

(2009) 05 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1903 Of 1999 And CMPNos. 3006 Of 1999, 2462 Of 2000

G.M.Wani

APPELLANT

Vs

State of J&K & Anr.

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Constitution of India, 1950 — Article 234, 235

Constitution of Jammu and Kashmir, 1956 — Section 110, 111

Citation : (2009) 3 JKJ 307

Hon'ble Judges : Barin Ghosh, J and Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : S.R.Hussain, M.I.Qadiri, M.Aijaz, Advocates appearing for the Parties

Judgement

1. This is a writ petition by an exMunsiff who was working as such in the Subordinate Judiciary of the State. On August 21,1995, he addressed a

letter to the Registrar of this Court stating that he thereby resigns from his service. By a communication dated February 27,1996, Registrar of this

High Court communicated to the petitioner that his resignation has been accepted by the High Court. On June 4,1999, by a letter again addressed

to the Registrar of the High Court, the petitioner withdrew his resignation. In the writ petition, the principal contention is that, he having been

appointed by the Governor, his resignation could only be accepted by the Governor and that having not been accepted until June 4,1999, as

entitled to, he has withdrawn the resignation and, accordingly, his status as Munsiff continues and, therefore, he is entitled to all benefits attached to

such status.

2. In course of hearing, the petitioner sought to give an impression, by referring

to various letters written by him to this Court, that the employees of his court had created such a situation that he was forced to give the said letter of resignation. The letter of resignation, however, admittedly did not utter a single word which would suggest that the same was not a voluntary act on the part of the petitioner but he was being compelled by circumstances to do so.

3. The learned Advocate General, who appeared on behalf of the High Court drew our attention to various letter written by the petitioner to the High Court subsequent to the date of his letter of resignation wherefrom it appears that the object of giving the letter of resignation was to enable the petitioner to sit in the examination for appointment to Higher Judicial service of the State. The learned Advocate General also drew our attention to the fact that after the communication of the decision accepting the resignation of the petitioner, the petitioner did appear in the examination for being appointed in the Higher Judiciary of the State but he failed and, thereupon, in 1998 he applied for being enrolled as an Advocate and was so enrolled. In the background of these facts which are documented, it would not be appropriate on our part to permit the petitioner to canvass that for the situation allegedly created by the employees of his court he had tendered his resignation.

4. However, the writ petition raises a Constitutional question as to what is the effect of the decision of the High Court to accept the resignation tendered by the petitioner and communication thereof to him by the letter dated February 27,1996 of the Court. There appears to be no reported judgment of any Court dealing with this issue.

5. No doubt the Governor was the appointing authority of the petitioner, a State Government employee. At the same time, the Governor has not accepted the resignation of the petitioner. Instead, it has been accepted by this High Court. The question is what is the effect of such acceptance?

Can it be said that such acceptance by the High Court is not acceptance in law and the same would become an acceptance only when, on the recommendation of the High Court, the Governor will accept the same and, if so, can it be said that the letter of the petitioner by which he sought to withdraw the resignation on June 4,1999 is of no effect?

6. Inasmuch as the issue indicated above is governed by the provisions of

Sections 110 and 111 of the Constitution of the State which are akin to the provisions contained in Articles 234 and 235 of the Constitution of India, we think that the issue involves a Constitutional question. Though the Governor in terms of Section 110 of the State Constitution was the appointing authority of the petitioner, but it was the High Court which had control over the petitioner in terms of Section 111 of the State Constitution. The control, as has been bestowed upon the High Court under Section 111 of the State Constitution, which uses' exactly the same words as that of Article 235 of the Constitution of India, is without any restriction and gives full control. By virtue thereof, it is the High Court which is competent to decide every aspect of a Officer, as the petitioner was then, in relation to his service and conditions relating thereto. It is now well settled in law that it is the High Court alone which can initiate disciplinary proceedings against a Subordinate Judicial Officer and not the Governor or any other authority. It is also settled that in relation to that the opinion of the High Court is final and such decision is required to be translated by the Governor in the exact manner as the High Court has decided. The Governor or the State Government has no say in relation to such decision of the High Court. Inter se the Judicial Officers, the High Court and the State Government, the decision of the High Court is final and that appears to be the mandate of Section 111 of the State Constitution as repeated by the Hon'ble Supreme Court from time to time and from day one while construing the provisions contained in Article 235 of the Constitution of India.

7. A Subordinate Judicial Officer, as the petitioner was then, is not a Constitutional functionary, he is a State Government employee. He, accordingly, had no right to relinquish his service. He could not leave his job and walk away. He could not do so even after submitting a resignation. If he has done so, he has committed grossest misconduct. He remains an employee of the State until such time his resignation is accepted. Only thereupon, he is entitled to walk away from his job.

8. There cannot be any dispute that until a resignation is accepted, the same can be withdrawn. The underlying principle is that when a letter of resignation is submitted, the same is merely an offer to bring the contract of employment to an end. Until such offer is accepted in accordance with

law and in particular those governing contract, the offerer can withdraw the offer. However, the moment the offer to resign is accepted the contract

stands concluded and the contract of employment comes to an end.

9. In the instant case, it is being contended that it is only the Governor who alone can accept an offer of resignation and since the offer of

resignation has not been accepted by the Governor it was well within the competence of the petitioner to withdraw the same.

10. As aforesaid, the Governor in terms of the provisions contained in Section 111 of the State Constitution is bound by the decision taken by the

High Court pertaining to every aspect of an inservice Judicial Officer subordinate to the High Court. In the matter of acceptance of resignation,

inasmuch as Section 111 of the State Constitution vests entire control of SubOrdinate Judiciary in the High Court, the Governor has no power to

accept such resignation; the same vests exclusively in the High Court and once the High Court accepts the resignation, the offer to resign thus being

accepted, the contract of employment comes to an end provided, however, such acceptance has been communicated to the offerer. The High

Court, in the instant case, on being pressed by the petitioner, accepted the resignation and communicate the same to the petitioner in order to

expedite the matter so as to enable the petitioner to appear in the Higher Judiciary examination for which he had tendered the resignation. In the

normal circumstances, the decision so taken to accept the offer of resignation would have been communicated to the petitioner through the

Governor. We, therefore, conclude that it was the High Court alone which could accept or refuse to accept the offer to resign, but it was

obligatory on the part of the High Court to communicate such decision to the petitioner. The moment communication of the acceptance is

complete, the contract to bring to an end the contract of service stood concluded. Because the High Court directly communicated the acceptance

of the offer to resign and because the same was not communicated through the Governor, we hold, it cannot be said that the offer to resign was not

accepted before the offer to resign was sought to be withdrawn.

11. The distinction between unilateral severance of relationship and mutual severance is that in the first case all formalities as are required to be

complied should be complied with to effect severance and in the latter case

mutuality should be achieved by persons competent to achieve the same.

12. We, thus, conclude the matter and dismiss the writ petition.

13. However, Having regard to the nature of controversy highlighted above, and there being no decision dealing with the issue, we grant to the

petitioner a certificate under Article 134A of the Constitution of India certifying that the case involves a substantial question of law as to the

interpretation of the Constitution of the State of Jammu & Kashmir and in particular Section 111 thereof which is verbatim similar to that of Article

235 of the Constitution of India.