

(2010) 04 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 750 of 2001

Farooq Ahmed Shah

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 2 JKJ 693 : (2010) 6 SLR 177

Hon'ble Judges : Mohd. Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohd. Yaqoob Mir, J.—Quashment of order of acceptance of resignation is sought, by the Petitioner on the ground that before the date of

acceptance of his resignation, he had withdrawn the same by requesting the authorities concerned to permit him to join the duties.

2. The case has its peculiar features, which are required to be noticed precisely, i.e., the Petitioner in the year 1995 has been appointed as Warder

in the department of Prisons and Fire Services, J&K, so was posted in Sub-Jail, Hiranagar. Petitioner availed ten days casual leave w.e.f: 21st of

May' 1998 to 30th of May' 1998 as he was suffering from Blood Stinge Sputum. When continued, to suffer from the said ailment was examined at

Chest Disease Hospital, Srinagar where he was admitted, in ward No. 6 and remained there from 1st of June 1998 till 25th of June' 1998, was

diagnosed as a case of Pulmonary Tuberculosis so was advised complete rest and was put on anti Tuberculosis drugs for first nine months, then

again for three months more.

3. Petitioner was again re-examined and admitted in the Chest Disease Hospital,

Srinagar w.e.f: 1st of September' 1999 to 3rd of September'

1999. He had telegraphically informed Respondent No. 3 for one month's leave, but was on 1st of September' 1998 informed that extension in

leave cannot be granted. Facing this situation, claimed to be in an abnormal state of mind and tendered resignation, which according to him was not

voluntary because he was suffering from Tuberculosis on the other hand leave was not granted, he had every reason to feel frustrated. On 9th of

September' 1998 again the Respondent No. 3 communicated to the Petitioner that since his extension of leave has been rejected, so shall report to

his duties within fifteen days. In the meantime, Petitioner's letter of resignation, had reached to the Respondent No. 3, who in response thereto

conveyed to the Petitioner on 24th of September' 1998 that his letter of resignation has been received but had been, directed to submit the same

on stamp paper duly attested by the Notary and to state that he is tendering resignation consciously and. in a fit mental health at the same time has

also been advised to re-consider the decision of leaving the government job and join duties forthwith.

4. On receipt of such communication, Petitioner again got checked up at Chest Disease Hospital, Srinagar. Doctors of the hospital certified that,

the Petitioner has fully recovered from T.B.M so, is fit to resume his duties. The Petitioner immediately claimed to have reported, back for his

duties at Sub Jail, Hiranagar but was not allowed to join, instead was asked to make a representation before the Respondent No. 2, which he did.

Respondent No. 2 sought a detailed report from the Medical Superintendent. Chest Disease Hospital, Srinagar vide communication dated 1st of

October 1999, which, was responded on 16th of October' 1999, same response is reproduced here-under:

Sir,

Kindly refer your letter No. Estt/770-J/4982 dated 01/10/1999 regarding the subject cited above. In this connection I am to say that as per the

records received from medical record section of this hospital Sh. Farooq Ahmad Shah, S/o. Gh. Hyder Shah, R/O Panzer Kupwara was admitted

in ward 06 under MRD No. T-II95 from 01/06/1998 to 26/06/1998. The patient was suffering from blood stinge sputum continuously for one

month and finally he was diagnosed case of Pul. Tuberculosis treatment for 1st

Nine months and same was repeated for three months more. After taking the anti-tuberculosis drugs the patient was again re-examined and admitted in this hospital from 01/09/99 to 03/09/99 under MRD No. -U-2027 in ward No. 04 and was advised to stop the anti tuberculosis treatment.

Yours faithfully,

Sd/-

Medical Superintendent

CD. Hospital, Sgr.

5. Petitioner was hoping that he will be permitted to join his services as he was willing to but to his dismay acceptance of resignation shown under

Order No. 09 of 1999 dated 6th of January' 1999, which in fact is the Order No. 09 of 2000 dated 6th of January' 2000 as is clarified in. the

reply filed by the Respondents and is also otherwise correct because under the signatures of the authority concerned the elate is written as 30/12

and also in the body of the order it is shown that this order is in response to the communication of Sub-Jail, Hiranagar dated 19th of December'

1999, so in any case the order has to be dated 6th of January' 2000.

6. Petitioner claimed that in the month of January' 2001, he was informed that his resignation has been accepted by the Respondent No. 2. The

Petitioner had no option left but to challenge the said order.

7. It is the settled proposition of law that once the resignation is tendered it can be withdrawn before the date of acceptance as the contract of

service remains operative until acceptance of the resignation. Government servant has a right to withdraw his resignation until date of its

acceptance, which position is no more res-intera. In the judgment Jai Ram Vs. Union of India (UOI), , the Hon'ble Apex Court has laid down that

a servant who express desire to retire can ask for its cancellation until he continues in service but not after it was terminated. It shall be relevant to

quote following from the para No. 7 of the said judgment.

7....It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him

the requisite permission, to change him mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so

long as he continues in service and not after it was termination.

8. It shall also be relevant to quote following from Para No. 51 of the judgment rendered in case titled Union of India (UOI) and Others Vs. Gopal

Chandra Misra and Others, .

51. 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. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant

on 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.

9. While considering the case of the Petitioner what has emerged is that the Petitioner was suffering from Pulmonary Tuberculosis and was

admitted in the Chest Disease Hospital, Srinagar firstly from 21st of May' 1998 to 30th of May' 1998 and has been put on anti-tuberculosis

medicines for one year continuously. It is only thereafter, certificate in his favour has been issued by the Chest Disease Hospital, Srinagar that he

has recovered and is fit to resume duties. This position is supported by the certificate issued on 14th of October' 1999. His contention of Slaving

reported to the Respondent No. 3 for being permitted to join the duties in the month of October' 1999, is fully established by the communication

issued by Respondent No. 2 to Medical Superintendent, Chest Disease Hospital, Srinagar dated 1st of October' 1999, same is reproduced here-

under:

Government of Jammu and Kashmir

Office of Addl. Director General Prisons/F.S. Jammu.

To

The Medical Superintendent,

CD. Hospital, Srinagar.

No: Estt/770-J/4982 Dated 1-10-1999

Subject: - Medical report in favour of Farooq Ahmed Shah.

Sir,

Farooq Ahmed Shah warder S/o, Ghulam Hyder Shah R/o. Panzer Vilgam District Kupwara remained unauthorised absent from duty. Now he

has requested for permission, to join duties. In his representation he has stated that he was suffering from T.B and was under treatment/admitted in

your hospital.

You are therefore requested that factual report may kindly be obtained and furnished to this office whether said official was suffering from T.B and

remained under treatment/admitted in your hospital so that further action is taken by this office.

Yours faithfully,

Sd/-

Addl. Director General Prisons,

& Fire Services, J&K, Jammu.

Same has been responded by the Medical Superintendent on 16th of October' 1999 (supra.).

10. The aforesaid two communications would clearly indicate that the request of the Petitioner for being permitted to join duties has been under

active consideration, of the Respondents but the Respondents No. 2 & 3 ignoring the said request, of the Petitioner, even after getting satisfied that

the Petitioner's absence was due to ailment and his request to re-join services would mean withdrawal of his resignation. What they did? They

issued an order dated 6th of January' 2000 though styled as 6th of January 1999, where-under resignation of the Petitioner has been accepted.

11. The most crucial point which emerges for consideration is as to whether the Petitioner had sought withdrawal of his resignation before the date

of its acceptance and as to whether the act of resignation was voluntary?

12. From the facts as noticed, the Petitioner admittedly has been suffering from serious disease so had applied for extension of leave, which was

not granted instead was asked to join within fifteen days. Petitioner had to choose between the two, either the life or the service, Service is

meaningful only when life is there, so the Petitioner was battling for survival, in the process, he has submitted the resignation, which by no standard

can be said to be voluntary or with full consciousness. The position of the

Petitioner having been, a patient of Tuberculosis cannot be denied by the Respondents as the Respondent No. 2 had clearly obtained, the report from the Medical Superintendent Chest Disease Hospital, Srinagar testifying the fact of his ailment. Furthermore, the Respondent No. 3 vide his communication dated 14th of August' 1999 had asked the Petitioner to re-consider his decision of leaving the Government job and had also asked him in case he is to resign consciously then he must submit his resignation on a stamp paper duly attested by the Notary. The said communication is quoted here-under:

Office of the Superintendent Sub Jail Hiranagar,

To,

Sh. Farooq Ahmad Shah,

S/o, Gh. Hyder Shah,

R/o, Panzer Vigam Distt. Kupwara.

No. SJH/Esstt/1618 Dated 24/9/98

Subject: Resignation from service.

Refer: This office Notice vide dispatch No. 1553-54 dated 09-09-1998

In response to this office letter referred above directing you to join your duty at Sub Jail Hiranagar without any fail, we have received your resignation letter No. nil added 1.9.98 today on 23rd September.

In this regard, you are directed to submit the same on Stamp paper duly attested by the Notary stating that you are doing so in your full conscious and mental health. Meanwhile you are once again advised to re-consider your decision of leaving government job and join your duty in the institution forthwith. With best wishes.

Sd/-

Superintendent

Sub Jail Hiranagar

13. The Petitioner in response to the said communication has not submitted the resignation means that he had not to resign instead what he did, he

got himself again examined in the Chest Disease Hospital, Srinagar for which he was again admitted from 1st of September' 1999 to 3rd of

September' 1999 as is clearly indicated in the certificate dated 14th of October'

1999. After getting satisfied that he has been certified fit to resume his duties, he went to the Respondent No. 2 for being permitted to join. As a result thereof, Respondent, No. 2 had obtained a detailed report from the Superintendent, Chest Disease Hospital, Srinagar, which would amply clarify that the Petitioner decided to join the services means in effect he has withdrawn his resignation itself in the month of October' 1999. When, it was so, the Respondents should not have issued the order of acceptance of resignation on 6th of January' 2000. The said order of acceptance of resignation is illegal and arbitrary exercise of power and has the effect of snatching a valuable right of allowing the withdrawal of resignation which the Petitioner well before the date of acceptance had initiated by requesting the Respondents to permit him to join.

14. It is quite surprising when the Respondent No. 3 had asked, the Petitioner to re-consider his decision of quitting the Government service or otherwise to submit the resignation on a Stamp paper duly attested by the Notary, what made him to recommend the acceptance of his resignation.

Then again it is surprising that when the Respondent No. 2 in the Month of October 1999 obtained the report from the Superintendent, Chest Disease Hospital. Srinagar about the health condition of the Petitioner then why they did not permit the Petitioner to join, the service and then to initiate the proceedings vis-a-vis period of absence from service in accordance with the applicable service rules.

15. The resignation, tendered by the Petitioner being in-voluntary and having been tendered in the stated unfortunate situation, coupled with the Petitioner's request for permitting him to join, in effect amounts to withdrawal of resignation, so could not be accepted subsequent to that. The contract of service of the Petitioner was intact at the time he was certified by the Doctors to be fit to resume duties and had requested for being permitted to join. Resultantly, resignation of the Petitioner was not in force, so, could not be accepted instead the Respondents should, have initiated other proceedings unwarranted under the Civil Services Rules.

16. The order impugned under caption acceptance of resignation bearing No. 09 of 2000 dated 6th of January 2000 (wrongly shown as No. 09/09 of 1999) is quashed. The Respondents are directed, to re-consider the case of the Petitioner for the period of absence by sanctioning

whatever kind of leave shall be permissible. After obtaining the fresh certificate from the Chest Disease Hospital, Srinagar about his position of

being fit to resume his duties, appropriate orders as shall be warranted be passed within eight months.

17. Petition, accordingly, succeeds so is disposed of as above.