
(2021) 12 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3886 Of 2019

Bhaba Krishna Ray Talukdar

APPELLANT

Vs

State Bank Of India And 3 Ors

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Citation : (2021) 12 GAU CK 0004

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : S Banik, S S Sharma

Final Decision : Disposed Of

Judgement

1. Heard Mr. S. Banik, learned counsel for the petitioner as well as Mr. S.S. Sharma, learned Senior Counsel for all the respondents.

2. The petitioner's case in brief is that he wrote a letter dated 01.08.2015 asking for resignation from his service. The petitioner thereafter submitted another letter dated 08.10.2015 withdrawing his earlier offer of resignation by way of an e-mail, which was received by the respondents on 08.10.2015.

3. The respondents thereafter issued a letter dated 09.10.2015 stating that the petitioner's offer for resignation had been accepted by the respondents on 07.10.2015 and that the same was to be effective from 11.10.2015. The petitioner was however not allowed to work by the respondents.

4. The petitioner's case is that as the withdrawal of the resignation offer has been made prior to the effective date of retirement, i.e. 11.10.2015, the petitioner could not be made to resign by the respondents. In support of his submission, the learned counsel for the petitioner has relied upon the judgments of the Apex Court in Balram Gupta vs. Union of India & Another, reported (1987) (Supp) SCC 228 and Shambhu Murari Sinha vs. Project & Development India & Another, reported in (2000) 5 SCC 621.

5. Mr. S.S. Sharma, learned Senior Counsel for the respondents, on the other hand submits that as the petitioner's offer for resignation has been accepted on 07.10.2015, which was to be made effective from 11.10.2015, the petitioner could not be allowed to withdraw his resignation offer. He further submits that the petitioner came to know that he would have to resign w.e.f. 11.10.2015 and has very cunningly made an application withdrawing his offer of resignation, one day prior to the effective date. In support of his submission that the petitioner could not have withdrawn his offer of resignation, he has relied upon the judgment of the Apex Court in *Raj Kumar vs. Union of India*, reported in 1969 AIR (SC) 180.

6. I have heard the learned counsels for the parties.

7. The question which arises in this writ petition is whether it is open to a person who exercises the option of resignation, to withdraw the said offer, after its acceptance, but before it is made effective.

8. In the case of *Balram Gupta vs. Union of India & Another*, reported (1987) (Supp) SCC 228 and *J.N. Srivastava vs Union of India and Another*, reported in (1998) 9 SCC 559, the Apex Court has held that the resignation, in spite of its acceptance, can be withdrawn before the effective date. The said law has been reiterated in the case of *Shambhu Murari Sinha (supra)*.

9. In the case cited by the respondents counsel, i.e. *Raj Kumar (supra)*, the officer who belonged to the Indian Administrative Service (IAS) had offered his resignation vide letter dated 21.08.1964 and the same was accepted by the Government on 31.10.1964. The IAS officer changed his mind and vide letter dated 27.11.1964 requested the Government to accept the withdrawal of his resignation offer. The letter withdrawing his resignation offer having not been accepted, the petitioner filed a case before the High Court. The matter went up to the Supreme Court and the Apex Court held that 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 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. In the case cited by the respondents' counsel, the question of effective date of the resignation was not an issue and as such the case in *Raj Kumar (supra)* is not applicable to the facts of this case.

10. In view of the reasons stated above, this Court holds that in terms of the judgments of the Apex Court in *Balram Gupta (supra)* and *J.N. Srivastava (supra)*, the petitioner's withdrawal of his resignation offer made vide letter dated 08.10.2015 has to be deemed to be valid and effective. Accordingly the letter dated 09.10.2015 issued by the respondents accepting the petitioner's resignation is hereby set aside. The respondents will allow the petitioner to re-join his service immediately but without payment of back wages, as per the

principle of no work no pay. Notional seniority and pay protection should be given to the petitioner by the respondents.

11. The writ petition is disposed of.