
(1998) 04 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 770 of 1992

Haryana State Co-operative Development Federation Ltd.	APPELLANT
Vs	
Rajbir Singh	RESPONDENT

Date of Decision : 18-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 ILR (P&H) 338 : (1998) 119 PLR 587

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Judgement

Jawaharlal Gupta, J.—The two questions which arise in this appeal are :-

(1) Is an employee who has tendered his resignation to be effective from a future date not entitled to withdraw his request only because the employer chose to accept the resignation prior to the date from which it was intended to be effective ?

(2) Is the employee who was relieved of his duties and was gainfully employed entitled to claim the arrears of salary consequent upon quashing of the order of the employer by which the resignation was accepted ?

2. A few facts which are relevant for the decision of these two questions may be briefly noticed.

3. The respondent was working with the Haryana State Co-operative Development Federation Limited. On May 9, 1990, he informed the Managing Director that he wanted to start "practice as a lawyer". For this purpose, he submitted "3 months" notice for resignation which may kindly be accepted on August 9, 1990". A copy of this communication is at Annexure P-4 with the writ petition. This request was accepted by the employer on June 15/29, 1990 and the respondent was relieved of his duties. On August 3, 1990 the respondent addressed another communication to the Managing Director and requested that he may be allowed to withdraw the resignation which had to be accepted on

August 9, 1990. Vide letter dated August 10, 1990, the respondent was informed that the Board of Administrators had accepted his resignation in the meeting held on June 29, 1990. It had been further resolved to recover an amount of Rs. 19,401/- which was outstanding against him. Thus, the respondent's request for withdrawal of resignation was rejected. Aggrieved by this action, the respondent approached this Court through a petition under Article 226 of the Constitution of India. He prayed that the order by which his resignation was accepted and the request for withdrawal was rejected be quashed. He also prayed for the grant of consequential benefits. The learned single Judge having accepted this prayer, the Federation has filed the present Letters Patent Appeal.

4. Learned counsel for the parties have been heard.

Regarding 1.

So far as the 1st question is concerned, the matter is not res-integra. The issue is covered by the decision of their Lordships of the Supreme Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, and *Balram Gupta Vs. Union of India (UOI) and Anr*, . In view of these decisions, whenever an employee tenders a resignation with a request that he be relieved from a future date, the request remains inchoate till the date fixed by the employee. The employer is not entitled to relieve the employee before the date fixed by him. In this view of the matter, the view taken by the learned single Judge that notwithstanding the acceptance of the resignation the respondent had the right to withdraw his request, has to be sustained.

Regarding 2.

As far as the 2nd question is concerned, a few facts deserve notice. The respondent had submitted his request for resignation on the specific ground that he wanted to start practice as a Lawyer. This request was made by him vide letter dated May 9, 1990. By this letter the petitioner has submitted "3 months" notice for resignation" with the request that it may "kindly be accepted on August 9, 1990". In spite of the specific request, it is the admitted position that the Managing Director of the Appellant-Federation had accepted the request of the respondent and relieved him of his duties on June 15, 1990. This action of the authority was duly approved by the Board of Administrators on June 29, 1990. It deserves notice that the respondent did not protest against the acceptance of his resignation. He did not object to his being relieved of his duties. On the contrary, he appears to have accepted this action of the authority and he proceeded to obtain licence from the Bar Council. According to the affidavit filed by the respondent with the miscellaneous application on August 19, 1992, he had got the licence from the Bar Council on July 3, 1990. It is also the admitted position that soon thereafter he had commenced his legal practice. According to the averments in the affidavit, the respondent had conducted 27 cases during the period from July 2, 1990 to August 3, 1992 when he was reinstated in service in pursuance to the judgment of the learned single Judge. In

the background of this factual position, it appears that the respondent's request for withdrawal of his resignation was only device to derive advantage in the form of arrears of salary etc. at a subsequent stage. It was in pursuance to this objective that he had actually approached this Court through a petition under Article 226 of the Constitution towards the end of October 1990.

5. Mr. Malik, learned counsel of the respondent, has vehemently contended that the employer had illegally relieved the respondent and deprived him of an opportunity to perform his duties. Thus, the employee is entitled to arrears of salary except the amount which he had actually earned. Learned counsel has placed reliance on the decisions of different Courts in *Krishan Kumar Vs. Haryana State Federation of Consumers Co-op. Wholesale Stores Ltd. (CONFED)* and *Another, Kolar District Co-operative Central Bank Limited v. Rama Rao* and another 1998 I LLJ 383 (Kant) and *Ranjit Singh v. Deputy Registrar Co-operative Societies, Faridkot* and another 1991 (3) R.S.J. 429. On the basis of these decisions, it has been contended that whenever an order of termination is found to be illegal, the employee is entitled to the consequential benefits of full arrears of salary.

6. This, undoubtedly, is the general view. However, in the present case it appears that the respondent had submitted the resignation with the purpose of starting legal practice. When his resignation was accepted before the due date he had not protested but had actually availed of the opportunity to obtain a licence. The licence having been obtained on July 3, 1990, it can be safely assumed that he had started legal practice. Thereafter the submission of letter dated August 3, 1990 for permission to withdraw the resignation was a device for use at a later stage. The respondent conducted cases. He claims to have earned only an amount of Rs. 13,000/-. It may be so, yet the fact remains that the respondent was gainfully employed. He had not started legal practice on account of the termination of his service. In this situation, we do not consider it appropriate that the employer should bear the burden of the salary for the period during which the employee was practicing as an Advocate.

7. Mr. Malik submits that the amount which has been actually earned by the respondent can be deducted from the wages due to him. However the remaining amount should be paid. If such a contention is accepted, the employer would face the impossible task of determining as to what had been actually earned by the employee. It would be impossible for the employer to determine the actual amount. Still further, it would give the employees, especially those who have professional degrees an opportunity to tender resignation, start private practice and then withdraw the resignation. They would earn money in private practice and then raise claim for arrears of salary. Such disputes cannot in any event be resolved in proceedings under Article 226 of the Constitution of India. It is the admitted position that the respondent had joined duty on August 3, 1992. He continues to hold his post with the Federation.

8. Taking the totality of circumstances into consideration, the appeal is partly

accepted. While the action of the appellant-Federation in rejecting the respondent's request for withdrawal of resignation is quashed and it is held that he is entitled to be taken back in service, the claim for consequential benefits of arrears of salary is declined. It is held that the respondent shall not be entitled to arrears of salary from the date he was relieved of his duties to the date he got the licence suspended/cancelled. Otherwise, the respondent shall be entitled to the benefits of continuity in service. The judgment of the learned single Judge is modified to that extent. In the circumstances, there will be no order as to costs.