
(2010) 10 AHC CK 0360
In the Allahabad High Court
Case No : Special Appeal No. 132 of 2007

Ashok Kumar Mishra

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Citation : (2011) 1 AWC 673 : (2011) 1 UPLBEC 141

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Shri Dharam Pal Singh appears for the petitioner appellant. Shri Rajiv Gupta represents the respondents.
2. In this intra court special appeal under Chapter VIII Rule 5 of the Allahabad High Court rules, 1952 the judgment of the learned Single Judge dated 4.12.2006 dismissing the writ petition against the order of the District Judge accepting the appellant's resignation, is under challenge.
3. The petitioner was working as a confirmed driver in the judgeship at Mahoba. By a letter dated 26.4.2000 he made a complaint to the District Judge (the appointing authority), of various irregularities in appointment and promotions made in the judgeship with which he was aggrieved. He referred to wrongful promotion of Shri Man Singh on 18.10.1997 by the then District Judge, against which he had filed an appeal, and sent a letter to the High court. He referred to a notice given to him by the District Judge at the instance of his gunner Shri Ram Kripal dated 2.4.1999, and for payment of his honorarium since 1997. He also referred to promotions made on 9.3.1999, 20.11.1999 and 21.4.2000, in which the District Judge had made allegedly, in an arbitrary manner, promotions based on castes. Shri Ashok Misra, Shri Vinod Kumar Dubey, Shri Ambrish Kumar Shukla all Brahmins by caste were alleged to be supporting the Harijans and

were promoted on that ground. This District Judge had employed his brother-in-law, Shri Ram Sewak, as orderly in the Court of Chief Judicial Magistrate and had employed his son in law Shri Dharm Pal Singh for running photocopy machine. He was working in the comfort of a room and was provided with a fan and a cooler. Shri Sanjay Varun was the nephew of the District Judge and was employed as "Ahalmad" Second Grade, in the Court of Chief Judicial Magistrate. Similarly Subhash, Munna Lal, Jabbar Singh, Nagendra employed in the judgship and Ishwar Singh, jeep driver were alleged to be the relatives of the District Judge, and were residents of Buland Shahar, and Ghaziabad. The Administrative Officer Shri Ishhaq Ahmad Kuraishi had appointed his son Imran Khan in the judgship on 21.4.2000. The petitioner appellant then stated in the complaint, that he has been mentally harassed and put to financial difficulties by the District Judge and the Administrative Officer, who have again threatened him, on that day and that under severe mental and financial strain he is submitting his resignation to the District Judge, Mahoba. He threatened that he will be on hunger strike from 26.4.2000 to 1.5.2000 and will wait for disposal of his complaint up to 1.5.2000, and on 1.5.2000 at 7.00 a.m., in the morning he will immolate himself in the open court of the District Judge. The District Judge accepted his resignation, on the next day on 27.4.2000.

4. On 29.4.2000 the petitioner gave a representation to the District Judge apologizing for the complaint made by him in his letter dated 26.4.2000. He stated that he had made the allegations on false representation made by Shri Ishhaq Ahmad Quraishi, the Senior Administrative Officer of the judgship. The allegations made by him for non payment of honorarium, promotions and appointments of the relatives of the District Judge, were not correct. He was not aggrieved by the promotions, which were in process. He had made complaint and submitted resignation under influence and pressure of other employees, and that he requests that his resignation letter may be reconsidered and he may be permitted to be taken back in service. In the last line he stated that he is sorry for his mistakes. The letter dated 28.4.2000 was presented before the District Judge on 29.4.2000. The District Judge made following note on the representation:

Hand over at 3.00 P.M. 30.4.2000 is Sunday Seen. Put up on 1.5.2000 Sd/-
Illegible 29/4/2000

5. The District Judge did not pass any orders on the letter dated 28.4.2000, either on 1.5.2000 or thereafter. The petitioner made a representation/ appeal to the Administrative Judge, Mahoba on 21.6.2000. The representation was rejected by following order:

The appellant had voluntarily submitted his resignation and had threatened to self immolate himself if the same was not accepted. The District Judge had not committed any illegality in accepting his resignation. Thus, the Appeal has no merits. It is rejected. A.J. 18.11.02

6. Learned Counsel appearing before learned Single Judge submitted that the letter did not constitute voluntary resignation. It was a conditional resignation to be effective from 1st May, 2000, and was withdrawn prior to that date. The District Judge ought to have accepted the representation. The counsel placed reliance on the judgment of Supreme Court in Dr. Prabha Atri Vs. The State of U.P. and Others,

7. Learned Single Judge held that from the language used in the last paragraph and the background of the letter it is apparent that the resignation was not only unconditional but full of threat, and with intention to resign. Admittedly it was accepted on the very next day, after efforts failed to pacify the petitioner. He was of the opinion that the judgment in Prabha Atri (Supra) was not applicable, as in that case the resignation was not unconditional and was given with intention to resign.

8. Learned Counsel for the petitioner appellant submits that the petitioner was expecting promotion. He was not treated fairly by the District Judge and was instigated by the Court staff. He was attached to the District Judge as official driver. There was no complaint against him in the past nor any incident of misbehaviour was reported by the District Judge. He was expecting promotion and found himself to be aggrieved by the process of promotion, in which several similarly situate persons were promoted ignoring his candidature. He was also aggrieved by several appointments made by the then District Judge of his relatives occupying important posts in the judgship. In the last but one paragraph of letter dated 26.4.2000 he had clearly stated that he was being financially and mentally harassed and that on that date the District Judge and the Administrative Officer had again threatened him for removing him from service and had asked him to resign. The resignation had to take effect on 1.5.2000. No effort was made to look into his complaint, or to pacify him before the resignation was accepted on the next day.

9. Learned Counsel for the petitioner states that statement of fact in the order of acceptance of resignation dated 27.4.2000 that he was given time to think over the matter to change his mind, but was not amenable to advice and was adamant, is incorrect. There was nothing to show that the District Judge or any officer had talked to him and that the acceptance of resignation within 24 hours, without waiting upto 1.5.2000, was arbitrary and clearly suggests that the District Judge wanted to get rid of him and had manipulated his resignation. Learned Counsel for the petitioner further submits that the petitioner realised his mistake, and gave a letter of apology, withdrawing all allegations against the District Judge and his resignation on 28.4.2000. The District Judge could have rejected the application, when it was presented before him on 29.4.2000; instead he directed the application to be put up on 1.5.2000, clearly establishing that the order of acceptance of resignation, was backdated.

10. Learned Counsel would further submit that the learned Single Judge has not appreciated the correct legal position laid down in Prabha Atri's case, and in any

case the petitioner had not requested to accept his resignation with immediate effect.

11. Shri Rajiv Gupta, learned Counsel appearing for the District Judge submits that the petitioner had given a letter of resignation on 26.4.2000, with a threat to immolate himself on 1.5.2000. The District Judge tried to reason out, and to pacify him but that since he did not agree to withdraw the resignation, the District Judge had no option but to accept it on the next day. Even if the resignation was not given to be accepted with immediate effect, the District Judge was not required to wait until the petitioner carried out his threat. In the entirety of the circumstances, the District Judge did not act arbitrarily in accepting the resignation. He would submit that the learned Single Judge has rightly dismissed the writ petition.

12. The law relating to acceptance of the resignation has been explained by the Supreme Court in *Moti Ram Vs. Param Dev and another, Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, In Dr. Prabha Atri (Supra)*. The Supreme Court has held:

In *Words and Phrases (Permanent Edition) Vol. 37* at page 476, it is found stated that,

To constitute a "resignation", it must be unconditional and with 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.

At page 474 of the very same book, it is found stated: "Statements by Club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignations". It is also stated therein that "A "resignation" of a public office to be effective must be made with intention of relinquishing the office accompanied by act of relinquishment". In the ordinary dictionary sense, the word "Resignation" was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim: *Resignatio est juris proprii spontanea refutatio* [Black's Law Dictionary - 6th Edition]. In *Corpus Juris Secundum, Vol. 77, page 311*, it is found stated

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

In *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been

all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and

as such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates.

In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and "out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer.

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. [See: *Union of India v. Gopal Chandra Misra*]. 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 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.

13. In *P.K. Ramachandra Iyer (Supra)* the Supreme Court had held that to constitute a resignation it must be unconditional, and with an intention to operate as such. Where the resignation is by way of a threatened offer, more on

account of exasperation to resign on account of feeling of frustration born out of an idea that a person is being harassed unnecessarily, but not at any rate amounting to resignation actual and simple, cannot be treated to be a letter by which employee seeks to relinquish his job.

14. The facts of the present case are almost similar to that of Dr. Prabha Atri. She was given memo on 5.1.1999 for having committed the act, which amounts to medical negligence and also against the medical ethics. She was asked to submit an explanation. She did not respond and was, therefore, placed under suspension pending institution of domestic enquiry. On receiving the order she had replied to the Secretary of the hospital that she has already clarified that on that date she was sick and tired. Her letter was not treated by the Supreme Court to be unconditional resignation, as she had added after her explanation as follows:

Your letter is uncalled for and should be withdrawn. I have been working in this Hospital since May 10, 1978 and have always worked in the best interest of the patients. It is tragic instead of taking a lenient view of my sickness you have opted to punish me.

If the foregoing is not acceptable to you then I have no option left but to render my resignation with immediate effect.

15. She, thereafter, sent a letter on 14.1.1999 within 5 days of her alleged resignation dated 9.1.1999 stating that she had never resigned and that she had nowhere stated that she is resigning but unnecessarily something was read between the lines. She requested for rectifying the mistaken understanding of her earlier letter by taking necessary steps in the correct perspective. The Secretary of the hospital declined to reconsider the matter.

16. The Supreme Court in the context of the above facts in Dr. Prabha Atri's case held, that her letter could not be construed to convey any spontaneous desire to relinquish her office accompanied by any act of relinquishment. It was not unconditional and given that communication to operate as such. The words "with immediate effect" in the letter could not be given undue importance, dehorse the context, tenor of the language used and purport as well, as the remaining portion of the letter indicating the circumstances in which it was written. The respondents seized the opportunity to get rid of the applicant. The moment they got the letter without due and proper consideration of the matter in the right perspective and understanding of the context therein. The order of the High court was set aside. The appeal was allowed. The communication by which her request for withdrawal was not accepted was also set aside.

17. In the present case we find that the petitioner was aggrieved by the promotions of Class-IV employees to Class-III employees in the judgeship. He was also aggrieved by deductions made from his salary of the bills of repair of clutch plate and 5 ltr. of mobil oil, and the denial of honorarium. He had made complaints against several appointments made by the District Judge and the

Administrative Officer of their relatives. He had clearly mentioned in his letter that he was being harassed and was threatened with termination of his service or to give resignation letter and on these conditions he found himself financially and mentally harassed. In these circumstances he gave resignation with threat to sit on hunger strike, for disposal of the matter upto 1.5.2000. In the last line of the letter he stated that he will immolate himself on 7.00 a.m., in the open court of the District Judge on 1.5.2000. The contents of the letter clearly suggests that the petitioner was under severe stress and was feeling harassed. He was also pressurised by the District Judge and the Administrative Officer to resign, failing which his services will be terminated, and in the circumstances he was tendering resignation on 26.4.2000 and will sit on hunger strike upto 1.5.2000. The District Judge in his order passed on the next date, has mentioned that the petitioner was given time to think over the matter and to change his mind but he was not amenable to advice and remained adamant. There is nothing on record to show that the petitioner had actually intended to sit, or had prepared to sit on hunger strike, and whether the District Judge or the Administrative Officer had called him and tried to pacify him. He did not relinquish the job voluntarily and spontaneously, with immediate effect. The acceptance of the resignation on the very next day clearly shows that the District Judge wanted to get rid of him and seized the opportunity of accepting his resignation. The suggestion of learned Counsel for the petitioner that the acceptance of the resignation was backdated appears to have substance from the endorsement made by the District Judge dated 29.4.2000 on the letter of apology and withdrawal of the resignation dated 28.4.2000. The District Judge did not make any remark, or mention in his note that he had already accepted the resignation. Rather he after looking into the representation, directed it to be put up before him on 1.5.2000, as 30.4.2000 was Sunday. Thereafter, he did not pass any orders on the application.

18. The petitioner-appellant did not tender the resignation with immediate effect. The act of resignation was not complete and to operate immediately. The grievance raised by him and the language of the letter clearly shows that it was only a threat to look into and to resolve his grievances. If he wanted to resign with immediate effect, there was no reason to give the District Judge time upto 1.5.2000, to resolve the issue. The contents of the letter in which in the last few lines he suggested to resign, do not show that there was any such intention to immediately resign. It appears that the District Judge was anxious not to wait upto 1.5.2000 and took an opportunity to accept his resignation and to remove him from service. The respondents have not placed on record any order passed by the District Judge on 1.5.2000 on the application of withdrawal of resignation.

19. We are of the opinion that the District Judge committed gross error in law, and acted arbitrarily in treating the letter dated 26.4.2000 as resignation with immediate effect, and in accepting it. The petitioner had infected withdrawn the letter within two days on 28.4.2000 presented before the District Judge on 29.4.2000 and much before the day (1.5.2000), when he threatened to commit suicide. From the contents of the letter withdrawing the resignation it is apparent

that he was not aware that his resignation was accepted on the previous day. We also do not find anything on record to show that the petitioner had actually sat on hunger strike to carry out his threat.

20. The special appeal is allowed. The judgment of learned Single Judge dated 04.12.2006; the order of the District Judge dated 27.4.2000, and the order of the learned Administrative Judge dated 18.11.2002 rejecting the representation of the appellant is set aside. The petitioner appellant shall be reinstated in service and allowed to continue in service with seniority and all consequential benefits, except full back wages. He will only be entitled to half of the back wages, as he has not worked in the judgeship in the intervening period.