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**(1975) 09 SHI CK 0009**

**In the High Court Of Himachal Pradesh**

**Case No :** Civil Writ Petition No. 164 of 1973

Mohinder Singh APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

**Date of Decision :** 05-09-1975

**Acts Referred:**

**Citation :** (1975) 4 ILR HP 624

**Hon'ble Judges :** Chet Ram Thakur, J

**Bench :** Single Bench

**Advocate :** P.N. Nag, for the Appellant; B. Sita Ram, General, for the Respondent

**Final Decision :** Dismissed

## Judgement

C.R. Thakur, J.—The Petitioner was employed as a Head Constable in the police department and was posted at Kulu. Respondent No. 3 was his immediate officer and according to the Petitioner somehow he incurred the displeasure of Respondent No. 3 and, therefore, he was compelled to tender his resignation and which he tendered on 6-11-1972, vide Annexure PE to the writ petition. Again he submitted an application, Annexure PF, on 15-12-1972 to the Superintendent of Police, Kulu, for the withdrawal of his resignation. It appears that before this application for withdrawal of the resignation was submitted the Respondent No. 2 had already passed an order (RI) on the resignation application, accepting the same with effect from 9-11-1972. Thereafter the department actually passed the order, Annexure PA, dated 6-1-1973 whereby the S.H.O. Kulu was directed to relieve the Petitioner with effect from 9-1-1973, as his resignation had been accepted and it was directed that he should see that all Government property, including uniform, etc. and appointment certificate was deposited by the Petitioner before he was relieved. The Petitioner has, therefore, prayed for quashing the order, Annexure PA, and further that he be declared to have been in continuous service and entitled to all benefits ensuing from the quashing of the impugned order.

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2. He had also prayed in Clause (c) of para 17 of the petition that the Respondents be directed to release the gun bearing No. 1211 Kulu S. B. L. 12 bore and if necessary they may be further directed to renew the licence of the gun after observing all formalities. Since this point has not been argued, therefore, it is not relevant for the purposes of the decision of this case.

3. The Respondents replied that the Petitioner submitted his resignation on 9-11-1972, which was accepted by Respondent No. 2 on the same day. However, he was relieved after completing two months notice according to rules, and that he would have been relieved immediately after the acceptance of resignation on 9-11-1972, had he deposited two months'' pay. The Petitioner could not deposit two months'' pay, as such he was relieved on 9-1-1973. Actually the resignation was accepted on 9-11-1972.

4. The only question before this Court is whether the resignation once accepted could not be withdrawn.

5. The learned Counsel for the Petitioner contends that although the Respondent No. 2 had passed an order on 9-11-1972, accepting the resignation but it was to take effect from 9-1-1973 and he was to cease to be a Government servant only with effect from 9-1-1973, and till then he continued to be in Government service and as such he had the right to withdraw his resignation before the acceptance of the resignation could be effective from a prospective date. For this proposition the learned Counsel has relied on three authorities.

6. The first authority is Sanker Dutt Shukla Vs. President, Municipal Board, Auraiya and Another, In this case the Petitioner was working as a Superintendent of the Municipal Board of Auriya in District Etawah. He sent a letter to the President of the Board saying that he was unable to discharge his duties as Superintendent of the Board and in these circumstances he submitted his resignation which he prayed should be accepted. Though the letter purported to have been received in the office of the Board on 24-2-1955 but it was dated 1-4-1955. Subsequently the Petitioner wrote a letter to the President in which he stated that the previous writings be not placed for consideration and be deemed as withdrawn and unmeant as they were not voluntary and bona fide- However, the President rejected his letter of withdrawal on 31-3-1955 and accepted his resignation with effect from 1-4-1955. In these circumstances it was decided that where an application for resignation by a municipal servant sent to the President was to come into existence from 1-4-1955, till that date there was no resignation at all and the applicant had the right to intimate to the President before that date that he no longer wished that his application should be considered as effective.

7. The second authority is Bahori Lal Paliwal Vs. District Magistrate, Bulandshahr and Another, It was a case of the Chairman of the Town Area Committee, who had forwarded his resignation to the District Magistrate. But before the same was accepted he had forwarded an application for withdrawal of the same. Therefore,

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it was held that before the resignation is accepted the Petitioner had a right to withdraw his resignation and he having done so there is no resignation left which can be accepted by the District Magistrate and 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.

8. The last authority is Jai Ram Vs. Union of India (UOI), . It was a case of an employee who was to complete 55 years on 26th November, 1946, but it appears that in 1945 he himself was anxious to retire from service and, therefore, on 7th May, 1945, he wrote a letter to the Director of the Institute where he was employed to the following effect:

Sir,

Having completed 33 years'' service on the 6th instant I beg permission to retire and shall feel grateful if allowed to have the leave admissible.

The permission was not granted at that time. The Appellant renewed his prayer by another letter, dated 30th May, 1945, wherein he stated that owing to the untimely death of his brother, his family circumstances did not permit him to serve the Institute any longer and he, therefore, prayed for leave preparatory to retirement four months on average pay and the rest on half average pay from Ist of June, 1945, or the date of his availing the leave, to the date of superannuation which was specifically stated to be the 26th of November, 1946. This time also the prayer of the Appellant was refused on the ground that he could not be spared. Then a third application was presented by the Appellant on 18th September, 1945, praying for reconsideration of his petition on some other ground but the same was also rejected. Thereafter till 28th May, 1946, he kept silent and then made a fourth application which was allowed and the Director of the Institute sanctioned the leave. The question as to how much leave and of what kind could be available to him was left to the decision of the Accountant-General, Central Revenue. On 11th July, 1946, the Accountant-General communicated his order to the Director that the Appellant was entitled to leave preparatory to retirement on average pay for six months from 1st June, 1946 to 30th November, 1946 and on half average pay for five months and twenty-five days thereafter, the period ending on 25th May, 1947. Just 10 days before this period of leave was due to expire, the Appellant on the 16th May, 1947 sent an application to the Director of the Institute stating that he had not retired and asked for permission to resume his duties immediately, The Director informed him that he could not be permitted to resume his duties as he had already retired, having voluntarily proceeded on leave preparatory to retirement. So, it was in these circumstances that it was held by their Lordships of the Supreme Court: "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

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continues in service and not after it has terminated. But where the service of the servant has ceased, because of his retirement, he cannot be held to continue in his service, though at the time he is on post-retirement leave granted to him under special circumstances. It is no longer competent to him to apply for joining his duties, even though the post-retirement leave had not then run out.

9. The facts of the instant case are altogether different. The Petitioner had tendered his resignation on 6-11-1972 and the same was accepted on 9-11-1972 although it was to take effect from 9-1-1973 Therefore, it is abundantly clear that the resignation had been accepted before the Petitioner had sent a letter for the withdrawal of his resignation. Therefore, in these circumstances, in my opinion, when once the resignation has been accepted, no matter that it was to take effect from a prospective date, the Petitioner had no right to withdraw ''the same even though his resignation was to take effect from 9-1-1973.

10. In Raj Kumar Vs. Union of India (UOI), the Appellant who was a member of the Indian Administrative Service and was posted as Collector and District Magistrate, Kota, in Rajasthan, on 21st August, 1964, addressed a letter to the Chief Minister, Rajasthan, setting out several grievances and in conclusion he requested that the Government may do him the favour of accepting his resignation from service which he was submitting separately. He addressed a letter, dated 30th August, 1964 to the Chief Secretary to the Government of Rajasthan submitting his resignation from the I.A.S. for early acceptance and requested that it may be forwarded to the Government of India with remarks of the State Government. The State Government recommended that the resignation be accepted. On October 31, 1964, the Government of India accepted the resignation of the Appellant and requested the Chief Secretary to the Government of Rajasthan to intimate the date on which the Appellant was relieved of his duties so that a formal notification could be issued in that behalf. After sometime the Appellant changed his mind and wrote a letter on November 27, 1964, to the Chief Secretary to the Government of Rajasthan to recommend acceptance of the withdrawal of his resignation from the I. A. S. He also wrote separately a letter to the Secretary to the Government of India, Ministry of Home Affairs, intimating that he was withdrawing his resignation from the I. A. S. On March 29, 1965, an order accepting the resignation of the Appellant from the I. A. S. was issued and the Appellant was directed to hand over the charge to the Additional Collector, Kota. The Appellant moved a petition in the High Court for issue of a writ of certiorari quashing the order passed by the Government of India accepting resignation of the Appellant and also quashing the order dated March 29, 1965, issued by the State of Rajasthan. The High Court rejected the petition holding that the resignation became effective on the date on which it was accepted by the Government of India and a subsequent withdrawal of the resignation was ineffective even if the acceptance of the resignation was not intimated to the Appellant. He filed an appeal to the Supreme Court. The contention raised before their Lordships of the Supreme Court by the Appellant was that the Appellant could, so long as acceptance of the resignation was not

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communicated to him, withdraw the resignation submitted by him. Repelling this contention it was held by their Lordships that termination of employment by order passed by the Government does not become effective untill the order is intimated to the employee. But where 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 paenitentiae but not thereafter. The present is the case which is actually covered by this authority of the Supreme Court.

11. Here the Petitioner wrote this letter, Annexure PE to the effect that as his domestic circumstances did not permit him to remain in service any longer he thereby tendered his resignation and he requested that he may be relieved at the earliest. Therefore, the Respondent No. 2 accepted the resignation by its order dated 9-11-1972 as is apparent from Annexure R. I. and this was to come into effect from 9-1-1973 because as is stated by the Respondents the Petitioner could not deposit his two month''s pay, which was a condition necessary if the employee wanted himself to be relieved forthwith. In such a case the employee has got to deposit two months pay if he wants to be relieved at an early date or he is to be relieved only after the expiry of two months period, and it was on that account that the Petitioner was not relieved at the earliest, although his resignation was accepted on 9-11-1972. Therefore, once the resignation had been accepted although it was to take effect from a prospective date, the Petitioner had no right to withdraw the same. In these circumstances, in my opinion, the authorities cited by the learned Counsel for the Petitioner will not be of any assistance to him, rather, it is Raj Kumar''s case (Supra) which is fully applicable.

12. The result, therefore, is that I dismiss this petition, leaving the parties to bear their own costs.

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