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**(1999) 05 AHC CK 0182**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No. 13550 of 1995

Kumar Abhay — APPELLANT

Vs

Union Bank of India and others — RESPONDENT

**Date of Decision :** 27-05-1999

**Acts Referred:**

**Citation :** (1999) 3 AWC 2150 : (1999) 2 UPLBEC 1221

**Hon'ble Judges :** V.M. Sahai, J

**Bench :** Single Bench

**Advocate :** G.C. Bhattacharya, Sudhir Agarwal and Yogesh Agarwal, for the Appellant; S.C. and V.R. Agarwal, for the Respondent

**Final Decision :** Allowed

# Judgement

V.M. Sahai, J.—The main question of law that arises for consideration in this petition filed by an employee of the bank is whether the resignation letter of the petitioner was unilateral or bilateral and whether its acceptance by the competent authority was necessary, if so its effect?

2. The petitioner after selection was appointed as clerk-cum-cashier in the Union Bank of India in 1986. When he was posted in Ujiyar branch, Ballia, he fell ill and was on leave for many months. On 5.6.1993, he resigned from service. The letter is neither traceable nor filed. It admittedly did not reach the bank. The petitioner, therefore, sent another letter on 16.7.1993 requesting the authorities to accept his resignation as he was still not well. This letter was replied by the Zonal office of the bank on 3.8.1993 informing the petitioner that the branch office has informed that the dues mentioned in the letter were outstanding against him which may be cleared to enable the bank to initiate further action on the resignation letter of the petitioner. No further action was taken and the petitioner on 30.5.1994 withdrew his resignation as he was well and was willing to join duty either at Allahabad or Ujiyar. This letter was replied by the bank on 29.7.1994 informing the petitioner that the process of accepting the resignation could not be initiated as the dues had not been cleared and the petitioner was

advised to pay the amount. Further the request of withdrawing resignation could not be accepted at that stage. The bank wrote another letter on 17.11.1994 advising the petitioner to clear the dues. The letter mentioned that after expiry of one month from notice, the resignation stood provisionally deemed to have been automatically considered and it was in his interest to pay the amount to enable the bank to accept it finally. Another letter was sent by the bank on 18.10.1994 informing the petitioner either to clear the dues or give written undertaking to the bank to adjust it from his terminal benefit to enable it to finally accept the resignation. The letter repeated that it was not possible to accept the request for withdrawing the resignation. The petitioner again reiterated that he may be permitted to resume his duty. Finally on 22.10.1994 the bank accepted the resignation of the petitioner from service of the bank subject to adjustment of dues.

3. The petitioner has challenged the two letters dated 12.8.1994, 18.10.1994 and the order dated 22.10.1994. Sri Yogesh Agrawal, learned counsel for the petitioner, has relied on the decisions of the Apex Court in P. Kasilingam Vs. P.S.G. College of Technology, , Raj Narain Vs. Indira Nehru Gandhi and Another, and Raj Kumar Vs. Union of India (UOI), and urged that the petitioner having withdrawn the resignation before its acceptance, the respondents could not take any action on it. On the other hand. Sri Vijay Ratan Agarwal learned counsel for the respondents relied on Moti Ram Vs. Param Dev and another, , and urged that resignation being spontaneous relinquishment of his right, the resignation took effect immediately. He further relied on Punjab National Bank Vs. P.K. Mittal, , and urged that the resignation became effective after expiry of one month.

4. The law on resignation is well-settled by the Apex Court in number of decisions. In Moti Ram (supra), the Court held :

"As pointed out by this Court, ''resignation'' means the spontaneous relinquishment of one''s own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. See Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, at pp. 699-700. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral

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character, the communication of the Intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g.. acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

5. The resignation by an employee, thus, may assume different forms depending on nature of the office and conditions governing it. It could be prospective, unilateral or bilateral. The first becomes effective after expiry of due date, the second immediately and the third after acceptance. The petitioner''s resignation was not prospective. The question is whether it was unilateral or bilateral. The test to determine it can be gathered from Moti Ram''s case (supra) where the Chairman of the Corporation sent his resignation with immediate effect. The High Court held that it became effective only when it was accepted. The Apex Court did not agree as the provision for acceptance of resignation after notification was for members only. The Court held that where the provisions in the Act or the Rules required acceptance, the resignation was bilateral. But since there was no provision for Chairman, it was unilateral.

6. The resignation by the petitioner was bilateral as is clear from the letters sent by the bank. In the earlier letters, the bank asked the petitioner to clear the dues to enable it to accept the resignation. But when the petitioner withdrew it, the bank changed its stand and informed that the resignation stood automatically considered. The learned counsel for the respondents could not support It with any provision In the rules or any authority. The concept of deemed acceptance or consideration of resignation is unknown. The reason and principle for acceptance of resignation was explained by the Apex Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , held as under :

"A resignation by an employee, would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified In refusing to accept the employee''s resignation as. for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee."

7. The petitioner''s resignation was not accepted by the bank as there were dues outstanding against him. It cannot, therefore, be said that the resignation was

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unilateral or its acceptance was not required. The bank cannot claim on one hand that the resignation could not be accepted unless dues were cleared and yet on the other that it became final.

8. Counsel for the respondents had placed reliance on paragraph 522 (2) of the Shashtry Award which reads as follows :

"522. (2)--A permanent employee desirous of leaving the service of the bank shall give one month''s notice in writing to the Manager. A probationer desirous of leaving service shall give 14 days'' notice in writing to the Manager. A permanent employee or a probationer shall, when he leaves service, be given an order or relief signed by the Manager."

9. Sri V. R. Agrawal argued that the Shashtry Award clearly shows that the resignation became operative after one month. It did not require any further action. The learned counsel drew support from the last sentence and urged that what remained to be done after one month was ministerial act of giving relieve to the petitioner.

10. From paragraph 522 (2), it is clear that it entitled the employee to resign. But the right is not absolute. It requires the employee to give one month''s notice. The bank may accept or refuse it. If it accepts, the resignation becomes operative after one month as desired by the employee. But the bank may refuse for any reason such as the bank may be contemplating disciplinary proceedings or there may be dues outstanding as in the case of petitioner. Any other interpretation may make the right of an employee absolute. But that is not made out either by the purpose for which such provisions are made or by the language of paragraph 522 (2). It is clear from the last sentence of the paragraph empowering the Manager to give relief. If the resignation would have been automatic as argued by Sri. V. R. Agrawal, the Manager would not have been required to give an order of relieve. It implies that something more had to be done. And that something could be acceptance of resignation only. The argument of the counsel for the respondents would have been correct if the paragraph would have provided that after expiry of one month, the relieve order shall be passed by the Manager. On the contrary, it provides that at the time of leaving service, the Manager shall give the order. Therefore, the service could come to an end when the competent authority accepted the resignation. The letter sent by the petitioner could result in bringing an end to the service of petitioner only after it was accepted. Such a resignation is bilateral and not unilateral.

11. The decision in Punjab National Bank (supra) is also not helpful to the respondents as the rules did not permit in that case an officer, to resign from the service of the bank otherwise than on expiry of three month''s notice from the service of the bank by a notice in writing of such resignation. It further provided that the competent authority may reduce the period of three months or remit the requirement of notice. The officer sent a notice resigning after three months. His resignation was accepted with immediate effect. The Court held that since there

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was no provision for acceptance the resignation could take effect after expiry of three months or the date mentioned in the letter. But the competent authority could not accept it before that as the officer had not made any request for waiver in the proviso. The Court held that the proviso in the rule could not be interpreted so as to thrust a resignation on an employee with effect from a date different from the one. on which he can make his resignation. Thus, a provision in the rule permitting an employee to resign is a right which can result in cessation of service as provided and it could not be curtailed by the bank. In the case of petitioner, he could resign by one month notice. But he could be deemed to leave service only after he received a letter from the Manager. In between the act of resigning and giving relieve something had to happen. That his resignation had to be accepted. But the competent authority on its own showing did not accept the resignation. Before the rule could come into force fully, that is, resignation could become effective after expiry of one month from the notice, the petitioner withdrew it.

12. The submission of learned counsel for the respondents, therefore, is not correct as the bank''s letter shows that it was not accepted till 22.10.1994. The stand of the bank that it was provisionally accepted automatically cannot be accepted. The petitioner having withdrawn the resignation much before its acceptance, the letter sent on 16.7.1993 became a dead letter which could not be accepted in October, 1994. If the bank would have passed the order as was passed on 22.10.1994 prior to 30.5.1994, the resignation would have become effective from the expiry of one month from the date the petitioner resigned. But the order was passed after 30.5.1994 when it had already become ineffective, therefore, it could not be accepted.

13. The question still is what relief should be granted to the petitioner. He resigned because he was not transferred from Ballia to Allahabad because he and his father were not well. An employee cannot claim any right to be transferred to place of his choice. He can of course resign. And the authorities should have accepted it. But they failed. It is due to this technicality that the petitioner got an opportunity to withdraw it. He is thus succeeding on omission by the respondent bank.

14. In the result the writ petition succeeds and is allowed. The letter dated 22.10.1994. Annexure-12 to the writ petition, issued by the respondents is quashed. The petitioner shall not to be entitled for any arrears of salary. The respondents shall reinstate the petitioner in service within two months from the date of production of a certified copy of this judgment before them.

15. There shall be no order as to costs.

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