

(1981) 12 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 145 of 1974

Jagdish Chand

APPELLANT

Vs

The Commissioner of Transport and Others

RESPONDENT

Date of Decision : 29-12-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1982) 11 ILR HP 65

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; Shamsheer Singh Kanwar, for the Respondent

Judgement

T.R. Handa, J.—The Petitioner has filed this writ petition under Article 226/227 of the Constitution praying for issue of an appropriate writ, direction or order for the quashing of the order found at annexure "E" whereby the services of the Petitioner had been terminated by way of acceptance of his resignation and also for an order directing Respondent No. 1 to pay the dues to which the Petitioner is legally entitled.

2. The facts in so far as they are material for the disposal of this writ petition are not in dispute and may be briefly narrated. The Petitioner was holding the post of Store Verifier in the Himachal Government Transport Deptt. in a substantive capacity. He was on tour at Mandi in the course of his official duties, when he was taken seriously ill on 27th January, 1972. He had to proceed to his native village on account of his illness and an intimation to that effect was conveyed by him to his Department. His illness prolonged and he was in a position to resume his duty only on 8th September, 1972. When he reported for duty on 8th September, 1972 he was threatened with a departmental enquiry for his wilful absence from duty. Confronted with that threat, he submitted his resignation, a copy of which is found at annexure "A". This resignation was addressed to the Deputy General Manager (Works), Himachal Government Transport, Simla.

3. The resignation submitted by the Petitioner, however, was not accepted forthwith. On the other hand the Deputy General Manager (Works) acting for Commissioner Transport, Respondent No. 1, vide letter dated 13th October, 1972, copy found at annexure "C" informed the Petitioner that his resignation would be considered only after a decision was taken on his wilful absence from duty. In the same letter it had been conveyed to the Petitioner that his joining report for 8th September, 1972 could not be accepted unless medical and fitness certificates from Government Medical Attendant were produced by him. It was also made clear that the said communication was without prejudice to action for wilful absence.

4. Before his resignation was accepted by the Respondents, the Petitioner, vide his letter dated 16th December, 1972 found at annexure "D" withdrew the same. He mentioned in this letter of withdrawal that he had submitted his resignation as he was upset on account of his family circumstances and that he was withdrawing the same.

5. After the Respondents received the letter, annexure "D" from the Petitioner withdrawing his resignation, Respondent No. 1, vide his order dated 2nd January, 1973, copy found at annexure "E", accepted the Petitioner's resignation dated 8th September, 1972 with effect from the date of his order, namely, 2nd January, 1973. The Petitioner was naturally relieved of his duties in pursuance to this order.

6. The Petitioner then filed an appeal against the order of the Commissioner Transport accepting his resignation. The appeal was filed before the Hon'ble Transport Minister and a copy of that was forwarded to the Secretary Transport. This appeal was, however, rejected.

7. The Himachal Pradesh Government had allowed revised scales of pay to all its employees on the pattern of Punjab pay scales with effect from 1st February, 1968. The Petitioner's grievance is that whereas such revised pay scales had been allowed to all his colleagues situate in the same circumstances and of the same class, the Petitioner was denied the benefit of such revised scales. The Respondents, however, denied this allegation and stated that the Petitioner had also been allowed revised pay scales on Punjab pattern on the same lines on which it had been allowed to the other employees similarly placed. The Respondents, however, further undertake that in case there has been any short payment to the Petitioner, he could make his representation to that effect narrating the actual facts and figures and his grievance shall be redressed in accordance with the rules. In view of this submission made by the counsel for the Respondents at the bar, the Petitioner does not press his plea with respect to the grant of pay scales.

8. The only point which, therefore, falls for consideration in this case is whether it was open to Respondent No. 1 to accept the resignation of the Petitioner after he had withdrawn it and to terminate his services on the basis of that

resignation. It is now settled law that a resignation submitted by a Government servant becomes effective and operates to terminate the service of the maker thereof only when it is accepted by the competent authority. Till such acceptance the Government servant submitting the resignation continues to remain in Government service. It is equally settled that so long as the resignation is not accepted and the Government servant concerned continues in service, the resignation can always be withdrawn. Once a resignation has been withdrawn before its acceptance, it becomes non-est. To put it in other words, there remains no resignation which can be accepted.

9. The above principles have found the approval of a catena of judicial authorities. As long back as 1954 the Supreme Court in *Jai Ram Vs. Union of India* (UOI), made the following crucial observations on this point:

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 his mind subsequently and ask for cancellation of the permission, thus obtained, but, he can be allowed to do so as long as he continues in services and not after it has terminated.

This point once again came up for consideration before the Supreme Court in *Raj Kumar v. Union of India* (1968) 3 SCR 860, wherein the rule enunciated in *Jai Ram*'s case was reiterated in the following words:

When a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter".

This view was reiterated by the Supreme Court in a recent decision, namely, *Union of India v. Shri Gopal Chandra Misra and Ors.* and *Satish Chandra v. Shri Gopal Chandra Misra and Ors.*, reported in 1978 (1) S.L.R. 521, wherein after discussing the earlier case law on the subject, their Lordships observed:

It will bear repetition that the general principle is that in the absence of a legal, 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 or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, given 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.

It is thus obvious that the Petitioner was within his right to withdraw his resignation before it had been accepted and once he had withdrawn the same, there was no resignation before Respondent No. 1 which it could accept so as to put an end to the service of the Petitioner.

10. Shri Shamsheer Singh Kanwar, the learned Counsel for the Respondents, could cite no authority to the contrary. He made a half hearted attempt to seek support from a Government of India decision mentioned under Article 205 of the Civil Service Regulations, Volume I, Sixth Edition, compiled by S. Lakhi Singh Chaudhri. The decision on which the learned Counsel relied may be extracted:

(d) Authority competent to permit withdrawal of resignation.- A resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective, the officer is no longer in Government service and acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break. As this would involve financial commitments, concurrence of the Ministry of Finance should be obtained before a request for withdrawal of resignation which has already become effective is accepted.

The learned, counsel on the strength of the above decision wanted to argue that a resignation once submitted could be withdrawn only with the approval or consent of the authority competent to accept the same. I am afraid no such interpretation can be put on the language of the Government of India decision quoted above. The normal rule is that once a resignation has been accepted by the competent authority, it becomes effective and puts an end to the service of the person resigning. After the resignation becomes thus effective, it cannot be withdrawn. It can, however, be always withdrawn before its acceptance. The Government of India decision extracted above makes a departure from this normal rule in two ways. In the first place it provides that the mere acceptance of a resignation by the competent authority would not make the resignation effective. The resignation, as per this decision, would become effective only when after its acceptance by the competent authority, the Government servant tendering the resignation is actually relieved of his duties. Secondly, it empowers the authority which accepts the resignation to permit its withdrawal even after the acceptance provided, the Government servant concerned has not been relieved of his duties in pursuance to such acceptance. This Government of India decision thus provides an additional opportunity to the Government servant to withdraw his resignation even after it has been accepted but he can avail of this opportunity only with the concurrence of the authority which accepted his resignation and before he is relieved of his duties pursuant to the acceptance of his resignation. The Government of India decision referred to above does not in any manner touch the right of the Government servant to withdraw his

resignation at any time before its acceptance. This Government of India decision is thus of no help to the Respondents.

11. In view of what has been stated above I have no option but to quash the order found at annexure "E". I would accordingly quash the order annexure "E" and direct that the Petitioner be treated as not to have resigned from service and to continue to remain in his service. The Petitioner shall be entitled to all the benefits to which he is legally entitled as a result of quashing of the order annexure "E".