
(1999) 02 AP CK 0033
In the Andhra Pradesh High Court
Case No : WA No. 386 of 1988

General Manager, BHEL Research and Development,
Vikasnagar, Hyd. and others

APPELLANT

Vs

K. Rajita Suryakanta

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Citation : (1999) 2 ALD 311 : (1999) 2 ALT 363 : (1999) 2 LLJ 549

Hon'ble Judges : M.S. Liberhan, C.J.; A.S. Bhate, J

Bench : Division Bench

Advocate : A.G, for the Appellant; Mr. Vilas Afzul Purkar for G. Ramachandra Rao, for the Respondent

Judgement

M.S. Liberhan, CJ

1. The skeletal facts in this appeal as emerged are not in dispute. A letter of resignation dated 1-12-1986 was received by the appellants-management on 2-12-1986 from the respondent-employee to the effect that since the employee is not enjoying the management's confidence, she has decided to resign from the organisation. The employee offered her resignation to be processed as per Rules. It was further brought to the notice of the management that she had got 75 days earned leave and 70 days half pay leave to her credit; thus after adjusting 30 days earned leave towards the notice period, she may be granted leave for the balance period of earned leave and half pay leave and she may be relieved on the day her leave expires. The management vide letter dated 15-12-1986 intimated that the competent authority has accepted her resignation and after adjusting the leave of 31 days towards the notice period and granting 36 days from 28-11-1986 to 2-1-1987 as the earned leave, she would stand relieved on the after noon of 2-1-1987. Final dues would be settled only on the receipt of "no due certificate" from the concerned authority. The employee wrote a letter on 13-12-1986 withdrawing her resignation, which was stated to be received by the authorities on 16-12-1986. The order accepting the resignation

was concedingly despatched on 17-12-1986 i.e., after the withdrawal letter was received. The acceptance of resignation was still in the office of the management. Though inspite of the fact that the order was despatched on 17-12-1986 after the receipt of the withdrawal of the resignation, the same was received by the employee on 23-12-1986.

2. It is accepted at the Bar and even from the letter accepting the resignation that dues will be settled only when "no due certificate" is issued as well as the salary for the period of the leave etc., was to be paid on the expiry of the due date of the month i.e., on the first of each calendar month that the salary of the December will be payable in January, a reading of the letter tendering resignation as well as acceptance of resignation leaves us in no manner of doubt that the relationship of master and servant was never brought to an end on or before 2-1-1987. The learned Counsel for the appellant vehemently contended that the relationship of master and servant has been brought to an end on 15-12-1986 when the resignation of the respondent was accepted. Thus the withdrawal on 13-12-1986 is of no consequence. We find no force in the submission of the learned Counsel for the appellant specially in view of the undisputed fact that though acceptance of the resignation has become final on 15-12-1986, which was never disputed by the office, mere acceptance of the resignation in the office without being put into transmission cannot be termed to be acceptance of resignation. Be that as it is, the learned Counsel for the appellant contends that mere acceptance of the resignation brings about an end to the relationship of master and servant irrespective of the fact whether it was put into transmission or brought to the notice of the employee. Mere passing of the order by itself would not terminate the relationship of master and servant as the management is always at liberty to withdraw the order passed before the same is implemented, There is no implementation of the order though passed on the record till 2-1-1987 with effect from the date the employee was accepted to be relieved from the service. In pith and substance, reading of the letter of offer of resignation and acceptance of the same in its totality leaves us with no doubt that the relationship of master and servant is being brought to an end only with effect from 2-1-1987 and it would be well within the right of the employee to withdraw the resignation and continue the relationship of master and servant before the final end is brought to the said relationship.

3. In view of the facts stated above, the relationship of master and servant having not been brought to an end either before 2-1-987 or 13-12-1986 or even assuming 15-12-1986, the despatch being on 17-12-1986 i.e., after receipt of the withdrawal letter, the management appears to bring into operation the effect of post withdrawal of the resignation which the management has got no right.

4. In view of the observations made above, we are of the considered view that the resignation has been withdrawn before the same was accepted.

5. The learned single Judge came to the conclusion that the letter of resignation indicated the date from which the resignation was to take effect i.e., after the

expiry of the period of leave due to her which the employer has concedingly accepted and the petitioner withdrew her resignation from the said date. It was further found by the learned single Judge that the petitioner had the locus paenitentiae to withdraw her resignation before the communication of the acceptance of resignation. Both the parties also understood the letter of resignation as stated above and accorded that she will be relieved only on 2-1-1987.

6. The learned Counsel for the appellant urged that the period of leave will be termed as terminal leave which will not be admissible when the employee has been dismissed or removed from service or who resigns his post for reasons of ill-health or for reasons beyond his control. We find no force in the submission of the learned Counsel because the resignation is neither for the reason of ill-health nor for reason beyond the control of the employee. The resignation is only on the supposition that the management has lost confidence in her. It is obvious that the resignation is of the volition of the petitioner rather than for the reasons beyond her control. Thus even the proposition relied upon for terminal rule is not attracted to the facts and circumstances of this case. The decision relied upon by the learned Counsel for the appellant in *Jai Ram Vs. Union of India (UOI)*, , has been noticed only because it was cited at the Bar, though the law laid down in the said judgment is not even remotely applicable to the facts and circumstances of this case, inasmuch as while interpreting the specific Rule 56(B)(i) of Chapter IX of the Fundamental Rules, it was observed that where the service of the servant has ceased because of his retirement, he cannot be held to continue in service though at the time he is on post-retirement leave granted to him under special circumstances. Here it is neither a post-retirement leave nor a leave of post-resignation. It is a leave due to an employee which the employee has earned by serving the employer and before demitting office. That was the case where the employee retired after 55 years of service and was seeking that an opportunity should have been given to show-cause that he was still efficient and able to discharge his duties before he could be retired at the age of 55 years. Thus the observation made in the judgment referred to above was only in the context of the facts of that case which is not the case in hand. Thus the law laid down in that judgment is not attracted to the facts of this case.

7. The judgment in *Punjab National Bank Vs. P.K. Mittal*, , is noted as it was cited by the learned Counsel for the respondent, in the view we have taken, reliance need not be placed on the said judgment.

8. For the reasons recorded above, we affirm the findings of the [earned single Judge and find no force in the appeal. The same is dismissed.