
(2008) 12 PAT CK 0013
In the Patna High Court
Case No : LPA No. 47 of 2007

Chandraditya Nath Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2008) 12 PAT CK 0013

Hon'ble Judges : Mihir Kr. Jha, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Ganesh Pd. Singh, Dhananjay Kumar, Sunil Pd. and Manoj Kumar, for the Appellant; Ajay Kumar Sinha and Mr. Ram Bishun Prasad, for the Respondent

Final Decision : Allowed

Judgement

Mihir Kumar Jha, J.—This appeal arises out of an order dated 21.12.2006 passed in C.W.J.C. No. 9690 of 2001, whereby and whereunder, the writ application of the appellant-writ petitioner came to be dismissed holding that withdrawal of his resignation from service subsequent to the acceptance of his letter of resignation was not permissible either on fact or in law and as such the appellant-writ petitioner was not entitled for the relief as prayed for by him in the writ application. Before this Court would decide the controversy in issue, it would be necessary to notice some of the relevant fact. The writ petitioner originally appointed as Clerk-cum-Cashier in Koshi Kshetriya Gramin Bank (hereinafter referred to as the Bank) some time in the year 1978 came to be promoted to the post of Officer in the Bank and on 4.7.2000 he was served with a memo asking him to explain certain allegations with a direction to submit his explanation within a period of three days, as to why disciplinary actions be not initiated against him. The appellant-writ petitioner on 8.7.2000 had submitted incomplete reply seeking a few months time to submit his detail explanation. On receipt of the said incomplete explanation, the General Manager of the Bank vide letter dated 18.7.2000 had granted him fifteen days time to submit his explanation by enclosing copy of the earlier memo dated 4.7.2000. It appears that petitioner

had filed an exhaustive reply to the allegations contained in the said memo on 4.7.2000 and while the same was still under consideration of the Bank, another memo dated 25.9.2000 was issued by the Bank as with regard to a separate allegation and in reply thereof the petitioner filed his letter dated 3.10.2000 in which he had not only denied the allegation but had also made direct allegation against the Chairman of the Bank that he (Chairman) seems to be desperate to re-" move the petitioner from the Bank and as such he was left with no other alternative but either to resign from services of the Bank or to move to higher authorities for redressal of his grievances. It is only after the aforementioned threat of resignation was given by the petitioner, a memo of charge contained in HO/DAW/255/2K-01/ 115 dated 20.10.2000 was issued against the petitioner by the Bank in purported exercise of power under Regulation 30 of Koshi Kshetriya Gramin Bank (Staff) Services Regulation, 1980. Such memo of charge accompanied by Articles of charges would go to show that the petitioner was subjected to disciplinary proceeding for some serious misconduct. The charges against the petitioner, however, having a direct bearing on the result of this appeal and as such the same is needed to be quoted hereinbelow:-

ARTICLE OF CHARGES

1. Despite knowing the fact that Shri Raj Narayan Prasad, the then Branch Manager, Sattar Branch was a direct recruitee Officer of the Bank, Shri C.N. Das wrote a letter dated 18.7.85 to Head Office that he will not work under him, only because Shri Prasad had joined the Bank after him. Thus Shri Das deliberately and knowingly had shown disrespect to his senior officer violating Regulation 17 of Kosi Kshetriya Gramin Bank (Staff) Service Regulaions, 1980.

2. Shri C.N.Das while on deputation to Saharsa Branch refused in writing vide his letter dated 27.4.95 to discharge the assigned job of Clerk-cum-Cashier. Branch Manager, Saharsa also alleged that Shri Das was never cordial with the staff members of the branch as well as the customers. It is also alleged that he abused the then Br. Manager, Saharsa on 28.4.95 keeping aside all the sanctity of the office. His undesirable actions compelled the then Area Manager for recommending his transfer to some other place for the sake of peace and restoring working atmosphere in the branch.

3. Shri C.N. Das wrote a letter to Chairman, Kosi Kshetriya Gramin Bank dtd. 11.12.85 which is quite eratic, irrelevant and meaningless. The brief contents of the letter is mentioned hereunder.

(a) That Shri Das had written a letter to Branch Manager, RBI, Patna giving reference of order dtd. 4.5.85 of a RBI senior officer and his verbal assurance of appointment to Shri Das in RBI. A copy of letter written to RBI was also enclosed. The enclosed letter dtd. 9.12.85 which was addressed to RBI cannot be accepted and believed to be written by a person of normal mind due to the following:-

(i) That, Shri Das had gone to join at RBI on 9.12.85 on the verbal assurance of

some senior officers of RBI who had allowed him to join at RBI in the 1st week of Aug.1985 but was asked to stay out of RBI for some days.

On interrogation this came to surface that he was never given any appointment letter by RBI to join what to speak of allowing him to join in the 1st week of Aug. 1985. His such actions cannot be accepted as an action of man possessing a sound mind,

(ii) In the above referred letter addressed to the Chairman, he had been found mentioning some very irresponsible thing like "In RBI I was asked how much money was taken by officials to direct him to join RBI."

His above acts are quite undesirable through which he has unnecessarily tried to defame the institution like RBI.

4. Shri C.N. Das vide his letter dtd. NIL (but mentioning that it is being sent vide Registry No. 4197 dtd. 19.9.85) addressed to RBI, Patna complained against his Br. Manager (Sattar Branch) that the Branch Manager was torturing him and he might be compelled to resign. He also alleged that his life was in danger.

This caused unnecessary tension at H.O. level as well as a RBI and NABARD level, as the whole matter was to be examined thoroughly.

Branch Manager, Sattar vide letter No. Ho/04/85/11 dtd. 11.9.85 had lodged a serious complaint against Shri Das on following points:-

(a) Uncalled for argument with the B.M. causing unnecessary tension and disrupting work of the branch.

(b) Behaving in indecent manner with the B.M.

(c) Shri Das in his letter No. Ho/ 04/85/77 dtd.19.7.85 informed H.O. that he will not work under any officer who joined after 25.7.1981.

(d) Branch Manager also alleged that no Statement/Report-returns is prepared by Shri Das. Balancing work was also reportedly not done by Shri Das.

(e) The relationship of Shri Das with the local residents was also not cordial which affected the development of the Bank adversely. Branch Manager was so fed-up with his behaviour that he requested the Management for the transfer of Shri Das.

5. A very serious complaint was made by the then Branch Manager, Baruari Branch vide his letter No. BR/ 06/86/75 dtd. 9.7.86 mentioning the following:-

Shri Das on 8.7.86 after reaching branch started discussing the farewell ceremony of the then Chairman Shri D.V.K. Sharma. When the B.M. told him that "Das Babu, Aap ko bhag jana chahiye tha"; Shri Das started shouting and abusing Shri D.V.K. Sharma in a very filthy language. Despite efforts to pacify him by the B.M. he continued to behave erratically in the presence of Branch customers. He also abused the MSW only because the MSW had given him a file

by left hand. When the B.M. tried to get him cooled he started abusing him too in a very filthy language. The above acts of Shri Das shows that Shri Das has no respect for either his subordinates or his high-ups which is an act punishable under Staff Service Regulations, 1980.

Further, B.M., Baruari through this letter No. BR/6/86/33 dtd. 21.3.86 has lodged very serious complaint against Shri Das mentioning the following:-

On 3.1.86 while making transaction at the counter Shri Das made some mistakes and paid Rs. 100/- (Rupees one hundred only) excess to one of the customers, and after detection started shouting abnormally alleging a theft to cover-up his mistake. However after 10 days, the customer who had received excess cash (Rs.100/-) came to branch and return the cash. The delay in getting the cash returned was his illness as stated by the customer. The money so received was credited to Sundry A/C which was withdrawn by Shri Das without obtaining permission from the B.M.

6. Shri C.N. Das made a complaint vide letter dtd. 15.5.87 alleging Area Office Officials demanding tea and snacks. Subsequently he withdrew his complaint but the Bank was thrown into a hectic and expensive exercise of getting the matter thoroughly investigation which ultimately went futile after withdrawn of the complaint.

Branch Manager, Saharsa also lodged a serious complaint vide letter No. HO/MPR/06/88/120 dtd. 2.7.88 regarding his abnormal behaviour with the customers damaging the interest and image of the Bank quite adversely. Charges of disobedience was also leveled against Shri Das by the Br. Manager.

7. Shri C.N. Das vide his letter dtd. 11.6.88 alleged Smt. Bibha Das (identity not disclosed but she happens to be the wife of Shri Das) was indulged in making some sort of conspiracy against him in connivance with one Shri Ram Narain Prasad and some other persons which compelled him to resign from Bank's service.

However Shri Das later on withdrew his resignation vide his letter dtd. 13.6.88 mentioning that his wife had given an undertaking that she will keep her behaviour balanced and also she will not claim any amount from the salary of Shri Das.

The above acts of Shri Das once again underlines his most irresponsible and erratic behaviour with none other than his wife. This act on the part of Shri Das also disturbed the bank's working atmosphere adversely.

8. Shri C.N. Das sent a telegram to Chairman, Central Bank of India alleging that the then Chairman Shri R.N. Bodhanler wanted to attach his salary in connivance with Mrs. Sunita Sinha, "a worst character lady who happens to be the Officer of the Bank". Bank record shows that no such attempt on the part of the then Chairman was made for attaching the salary of Shri Das. For his such derogatory remark against the officer of the Bank and for sending a highly objectionable

telegram to outside higher authority, an explanation vide letter No. HO/PRS/e/C-02/88/M-5424 dtd. 20.12.88 was asked from Shri Das which Shri Das received on 20.12.99.

Thus Shri Das very wrongfully dragged the name of the then Chairman in his own family affairs and also made a very cheap and derogatory remarks against a lady officer by saying her "Worst Character lady". This act of Shri Das is a major misconduct and punish-able under Staff Service Regulations, 1980.

9. Shri C.N. Das wrote a letter dtd. 14.2.89 to Finance Minister, Govt, of India alleging the management for not granting him promotion in 1981, 1983 and 1989 violating clauses 31, 32, 33 & 34 of Staff Service Regulations, 1980. Instead of making an appeal for any grievance before the Board of Directors, Shri Das unnecessarily involved Ministry of Finance, Govt, of India which is not a competent forum for redressal of grievance.

10. Shri C.N. Das vide letter No. HO/PRS/2/89/1252 dtd. 14.3.89 was asked an explanation on account of different omission and commission while working in Despatch section at Head Office. His reply to the above explanation was quite irrelevant and unacceptable.

11. Shri C.N.Das while working at Mahishi Branch made a complaint to Zonal Manager, Central Bank of India, Patna alleging that MSW does not clean office, another Field Supervisor does not talk gently with Shri Das, C/C torn DTB leaf and blamed Shri Das and finally the B.M. did not care to take action against them. He further alleged in the letter even against Chairman that he had sent Regd. Letter and telegram to him but the same was not taken seriously by the Chairman and also that Chairman was having a deaf ear etc.

His such act making unwanted complaint against the co-staff members as well as the Chairman is an act of gross indiscipline punishable under Staff Service Regulations, 1980 and violation of circular No. 25/89 dtd. 20.4.89.

12. It is also observed from the record that Br. Manager, Paharpur vide his letter No. HO/11/92-93/22 dtd. 30.5.92 informed the then Chairman regarding the callous attitude of Shri Das towards Bank's work and also his habits of alleging the high-ups of the institution.

13. Shri C.N. Das wrote a letter dtd. 19.5.92 through B.M.Paharpur mentioning some quite irrelevant points in the following manner.

He had started the letter with a desire of transfer and erratically mentioned that Chairman had verbally ordered to give representation.

The only point in his above letter relates to his so-called discussion with the then Chairman dtd. 13.5.92 in his official chamber. This is also an example of his erratic behaviour and irrelevant correspondence.

14. It is also observed that Shri Das put a question mark before the authority of the Branch Manager who on some occasion marked his absent and stopped his

salary by making complaint dtd. 28.4.92 to the Chairman.

15. It is also observed from his letter dtd. 13.6.93 addressed to Chairman making very derogatory remarks against the Br. Manager, Paharpur Shri P.C. Prasad in the following way.

He further alleged in his letter dtd. 13.6.93 that Branch Manager had ordered him verbally to pay Rs. 1000/- to one Shri Md. Manjar Alam without obtaining withdrawals, which however was found baseless afterwards.

Making a baseless complaint and passing such a derogatory remarks against the Superior Officer is a major misconduct on the part of Shri Das which is punishable under Staff Service Regulations, 1980. The allegation that Shri Das paid Rs. 1000/- to Md. Manjar Alam without taking any withdrawal by the order of the B.M. Shri P.C. Prasad is sufficient example. of his habit of making unfounded allegations upon the co-workers. It is also observed from the record that while posted at Paharpur Shri Das was "CAUTIONED" for not behaving nicely with the customers vide letter No. Pra.ka./Aa.Sa./Cee./117/92-93/ 1052 dtd. 20.2.93.

16. Shri Das lodged a complaint to the Governor, RBI, Mumbai endorsing a copy to the Manager, RBI, Patna alleging Br. Manager and Officer, Saharsa as "PATHBHARAST AWAM BHARST PADADHIKARI HAP. He also alleged that the Br. Manager was indulged in casteism. This complaint was forwarded to the Bank vide their letter No. RPCD/CRRP/32112/134/99-2000 dtd. 26.7.99 for investigation. However, on investigation of the said complaint, it was observed that the allegations were quite baseless.

17. Shri Das while deputed to our Rajanpur branch sent a fax message on 28.9.2000 stating therein that while verifying cash into the safe, he observed a shadow of a hand entering the safe which prevented him verifying the cash into the safe.

The above observation made by Shri Das may not be termed as an observation of a person of sound health and mind.

From the abovementioned facts, it is evident that Shri C.N. Das, Officer, Saharsa Branch have been committing a series of misconducts which is highly detrimental to the interest and image of the Bank and constitutes gross misconduct punishable under Regulation 30(1) of Kosi Kshetriya Gramin Bank (Staff) Service Regulations, 1980.

Sd/- (D.K. Paul) DISCIPLINARY AUTHORITY

2. After service of the aforesaid charge on 20.10.2000 the petitioner is/was said to have sent a letter dated 23rd November, 2000, which is claimed to be a letter of resignation of the petitioner and reads as follows:-

To,

The Chairman,

Koshi Kshetriya Gramin Bank, Head Office, Purnea at + P.O + Dist.: -Purnea (Bihar) India.

Sub: Your Memo No. HO/XHW/ 255/27-01/11(115) dated 20.10.2000 is replied through the reply letter.

Sir,

You please find my answer here that in the year 1998, I was served a letter that from 31 March, 1998. My resignation will be accepted by you where previously this resignation was rejected by the ex-chairman. I was told that I was not found my (I will not found my) amount of provident fund, Gratuity, Group Insurance and pension scheme perfectly. Then I reported honorable Finance Secretary Central Government of India New Delhi in March 1998. After some time you have declare that I have not accepted said Resignation at all you also again took my another representation that said resignation should be rejected also and I will not put any Resignation in future. My said resignation was rejected by you and honorable member of the Board of Directors and that was confirmed also. But Shree D.K. Paul New Chairman planned and created several causes which already disappointed by me and Chairman. You made a plan that you will not pay me my amount of P.F. Gratuity, Group Insurance and pension scheme and additional salaries of 60 (Sixty) months which is authorize by Central Government of India, New Delhi, India. I am weak and poor employ of this Bank. I am not able to go to court for this. So therefore you are competent to accept my said resignation with effect from January 2001 or remove my service from January 2001. With best regards.

Saharsa Yours faithfully

23 November 2000

Chandraditya Nath Das Officer Koshi Kshetriya Gramin Bank Branch Saharsa P.O. +P.S.-Saharsa District-Saharsa (Bihar) India

3. It is in pursuance of the said letter of the petitioner dated 23rd November, 2000 that the impugned order came to be passed on 24.11.2000, i.e, next day communicating the petitioner that his resignation have been accepted w.e.f. 1.12.2000 and such acceptance of resignation being relevant for the purposes of this appeal is quoted hereinbelow:-

To,

Shri C.N. Das, Officer, Saharsa Branch

Reg: Your Resignation dtd. 23.1.2000

Dear Sir,

We have gone through the above resignation letter and have also examined it

thoroughly.

We accept your resignation w.e.f. 1.12.2000. We are instructing our all offices accordingly.

Sd/- (O.K. Pal) CHAIRMAN

Copy to:

1. Saharsa Branch
2. Area Office, Saharsa
3. All Deptt. in H.O.

4. The appellant-writ petitioner after receipt of the said order of the Bank dated 24.11.2000 had however immediately sent his letter dated 30th November, 2000 by registered post wherein he had made a request that his letter dated 23.11.2000 was not a voluntary letter of resignation rather it was only submitted for getting the memo of charge withdrawn and as such his services should not be dispensed with from the Bank. As this representation has also a vital bearing on this case, the content thereof needs to be quoted in extenso which reads as follows :-

5. The said representation dated 30th November, 2000 followed by series of further representations dated 26.12.2000 and 28.2.2001, did not evoke any response from the Bank save and except that the Chairman of the Bank on 9.3.2001 had constituted a three man committee to examine the erratic behaviour of the appellate-writ petitioner on the ground that he appeared to be a man of unsound mind. The appellant-writ petitioner and his wife sensing trouble had immediately reached to Ranchi Mental Hospital and remained under observation of Dr. A.K. Gupta psychiatrist who had initially given a certificate on 9.3.2001 and again on 14.4.2001 had declared the appellate-writ petitioner to be mentally, healthy and a fit person to discharge his duty. It however appears that the three man committee consisting the official of the Bank in its report had observed that the appellant-writ petitioner was not in a sound mental condition to discharge his normal duty and as such recommended for soliciting opinion of medical expert/psychiatrist.

6. In fact the letter of the Bank dated 26.3.2001 addressed to the wife of the appellant-writ petitioner (Annexure-10) would itself go to indicate that the Bank wanted the appellant-writ petitioner to be examined by the medical expert for ascertaining his mental condition so that there could be no further difficulties in releasing his terminal benefits pursuant to acceptance of his resignation. The records annexed with the writ application would bear out that wife of the writ petitioner and the writ petitioner had filed an application dated 30.3.2001 and 2.5.2001 enclosing certificate of Dr. A.K. Gupta, Psychiatrist of Ranchi Mental Hospital dated 9.3.2001 and 14.4.2001 respectively that appellant-writ petitioner was having no mental problem and in fact after being kept in observation, the

doctor at Ranchi Mental Hospital had reported that the appellant-writ petitioner was diagnosed as a case of acute Psychotic episode and having been cured he was fit to rejoin his duties.

7. It, however, appears that even thereafter the authorities of the Bank did not respond to the repeated representation filed by the appellant-writ petitioner and his wife. The authorities of the Bank vide letter dated 2.6.2001 in fact only directed the writ petitioner to appear before the Medical Board constituted under the Chairmanship of Civil Surgeon of Purnea. Pursuant to the said order of the Bank dated 2.6.2001 the appellant-writ petitioner was examined by the Medical Board consisting five Government doctors of Purnea district headed by Civil Surgeon-cum-Chief Medical Officer and the said Medical Board after getting the appellant-writ petitioner admitted in Sadar Hospital, Purnea and keeping him under joint observation for a period of five days, i.e, from 9.6.2001 to 13.6.2001 had submitted its report dated 13.6.2001 (Annexure-17), wherein the appellant-writ petitioner was found to be well oriented in time, place and person and no abnormality of any nature whatsoever was observed during his stay at the hospital. The Medical Board accordingly concluded that the appellant-writ petitioner was mentally fit.

8. It appears that pursuant to receipt of report of the said Medical Board, when the appellant-writ petitioner had filed another series of representations for allowing him to resume his duty by recalling the order of acceptance of resignation dated 24.11.2000, the whole matter was placed before the Board of Director of the Bank in its meeting held on 15.7.2001, but the Board of Director treated the case of the appellant-writ petitioner to be one of resignation and as such left the matter to be decided by the Chairman in respect of future course of action for the appellant-writ petitioner.

9. The appellant-writ petitioner under such situation having got no relief from the authorities of the Bank had filed the writ application on 27.7.2801 wherein prayer was made that the Bank's order dated 24.11.2000 accepting resignation of the appellant-writ petitioner as also the consequential order dated 4.7.2001 seeking to adjust his payable terminal berlefet as against the outstanding loan taken by him asking him to pay the balance amount be quashed with a consequential order for reinstatement in service were made.

10. The Bank and its officials had filed a counter affidavit in which it was sought to be explained that letter of the petitioner dated 23.11.2000 was a letter of his resignation and though Regulation 10 of the Services Regulation of the Bank had required a notice of three months for acceptance of such resignation, the Chairman of the Bank in exercise of his power under Regulation 10(1)(d) had waived such requirement of notice of three months and have accepted his resignation w.e.f. 1.12.2000. In this regard it is the case of the Bank that the letter which was sent by the appellant-writ petitioner seeking to withdraw his resignation were all received in the Bank after resignation of the petitioner had already came into force. In the counter affidavit that was filed at the stage of the

writ application, it had also been sought to be explained that the subsequent conduct of the appellant-writ petitioner in approaching the sponsoring Central Bank of India as also the Reserve Bank of Patna would go to show that the appellant-writ petitioner had accepted this fact that his resignation had already come into force and he was insisting only for payment of his full terminal benefits. In this regard the aforesaid counter affidavit also seeks to explain that the dues which after adjustment of the amount of provident fund payable to the appellant-writ petitioner came to Rs. 3,46,412/- which was found to be payable by the Bank after adjusting the amount of Rs. 56,700/-. Two paragraphs of the counter affidavit, however, are quite relevant and need to be quoted hereinbelow:-

11. That the letter of withdrawal submitted after acceptance of resignation cannot be entertained by the Bank. Moreover the plea that the resignation letter was given out of family feud, anger and annoyance on account of charges leveled against him by the Bank cannot be a valid plea for withdrawal of resignation which has already been accepted.

12. That it is true that the Bank vide charge-sheet dated 20.10.2000 contained in Annexure-4 decided to proceed against him for disciplinary action under Staff Service Regulation but since the petitioner instead of facing the departmental enquiry expressed his intention to resign, the respondent-Bank though it proper to accept his resignation instead of proceeding against him for departmental action by taking a lenient view in the matter as such this writ petition is not maintainable at all.

11. On the said pleadings the learned Single Judge by the impugned order dated 21.12.2006 had dismissed the writ application holding that the impugned order dated 24.11.2000 was passed by the Chairman of the Bank in terms of the Regulation 10(1)(d) of the Staff Service Regulation of the Bank and that there was previous history of the petitioner of submitting resignation and withdrawing it which made the Chairman of the Bank this time to act on the offer of resignation of the petitioner in his letter dated 23.11.2000 by waiving the requirement of notice and as such his request for reinstatement in service after acceptance of resignation could not be acted upon.

12. Mr. Ganesh Prasad Singh, learned Senior Counsel appearing on behalf of the appellant-writ petitioner had submitted that first of all it was not correct to say that the petitioner's letter dated 23.11.2000 was actually the letter of resignation. He has next contended that even if the said letter of the appellant-writ petitioner dated 23.11.2000 is accepted as the letter of resignation, the same could not have been given effect to on or before 1st January, 2001 and since the appellant-writ petitioner had withdrawn his alleged offer of resignation by sending his two applications dated 30.11.2000 and 26.12.2000 well before 1st January, 2001, the impugned order accepting his resignation on 24.11.2000 w.e.f. 1.12.2000 would not be sustained.

13. Mr. Singh, learned Senior Counsel had also placed reliance on the judgment of the Apex Court in the case of P. Kasilingam Vs. P.S.G. College of Technology, , Punjab National Bank Vs. P.K. Mittal, , Dr. Prabha Atri Vs. The State of U.P. and Others, and also the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., wherein it has been held that in order to constitute resignation it must be unconditional and with intention to operate as such.

14. Mr. Ajoy Kumar Sinha, learned counsel appearing on behalf of the Bank while defending the order of the Hon'ble Single Judge had basically relied on the provisions of the Service Regulation to contend that there was no question of withdrawal of resignation of the appellant-writ petitioner, inasmuch as, when the memo of charge was served on him he instead of defending himself choose to submit his resignation voluntarily which was accepted by the Chairman of the Bank and once such resignation was accepted there was no question of its withdrawal. In this regard he had placed his reliance on the judgment of the Apex Court in the case of State Bank of Patiala Vs. Phoolpati, and in the case of Chand Mal Chayal Vs. State of Rajasthan, .

15. Amidst the aforementioned facts, first question which would emerge for consideration is as to whether letter of the petitioner dated 23.11.2000 is a letter of resignation. From the contents of the aforementioned resignation letter dated 23.11.2000 it would be absolutely clear that the appellant-writ petitioner was unnerved on account of being served memo of charge dated 20.10.2000 where in he had narrated his mind with reference to the previous experience that he had received in the hands of Ex-Chairman and the Present Chairman and as such he had rather under compulsion stated that-

"So therefore you are competent to accept my resignation w.e.f. January, 2001 or to remove my service from January, 2001".

16. Wording of the letter dated 23.11.2000 therefore cannot be treated to be voluntarily offer of resignation. The offer of resignation must be clear and unequivocal and also unconditional expressing intention of the employee to sever his relation from the employer without any riddance. In the present case, the letter dated 23.11.2000 would go to indicate that the intention of the appellant-writ petitioner was not to sever his relation immediately but from the prospective date and that too subject to certain condition. From the background that was given in the letter dated 23.11.2000 it appears that the petitioner was under great strain and earlier also he was subjected to certain allegations which led him to submit his resignation but such resignation was not accepted and while he was continued in service, arrival of new Chairman of the Bank had again created a situation under which it appeared to him that a conspiracy was hatched to remove him from service of the Bank without making him entitled to get his full retirement benefits including provident fund, gratuity, group insurance, pension as also salary of five years admissible in case of voluntary retirement. Apparently, the appellant-writ petitioner was rather coerced to state in his application dated 23.11.2000 that he was poor employee and he is not able to go

to Court against all injustice meted out to him in past and as such the Chairman of the Bank being competent could either remove him from the- service or accept his resignation w.e.f. January, 2001. Wording of resignation letter which has been acted upon by the authorities of the Bank thus cannot be held to be unconditional letter of resignation and to that extent reliance placed by the learned Senior Counsel on the judgment of the Apex Court in the case of Prabha Atri (supra) seems to be appropriate and correct. In Dr. Prabha Atri's case she was served with a memo of charge dated 5.1.1999 and on 9.1.1999 while replying to the charges she had stated that if explanation was not acceptable then she would have no option but to tender his resignation with immediate effect. Such resignation of Dr. Prabha Atri having been accepted on 9.1.1999 itself, when her writ petition against the impugned order accepting his resignation was dismissed. The Apex Court after considering the concept of resignation and also considering the earlier judgment of the Apex Court in the case of P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , as also in the case of Moti Ram Vs. Param Dev and another, and also in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, had held that even if expression used for tendering resignation with immediate effect was there in Dr. Prabha Atri's letter dated 9.1.1999, the same could not be accepted as letter of resignation. Paragraph 10 of the aforesaid judgment in the case of Dr. Prabha Atri Vs. The State of U.P. and Others, in this context becomes relevant which is quoted hereinbelow:-

"We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9.1.1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey and spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a "resignation", it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9.1.1999 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so-call resignation. The words "with immediate effect" in the said letter could not be given undue importance de hors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was

written. That the management of the hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9.1.1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9.1.1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the writ petition."

17. Having held that the letter dated 23.11.2000 was not a letter of voluntary resignation, the next question would be as to whether the appellant-writ petitioner could have withdrawn his alleged offer of resignation on any date prior to 1st January, 2001 on which day at best his offer of resignation could have come into force. There is no doubt that even if a person has tendered his resignation voluntarily w.e.f. prospective date that by itself becomes a condition and in that case resignation would become effective on fulfillment of those conditions. In this background it is found that the appellant-writ petitioner had sent two letters one dated 30.11.2000 and other dated 26.12.2000 prior to 1.1.2001 and as such the plea of the respondent-Bank that such resignation could not have been withdrawn because it was already accepted on 24.11.2000 w.e.f. 1.12.2000 has to be only noticed for its being rejected.

18. As a matter of fact, the submission of learned counsel for the Bank on Clause 10 of the Regulations to justify the order dated 24.11.2000 accepting resignation of the petitioner also does not seem to be correct, inasmuch as, there is no power vested in the Chairman of the Bank to accept resignation by waiving the period of notice. It is one thing to say that the Chairman has power to waive the amount of payment of compensation which becomes possible on account of breach of an employee of not giving notice of period of three months in case of officers of his intention to leave or discontinue services of the Bank, but it cannot be said that the Chairman has power to accept resignation under Clause-10(1) (d) with immediate effect even when the offer given for such resignation was with effect from prospective date. This becomes clear from reading of Clause 10 of Service Regulation which reads as follows:-

"10(1)(a). An Officer or employee shall not leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank of his intention to leave or discontinue the service.

(b) The period of notice required shall be-

(i) Three months in the case of Officers, and

(ii) one month in the case of other employees.

(c) In case of breach by an employee of the provisions of this sub-regulation, he shall be liable to pay to the bank as compensation a sum equal to his

emoluments for the period of notice required of him.

(d) He shall also be liable to refund the pay or allowances or both, if any, drawn by him while on training and make good the training expenses, incurred by the Bank or Sponsor bank for deputing him for training.

(e) In exceptional circumstances the payment of such compensation and refund may be waived by the Chairman, at his discretion.

(2) (a) The Bank may terminate the service of an-

(i) Officer after giving him three months notice or emoluments in lieu thereof.

(ii) employee after giving him one month notice or emoluments in lieu thereof.

(b) The power to terminate the service of an officer or employee shall be exercised by the Chairman;

(3) Nothing in sub-regulation (2) shall alter the right of the Bank:-

(a) to retire or dismiss an officer or employee without notice or pay in lieu thereof in accordance with the provisions of regulations 11 and 30; and

(b) to terminate the service of an officer or employee without notice or pay in lieu thereof if his being certified by a Medical Practitioner recognized by the Bank, to be permanently incapacitated for further continuous service in the Bank."

19. Thus the reliance placed by counsel for the Bank on Clause 10 seems to be misconceived and in any view the same cannot be accepted in the light of the law laid down by the Apex Court in the case of "Punjab National Bank vs. P.K. Mittal (supra), wherein it has been held that an order of the Bank accepting resignation with immediate effect as against offer of resignation of an employee of the Bank after completion of the notice period would be itself without jurisdiction. In the aforesaid the Apex Court having taken into consideration almost identical service regulation had gone to hold that accepting the resignation of Mr. P.K. Mittal in that case with immediate effect was without jurisdiction. Paragraphs 6 and 7 of the aforementioned judgment in this regard would be relevant, which reads as follows:-

"Much reliance was placed on the terms of the proviso to clause (2) of Regulation 20 to justify the action of the Bank in terminating the respondent's services earlier but we do not think that the proviso can be interpreted in the manner suggested by learned counsel for the Bank. The resignation letter of the officer has to give at least three months' advance notice under the main part of the clause. What the proviso contemplates is that in a case where the employee desires that his resignation should be effective even before the expiry of the period of three months or without notice being given by him, the bank may consider such a request and waive the period or requirement of notice if it considers it fit to do so. That question does not arise in the present case because the employee had not requested the bank to reduce the period of notice or to

waive the requirement of notice. Dr. Anand Prakash seeks to interpret the proviso as empowering the bank, even without any request on the part of the employees, to reduce the period or waive the requirement of notice. In other words, he says the bank has power to accept the resignation with immediate effect even though the notice is only of a proposed future resignation. We do not think this contention can be accepted. As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry, or beyond the period, of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that even though an employee might express a desire to resign from a future date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under clause (2) becomes effective at the instance of the employee and the services of the employee cannot be terminated by the employer under this clause.

7. Dr. Anand Prakash emphasizes that as clause (2) and its proviso are intended only to safeguard the bank's interests they should be interpreted on the lines suggested by him. We are of the opinion that clause (2) of the regulation and its proviso are intended not only for the protection of the bank but also for the benefit of the employee. It is common knowledge that a person proposing to resign often wavers in this decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires it. The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation. We, therefore, agree with the High Court that in the present case the resignation of the employee could have become effective only on or about April 21, 1986 or on June 30, 1986 and that the bank could not have "accepted" that resignation on any earlier date. The letter dated February 7, 1986 was, therefore, without jurisdiction.

20. Reliance placed by the counsel for the Bank on the judgment of the Apex Court in the case of State Bank of Patiala (*supra*) is also wholly misconceived, inasmuch as, on the facts of that case the Apex Court had held that the

employee had not only resigned but when asked to explain his conduct, he had reiterated for existence of resignation and in that context it was held that as the employee in his lifetime has never questioned the legality of Bank's action of relieving him pursuant to existence of his offer of resignation, withdrawal thereof was not accepted.

21. Similarly, in the case of Chandmal (supra) the Apex Court had, with reference to the facts of that case, held that resignation of the employee had been accepted and therefore claim of reemployment could not be considered. As a matter of fact, in that case the appellant had resigned from service to contest election and therefore it was voluntary act of his resignation and in fact after acceptance, of his resignation dated 27.1.1990 it was accepted on 28.1.1990, and he had been not only relieved from the service on 29.1.1990 but also filed his nomination for contesting the election, but subsequently withdrew his such nomination on 2.2.1990 and thereafter he was asked his employer by his application dated 12.2.1990 to withdraw resignation either by reinstating on the old post or by way of reemployment, and it was in that context that the Apex Court had held that once such resignation was accepted, same could not be withdrawn.

22. Having thus noted the aforementioned position in law and in the background of the facts, it appears to this Court that as a matter of fact on account of some previous history of the petitioner of being in the zone of controversies on account of certain acts of omission and commission when the authorities of the Bank could not rid of the appellant-writ petitioner whose letter of resignation was not accepted in the year 1988, were too anxious and eager to remove the petitioner from the service and as such no sooner they received reply of the petitioner to the memo of charge dated 23.11.2000 making direct and frontal allegation against Chairman of the Bank, they chose to pick half of the last sentence using the word "resignation" wholly out of the context and accepted such offer of resignation on the very next day i.e. 24.11.2000, which in no view matter can in fact be treated to be a voluntary letter of resignation of the appellant-writ petitioner. This fact coupled with subsequent events as narrated in the Agenda note of the Bank dated 15.7.2001 (Annexure-B to the counter affidavit) regarding appellant-writ petitioner being sent by the Bank for his mental check-up by the experts including Psychiatrists and Doctors for his being reviewed by the Medical Board at Purnea would go to show that the authorities of the Bank were determined to remove the petitioner from the services of the Bank by hook or by crook.

23. There seems to be otherwise no reason as to why the Bank had even entertained and made correspondence to the wife of the petitioner for getting the writ petitioner checked-up by Psychiatrists or had chosen to doubt the report of the specialist doctor of Ranchi Mental Hospital by sending him for further review by the Board of Doctors headed by Civil Surgeon, Purnea. It would thus appear that the authorities of the Bank were trying to prove that the petitioner was a

mental patient and incapable of serving the Bank and when such effort did not yield fruitful result from the report of the Medical Board at Purnea, they had reverted to their earlier stand that resignation of the petitioner had already been accepted and could not have been withdrawn by him even before its coming into force.

24. Last part of submission of counsel for the Bank that the subsequent communication of the appellant-writ petitioner to the Sponsored Central Bank of India or Reserve Bank, Patna with regard to making payment of terminal benefit as a consequence of acceptance of resignation of the writ petitioner shall act as estoppel against the appellant-writ petitioner in claiming his relief against the order of acceptance of resignation dated 24.11.2000 is again to be noticed for its being rejected. In all letters either sent by the writ petitioner to the Bank or to the Central Bank of India or to the Reserve Bank of Patna it was the consistent case of the appellant-writ petitioner that he was forcibly removed from the service of the Bank by treating his letter dated 23.11.2000 as a letter of his resignation, though it was never intended to be letter of resignation and infact the same was also sought to be withdrawn on 30.11.2000 itself.

25. This Court on perusal of the letters of the appellant-writ petitioner as also those communications summarized in the Agenda Note dated 15.7.2001 of the Bank brought on the record by way of AnnexureB to the counter affidavit, would find that reference to the payment of terminal benefits was only to explain miseries in which he had been placed as a consequence of his being removed from service by way of acceptance of his non-existent letter of resignation. Thus, to that extent even findings of the learned Single Judge on those communications of the appellant-writ petitioner as with regard to claiming payment of terminal benefits seems to be contrary to the materials on record. In that view of the matter, this Court would set aside the impugned order passed by the learned Single Judge and would allow this appeal. The Bank's letter dated 24.11.2000 purporting to accept a non-existing resignation letter of the appellant-writ petitioner dated 23.11.2000 is quashed with a consequential direction for his reinstatement in service of the Bank and to that extent the prayer made in the writ application is allowed. The respondent-Bank shall however be at liberty to pursue the disciplinary proceeding initiated against the appellant-writ petitioner vide memo of charge contained in HO/DAW/255/2K-01/115 dated 20.10.2000 in accordance with law.

Chandramauli Kumar Prasad, J.

I agree.