
(1997) 03 PAT CK 0066
In the Patna High Court
Case No : C.W.J.C. No. 1387 of 1996

Dr. Raj Prakash Rao

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Citation : (1997) 2 PLJR 408

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Ajit Kumar and Krishna Mohan Prasad, for the Appellant; G.P. III, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The Petitioner has filed this writ application for quashing the order dated 7.9.1995, Annexure-1, whereby and whereunder his resignation has been accepted with effect from 29.2.1988.

2. The Petitioner joined as Touring Veterinary Officer, Naron in the district of Saran on 21.3.1983. He was transferred to Phulwari Sharif Block by order dated 25.6.1987. He joined there unilaterally. The incumbent of the post did not hand over charge to him and ultimately the order of transfer was stayed. He was also not paid salary for the period December, 1987 to February, 1988. He tendered his resignation on 29.2.1988. He engaged himself in a private firm and continued there till 10.7.1991. On 11.7.1991 he filed a petition for withdrawal of his resignation. Thereafter, he filed several reminders, lastly on 19.4.1994, but nothing was done. He filed C.W.J.C. No. 2771/94 for issue of a direction for his posting on the vacant post. While the writ petition was pending the order, Annexure-1, accepting his resignation with effect from 29.2.1988 was passed.

3. A counter-affidavit has been filed on behalf of Respondents stating therein that the Petitioner submitted his resignation on 29.2.1988 stating that in anticipation of approval he treated himself free from the Government job with

effect from afternoon. He joined the service in a private company, namely, Pfizer Ltd. on 1.3.1988 and he worked till 19th August, 1991. He submitted his joining on 11.7.1991 stating therein that he was suffering from abdominal diseases and was on rest under the advice of the Doctor. The aforesaid statement is not correct as on the one hand he says that he was ill, whereas on the other hand he admitted in the writ petition itself that he was working in Pfizer Ltd. Besides he submitted his joining on 11.7.1991 when he was working in Pfizer Ltd. In reply to the counter-affidavit it has been stated that he submitted his resignation in Pfizer Ltd. on 29.5.1991. In terms of the agreement the firm simply treated the Petitioner in service till August, 1991 although he submitted his resignation on 29.5.1991 and he dis-associated himself from the affairs of the firm after tendering resignation.

4. Learned Counsel for the Petitioner contended that order dated 7.9.1995, Annexure-1, accepting his resignation with effect from 29.2.1988 is bad in law as he withdrew his resignation on 11.7.1991 i.e. before acceptance of his resignation. On the other hand, learned Counsel for the Respondents contended that the Petitioner tendered his resignation on 29.2.1988 Stating therein that he treated himself free from Government job with effect from afternoon in anticipation of approval of his resignation. The Petitioner after tendering his resignation joined the private firm on 1.3.1988 and did not wait for approval of his resignation and hence resignation became effective as soon as he joined the service in Pfizer Ltd. He also contended that the Petitioner has not come with clean hands as in his joining letter dated 11.7.91 he has stated that he was suffering from abdominal diseases and was on bed rest. Besides, he filed joining on 11.7.1991 while he was in job in Pfizer Ltd.

5. It is manifest from the material on record that the Petitioner tendered his resignation on 29.2.1988 stating therein that in anticipation of approval he treated himself free from Government job with effect from afternoon on the day he tendered his resignation. He joined service in Pfizer Ltd. on 1.3.1988 and continued in the said job till August, 1991. He filed his joining on 11.7.1991 stating therein that he was suffering from abdominal diseases and was on bed rest under Doctor's advice. In reply to the counter-affidavit he admitted that he tendered his resignation on 29.5.1991 which was accepted on 31.8.1991. Thus it is evident that the Petitioner has not come with clean hands as in the writ petition he admitted that he was in job in Pfizer Ltd. but in the joining letter he stated that he was suffering from abdominal diseases and was on bed rest or Doctor's advice.

6. In the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , the Apex Court has held that, "the general principle regarding resignation 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 of the office-tenure of the resigned. This 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, normally, the tender of resignation becomes effective and his service/or office-tenure terminated when it is accepted by the competent authority."

7. In the instant case, no doubt, the resignation of the Petitioner was accepted vide letter dated 7.9.1995, Annexure-1, with effect from 29.2.1988 but the Petitioner after tendering his resignation joined the service in Pfizer Ltd. on 1.3.1988 and he continued to work till August, 1991. Thus by act of the Petitioner itself the resignation came into effect with effect from the date of joining and the service stood terminated as soon as he joined the other service. Being conscious with the law laid down by the Apex Court, that normally the resignation becomes effective and service stood terminated when it is accepted by the competent authority, I am tempted to say in the instant case that the Petitioner joined the service in Pfizer Ltd. just after tendering his resignation and hence the resignation came into effect as soon as he joined the service in the said company and his service stood terminated. The Petitioner himself stated in his resignation letter that he treated himself to be free from government job with effect from afternoon the day on which resignation was tendered. It has also been indicated that the Petitioner has not come with clean hands as in the writ petition it has been stated that he was in job, whereas in the joining letter he stated that he was suffering from abdominal disease and was on bed rest. Besides, he filed his joining while he was in job in Pfizer Ltd. In such a situation, I do not find any reason to exercise discretion in writ jurisdiction.

8. Thus on consideration of the entire facts and circumstances, as indicated above, I do not find any merit in this writ application. Accordingly, it is dismissed but without cost.