

(1996) 12 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1160/1993

Mohammad Amin Pukhta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Constitution of India, 1950 — Article 235

Constitution of Jammu and Kashmir, 1956 — Section 111

Citation : (1997) SriLJ 205

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : Z.A.Shah, B.M.Sadiq, Advocates appearing for the Parties

Judgement

1. The controversy involved and to be determined by the court in this writ petition boils down is:

Whether a resignation submitted by a Government servant, can be withdrawn by him subsequently before same is accepted and acted upon by

the competent authority?

2. This controversy has already been clinched and set at naught by the apex court in catena of authorities by holding that when a resignation given

by a Government servant is dependant for its effectiveness on the acceptance by the appropriate authority, the Government servant concerned has

an unqualified right to withdraw the resignation, until the same is accepted by the competent authority. However, before appreciating law on the

subject, I would like to give brief resume of the facts which have given rise to the present petition.

3. It is submitted by the petitioner that he was an employee of the Jammu and Kashmir Judicial Service and on the relevant date was in the cadre

of SubJudge. It was on 18/11/1991 that the petitioner was transferred vide order No. 760 from Kupwara to Leh as Chief Judicial Magistrate.

Petitioner alleges that he had not received the said order of transfer because situation in the valley had developed in such a way that no postal

services were available and no communications were possible. It is also submitted that on learning that a show cause notice has been issued against

him on the alleged ground that he had absented himself from duty and that he had been transferred to Leh, the petitioner sought an appointment

with Hon'ble the Chief Justice (Justice S.S.Kang), as his lordship then was, at Jammu in the month of February 1992. The petitioner met the

then Chief Justice at Jammu on 12/2/1992 for a few minutes. It was a day of turmoil for all offices due to strike, procession and protest of low paid

employees, which added haste and confusion in the meeting, with the then Chief Justice. Then the petitioner again came to meet the Chief Justice

and to explain him as difficulties in going to Leh as he being a smoker, cannot travel to Leh in February, but as ill luck would have it, by that time,

the Chief Justice had left for Chandigarh in the morning hours.

4. It is also averted that the petitioner represented to the then Chief Justice that as he was sick and cannot efficiently discharge his judicial functions

at Leh because of high altitude and as such, he may be transferred to some other place.

5. It is further averred that in view of the fact that sequence of events which have taken place beginning from alleged absence of the petitioner at

the Headquarter at Kupwara and subsequent transfer to Leh and show cause notice for his alleged absence from the Headquarter and the present

day circumstances which were prevailing in the valley at the relevant time had made confusion and disturbed the petitioner. He could not precisely

know as to what to do in view of the circumstances which had developed. He further alleges that he was totally frustrated and the Chief Justice

having refused to put and keep in abeyance the order of his transfer to Leh and when the petitioner could not go to Leh because of his ailment, he

in an abnormal state of mind jotted few lines involuntarily on 13/2/1992, which was infect a resignation. The said resignation as alleged by him was

not voluntary. He never wanted to resign, but wanted a sympathetic consideration from the Chief Justice.

6. It may be noted that prior to the acceptance of the resignation tendered by the petitioner on 2351992 by the respondents, two more communications seem to have been addressed by the petitioner, one on 2021992 which seems to have been received by the respondent No. 2 on 2521992 and another on 241992 and received by respondent No.2 on 1641992 admittedly before 2351992, when the resignation of the petitioner seems to have been accepted.

7. The contents of these two communications which are on record reveal that the petitioner has again submitted that in view of the present day circumstances and ill health he is not in a position to join at Leh and has requested to the then Chief Justice to reconsider his posting at Leh. He has also submitted in the application dated 202192 that he may be permitted to avail leave on medical grounds instead of directing him to travel to Leh and has in the alternative prayed for his posting in the Valley.

8. In the application dated 241992, petitioner has submitted as under:

To

The Registrar, High Court of J&K, at Jammu.

Sub: Change of place of posting or voluntary retirement.

Sir,

In continuation of my two earlier written applications, I want to further submit that on account of health grounds, I cannot join at Leh nor can I

travel by air. The Hon'ble court may be kind enough to change my place of posting from Leh to any place in the Valley or Jammu province or

retire me under the provisions for voluntary retirement under C.S.R.

I have put in 17 years of regular service from 12th September, 1974 to 11th September, 91 Although 20 years service is required for voluntary

retirement, but I submit this option under Art. 230 CSR on account of attaining 45 years of age. My officially recorded date of birth is 1st.

September, 1946. This may be treated as a written notice under Art. 230 clause 1 CSR. Further before any action is taken against me, I may be

allowed to submit a detailed written explanation for remaining absent from duty as SubJudge, Kupwara (as alleged by Kupwara Bar Association).

Yours Faithfully,

Sd/(M.A.Pukhta)

Presently posted as

SubJudge, Leh.

Dt:2nd April, 1992

9. These were the two applications which were before the Hon'ble High Court/ respondents at the time when application/letter of resignation me to

be considered by the court in its full meeting.

10. Petitioner has further pleaded that resignation submitted by the employee/ Government servant must be unconditional and voluntary in his case,

both these conditions are lacking. The respondent No.2 therefore, has erred in law in treating the application dated 1321992 as application for

resignation. It is also submitted that the review petition submitted by the petitioner and rejected by the respondents is also not showing any reasons

for such rejection. The order impugned is a nonspeaking one.

11. Petitioner has also pleaded that his appointing authority is the Governor and not the High Court. It is settled principle of law that his resignation

has to be accepted only by the appointing authority and none else and soon.

12. In the counter affidavit filed by respondent no. 2., it is submitted that the writ petition filed by the petitioner is not maintainable as none of the

rights of the petitioner have been violated. The resignation submitted by the petitioner is unqualified, unconditional and voluntary on the ground of

his deteriorating health. To make it more elaborate, the letter of resignation submitted by the petitioner is only consisting of these lines which read:

With due respects and without any intention of insubordination, I want to submit that on account of health grounds I cannot continue my services

in the Judicial Department. Hence I submit my resignation. I have never been seriously associated with any political or religious party nor any

spiritual group.

13. So the wording of the letter clearly show the intention of the petitioner of tendering his resignation from the post he was holding. The petitioner

on the relevant date was only a SubJudge and the Hon'ble court is vested with the powers to accept or otherwise the application for resignation

submitted by a SubJudge. Thus there is no jurisdictional error exercised by the respondents in accepting the resignation tendered by the petitioner.

14. It is also averred in the counter affidavit that the two more applications

addressed by the petitioner to Hon'ble the Chief Justice, wherein he has prayed for reconsideration of his resignation application dated 1321992 and also in a separate application prayed for grant of option under Article 230 of the Jammu and Kashmir Civil Service Regulations on account of his having attained age of 45 years. All these three applications and also reply to the show cause notice seem to have been placed before the Full Court on 2351992 on administrative side and were considered in the Hon'ble Judges meeting. The Hon'ble Judges of the court were pleaded to accept the resignation application dated 1321992 as the same was unqualified, unconditional and voluntary. The writ petition filed by the petitioner is misconceived and admittedly the petitioner being a Psychologically disturbed, is not able to conduct judicial proceedings and deliver judgments. It is also pleaded that the review applications submitted by the petitioner subsequently were also placed before the Full court meeting on administrative side and same was rejected.

15. The counter affidavit further reveals that the petitioner after having been transferred from SubJudge Court Handwara to SubJudges Court Kupwara, where he joined on 2351991, he absented himself from duty there and, therefore, a show cause notice was issued to him for the absence from duty at Kupwara.

16. It is further pleaded that on 2021992, the petitioner submitted an application to Hon'ble the Chief Justice wherein he had prayed that he may be posted anywhere in the valley for the time being. But in so far as the letter of resignation is concerned, same is not the result of any mental disturbance on the part of the petitioner, but is unconditional, unqualified and voluntary on the ground of deteriorating health of the petitioner. The said resignation letter has been voluntarily tendered and validly accepted by the Full Court. The review application submitted by the petitioner was dismissed by the Hon'ble court and the decision was communicated to the petitioner on 2111992. The inclusion of some irrelevant matters in the resignation letter do not take away the spirit and intent from the said letter of having resigned from the post. The resignation letter, notwithstanding the recitation of irrelevant material, is clear and when read and evaluated in whole is tendering of unqualified voluntary resignation.

17. It is also averred in the counter affidavit that the Full Court is vested with the

jurisdiction to accept or reject the resignation tendered by a subordinate Judge and there is no necessity to forward the same to the Government. It is not correct that the petitioner is not an employee subordinate to the High Court and the petitioner was fully aware of the same. The order impugned does not suffer from any jurisdictional error or vice. The petitioner is not entitled to the pensionary benefits under rules. However the arrears of his pay are being looked into and shall be paid to him as and when calculated. It is also stated that the person of the petitioner had been relieved as Sub Judge Kupwara and had not joined as Chief Judicial Magistrate, Leh, as such, there was no question of his being relieved from Leh and so on.

18. In the rejoinder affidavit filed by the petitioner to the counter affidavit, he has pleaded that it is an admitted case of the parties that the communication submitted on 13/2/1992 at Jammu was followed by two more communications dated 20/2/1992 and 24/2/1992. It is also admitted case of the parties that all the three applications including application dated 13/2/1992 was considered by the Full court on 23/5/1992 and it is on that date that the resignation of the petitioner was accepted. It is also admitted case of the parties that till 23/5/1992, the alleged resignation of the petitioner had not been accepted. The subsequent applications dated 20/2/1992 and 24/2/1992 clearly constitute withdrawal of the earlier communication dated 13/2/1992.

19. It is also stated by the petitioner in his rejoinder affidavit that the subsequent applications prayed for one kind of a relief or the other and if that be so, these applications when read in the context of the earlier applications clearly led to irresistible inference that the petitioner had withdrawn his alleged resignation much before it was accepted by the Hon'ble Court. In that view of the matter, the Hon'ble High Court clearly erred in law in accepting the resignation of the petitioner without considering cumulative effect of the other two applications and the circumstances. The Hon'ble High Court under law had no jurisdiction to accept the resignation which stands withdrawn, before the acceptance of the resignation. It is also submitted that the Hon'ble court could not have in law rejected the other applications and chosen to accept the alleged resignation of the petitioner.

20. Heard learned counsel for the parties and perused the records made

available before me. I had also the occasion to go through the application of resignation as well as subsequent communications made by the petitioner in this behalf.

21. It is an admitted fact that the petitioner had tendered his resignation on 13/2/1992 and even till date he had not withdrawn the said resignation,

but the fact remains that before the said resignation came to be accepted by a Full court, the petitioner intended not to resign and instead wanted

that he may be prematurely retired from service as he had attained 45 years of age, though his service is not qualifying for pensionary benefits, but

had tendered such communication dated 24/1/1992, wherein he has specifically prayed and stated that he may be allowed to retire prematurely as he

has attained the age of 45 years as per Article 230 of the J&k Civil Service Regulations which reads:

230. A Government servant may voluntarily retire from service any time after completing 20 years/40 completed six monthly periods of qualifying

service or 45 years of age provided that he shall give in this behalf a notice in writing to the pension sanctioning authority at least 3 months before

the date on which he wants to retire. Such an officer shall be granted five years addition to the qualifying service, as may have been put in by him,

on the date he wants to retire, provided that his past record of service has been clean in the opinion of the competent authority to be specified.

Where, in any such case addition in qualifying service is granted, pensionary benefits will be calculated on the basis of service as he would have put

in had he retired at the normal age of superannuation or the service put in including five years addition, whichever may be earlier.....

22. So any intention shown by the petitioner before his resignation tendered on 13/2/1992 was placed before a Full Court on administrative side for

decision, that should also have been considered in its proper perspective.

23. The legal position on the question formulated by me in the very first para of this judgment is now no more restintegra. Much law has been laid

down by various High Courts of the country including this court and the apex court. In AIR 1954 SC 584, it has been authoritatively pronounced

and held that a resignation is to become effective from a date when the same is accepted by the competent authority and it necessarily implies that

if the resignation has not been accepted, it would be open to the employee to

withdraw vary the same.

24. Similarly in 1978 SC 694, it has been laid down that the withdrawal of resignation is always linked with acceptance. Where no acceptance is

required and resignation has been made in accordance with the prescribed procedure, the process gets exhausted and resignation becomes a fact

accomplice. In the said judgment at subpara (v) of para 14 at page 698, it has been observed as under:

(v) The general Principle is that in the absence of a provision prohibiting withdrawal, an intimation to resign from a future date can be withdrawn at

any time before it operates to terminate the employment or the connection of the resignor with his office.

25. Thus the principle which has been evolved in Jai Ram's case reported as AIR 1954 SC 584 lays down:

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

long as he continues in service and not after it has terminated.

26. The principle enunciated in AIR 1954 SC 584 (supra) has been followed by Allahabad, Kerala, Delhi and Madhya Pradesh High Courts in

AIR 1956 Allahabad 70, AIR 1956 Allahabad 511, AIR 1964 Kerala 194 and AIR 1974 Delhi 58. Same principle is also reiterated in Raj

Kumar's case reported as AIR 1969 SC 180, wherein their lordships of the apex court have observed:

When a public servant has invited by his letter of resignation determination of his employment, his service 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 for appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus

poenitentiae but not thereafter.

27. So from the ratio of the decisions quoted above, I do find that where resignation presupposes acceptance, it can be withdrawn/varied before

such acceptance and till that acceptance, prospective resignation remains mute and inoperative and nonexistent in the eyes of law and can be withdrawn.

28. So once it is conceded that the resignation is complete, if the resignation is to be accepted by the employer so long same is not accepted, it remains an incomplete document and totally ineffective. In such circumstances it is always open to the resignor to withdraw his resignation which has not reached the stage of completion. Reliance on this aspect can also be placed on AIR 1956 Allahabad 511 Full Bench.

29. It may also be concluded safely that Hon'ble Mr. Justice Fazal Ali, as his lordship then was, while delivering a minority judgement in AIR 1978 SC 694, his lordship has observed as under :

Thus the position that emerges from the aforesaid decisions is that where a resignation given by a Government servant is dependent for its effectiveness on the acceptance by the appropriate authority, the government servant concerned has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resigner has a right to resign but the resignation can be effective only after acceptance, it is a bilateral act. That is to say, resignation by one authority and acceptance of the resignation by the other authority. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say a resignation sent by a servant is no resignation in the eye of law until accepted by the employer and so long as it is not an effective resignation, there can be no bar to withdrawing the same.".....

30. So in the case in hand, I do find that the petitioner had tendered his resignation on 13/2/1992, but was not accepted by the High Court till 26/5/1992, when in the meantime, the resignor had every right to withdraw or vary his resignation before same was accepted. Though I do not find that explicitly and openly the person of the petitioner has withdrawn his resignation* but the fact remains that he has varied it by tendering the notice/ applications dated 20th February, 1992 and 2nd of April, 1992. The application dated 20th February, 1992 is not regarding consideration of his resignation, but is again a request for reconsideration/change of his posting to Leh on medical grounds or in the alternative, he be considered

for retirement. This was not for his consideration of his resignation and emphatically shows and makes it clear that after tendering his resignation on 1321992, immediately after about 5/6 days, he had submitted this application on 2021992, asking for consideration of his change of posting from Leh to anywhere in the Valley or else to allow him to avail leave on medical grounds.

31. Similarly in his application dated 2nd of April 1992, received by the office of Registrar on 1641992, the petitioner has submitted that he may be retired from service prematurely and has given notice in terms of Article 230 of the Civil Service Regulations applicable to him. This shows his intention that he be retired prematurely as because he has completed 45 years of age and has stated that his date of birth recorded officially is 1st September, 1946. So at the relevant time, when High Court was considering in its full meeting on administrative side, the letter of resignation tendered by the petitioner on 1321992, the subsequent applications were already submitted by him on 2021992 and 241992. These subsequent applications have not been considered in their correct prospective and correct appreciation of law and the procedure. The High Court has infact landed in mistake of law and fact on administrative side in not considering the subsequent notices/applications tendered by the petitioner, particularly letter dated 241992, which has been received by on 1641992 and was very much before the court on 2351992, when the court in its full meeting on administrative side was considering the letter of resignation tendered by the petitioner on 1321992. Had the court not erred in giving due appreciation and considering the matter in its correct perspective, the matter would have been different.

32. The letter of resignation followed by subsequent letters particularly letter dated 1641992, wherein petitioner has clearly stated that in continuation of his two earlier written applications, he wanted to further submit that on account of his health ground, he cannot join at Leh, nor can he travel by air. Hon'ble court was accordingly requested by the petitioner that they may be kind enough to change his place of posting from Leh to any other place in the Valley or Jammu province or retire him voluntarily under the provisions of the Civil Service Regulations. He has further submitted that as he has put in 17 years of regular service from 1291974 to 1191991 and though he has not completed 20 years of service which

is required for voluntary retirement, but he submitted this option under Article 230 of the J&K Civil Service Regulations on account of having attained the age of 45 years as because he claims that his official date of birth recorded is 191946. He has further intended that this may be taken as a notice as is envisaged under Article 230 of the Civil Service Regulations. The court has not given due appreciation of all the contentions and submissions made by the petitioner and had thus erred in law as well as on facts to appreciate the letter in its correct perspective. The letter dated 1641992 thus amounts if not to withdrawal of resignation but varying of the resignation before same has been accepted by the court, in its full meeting on administrative side. The court should have given due weightage to his subsequent communications particularly communication dated 241992, which was received by the High Court on 1641992, and is said to have been put on agenda on that date when his resignation has been accepted. While disposing of these applications, the Full Court in its meeting dated 2351992 has resolved :

Considered the applications. The court accepts the resignation, of the officer.

33. I have perused the minutes of the meeting held on 23rd of May 1992 at Srinagar and the matter of the petitioner was at agenda No. 10 of the said court meeting on administrative side, which was consisting of:

- a) Consideration of reply of Shri Mohd. Amin Pukhta, SubJudge;
- b) Consideration of resignation of Shri Mohammad Amin Pukhta, SubJudge;
- c) Fresh application of Shri Mohd. Ami Pukhta SubJudge for consideration of application of resignation.
- d) Fresh application of Shri Mohd. Amin Pukhta SubJudge dated 241992.

34. These applications seem to have been decided by the full court by resolving ""Considered the applications. The court accepts the resignation, of the officer."" It does not say more specifically as to why the letter of variation of his resignation has not been considered in its correct perspective.

35. Admittedly when the resignation tendered by the persons of the petitioner is subject to acceptance by the competent authority namely the Full

Court on administrative side. In case in light of the law laid down by the apex court and as enunciated in the foregoing paras, resignation before its

acceptance can be withdrawn or varied by the person who tendered it, why this law of the land cannot be made applicable to the case of the

petitioner. Not only that, even a notice for retirement as in Jai Ram's case as discussed hereinabove, the request for retirement require acceptance

The act was held not complete till accepted and in such a situation, the request could definitely be withdrawn.

36. Here in the case in hand, the respondent/High Court should have been more liberal in considering the applications of the petitioner which were

submitted by him subsequent to the tendering of his resignation, which was pending acceptance and was yet to be accepted. These applications

filed subsequent to the tendering of resignation were admittedly prior to the date of acceptance of the resignation and should have been given due

credence and consideration which was not been done. Thus his resignation in terms could be to have been varied on the date when the same was

accepted by the Full Court on administrative side. So the resignation accepted by the High Court on that count will amount that it had acted on a

varied resignation which was no more existing at the relevant time of its acceptance because the resignation was varied and had culminated into the

notice for retirement under Article 230 of the J&K Civil Service Regulations as applicable to the petitioner.

37. Similarly the review petition filed by the petitioner on 461992 has not been considered in its correct perspective and due appreciation of factual

and legal position as had emerged on the relevant date of such consideration.

38. So in the light of the discussions and observations made hereinabove, I while allowing the writ petition, by issuance of a writ of certiorari, quash

the acceptance of resignation recorded by respondent no.2 on 2351992 and communicated vide letter dated 2651992 on the count that the

respondent No. 2 had acted on a letter of resignation which in the eyes of law was nonexistent at the relevant time and date of such acceptance.

The intention of resignation by the petitioner was already varied by him and instead had tendered a notice under Article 230 of the J&k Civil

Service Regulations for voluntary premature retirement. Further a writ of certiorari will go for quashment of order passed by respondent no.2 on an

applications for review in the light of the findings arrived at and returned in the foregoing paras.

39. By the issuance of a writ of certiorari for quashment of acceptance of resignation etc. the person of the petitioner is relegated to the position of

his varied/second option tendered by him viz/voluntary retirement.

40. Further by issuance of a writ of mandamus to respondent No. 2, directing to finalise the case of the premature retirement of the petitioner in

terms of Article 230 of the J&k Civil Service Regulations by deeming the application dated 24/1992 as notice under Article 230 of the J&K Civil

Service Regulations and to calculate and pay him the back wages/pay and other benefits which have accrued and may accrue to him and

finalization and fixation of his case of pension/gratuity etc. after such premature retirement, considering all benefits to which he is entitled to on

humanitarian grounds in addition to the rules applicable to him, in view of his past service records.

41. The records produced by the Registrar are being returned to him. File be consigned to records after due completion. However, there shall be

no order as to costs.