
(2014) 08 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2057 of 2013

Dharitri Barman

APPELLANT

Vs

The Gauhati High Court

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 217(1), 226

Citation : (2015) 2 GLD 20 : (2014) LabIC 4141

Hon'ble Judges : M.R. Pathak, J;C.R. Sarma, J

Bench : Division Bench

Advocate : H.P. Barman, Advocate for the Appellant; P. Sen Deka, Govt. Advocate and U.K. Nair, Standing Counsel, Advocate for the Respondent

Judgement

C.R. Sarma, J.—The writ petitioner, joined as an officer in Grade-III of the Assam Judicial Service, on 17.04.2002. Thereafter, she served in various places under the jurisdiction of this High Court. On being promoted, she joined, on 1.7.2012, as Addl. CJM, Goalpara and continued in the said post till her resignation from the service. According to the petitioner, she being unable to bear with various personal problems, relating to her family life, decided to relinquish the job and accordingly submitted her resignation letter, on 3.10.2012. Her said letter was forwarded to the High Court by the controlling officer i.e. the District and Sessions Judge, Goalpara and she left for Guwahati, on 5.10.2012, to join the members of her family. On 6.10.2012, in the evening hours, the District Judge, Goalpara telephonically informed her that the resignation letter was accepted by the High Court. On 8.10.2012, at about 3 p.m., she met the Registrar General of the High Court and submitted a letter of withdrawal of her resignation, but, she was asked by the Registrar General to proceed to Goalpara and handover charge. She was also informed, by the Sub-Divisional Judicial Magistrate (S), Goalpara, that a corrigendum was issued by the Registry of this Court, directing her to handover charge to the SDJM. Accordingly, on 8.10.2012 at 11 p.m. she handed over charge of her office. According to the writ petitioner, due to her mental anxiety, she failed to notice that, in the charge handing over letter (form) the

date and time were written as "8th October, 2012, at 10-30" a.m. According to the petitioner, due to pressure of various problems, she had whimsically submitted the resignation letter and that, her application for withdrawing the resignation being submitted before handing over the charge, she was entitled to withdraw her resignation.

Failing to obtain response to her said withdrawal letter, she has come up with this writ petition seeking a mandamus directing the respondent authority to allow her to withdraw the resignation letter dated 8.10.2012 and also to re-instate her in the original post.

Notice being issued/die respondents entered appearance. The learned Standing Counsel, High Court has produced the relevant records.

We have heard Mr. H.P. Barman, learned counsel appearing for the appellant. Also heard Mr. U.K. Nair, learned S.C., High Court and Mr. P. Sen Deka, learned State Counsel.

2. Mr. H.P. Barman, learned counsel, appearing for the appellant, has submitted that the petitioner, due to her certain personal problems, including her illness, she had whimsically decided to tender resignation letter dated 3.10.2012. It is submitted that, she, realizing her mistake and considering the responsibility she has to shoulder, in maintaining her family, petitioner immediately decided to withdraw her resignation letter and accordingly she personally approached the Registrar General and submitted the withdrawal letter, but she was not informed about the fate of her resignation letter. The learned counsel, appearing for the petitioner, has also submitted that, on being directed by the High Court and in pursuance to the corrigendum, dated 8th October, 2012, she rushed to Goalpara and handed over the charge, on 8.10.2012 at 11 p.m., after submitting her withdrawal letter, in the High Court at about 3 p.m. The learned counsel has further submitted that it is not correct that she has handed over the charge at about 10-30 a.m.

It is also submitted, on behalf of the petitioner, that the withdrawal letter being submitted before handing over charge of the office, she is entitled to withdraw her resignation and that the authority ought to have accepted her said withdrawal.

It is further submitted that no communication was made to the petitioner with regard to the withdrawal letter and as such her release, from the service, on the basis of said resignation, was not lawful.

In view of above, the learned counsel, appearing for the petitioner, has strenuously argued that the High Court committed illegality by refusing to allow the petitioner to withdraw her resignation letter.

Therefore, it is contended that the petitioner is entitled to withdraw the said resignation letter and continue in her service.

3. In support of his contentions, the learned counsel, appearing for the petitioner, has relied on the decisions held in the cases of (1) Dharam Chand Sharma v. Union of India, reported in 1989 (2) SLR 692, (2) Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, .

4. Refuting the said argument, advanced by the learned counsel, appearing for the petitioner, Mr. U.K. Nair, learned Standing Counsel, Gauhati High Court, producing the record, has submitted that the resignation letter, submitted by the petitioner, was accepted by the High Court i.e. the appropriate authority on 6.10.2012, and the said acceptance, in fact, was made known to the petitioner. Therefore, it is submitted that, the letter of withdrawal, submitted on 8.10.2012 i.e. after acceptance of the resignation, was not acceptable. It is also submitted that, in view of acceptance of the resignation letter, the date of handing over of charge was not relevant. The learned Standing Counsel has contended that no prospective date of resignation being mentioned, from the tenor of the resignation letter, it could be understood that the resignation was to come into effect immediately and as such, there was no scope to withdraw the resignation, after the same was accepted. Supporting the action taken by the High Court, the learned Standing Counsel has submitted that the authority has committed no error or illegality by accepting the resignation of the petitioner.

5. The learned Standing Counsel has relied on the following decisions: (1) Balram Gupta Vs. Union of India (UOI) and Anr, , (2) North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar, .

6. Adopting the said argument, advanced by the learned Standing Counsel, Gauhati High Court, Mr. P. Sen Deka, learned State counsel, has submitted that, on the recommendation of the High Court, the Govt. released the petitioner from the service w.e.f. 8.10.2012. The learned State Counsel has also submitted that, in view of acceptance of resignation, prior to submission of the withdrawal letter, the petitioner was not entitled to any relief, as sought for.

7. Having heard the learned counsel, appearing for both the parties, we have carefully perused the record, produced by the learned standing counsel. The learned counsel appearing for the petitioner has also been given an opportunity to peruse the record.

It is an admitted position that, on 3.6.2012, the petitioner had submitted her resignation letter, which reads as follows:

"From:- Mrs. D. Barman, AJS, Add. Chief Judicial Magistrate, Goalpara.

Dated: Goalpara, the 3rd day of October/12.

To

The Registrar General, Hon"ble Gauhati High Court, Guwahati. Through the Chief Judicial Magistrate, Goalpara

And

Through the Hon"ble District & Sessions Judge, Goalpara.

Sub: Resignation,

Sir,

I have the honour to state that due to my various health problems I have decided to resign from the Assam Judicial Service.

I, therefore, request your honour kindly to release me from my service and thus oblige.

Yours faithfully (Mrs. D. Barman) Addl. Chief Judicial Magistrate Goalpara"

In the said resignation letter no prospective" or future date of her resignation has been mentioned. She, in clear terms, stated that she decided to resign from service and as such she should be released from her service. A careful reading of her resignation letter indicates that the petitioner wanted to get released with immediate effect and not from any future date.

8. The said resignation letter was forwarded to the Registrar General of the High Court by the District & Sessions Judge, Goalpara, on 4.10.2012. With the approval of the Hon"ble Chief Justice and the Judge Administrative Department, her resignation letter was placed before the administrative committee for consideration. The meeting of the administrative committee, held on 5.10.2012, vide resolution in respect of Additional item No. 3, accepted the resignation of the petitioner with immediate effect.

In view of the said decision, taken by the High Court, the Registrar General by his letter dated 6th October, 2012 requested the Government to release the petitioner from service.

Accordingly, on the basis of the order passed by the Governor of Assam, the LR & Secretary to the Govt. of Assam, Judicial Department issued a notification stating that the Governor of Assam was pleased to release the petitioner from the Assam Judicial Service w.e.f. 8th October, 2012.

The copy of the letter, by which the recommendation of the High Court was sent to the government and the copy of the notification, issued by the government, were forwarded to the petitioner also.

From the above, it is clearly found that the resignation of the petitioner was accepted by the High Court on 5.10.2012. As contended by the petitioner she submitted her letter of withdrawal on 8.10.2012. The petitioner in her writ petition at paragraph 9, clearly stated that, she was informed by the District & Sessions Judge, Goalpara, on 6.10.2012, that her resignation letter was accepted by the High Court. Therefore, it is found that the resignation letter, submitted by the petitioner, was accepted much prior to submission of the withdrawal letter. As stated by the petitioner, she submitted the withdrawal letter on 8.10.2012 at 3 p.m. She pleaded, at paragraph 9 of her petition, that due to her severe

headache, she could not proceed to Goalpara, on 8.10.2012 and as such she proceeded to Goalpara on 9.10.2012 and handed over the charge on the said date. She contradicted her said statement by stating, at paragraph 12, that she handed over charge on 8.10.2012 at 11 p.m. Her said averment reads as follows:--

"12.....In fact the petitioner handed over the charge of her office at Goalpara on 08.10.2012 at about 11.00 p.m. in the night after submitting the withdrawal letter before the Hon"ble Gauhati High Court on the same date at about 3.00 p.m."

But, in the charge handing over form, it has been written that she handed over the charge on 8.10.2012 at 10.30 a.m. According to the petitioner, due to her mental anxiety, she put her signature in the certificate of transfer of charge without noticing the time, mentioned therein. The said contradictory statements, made by the petitioner, at paragraphs 9 and 12 of the writ petition, do not inspire confidence to believe that she had handed over charge at 11 p.m. Be that as it may, facts remain that, her resignation was accepted before submission of the withdrawal letter and there was no prospective date of resignation, in the said letter dated 3.10.2012. Admittedly, she handed over charge after the notification was issued by the Government of Assam, in the judicial department. It is found that, vide Government notification aforesaid, the petitioner was released from service w.e.f. 8.10.2012. Now the question is, whether the petitioner was entitled to withdraw her resignation, after the same was accepted by the High Court.

9. Rule 6 of the Assam Judicial Service Rules, 2003, which governs the service of the petitioner reads as follows:--

"Rule 6. Appointing authority--(1) The appointing authority for the cadre of Grade-I and Grade-III shall be the Governor and for the category of posts of Grade-II shall be the High Court.

(2) Appointment to the posts of Super Time Scale/Selection Grade District & Sessions Judges shall be made by the High Court by promotion from Grade-I of the Service, as per criteria given in Schedule-"E".

10. The function and powers of the Administrative Committee have been outlined in Chapter 1, Rules 2 and 3 of the Gauhati High Court Rules. Rules 2 and 3 are quoted below:--

"Rule 2. The Administrative Committee shall be charged with the control and direction of the Subordinate Courts, so far as such control and direction are exercised otherwise than judicially.

3. The Administrative Committee shall have power, without reference to the Judges generally--

(a) To dispose of all correspondence with its own department, urgent in its nature and not of general importance;

(b) to make recommendation for appointment of District and Sessions Judges, Assistant District and Sessions Judges, Munsiff and Judicial Magistrates and for their promotion, degradation, suspension or dismissal;

(c) to issue Circulars, Orders and General Letter to the Mufassal Courts; and

(d) to dispose of any matter which might ordinarily have been dealt with by the Judge in charge of the Administrative Department, and which he may have referred to the Committee for their opinion."

From the above, it appears that the High Court is the appointing authority for Grade-II officers to which category the petitioner belonged. The above stated High Court Rules empowers the Administrative Committee to deal with promotion, degradation, suspension or dismissal of the judicial officers. Hence, there is no bar for the Administrative Committee for accepting resignation of a Grade-II Officer.

11. In view of above, High Court being the appointing authority of the petitioner (Grade II Officer) had rightly accepted her resignation letter.

The Government also, on being recommended by the High Court, released her w.e.f. 8.10.2012. It is found that the resignation of the petitioner was accepted on 5.10.2012 and the petitioner also admitted that she came to know about such action, on 6.10.2012, on being informed by the District & Sessions Judge, Goalpara. Hence, fact remains that she submitted her withdrawal letter dated 8.10.2012 after her resignation was accepted.

12. The case of Dharam Chand Sharma (supra) was decided by the Central Administrative Tribunal. In the said case the applicant served a notice of resignation, on 17.04.1988, upon the respondent, tendering his resignation after 3 months from the date of receipt of the said notice. As indicated in the said resignation letter the resignation was to come into effect after completion of 3 months w.e.f. 17.4.1988. Therefore, he was to be relieved on 16th July, 1988. Before he was relieved, he made an application on 12th July, 1988 seeking permission to withdraw his resignation; but the respondent declined his request for withdrawing the resignation. The Tribunal, while allowing the application, directed the respondent to treat him in continuous service. In the said case, the applicant had expressed his desire to resign from a future date i.e. after 3 months from the date of receipt of this notice and he submitted the letter of withdrawal before the expiry of the said period. In fact, his resignation was supposed to come into effect w.e.f. from a future date. But in our present case, the petitioner, while submitting her resignation letter, did not mention any future date.

13. Resignation letter may be of two types i.e. (1) resignation letter with a future date of resignation and another without any such future date. In the former case the resignation will be effective from the future date, prescribed therein. In the absence of any future/prospective date of resignation such letter is to be treated

as a resignation with immediate effect. The facts and circumstance of the above referred case, being different from the case at hand, the said decision does not help the petitioner.

14. In the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , the question, that came up for consideration before the Supreme Court, was as to whether a letter written by a High Court Judge, to the President, intimidating to resign from his office with effect from a future date, is competent to withdraw the same before that date is reached.

The second appellant in the appeal before the Supreme Court, who was a Judge of the Allahabad High Court, on 7th May, 1977, sent a letter to the President expressing his desire to resign from the office of Judge w.e.f. 1st August, 1977. On 15th July, 1977, he wrote another letter to the President requesting to treat his earlier letter of resignation, i.e. the letter dated 7th May, 1977, as null and void. The Appellant No. 2, who was on leave, cut short his leave and resumed his duties as Judge on July 16, 1977 and from July 18, 1977, he commenced sitting in the Court and deciding cases. On August 1, 1977, Shri Gopal Chandra Mishra, an Advocate of the High Court filed a writ under Article 226 of the Constitution in the High Court contending that the resignation letter, dated May 7, 1977, of the Judge having been duly communicated to the President was final and irrevocable and as such the Judge ceased to be a Judge of the Allahabad High Court. The said petition came up for hearing before a 5(five) Judges Bench of the Allahabad High Court. By a majority of 3(three), the writ petition was allowed. As against the said judgment two appeals were preferred. In allowing the said appeals and setting aside the majority judgment of the High Court, the Supreme Court held that the letter to the President amounted to a proposal or notice of intimation to resign at a future date (August 1, 1977) and not being a absolute, complete resignation operative with immediate effect, could be, and, in fact had been validly withdrawn vide letter, dated 15th July, 1977.

In the said case a constitution Bench of the Supreme Court, by a majority of four to one, while answering the said question in affirmative, observed as follows:--

"Para 50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. The general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary/ who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally the tender of resignation becomes effective and his service/or office tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective

and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns *sin praesenti*, the resignation terminates his office tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such, withdrawal."

15. As held in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , if any prospective date of resignation is mentioned in the resignation letter then the resignation would come into effect from such date only. In that case the employee is entitled to withdraw the resignation before the expiry of the said date. But, if no such future date is mentioned then the resignation, once accepted by the authority cannot be withdrawn.

16. In the case of Balram Gupta Vs. Union of India (UOI) and Anr, , the appellant wrote a letter on 24.12.1980, to the appointing authority, seeking voluntary retirement on 31.03.1981. He wrote that the notice period of 3 (three) months be treated from 1.1.1981.

By an order dated 20.01.1981 the appellant was allowed to retire voluntarily w.e.f. 31.03.1981. In the meantime, on 31.01.1981, he withdrew his notice on the ground that he had changed his mind. He was relieved, by order dated 31.03.1981, intimating that his withdrawal application was considered and found not acceptable. The appellant moved the authorities and the High Court, contending that, in view of his withdrawal letter dated 31.01.1981, the impugned order, dated 31.3.1981, thereby relieving him from his job was illegal and invalid. The High Court dismissed the appellant's writ petition. Before the High Court, it was contended that up to the prospective date of resignation, intimated in the application, i.e., till 31.03.1981, the appellant was in service and that he was entitled to withdraw his notice of voluntary retirement prior to the said date. The writ petition being dismissed by the High Court, the appellant carried the appeal to the Supreme Court. The Supreme Court, referring to the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , allowed the appeal and set aside the order passed by the High Court in the writ petition.

17. In the case of Balram Gupta Vs. Union of India (UOI) and Anr, the appellant clearly mentioned that his resignation would be effective only w.e.f. 31.3.1981. In the said case the Supreme Court observed:-

"11.....Our attention was also drawn to the observations of this Court in Raj Kumar Vs. Union of India (UOI), . There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus poenitentiae* but not thereafter. Undue delay in intimating to the public servant

concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus."

The facts of the case of Balram Gupta (supra) were quite different from the case at hand. In the present case, as indicated above, no such future date was mentioned.

18. In the case of North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar, , the respondent i.e. an employee of the appellant submitted his resignation letter, on 18.11.1988, tendering his resignation w.e.f. 18.11.1988. Though his resignation was accepted on the same date, the acceptance was not communicated immediately thereafter. He sent a telegram, on 21.11.1988, withdrawing his resignation on the ground that the resignation was obtained by pressure. It was also pleaded that even after the resignation he was regularly attending the work and signed the attendance registrar. On 21.11.1988 he received a letter of 18.11.1988, wherein it was intimated that his resignation was accepted on 18.11.1988 itself. The appellant did not permit him to continue work in the post concerned. Therefore, the respondent filed a writ petition in the High Court. The High Court allowed the writ petition with the direction that the writ petitioner shall be treated as having continued in the post he held. Challenging the said order of the learned single Judge, an appeal was preferred before the Appellate Bench of the High Court. But the same was also dismissed. Hence, the matter was taken to the Supreme Court. The Supreme Court, while allowing the appeal, set aside the impugned order, passed in the writ petition. The Supreme Court referred to the following observation made in the case of Raj Kumar Vs. Union of India (UOI),

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

The Supreme Court observed;

"16. Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is, in fact, an acceptance before the withdrawal."

19. In view of above decisions, there is no difficulty in concluding that the resignation letter, issued by an employee, expressing his or her desire to resign from the job, without mentioning any prospective date of resignation, will come

into effect immediately on acceptance of the same by the appropriate authority. However, if any prospective date of resignation is mentioned, the resignation shall be effective from such future date only. In the absence of any prospective date the resignation letter cannot be allowed to be withdrawn, once the same is accepted by the authority. Whereas, in respect of cases where a future date of coming into effect of the resignation is mentioned, then the employee is entitled to withdraw the same before the prospective date.

20. In the present case the petitioner, in her resignation letter, did not mention any prospective date. Her resignation was a resignation simpliciter. As revealed from the record, the same was accepted by the authority on 5.10.2012.

The petitioner in his writ petition at paragraph 9 stated as follows:--

"9. That, your humble petitioner begs to state that, on 06.10.2012 in the evening hours, the District Judge, Goalpara informed the petitioner over telephone that her resignation letter dated 03.10.2012 has been accepted by the Hon"ble Gauhati High Court. Next day i.e. 07.10.2012 was a Sunday. On 08.10.2012 the petitioner could not proceed to Goalpara as she was suffering from severe headache and vomiting tendency and accordingly she informed the District Judge, Goalpara over telephone about her illness and to come to Goalpara on the next day i.e. on 09.10.2012 to hand over the charge of her office."

Admittedly, she filed her application on 8.10.2012 seeking permission to withdraw the resignation. From her averment aforesaid it is clearly found that on 06.10.2012 she came to know that her resignation was accepted. As per record her resignation was accepted by the authority on 5.10.2012 and she was released w.e.f. 8.10.2012 by the State Government. The application for withdrawing the resignation was submitted after acceptance of her resignation letter and after such acceptance, she ceased to be in service and therefore, she had no locus.

In view of the above, we have no hesitation in holding that the authority committed no error or illegality by refusing to allow her to withdraw her resignation after the same was accepted on 05.10.2012, inasmuch as, there was no future date of resignation in her said resignation letter.

In view of what has been discussed above, we find no merit in this writ petition requiring interference.

Accordingly the writ petition stands dismissed. We leave the parties to bear their own costs.

Return the record produced by the learned Standing Counsel, High Court.