
(1997) 04 MP CK 0040
In the Madhya Pradesh High Court
Case No : M.P. No. 2936 of 1990 (J)

Mukul Shrivastava

APPELLANT

Vs

Chairman Punjab and Sindh Bank

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 MPJR 272

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : Masood Ali, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikariy, J.

The petitioner was employed as Clerk-cum-Cashier at the Satna branch of the respondent Punjab and Singh Bank. By this petition under Article 226 of the Constitution, of India, the petitioner claims that he had withdrawn the resignation lauded by him before it was accepted by the bank and, therefore, he should be granted relief of reinstatement with back, wages in service.

It is necessary to examine the terms and conditions under which the petitioner was appointed, the circumstances leading to his resignation and the action of the bank in response to the notice of resignation.

The petitioner was employed in the year 1983 as Clerk-cum-Cashier in Punjab and Singh Bank. While in service, he applied for the post of Mining Inspector under the State Government. He was selected for the post and thereafter on 8.6.88 he gave a notice of abandonment of service (Annexure -R/1) and the contents of the said notice are as follows:

Reg. - ABANDONMENT OF SERVICE. Venerated Sir, Sat Siri Akal.

I wish to bring to your kind notice that I have been selected for the post of

MINING INSPECTOR by M.P. JUNIOR SERVICE SELECTION BOARD, BHOPAL (M.P.). Selection confirmation letter is attached along with this letter. Sir, further I have made up my mind to join the post of MINING INSPECTOR. I shall tender my resignation as soon as I get my appointment letter. I am awaiting my posting which may take place after one to two months. Sir, please arrange to refund my dues i.e. P.F. Contribution & Security deposit, etc.

With thanks,

Very Sincerely Yours, Sd/- Encl:1.

(MUKUL SHRIVASTAVA) C.C.C. B/O SATNA (M.P.)

On 14.7.88, again under the Subject "Reg.- Abandonment of Service" a letter with following contents was addressed to the Regional Manager of the bank:

I beg to state that I have been selected for the post of MINING INSPECTOR by M.P. Junior Public Service Commission, Bhopal. Sir I shall tender my resignation on receiving appointment letter from M.P.J.P.S.C. Bhopal. Sir, you might have received one letter of mine prior to this one, but unfortunately the same remained unrealized.

With thanks.

Very sincerely yours, Sd/- (MUKUL SHRIVASTAVA)

On 8.9.88, the petitioner sent his resignation letter (Annexure- R/3) stating thus:

Reg. Resignation from Bank Service.

Respected Sir.

I wish to bring to your kind notice that I have been selected for the post of MINING INSPECTOR by M.P.J.P.S.C. Bhopal (M.P.)

Sir, further, I have, to join my duties as a MINING INSPECTOR at CHHINDWARA DISTRICT by 21.9.88 which is the closing date of my joining.

Sir, you have already issued a NO OBJECTION CERTIFICATE in this respect, which is in my safe custody.

Sir, now I am finally tendering my resignation from Bank service.

Sir, I shall perform my duties upto 10.9.88, Sir, there is no Bank dues towards me & I shall deposit one month's salary as per rules.

Sir, You are requested to accept my resignation, Kindly do the needful & enable me to join my duties at CHHINDWARA.

With thanks.

Very Sincerely yours, Sd/- C.C.C. B/o SATNA (MP) (MUKUL SHRIVASTAVA) B/o PUNJAB AND SINDH BANK SATNA (M.P. PIN -485001.

(underlining by the Court for emphasis)

From the contents of the above letter of resignation, it may be noted that the petitioner desired to resign w.e.f. 11.9.88 stating that he would perform his duties only upto 11.9.88. He also agreed to deposit one month's salary as a precondition of resigning.

The first question raised by Shri Masood Ali, learned counsel appearing for the petitioner is that the above letter of resignation did not become effective until it was accepted by the competent authority of the Bank.

The above letter of resignation was forwarded by the Manager of the Bank at Satna to Regional Manager, Bhopal with a request to communicate his decision well before 21.9.88 which was the last date for joining by the petitioner on the new post. Similar letter was again sent by the Branch Manager to the Zonal Manager of the bank on 17.9.88 (Annexure - R/5).

On 11.11.1989 vide Annexure - R/5-A, the petitioner demanded F.D.R. amount of Rs. 1000/- which was furnished as security for service in the Bank.

It is the case of the petitioner that since the post of Mining Inspector and his posting at Chhindwara did not suit his health, he decided to withdraw his resignation. It is stated that the petitioner had sent a letter for withdrawal of the resignation before 20.7.1989. According to him, the fact of his submitting a letter of withdrawal of resignation is evident from the two letters of the Bank written by the Manager to the Deputy General Manager with recommendation that looking to the petitioner's satisfactory performance in the Bank he be allowed to revoke the resignation. The two letters recommending his reinstatement are filed with (he petition as Annexure-A dated 20.7.89 and Annexure - B dated 27.2.1989. By the above two letters, the Manager sought decision of the Bank on his letter of revocation or withdrawal of resignation.

The fact that the petitioner has sought withdrawal of his resignation also gets confirmation from a personal letter sent by him by post to the Regional Manager (Annexure-R/6) in which he sought personal intervention of the Manager to help him in getting out of the situation in which he earlier resigned and as the new job did not suit him wanted to come back to the Bank's services.

By the impugned communication dated 8.3.89 (Annexure - R/7), the request of the petitioner to permit him to rejoin the Bank's services was turned down by the Regional Manager, informing him thus:

REG : Shri Mukul Shrivastava - Clerk / Cashier.

This has reference to your letter no. PSB/STN / 88 / 89 / Staff / 203 dt. 19.1.89 with regard to the above named.

In this regard, we may inform you that the resignation of above named has been accepted with effect from 11.9.1988 subject to depositing 27 day's (Twenty Seven) Salary in lieu of notice period.

Further, please note that Sh. Mukul Shrivastava has chosen to sever Employer-Employee relations by joining another concern. Hence the issue involves fresh appointment & B.S.R.B. is the only agency through which he can be appointed. In these circumstances, he may be informed that the management has accepted the factual position of his resignation with effect from 11.9.1988. We regret, he cannot be permitted to rejoin duties.

Please send the following information/papers to H.O. Provident Fund Deptt. New Delhi under intimation us so that his terminal dues may be settled at the earliest.

- (1) Date of joining in the bank.
- (2) Salary details
- (3) Postal address of the abovenamed.
- (4) Letter of request/set off any liability from the employee.
- (5) Confirm whether any liability is out-standing against the abovenamed, if so complete details of same be intimated to H.O. Personal Deptt. also.

Your faithfully. Sd/- REGIONAL MANAGER.

(underlining by Court for emphasis).

On behalf of the petitioner it has been contended that the petitioner having withdrawn his resignation prior to the issuance of impugned communication dated 8.7.89 (Annexure - R/7), the petitioner should not be deemed to have resigned or severed his connection with the bank. It is submitted that the petitioner has desired to resign w.e.f. 11.9.88, but as no acceptance was communicated to him prior to the aforesaid date i.e. the date of issuance of letter Annexure - R/7 (8.7.1989) his resignation could not be accepted from a back dated i.e. 11.9.88 when before communication of such acceptance he had also withdrawn his resignation. It is argued that a resignation can become effective only from the date of acceptance and if it is withdrawn before it is accepted, it will have no effect. Reliance is placed on. Punjab National Bank Vs. P.K. Mittal, and Moti Ram Vs. Param Dev and another, .

Shri N.S. Ruprah learned counsel who appeared for the Bank, has in his reply contended that the facts disclosed show that it was a case of abandonment of service by the petitioner and not of resignation. It is also submitted that for severing relationship with the bank it was not necessary for the Bank to have accepted the resignation. The act of the petitioner in giving a notice to sever connection with the bank from a particular date and thereafter joining another service followed by a request for refund of his security deposit left no right with the petitioner to rejoin on the post. The relationship with the bank having been unilaterally severed by the petitioner, it would not have been possible for the petitioner to apply for withdrawal of his resignation. The contract of service had come to an end on the expiry of the notice period on 10.9.1988 and thereafter by joining another service. The learned counsel for the bank distinguished the

case of T.K. Mittal (Supra) and relief of paragraph 9 of the said judgment to strengthen his contention that no question of withdrawal of resignation arises in the facts and circumstances of the case. The learned counsel also made a reference to the contents of agreement of service, particularly condition no. 4 therein. The agreement of service was not made a part of the reply filed by the bank. It was subsequently filed only as an additional document. The copy of the agreement of Service filed subsequently by the bank pertains to some other employee named Anil Kumar Kelkar. Since it is not concerning the petitioner, this Court cannot take it into consideration.

It has not come on record whether the petitioner was only a temporary employee or a permanent employee. The parties have also not produced in writing the agreement of service. They have also not produced any regulation or service rule on the subject matter of resignation. The question raised, therefore, has to be decided on the principle of general law of master and servant, Relationship between master and servant can be snapped by the servant voluntarily resigning or abandoning his services, As explained in "Words and Phrases" permanent Edition. Volume 37, page 475, "Abandonment" of an office is species of resignation, but differs from "resignation" in that resignation is a formal "relinquishment While abandonment is a voluntary relinquishment through nonuser and although the intention may be inferred, an office cannot be abandoned without an intention by me officer to relinquish it and such relinquishment is not produced merely by a temporary nonuser or neglect of duty, but must be total under such circumstances as clearly indicted an absolute relinquishment.

In the instant case, by successive letters sent by the petitioner on 8.6.1988 (Annexure - R/1) and 14.7.88 (Annexure - R/2), the petitioner has made up his mind to give up Banks service in (order to join (he State Service son being selected in the Mining Department. By a formal notice on 8.9.88 (Annexure - R/3), he very clearly and unequivocally forsook the employment e.f. 11.9.88 stating clearly that thereafter he would not perform any duties. He has not disputed the fact, as contained in the return of the Bank, that he stopped coming after 10.9.88 and joined the new service as Mining Inspector at Chhindwara on 20.9.88. (See; averments in the reply of the Bank at the end of paragraph 2). After joining services in me Government at Mining Inspector, the petitioner wrote a letter on 11. 11 1989 (Annexure - R/5A) demanding from the bank the F.D.R. amount of Rs. 1000/- furnished as Security while in service. In the said letter; he has very categorically stated as under:

.....At present I am no more in your bank service.

From the above facts, it is very clear that the petitioner had himself severed his relationship with the bank by giving a notice of resignation to become effective from a particular date by joining the State services, and by demanding from the bank his security amount intimating that he was no longer in services of the Bank. In the above circumstances, merely because the Branch Manager had been

recommending his case for re-joining, it cannot be said that there was any right left with the petitioner to withdraw his so eagerly resigned resignation which had not, by that time, been accepted. In a case where the service had been abandoned voluntarily, and no contract of service or rule prohibits it the service relationship can be severed by voluntarily abandoning it, as is the case here. In taking this view, this court finds some support from the decision of the Supreme Court in *State of U.P. the others Vs. Ved Prakash Sharma* 1996 (2) S.L.R. 146. The case of *P.K. Mittal (Supra)* on which reliance was placed on behalf of the petitioner and reference was made to it by the respondent, is distinguishable because there the question arose on the interpretation of Regulation No. 20 providing for termination of services of the Bank employee by either side serving three months' notice. In the instant case, the termination of service has been brought about by voluntary act of abandonment of service by the petitioner. There was no question of acceptance of any resignation and permitting its withdrawal before acceptance, more so when petitioner had joined another service. This Court finds support for the above view from the statement of law on the subject contained in *Carpet Juris Secundum*, Vol. 56. Art. 40 page 424. The relevant portion of it reads as under:-

Where an employee, including one under a contract for permanent employment, refuses to serve or voluntarily abandons the service, whether with or without justifiable cause, the contract of employment is terminated or at least the employer is authorised to rescind the contract and refuse any longer to be bound by it. In such case he may not insist on reemployment. The only way he can return to his abandoned employment is by making a new contract with his employer, who may or may not receive him back, as he sees fit....

Since the petitioner had abandoned the employment as explained above, the respondent-bank, on being approached for re-joining, rightly took the view and communicated the same to the petitioner vide letter dated 8.3.1989 (Annexure - R/7) that he will have to seek re-employment.

For the reasons aforesaid, the petition fails and is hereby dismissed, but without any order as to costs. The security deposit, if any, shall be refunded to the petitioner.