

(1971) 08 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 318 of 1970

Hardeo Singh

APPELLANT

Vs

Pramukh, Zila Parishad, Sikar and Another

RESPONDENT

Date of Decision : 31-08-1971

Acts Referred:

Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 19

Citation : AIR 1972 Raj 51 : (1971) 4 WLN 455

Hon'ble Judges : L.N. Chhangani, J

Bench : Single Bench

Advocate : G.M. Lodha, for the Appellant; M. Mridul and M.R. Calla, for the Respondent

Final Decision : Allowed

Judgement

1. This is a petition by Hardeosingh under Article 226 of the Constitution of India praying for issue of an appropriate writ, direction or order to quash the orders of the Pramukh, Zila Parishad, Sikar, rejecting the petitioner's application for withdrawal of the resignation and accepting and sanctioning the resignation of the petitioner. The petitioner also prayed that the respondents be restrained from interfering with the petitioner's discharge of duties as Pradhan of the Panchayat Samiti, Fatehpur.

2. The relevant facts are these-

The petitioner was elected as Pradhan of the Panchayat Samiti, Fatehpur in the year 1965. On 27-1-1970 he signed a resignation letter. The same was forwarded by the Vikas Adhikari of the Panchayat Samiti, Fatehpur, on 28-1-1970 to the Zila Pramukh, Sikar. However, on 2-2-1970, the petitioner sent a letter withdrawing the letter of resignation and the same was received by the Zila Pramukh on 3-2-1970. According to the petitioner, the letter withdrawing the resignation was received by the Zila Parishad before the sanction of the resignation. The petitioner's further case is that the Zila Pramukh, on a mistaken

view of law, held that he having received the resignation had no power to allow its withdrawal. He, therefore, rejected the letter withdrawing the resignation and sanctioned the resignation vide his order Ex. 3. He also made an endorsement on the resignation letter Ex. 1 "accepted". The letter sanctioning the resignation was received in the office of the Panchayat Samiti on 5-2-1970 and was entered in the Inward Register vide entry marked Ex. 4. After receipt of the sanction of the Zila Pramukh, the Vikas Adhikari issued orders on 3-2-1970 that the Up-Pradhan should work as a Pradhan. After this order, the respondents began interfering with the work of the petitioner and he, therefore, sent a letter on 28-2-1970 to the Zila Pramukh and a copy to the Collector and District Development Officer Sikar, asserting his right to function as Pradhan and stopping interfering with his work, but his claim was rejected and interference with his work continued. He, therefore, filed the present writ application and prayed that the orders of the Zila Pramukh rejecting his prayer for withdrawing the resignation and the order sanctioning his resignation be quashed and the respondents be restrained from interfering with his work. His contention is that he has an absolute right to withdraw his resignation until the resignation becomes effective and he vacates the office. In the alternative, he contended that the letter withdrawing resignation was received by the Zila Pramukh before the sanction of the resignation and the Zila Pramukh should have considered the letter of withdrawal before accepting the resignation and he acted under a mistaken view of law in holding that after the receipt of resignation in his office, he had no jurisdiction to consider an application for withdrawal of the resignation.

3. The writ has been opposed by the Zila Pramukh. The respondent's case is that the resignation was accepted by the Zila Pramukh before the receipt of the letter withdrawing the resignation. According to the respondent, the resignation becomes effective on the grant of sanction by the Zila Pramukh and the subsequent communication of information to the Panchayat Samiti Office was a mere formal affair and would not enable the petitioner to withdraw his resignation after its acceptance by the Zila Pramukh.

4. I have heard the counsel for the parties at some length.

5. It will be proper to examine the legal position in the first instance.

6. The Common Law of England drew distinction between resignation from unincorporated members club and resignation from corporated bodies. In Halsbury's Laws of England. Third Edition, Volume 5, at page 261, the position with regard to resignation from members' club was stated as follows-

"Subject to any provision in the rules to the contrary, a member of an unincorporated members club may at any time terminate his membership and if desirous of doing so must communicate to the secretary his intention to resign. The resignation does not require any acceptance by the committee, and cannot, in the absence of a bye-law to the contrary, be withdrawn or revoked. A member who sends a letter of resignation thereupon ceases to be a member, and can only

be reinstated by re-election."

It will be seen that the freedom of disassociation by a unilateral act of resignation is subject to rules to the contrary.

7. In the case of corporations created by statute for the discharge of public functions, common law did not recognise an absolute right to resign at will on account of consideration of a duty upon the person elected to a public office to act in that office in the public interests. Thus, a person elected to a municipal corporation could resign only with the consent of the pro-per authority. Of course, common law was abrogated to some extent by statutory amendments. Similar is the law laid down by the Supreme Court of the United States in *Edward M. Edwards v. United States* (1880) 26 Law Ed 314 wherein Mr. justice Bradley giving opinion of the Supreme Court observed as follows:--

"As civil officers are appointed for the purpose of exercising the functions and carrying on the operations of Government, and maintaining public order, a political organisation would seem to be imperfect which should allow the depositories of its power to throw off their responsibilities at their own pleasure. This certainly was not the doctrine of the common law."

8. The Supreme Court of India also had an occasion to consider the withdrawal of resignation by a member of the Indian Administrative Service in *Raj Kumar Vs. Union of India (UOI)*, . In that case, the Supreme Court laid down the following propositions:--

(1) that a member of the Indian Administrative Service had no *locus paenitentiae* to so withdraw his offer of resignation after it was accepted;

(2) that the principle that an order terminating employment is not effective until it is intimated to the employee could not apply to the facts of the case;

(3) that there is no rule framed under Article 309 of the Constitution about when the resignation becomes effective;"

The Supreme Court thus laid down the general proposition that it will not be open to the public servant to withdraw resignation after it is accepted by the appropriate authority, but envisaged exceptions arising from a law or a rule governing conditions of service providing to the contrary. The ordinary rule may not be enforced in cases where the statute may provide that the resignation would be effective on receipt of the resignation by a specific authority or that the resignation would be effective only at some later stage. It follows that the question whether a member can withdraw the resignation and up to what stage of time, cannot be answered generally and in the abstract and in answering them, the statutory provisions dealing with the matter of resignation must be considered.

9. In this background, we may now notice the provisions of Section 19 of the Rajasthan Panchayat Samities and Zila Parishads Act (Act No. 37 of 1959)

(hereinafter referred to as the Act).

10. Section 19 of the Act reads as follows:--

"Resignation of the Pradhan, Up-Pradhan or Member:--

The Pradhan, the Up-Pradhan or any member may resign his office as such Pradhan, Up-Pradhan or member by giving notice in writing to the Panchayat Samiti. Such resignation shall take effect on and from the date on which the notice is received by the Vikas Adhikari:

Provided that the resignation of the Pradhan shall take effect on and from the date on which the sanction thereto of the Pramukh is received in the office of the Panchayat Samiti."

Section 58 of the Act deals with the powers and functions of the Zila Pramukh and sub-clause (cc) empowers the Zila Pramukh to consider and sanction the resignation of the Pradhan of a Panchayat Samiti within the District. Section 19 proviso thus envisages three stages-

1. tender of resignation of the Pradhan:
2. sanction of the resignation by the Zila Pramukh:
3. communication of the sanction to the office of the Panchayat Samiti.

It is only after the receipt of the sanction of the resignation by the Zila Pramukh in the office of the Panchayat Samiti that the resignation becomes effective. It may be added that the statutory provisions do not state that the resignation once given is irrevocable and cannot be withdrawn.

11. Butterworths in "Words" and Phrases" Volume 5, page 166 quoted from *Dominion Square Corpn. v. Aluminium Co.* (1942) 2 D. L. R. 189, per Hudson J., at page 194, the following meaning of the expression "take effect":

"I conclude that the natural meaning of the words "take effect" in this instance is "producing the desired effect", namely, the termination of the lease."

Giving this meaning to the words "take effect" proviso to Section 19 of the Act contemplates that the desired effect namely the completion of the process of resignation and the vacation of the office of the Pradhan is brought about on and from the date of the receipt of the sanction of the resignation by the Pramukh in the office of the Panchayat Samiti and the Pradhan continues in office and cannot be deemed to vacate office until the receipt of the Zila Pramukh's sanction of the resignation in the office of the Panchayat Samiti. It is only after such a receipt of the communication that the resignation becomes effective and the Pradhan vacates the office.

In view of Section 19 proviso it appears reasonable to hold that the legislature did not adopt the ordinary rule that a person cannot withdraw resignation after its acceptance by providing that the resignation would not be effective

immediately on the Zila Pramukh sanctioning it but would become effective at a later stage namely when the sanction is received in the office of the Panchayat Samiti and thus implying that it can be withdrawn any time before that stage is reached.

12. On a careful consideration of the principle in *Raj Kumar Vs. Union of India (UOI)*, and proper interpretation of proviso to Section 19 of the Act, I am inclined to hold that a Pradhan can withdraw his resignation before it becomes effective on receipt of the sanction of the Zila Pramukh in the office of the Panchayat Samiti. Reliance may also be placed in support of the above proposition on *Bahori Lal Paliwal Vs. District Magistrate, Bulandshahr and Another*, In that case, the Full Bench of the Allahabad High Court had an occasion to interpret Clause (5) of Section 8-A of the U. P. Town Areas Act reading as follows-

"If the chairman wishes to resign he shall forward his resignation in writing to the District Magistrate. He shall be deemed to have vacated his office from the date of receipt by the Committee of information that his resignation has been accepted by the District Magistrate."

Speaking for the majority, Agarwal J. referred to the common law and the decision of the Supreme Court of U. S. A. in (1880) 26 Law Ed. 314 and *Corpus Juris Secundum*, Volume 62, at page 942, and reached the following conclusions:--

"From this observation it would follow that a person has a right to withdraw his resignation before it is accepted or before his office has come to an end."

The majority decision was that "the Chairman of a Town Area Committee, who has, u/s 8-A (5), forwarded his resignation to the District Magistrate, has, before it is accepted, a right to withdraw his resignation and he having done so there is no resignation left which can be accepted by the District Magistrate. Hence, even after its withdrawal if the District Magistrate accepts the resignation, the purported acceptance of the resignation by the District Magistrate is a nullity and so is his communication to the Town Area Committee." In this case, of course, there was greater emphasis on the acceptance of the resignation as the letter withdrawing the resignation was received before the acceptance of the resignation. However, the observations in this judgment can also be availed of in support of the conclusion that the resignation can be withdrawn even after acceptance but before the resignation becomes effective and the person tendering resignation vacates office.

13. It will be also proper to notice the case *Shamsuddin Vs. The State of Rajasthan and Others*, . In that case, Rajasthan Act No. XXI (21) of 1949 came up for interpretation. There was no provision for resignation from membership of the Board. In that background the Court held-

"A letter of resignation sent by a member who is duly elected to a Municipal Board takes effect on receipt of the letter by the appropriate authority. And

unless there is any law or general principle to the contrary, the member cannot contend that the authority has no authority to act upon the letter of resignation when he had withdrawn it."

In that case after making references to the passages from Halsbury's Laws of England relating to resignation by a member of unincorporated members' club by a person elected to a corporate post and by the Chairman or the Councillor, the learned Judges observed as follows:--

"It is true that these two passages relating to corporate bodies are based on certain provisions in the Local Government Act of 1933, but learned counsel has not been able to point out to us any general principle by which the Government was bound to take into account the letter withdrawing the resignation. It is not even clear whether the Municipal Board of Nagaur is a corporate body or an unincorporated association. Whatever may be the position of the Municipal Board of Nagaur, in the absence of any law, we are unable to issue a writ of any kind." It appears, the learned Judges reached the conclusion which they did, on account of two considerations:--

1. that there was no statutory provision providing for resignation,
2. that it was not clear to them whether the Municipal Board of Nagaur was a corporate body or an unincorporated association.

The decision in Shamsuddin Vs. The State of Rajasthan and Others, cannot afford any guidance in the present case where there are statutory provisions providing for resignation and also providing when the resignation becomes effective. In taking this view, I am conscious of the fact that the recognition of a right of the Pradhan to tender resignation until it becomes effective and an obligation on the part of the Zila Pramukh to accept it or at any rate, to consider it, may have the effect of allowing the Pradhan by his unilateral act to make the sanction given by the Zila Pramukh nugatory. But, this consideration should not stand in the way of a proper literal interpretation of the statutory provision. I need not decide in the present case whether the Zila Pramukh is bound to accept the withdrawal of the resignation even after sanction but I have no doubt that the Zila Pramukh must consider the prayer for withdrawal on merits on account of the resignation having not become effective. In the present case, the Zila Pramukh did not apply his mind to the withdrawal and took the view that he had no alternative but to accept the resignation. His orders are, therefore, not in accordance with law.

14. The petitioner's writ application succeeds on this contention. Even so, it will be proper to deal with the alternative contention of the petitioner.

15. The petitioner's case is that his letter withdrawing the resignation was received by the Zila Pramukh before the sanction of his resignation. This has been denied by the respondent. Indeed, the Zila Pramukh has filed an affidavit in which he stated that the resignation was accepted before the receipt of the letter withdrawing the resignation. Mr. Mridul vehemently contended that the parties

are at an issue on a question of fact and there being a dispute on a question of fact, this Court should not proceed to determine disputed question of fact and should reject the alternative contention of the petitioner. The argument appears to be plausible but does not stand close scrutiny. As pointed out by the petitioner, there is no factual controversy on a proper consideration of the order of the Zila Pramukh rejecting the petitioner's letter withdrawing the resignation. In his order rejecting the application Ex. 2, the Zila Pramukh clearly stated that the resignation could not be permitted to be withdrawn as it having been produced before the Vikas Adhikari was received by him for acceptance and, therefore, there could be no question of permitting withdrawal. The Zila Pramukh thereafter rejected the application praying for the withdrawal of the resignation and further recorded that the resignation was being accepted. There is no clear mention in this order that the resignation had already been accepted. On the other hand, the Pramukh simultaneously ordered the acceptance of the resignation.

On a proper interpretation of Ex. 3, I have no doubt that the letter withdrawing the resignation came up for consideration before the Zila Pramukh before the acceptance of the resignation. The letter of withdrawal having been received by the Pramukh before the acceptance of the resignation, he was not justified in taking a view that he had no jurisdiction to consider the question of permitting withdrawal. In fact it appears that the Zila Pramukh had no occasion to consider whether the resignation should be accepted in the public interest or not. He mechanically rejected the prayer for withdrawal under a mistaken view and accepted the resignation. The petitioner's alternative contention has also force.

16. In view of these conclusions, there is no alternative but to hold that the order of the Zila Pramukh rejecting the petitioner's prayer for withdrawing the resignation and his order accepting the resignation are not in accordance with law and cannot be sustained and have to be quashed.

17. The petition is allowed. The order of the Zilla Pramukh dated 2-2-1970 rejecting the petitioner's prayer for withdrawing the resignation and accepting the resignation are set aside and the respondents are restrained from interfering with the discharge of duties by the petitioner as Pradhan of the Panchayat Samiti, Fatehpur. The parties will bear their own costs.