

**(1971) 11 CAL CK 0005**  
**In the Calcutta High Court**  
**Case No : C.R. No. 3094 (W) of 1966**

Durga Prasanna Gupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 29-11-1971

**Acts Referred:**

Constitution of India, 1950 — Article 309, 311

**Citation :** AIR 1972 Cal 378

**Hon'ble Judges :** Sabyasachi Mukharji, J

**Bench :** Single Bench

**Advocate :** A.P. Chatterjee and Sm. Sabitri Devi Sen, for the Appellant; Addl. Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sabyasachi Mukharji, J.—The petitioner was appointed Law Officer in the Directorate of Mines and Minerals, Government of West Bengal by the order dated 19th April, 1965. The petitioner was appointed sub-statically to that post though on probation for two years with effect from the date he actually joined the said post as Law Officer. The petitioner actually joined on 27th April, 1965. On 16th May, 1966 the petitioner tendered his resignation to the Deputy Secretary, Commerce and Industries Department, Government of West Bengal through the Chief Mining Officer, Government of West Bengal. In the said letter, the petitioner stated that his resignation might be accepted at an early date with a request to relieve him of his present post as early as possible. It : has been said on behalf of the respondents in the affidavit-in-opposition that the said resignation was accepted by the then Minister of State on the 30th May, 1966. After submission of the resignation, the petitioner changed his mind and wrote a letter on 3rd June, 1966 to the Deputy Secretary, Commerce and Industries Department withdrawing his resignation. On 8th June, 1966 the Deputy Secretary to the Government of West Bengal, Commerce and Industries, Mines Branch forwarded a Notification accepting the petitioner's resignation from the

post of the Law Officer. The petitioner was informed by the said letter that his resignation had been accepted with effect from 10th June, 1966. On 9th June, 1966 the petitioner was informed that the petitioner's resignation had already been accepted with effect from 10th June, 1966 and the Government expressed its inability to consider the petitioner's letter dated 3rd June, 1968 withdrawing his resignation. Upon these facts, the petitioner moved this Court under Article 226 of the Constitution.

2. Counsel for the petitioner contended that inasmuch as the resignation letter was withdrawn before the order communicating acceptance of the resignation was received by the petitioner, the petitioner was entitled to withdraw the said resignation and the respondents were required to consider the said withdrawal. In not having done so, it was urged that the respondents acted illegally. It was further submitted that inasmuch as the resignation was accepted with effect from June 10, 1966 the petitioner continued to be in the Government service until that date and, therefore, the petitioner had the right to withdraw the said resignation until that date. It was urged that the Government decision was not a decision until it was communicated. In the premises, inasmuch as no decision was communicated to the petitioner accepting the resignation of the petitioner prior to 3rd or 4th June, 1966, the petitioner was entitled to withdraw the letter of resignation. It was submitted further that the Government had acted illegally in accepting the resignation.

Counsel for the petitioner drew my attention to the decision of the Supreme Court in the case of *Jai Ram Vs. Union of India (UOI)*, . There it has been observed that it might be conceded that it was open to a servant, who had expressed a desire to retire from service and to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but the Government servant should be allowed to do so as long as he continued in service and not after it had terminated. But where the service of the servant had ceased, because of the retirement he could not be held to have continued in his service, though at the time he was on post-retirement leave granted to him under special circumstances. It was urged by counsel for the petitioner on the basis of the authority of this aforesaid decision that in the instant case, firstly, the resignation was accepted from 10th June, 1966, therefore, the Government servant was entitled until that date to be considered to be in service and as he was in service until June 10, 1966 the Government servant was entitled to withdraw the resignation. I am however of the opinion that it cannot be contended that the resignation was accepted on 10th June, 1966. The resignation was accepted long before that and in the affidavit-in-opposition it had been stated that it was so accepted on 30th May, 1966. The fact that the resignation was effective from a future date does not, in my opinion, mean that the resignation was not accepted until that future date. Therefore, it is not possible to hold that until 10th June, 1966, the petitioner continued to be in service. In the premises, I am unable to accept the first contention urged in support of this application.

3. Counsel for the petitioner also relied on the Full Bench decision of the Allahabad High Court in the case of Bahori Lal Paliwal Vs. District Magistrate, Bulandshahr and Another, There, a bye-election was held on a casual vacancy supposed to have been created by the acceptance of resignation of the former Chairman of a Town Area Committee. The Chairman had, however before his resignation was accepted by the District Magistrate, withdrawn it. In reply to the writ petition filed by the Chairman, questioning the order of the District Magistrate to hold the bye-election, it was contended that the election having been held it could only be set aside in accordance with the provisions of the U. P. Town Areas Act or the rules framed thereunder, and hence the writ petition was not maintainable. It was held that as upon the validity of the acceptance of resignation depended the validity of the order to hold the bye-election and the bye-election itself, the petition was maintainable. The majority of the learned Judges of the Allahabad Full Bench observed that the Chairman of the Town Area Committee had, before the resignation was accepted, a right to withdraw it and he having done so, there was no resignation left which could be accepted by the District Magistrate. Hence, even after its withdrawal if the District Magistrate accepted the resignation, the purported acceptance of the resignation by the District Magistrate was a nullity and so was his communication to the Town Area Committee. The facts of that case, in my opinion, were entirely different. It is not necessary for me to refer in detail to the said judgment in considering this issue.

4. It was further contended that the decision was no decision until it was communicated to the party concerned and in the instant case the decision to accept the resignation was communicated to the petitioner on 8th June, 1966. Therefore, it was urged it could not be said that prior to 8th June, 1966 there was any decision to accept the resignation. Therefore, it was submitted that the petitioner was entitled to withdraw his resignation. Reliance was placed on the Supreme Court decision in the case of Bachhittar Singh Vs. The State of Punjab, There, the Supreme Court observed that before something amounted to an order of the State Government two things were necessary. The order had to be expressed in the name of the Governor as required by Clause (1) of Article 166 of the Constitution and then it had to be communicated. The Constitution requires that the action must be taken by the authority concerned in the name of the Governor. It was not till this formality was observed that the action could be recorded as that of the State. Constitutionally speaking, the Minister was no more than an adviser and that the head of the State, the Governor was to act with the aid and advice of his Council of Ministers. Therefore, until such advice was accepted by the Governor whatever the Minister or the Council of Ministers might say in regard to a particular matter would not become the action of the State until the advice of the Council of Ministers was accepted or deemed to be accepted by the Head of the State. Indeed, it was possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers might express quite a different opinion, one which might be completely opposite to the earlier opinion. Therefore to make the opinion amount

to a decision of the Government it should be communicated to the person concerned. The Supreme Court further observed that it was of the essence that the order had to be communicated to the person who would be affected by that order before the State and that person could be bound by that order. For, until it was communicated to the person affected by it, it was open to the Council of Ministers to consider the matter over and over again and, therefore till its communication the order could not be regarded as anything more than provision in character. Relying upon these observations, counsel for the petitioner contended that in the instant case also there was no decision and such communication was received only after 8th June, 1966 before which the petitioner had already written withdrawing his resignation. This point would have required very serious consideration but this point is no longer open to counsel for the petitioner in view of the judgment of the Supreme Court in the case of *Raj Kumar Vs. Union of India (UOI)*, . The petitioner in that case was a member of Indian Administrative Service and he had asked the Government to relieve him from service. The Government accepted it. But before communication of the order accepting his resignation reached him, he withdrew his offer of resignation. The petitioner in that case wrote to the Government on 21st August, 1964 and on 30th August, 1964 submitted his resignation. On 31st October, 1964 the Government of India accepted the resignation and requested the Chief Secretary to the Government of Rajasthan to intimate to the petitioner the date on which the petitioner might be relieved of his duties so that a formal notification could be issued in that behalf. After some time the petitioner changed his mind and by the letter dated 27th November, 1964 the petitioner requested the Chief Secretary to the Government of Rajasthan to recommend acceptance of the withdrawal of his resignation from the Indian Administrative service. He also addressed a separate letter to the Secretary to the Government of India, Ministry of Home Affairs, intimating that he was withdrawing his resignation from the Indian Administrative Service. On 29th March, 1965 an order accepting the resignation of the appellant from the Indian Administrative Service was issued and the petitioner was directed to hand over the charge to the Additional Collector, Kota. The petitioner then moved a petition in the High Court of Punjab at Delhi for the issue of a writ of certiorari quashing the order passed by the Government of India accepting the resignation of the petitioner and also for quashing the order issued by the State of Rajasthan. The High Court rejected the petition. On an appeal to the Supreme Court, it was held that in view of the facts and circumstances the petitioner had no locus penitential to withdraw his offer of resignation after it was accepted. It was further held that the principle that an order terminating the employment was not effective until it was intimated to the employee could not apply to the facts of this case. The Supreme Court held that there was no rule framed under Article 309 of the Constitution dealing with the question as to when a resignation became effective. In the facts and circumstances of the case, the Supreme Court also held that there was no question of application of Article 311 of the Constitution.

In my opinion, the facts of the instant case are apposite to the facts of the aforesaid case. In view of the Supreme Court's judgment that an order of termination of service would not become effective until it was communicated would not apply to a case of acceptance of resignation, in the instant case also it must therefore be held that in order to be effective it was not necessary for an order of acceptance of the resignation to be communicated. According to counsel for the petitioner the Supreme Court was not concerned with that contention in the aforesaid case. I am unable to accept this position. It is not necessary for me to speculate whether a particular contention was considered or not but the Supreme Court has in unequivocal terms expressed the opinion that in case of an acceptance of resignation to be effective communication was not essential and a decision of the Government to accept the resignation would be effective without communication. After the said decision of the Supreme Court it cannot be contended that it was open for this Court to hold that the decision of a Government was not effective until it was communicated. It follows from the said decision that after decision was taken to accept the resignation of the petitioner he had no right to claim consideration of its withdrawal. In the instant case it is stated in the affidavit-in-opposition that the Minister of State concerned had accepted the resignation on 30th May, 1966. That was a date before the petitioner withdrew his resignation. Counsel for the petitioner then suggested that there was no proper decision by the Minister of State on 30th May, 1966. This point was not specifically taken either in the petition or in the affidavit-in-reply. Furthermore, in view of the statements made in the affidavit-in-opposition and in the context of the points urged in the petition it must be held that the decision was taken on 30th May, 1966. Counsel for the petitioner also drew my attention to Section 5 of the Contract Act and contended that in this case the withdrawal of the resignation was made at a time when the resignation had not become effective. However, in view of the Judgment of the Supreme Court, I am of the opinion that it was not possible for counsel for the petitioner to urge that point any longer.

5. In the aforesaid view of the matter, this application must fail and is accordingly dismissed. The Rule nisi is discharged without any orders as to costs. Interim orders, if any, are vacated.