servant to make his resignation operative from a future date and to withdraw such resignation before its acceptance. The question as to when a Government servant's resignation becomes effective came up for consideration by this Court in Raj Kumar Vs. Union of India (UOI), It was held that the services of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, unless there is any law or statutory rule governing the conditions of services to the contrary. There is no reason why the same principle should not apply to the case.

25. In Moti Ram Vs. Param Dev and another, , this Court observed as hereunder:

As pointed out by this Court, "resignation" means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it, Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g. acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

26. In Union of India v. Wing Commander T Porthasarathy, (2001) 1 SCC 158: 2001 (1) AWC 289 (SC), the Apex Court has held that when a public servant has tendered resignation his service normally stands terminated from the date on which the letter of his request is accepted by the appropriate authority and the absence of any law or statutory rule governing the condition of his service contrary to the delay not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority.

27. In the case of Dr. Prabha Atri Vs. The State of U.P. and Others, Hon''ble Supreme Court has observed that letter when constitutes resignation, such a letter, held must be unconditional and intending to operate as such. Where an employee, required to submit his explanation for a certain lapse on his part, while submitting his explanation added that if the explanation was found to be not acceptable he would have no option left but to tender his resignation with immediate effect, held, such a letter did not amount to resignation. At best it could amount to a threatened offer to resign. The words "with immediate effect" in the said letter, held, could not be given undue importance de hors the context tenor of the language used, the purport of the letter and the portion of the letter indicating the circumstances in which the letter was written. Moreover, stopping the domestic enquiry by the management consequent to acceptance of the alleged resignation, held, had no significance in ascertaining the true or real intention of the said letter.

28. The Supreme Court in North Zone Cultural Centre and Anr. v. Vedpathi Dinesh Kumar, (2005) 5 SCC 455: 2003 (3) AWC 2300 (SC), has observed that the resignation becomes effective on acceptance even if not communicated. Non-Communication of the acceptance does not make the resignation inoperative provided there is in fact on acceptance before the withdrawal when the relevant rules not postulating communication of acceptance as a condition precedent for coming into effect of resignation. Employee tendering resignation with immediate effect and employer accepting the same on the same day but communicating the acceptance to the employee after 13 days. During the intervening period, the employee withdrawing his resignation. Such delay of mere 13 days, held, not an undue delay so as to infer that resignation had not already been accepted. Even the continued attendance to duty and signing of attendance register by the said employee during the intervening period held, of no assistance to claim that the resignation had not taken effect. More so, when there was no responsible officer in the office during that time and taking the advantage of that situation the employee had marked his attendance, hence the High Court's decision holding that communication of the acceptance of resignation subsequent to withdrawal of the resignation by the employee had become redundant was held improper.

29. In the present case, whether the alleged resignation submitted by the Petitioner is a resignation simplicitor or the same is given by him under a duress or any compulsion. It would be appropriate to reproduce the contents of the letter of resignation dated 1.8.1986 (Annexure-B2 to the counter-affidavit) which is as under:

To, The General Manager, Uprton Capacitors Limited, Lucknow Subject: Resignation Dear Sir, Due to domestic personal circumstances, I am unable to continue in service of the U.C.L. Please accept my resignation from the services of the Co. and this may be treated as three months notice and pay me three months pay in lieu thereof and relieve me at the earliest. You are also requested to kindly settle all my dues latest by 5.8.1986 including C.P.F. Thanking you

Yours sincerely, (Ashok G. Sharma)

30. From the above said resignation letter dated 1.8.1986, it is crystal clear that the Petitioner had shown his intention to resign from the post held by him and it was unilateral resignation and without any condition which was accepted by the Respondent (General Manager) of the Uptron Capacitors Limited was competent to accept it.

31. The submission made by the Petitioner that General Manager, Uptron Capacitors Limited was not competent to accept the letter of resignation submitted by the him, has got no force in view of the fact that the Uptron Capacitors Limited was registered as Government Company under the provision of Section 617 of the Company Act, 1956 with effect from 13.3.1979 thereafter the services of the Petitioner was transferred in Uptron Capacitors Limited and was confirmed by order dated 11.1.1980, passed by the project manager and further by resolution dated 7.7.1986, passed by the Board of Directors of the Uptron Capacitors Limited by which its General Manager was authorized to accept the resignation of an employee being the competent authority to do so. As such the action on the part of General Manager thereby accepting the resignation of the Petitioner is perfectly valid.

32. Subsequently, after submitting his resignation, the Petitioner had received the amount for which he was entitled after his resignation without any protest and further the Petitioner had also requested for payment of the amount towards C.P.F. account to him because he want to invest the said amount in the business of his son, which was accordingly paid to him and accepted, then the Petitioner cannot come forward and pray for setting aside the impugned order of resignation in view of the law laid down by the Apex Court hereinbelow.

33. In the case of Bank of India and Others Vs. O.P. Swarnakar etc., Hon''ble Supreme Court has held that:

In Halsbury's Laws of England, 4th Edn., Vol. 16 (Reissue), para 957 at p 844 it is slated: "On the principle that a person may not approbate and reprobate a special species of estoppel has arisen. The principle that a person may not approbate and reprobate expresses two propositions:

(1) That the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile.

(2) That he will be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct, which he has first pursued and with which his subsequent conduct is inconsistent.

In American Jurisprudence, 2d, Vol. 28, 1966, pp 677-80 it is staled:

Estoppel by the acceptance of benefits ; estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have

rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions. As a general principle, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance.

34. In the case of Punjab National Bank Vs. Virender Kumar Goel and Others, the Apex Court has observed that the applicant bank submitted that some of the optees having accepted the benefits under V.R.S. cannot be permitted to withdraw therefrom. In that matter, several review petitions were filed and in some of those review petitions, it was found that the optees were aware of the credits in their accounts and they had even withdrawn the amounts deposited and had utilized the same and consequently in such cases, this Court did not permit the optees to withdraw from V.R.S. The above said view was further reiterated in the case of Bank of India and Others Vs. Pale Ram Dhanial,

35. In the case of Punjab and Sind Bank and Another Vs. S. Ranveer Singh Bawa and Another, the Apex Court observed that estoppel is based upon the acceptance and retention of benefits, by one having knowledge or notice of the benefits from a contract or a transaction. The doctrine of estoppel is a breach of the rule against assumption of inconsistent position. One who knowingly accepts the benefit of a contract is estopped from denying the binding effect on him of such contract. This rule has to be applied to do equity. It was accordingly held that those optees who knowingly received the payment and utilized them were not entitled to withdraw from V.R.S.

36. In the case of State Bank of Patiala Vs. Phoolpati, Hon"ble Supreme Court has held that it is a settled position in law that unless the employee is relieved from the duty after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Once an employee has accepted the admissible service benefits after his tendering resignation then in that circumstances, he cannot challenge the resignation or voluntary retirement tendered by him.

37. In the case of Gyanendra Sahay v. Tata Iron and Steel Co. Limited, 2006 (3) LBESR 586: 2006 (6) AWC 6201 (SC), Hon"ble the Supreme Court has held that the Appellant having written letter of voluntary retirement and after having accepted the retiral benefits without any protest cannot now turn round and say that he was compelled to submit his premature/voluntary retirement.

38. In view of the said reasoning given by us in the present case that the Petitioner who had submitted his resignation from the post of Senior Assistant Manager (Commercial) on 1.8.1986 and was accepted by the competent authority, i.e., General Manager of the Uptron Capacitors Limited and thereafter when he had received the benefits which were admissible under law to him paid by the employer as a consequence of his resignation then subsequently he cannot take "U" turn and make a request for withdrawal of the resignation on the ground that same has been obtained from him under duress and compulsion.

39. For the foregoing reasons, the present writ petition lacks merit. It is accordingly dismissed.