
(1995) 08 AP CK 0034
In the Andhra Pradesh High Court
Case No : W.A. No. 74 of 1993

National Thermal Power Corporation Ltd. and Another	APPELLANT
Vs	
S. Partha and Others	RESPONDENT

Date of Decision : 02-08-1995

Acts Referred:

Constitution of India, 1950 — Article 217, 310
Government Service Conduct Rules — Rule 24.2, 24.2.4, 24.3

Citation : (1996) 1 LLJ 1019

Hon'ble Judges : Lingaraja Rath, J

Bench : Single Bench

Advocate : K. Srinivasa Murthy, for the Appellant; S.A. Chary and D. Gopal Rao, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—The moot submission advanced before us by Mr. K. Srinivasa Murthy, learned counsel appearing for the appellants in assailing the Judgment of the learned Single Judge allowing the Writ Petition No. 16524 of 1991 filed by respondent No. 1 against the appellants is that the letter of resignation submitted by the respondent No. 1 on October 15, 1988 became effective from November 16, 1988 and that there was no necessity of either accepting or making a communication of acceptance of the resignation, and that all correspondences made by the appellants to the 1st respondent in the matter were redundant as having no effect. A subsidiary question has also been raised that even if the resignation of the respondent No. 1 is treated as withdrawn and he becomes entitled for reinstatement, yet the reinstatement can be effected only in the respondent No. 3 Corporation and not in the appellants-Corporation there having been a split and bifurcation of the appellants as a result of which the respondent No. 1 was to have been borne in the order of respondent No. 3

2. A brief sketch of the facts is necessary to be adumbrated for the purpose of unfolding the questions urged. Respondent No. 1 was appointed on probation as

Supervisor - Trainee on July 16, 1985. His services were regularised on completion of training with effect from August 1, 1986 with order of appointment issued on December 19, 1986. He submitted the resignation letter on October 15, 1988 saying that he may be granted leave from September 22, 1988 to November 15, 1988 and that the period from October 16, 1988 to November 15, 1988 be treated as the Notice Period. He further stated that his resignation may be taken as effective from November 16, 1988 or such other date as is found appropriate or proper to the addressee, the Senior Manager (P&A). The 1st respondent also expressed his desire that once he finds himself fit to carry on the duties, he would like to offer his services which he solicited, to be kindly accepted. The file relating to the resignation and acceptance thereof was kindly accepted. The file relating to the resignation and acceptance thereof was produced before the learned Single Judge. The relevant facts as appeared in the records and were extracted in the Judgment were that after the receipt of the resignation the Senior Manager (P&A) put his remarks on December 5, 1988, inter alia as follows:-

"(1) On perusal of the note, bracketed at X on page two and also the resignation submitted by Shri Partha, I would be of the opinion that we may accept Shri Partha's resignation.

(2) I would be in agreement with the suggestions put forward by the SPO at (i) and (ii) on page two for regularising his absence and acceptance of his resignation.

(3) However, the competent authority may like to take a decision with regard to item (iii) on Page for "A" or "Y" which is in connection with the bond money,"

Perusing the remarks, the General Manager (TL) recorded the remarks on December 7, 1988, which are as follows:-

"(1) above and (2) approved. For para side marked (3), we may advise the employee to deposit the amount of Bond Money"

A communication was made on December 9, 1988 to the Senior Personnel Officer by the Manager (Personnel) with reference to the service bond of respondent No. 1 that it was being traced out and that the addressee may take necessary action for processing his resignation as per the terms and conditions. Respondent No. 1 sent a letter on December 23, 1988 saying that he withdraw his proposal of resignation and that his letter on October 15, 1988 was for all purposes and intent a request for granting leave for an indefinite period on medical grounds and that as his Doctor opined that he would be fit for resumption of duties by next two months, his letter of October 15, 1988 be treated as a leave request letter for the period from September 22, 1988 to February 15, 1989. The Senior Manager (P&A) put up a note on January 10, 1989 stating, inter alia as follows:-

"(A) Under the circumstances, Sr. Manager (P&A) is of the opinion that Shri Partha be not allowed to withdraw his resignation, at this stage.:

On the note, the G.M. made the query on the same day as follows:

(1) Was the resignation of Shri Partha accepted by the Competent authority. Discussed with Sr.M(P&A) who confirmed that the resignation of Sri Partha was accepted.

As such I agree with the proposal of Sr.M. (P&A) at para side marked (A) above."

On January 18, 1989 communication was made to the respondent No. 1 while referring to the letter of December 23, 1988 asking the resignation letter to be treated as leave application, that the resignation of October 15, 1988 had been accepted by the competent authority subject to the recovery dues and, hence, withdrawal was not permissible and that the respondent No. 1 may remit the amount of Rs. 2,638-88 ps. as earlier advised.

3. The learned Single Judge on analysis of the facts of the view that prior to the withdrawal of the resignation on December 23, 1988, the resignation had not been accepted by the appellants and that action of the authorities to link the acceptance of the resignation with the refund of the due money by the respondent No. 1 for which they had called upon him to make good the amount, showed the refund was made the condition for acceptance of the resignation. Taking such view it was held that as the resignation had been withdrawn prior to acceptance, the withdrawal was valid and the resignation could not be enforced against the respondent No. 1. On the premises the Writ Petition was allowed directing reinstatement of the 1 st respondent and his eligibility to other consequential benefits.

4. Mr. K. Srinivasa Murty, learned counsel for the appellants has drawn our attention to the Service Rules of the appellants - Corporation, where Rule 24.3 is on the subject of "Resignation". The Rule has two parts numbered as 24.3.1 and 24.3.2 and is as follows.

"24.3: Resignation

24.3.1: An employee resigning from the services of the Corporation shall be required to give such notice as is prescribed in the service contract or in the absence thereof as per the provisions indicated under Rule 24.2 above.

24.3.2: Under no circumstances shall the resignation tendered by an employee whose conduct is under investigation be accepted without the sanction of the authority competent to dismiss him.

Note : Where an employee submits resignation during pendency or where disciplinary proceedings are contemplated, the resignation may be accepted by the appointing authority if the charges are not in the nature of moral turpitude, criminal offence, bribery or corruption or where substantial loss to Corporation is involved or where the evidence against delinquent employee does not warrant or justify assumption that if the departmental proceedings were continued., the employee would be removed or dismissed from service. However, in other cases

of lessor nature, in the letter accepting the resignation, it must be indicated that the enquiry proceedings were pending or contemplated against the employee. This principle will apply in case of superannuation also.

Since Rule 24.3.1 refers to 24.2 as regards the giving of prescribed notice, it is also useful to extract Rule 24.2, which deals with termination of service in terms of the service contract, and its Sub-rule 24.2.4:

24.2 In terms of service contract: The services of an employee may be terminated by giving such notice or pay in lieu thereof as may be prescribed in the contract of his service. In the absence of any such specific provision in the Contract of Service, the services of the employee may be terminated in the following manner:-

24.2.1: xxxxxx 24.2.2: xx xx xx 24.2.3: xx xx xx 24.2.4: The services of a regular employee, can be terminated by either side giving three months' notice if he is an executive or one month's notice if he is a non-executive or payment of salary consisting of pay and dearness allowance in lieu thereof."

It is the submission that a combined reading of the Rules as above shows that the employee may resign from services by giving notice, if he is a non-executive, which the respondent No. 1 is, of one month or payment of salary consisting of pay and dearness allowance in lieu thereof. It is hence urged that as the respondent No. 1 gave a month's notice the resignation became effective on the expiry of one month i.e. on November 16, 1988, and that no action of the respondent could have saved the resignation from having become operative. Reliance for submission is placed on the decision in Punjab National Bank Vs. P.K. Mittal, ; Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, ; Dinesh Chandra Sangma Vs. State of Assam and Others, and D.E.S.U. v. Tara Chand 1978 (2) SLR 425.

5. The question of the right of an employee to submit resignation and as to when it becomes effective, whether acceptance of the resignation is necessary, and the effect of withdrawal of the resignation have received judicial attention in a plethora of decisions. The broad principles, which have emerged consistently from the pronouncements are that while the relationship of master and servant between two persons is primarily a matter of contract, though it may be superimposed by statutory law, yet resignation is exclusively a voluntary act of the employee and its conditions are regulated by terms set by the employee submitting the resignation unless of course the act of resignation is statutorily regulated. Since it is an optional act of the employee, it is always open to him to express to withdraw the resignation before it becomes operative in accordance with its own terms or in accordance with the stipulated conditions of service or statutory provisions bearing upon it as the case may be. If a resignation is not to be accepted, the communication in that regard has to be conveyed prior to it becoming effective. But where the resignation stipulates as in the present case, it to become effective from a future date or such other date as the authorities

may decide, it in effect vests discretion in the authorities to accept the resignation at a later point of time for which communication has to be made prior to the date stipulated in the resignation, and likewise if the acceptance is made conditionally, the resignation does not become effective unless the condition is complied with, on the premises however that the condition is legally permissible to be imposed. Hence, when a resignation is submitted as being effective from a future date, it does not lie in the powers of the employer to make it effective from an earlier date i.e. it cannot be accepted from an earlier date. That is so, since before the date it is intended to take effect, the discretion lies with the employee to change his mind and retract his voluntary act, which option if exercised, makes the resignation non-existent and, thereafter, nothing remains to be accepted by the employer. Similarly, when the relevant service contract or the statutory provision bearing upon the employment mandates a notice to be given to the employer for any particular period for submitting resignation, the notice also to the benefit of the employer for making his arrangements to substitute the employee. As the notice is also for the benefit of the employer, it would be always open for him to waive the notice or accept notice for a shorter period subject to the agreement of the employee, since he, having given the notice for the specified period, would be taken to have intended the resignation to be effective from the date of expiry of the notice. Hence, even though a notice period is stipulated, yet it would be possible for the employer and the employee to agree on a shorter period on which date the notice would become effective. Again, as the effect of resignation from service involves and affects the two parties i.e. the employer and the employee, it is the general law that an acceptance of the resignation is necessary. While it is the unqualified right of the employee to tender resignation, yet in given circumstances there may be no unqualified right for its acceptance as the employer may, for relevant reasons such as his dues have not been cleared or the employee is facing any proceeding, refuse to accept the resignation as accepting that would mean the cessation of the relationship of master and servant and the employee becoming free from any control of the employer. But, barring such contingencies, the employer would have no right to refuse acceptance of the resignation merely for the sake of non-acceptance.

6. With the background of the law relating to the subject being so outlined, the decisions cited by Mr. K. Srinivasa Murthy may now be examined. *Union of India v. Gopal Chandra* (supra) was a case relating to the resignation submitted by a Judge of the Allahabad High Court. The scope of proviso(a) to Article 217 of the Constitution of India was explained as creating the unilateral right or privilege in a Judge of the High Court to resign his office, which becomes effective and his tenure terminated on the date from which he, of his own volition, chooses to quit office, thus implicitly meaning that resignation once submitted by a Judge cannot be withdrawn or revoked. The Apex Court explained the general principles regarding resignation as being that in the absence of a legal, contractual or constitutional bar, a resignation stated to be effective from a future date can be

withdrawn at any time before that date, which Rule equally applies to a Judge also. But proviso (a) of Article 217 of the Constitution of India is a special provision of the resignation becoming effective from the date of its despatch unless its effectiveness from a future date is stipulated. The decision in no way helps the appellants' case.

7. Punjab National Bank v. P.K. Mittal (supra) was again a case where the resignation had been submitted by a Bank Officer making it effective from a future date saying that the intervening period be treated as the notice period but the Bank had accepted it from an earlier date. Such action of the Bank was held as impermissible. Analysing the facts of the case, the Court observed that the resignation of the Officer was to have become effective either on expiry of three months from its date or from the future date as desired by him and that normally the resignation would have taken effect on either of those dates as there was no provision for acceptance or rejection of resignation by the employer, as it found in other Rules, such as the Government Service Conduct Rules. It is on this basis submitted by Mr. K.Srinivasa Murthy that as there is no Rule in the appellants, service regulation for acceptance of resignations, the resignation of the respondent No. 1 became automatically effective on November 16, 1988. It is to be seen that the question before the Supreme Court was whether the resignation could have been accepted prior to the expiry of three months, which was the notice period stipulated under the Rules, or before the expiry of the future date from which the resignation was intended to be effective and it is only to explain the legal effect of the acceptance of the resignation before those dates that the Court observed of there being no provisions of acceptance or rejection of the resignation. As has been explained earlier, a resignation submitted usually becomes effective from the time stipulated therein or from the expiry of the notice period unless the employer indicates, prior to the expiry of the period, of its non- acceptance. Hence, even if no acceptance is indicated, yet the resignation becomes effective on the expiry of the stipulated periods as the employer has failed to act to protect his interest, if any in the matter.

8. Dinesh Chandra v. State of Assam (supra) was a case of compulsory retirement under Rule 56(c) of the (Assam) Fundamental Rules, which vested right in a Government servant after he has attained the age of 50 years or has completed 25 years of service, whichever is earlier, to retire by giving not less than 3 months notice in writing. The Court while analysing the provisions of the Rule 56 of the (Assam) Fundamental Rules observed in Paragraph 8, referring to Article 310 of the Constitution of India, that Government servants hold office during the pleasure of the President or the Governor and that under Rule 56(c) the Government had the right to retire the Government servant on his attaining the specified age or after rendering the specified period of service if it is of the opinion that it is in the public interest to retire him. While such right is conceded to the Government under the Rules, the Court said analysing the provisions of Sub-rule (c), that similar right is vested in the employee to voluntarily retire himself and that the retirement operates ipso facto from the expiry of the notice

period and no order of acceptance is necessary to be passed. The position has been long settled that so far as the superannuation of an employee is concerned, it operates automatically on the employee reaching the superannuation age and that even if an order of retirement is not passed prior to attaining the age of superannuation, yet the employee retires on attaining the age and the relationship of employer and employee comes to end unless of course the service is extended, if such power is available under the Rules, to complete a disciplinary proceeding. Though that is so, yet the observations in Paragraph 8 of Dinesh Chandra's case (supra) has to be understood as not deciding unqualifiedly that an employee has right to retire under Rule 56(c) and that in no cases the Government has the right to refuse his notice of retirement. As in the case of resignation so also in the case of retirement, the Government may indicate prior to the expiry of the notice period that the retirement is not acceptable as the person concerned is already under departmental proceeding or such proceeding is contemplated to be started.

9. It is not necessary to refer to the decision of the Delhi High Court in the case of D.E.S.U. v. Tara Chand (supra) on the same question in view of the decisions of the Apex Court cited and discussed as above.

10. Exception was taken by Mr. K. Srinivasa Murthy to the observations of the learned single Judge on authority in Raj Kumar Vs. Union of India (UOI), that in matters of resignation acceptance is necessary. It is submitted that in that case Rule itself contemplates an order of acceptance to be passed and it is for that reason the Court held an acceptance being necessary. The submission is not acceptable, as their Lordships while discussing the general law on the subject of resignation and its acceptance observed:

"Termination of employment by order passed by the Government does not become effective until 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 penitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an interference that resignation has not been accepted."

11. Even the service regulations placed before us do not support the contention advanced by Mr. K. Srinivasa Murthy. The regulations themselves contemplate acceptance of the resignation as is apparent from Rule 24.3.2 and the note thereunder. It appears therefrom that the resignation of the employee under no circumstances shall be accepted, if his conduct is under investigation, without the sanction of the competent authority, with the rider that the resignation may be

accepted even during the pendency of the disciplinary proceeding or if such proceeding is in contemplation if the charges do not involve moral turpitude, criminal offence, bribery or corruption etc. Since that is so and letter of acceptance of the resignation is expressly stipulated, which applies to all cases, it cannot be said that the provision of acceptance of the resignation only applies where the conduct of the employee is under investigation and not otherwise. Even the Officers of the Corporation understood it in the same light and as the facts narrated earlier would show, they were of the view that while the respondent No. 1 may be allowed to resign, yet his resignation should be linked with his making good the payment due to the Corporation. The resignation hence was, as was rightly observed by the learned Single Judge, inescapably linked up with the payment condition. As a matter of fact, the very acceptance of the General Manager on December 7, 1988 was to the proposals (1) (2) of the Senior Manager (P&A) and he also simultaneously okayed the proposal in para (3) of the note which was regarding direction to the respondent No. 1 to deposit the amount. The payment was never stipulated as being separate from the acceptance of the resignation and communication to that effect was also made to the respondent No. 1 on January 18, 1989. Such contemporaneous exposition as to the nature of the regulation offers aid to the true understanding of the provisions showing that the Officers themselves understood the regulation in the matter in the same way as we have tried to expose. For such reasons, we reject the submissions advanced by Mr. K. Srinivasa Murthy and endorse the view expressed by the learned Single Judge.

12. The other submission raised is that the directions in the impugned Judgment are not implementable as the respondent No. 1 has to be absorbed by respondent No. 3 because of formation of the new Corporation in the year 1991. Mr. K. Srinivasa Murthy drew our attention to the National Thermal Power Corporation Limited, the National Hydroelectric Power Corporation Limited and the North- Eastern Electric Power Corporation Limited (Acquisition and Transfer of Power Transmission Systems) Ordinance, 1993 (Ordinance No. 10 of 1993) promulgated by the President of India on January 8, 1993 providing for the provisions regarding acquisition and transfer of the power transmission systems. Section 10(1) occurring in Chapter IV of the Ordinance made the provision that all associated personnel are to become, on and from the date of commencement of the Ordinance, employees of the Corporation and shall hold office or service under the 3rd respondent- Corporation. The Ordinance has since been replaced by Act 24 of 1993 with the same provisions. It is the argument on behalf of the appellants that because of Section 10(1) of Act 24 of 1993, the respondent No. 1, since on the appointed day and before that was an associated personnel, would have been liable, had he been continuing in service, to have his services absorbed in the respondent No. 3 Corporation, for which reason no relief lies against the appellants. An "Associated personnel" has been defined in Section 2(b) of Act 24 of 1993 as meaning employees associated with the power transmission system. The contention advanced is disputed by respondents No.

1,2 and 3 on factual grounds of the respondent No. 1 having not been an associated person. However, for the purpose of this case we do not want to enter into the determination of the question as to whether the respondent No. 1 was a person who was liable to have been placed at the disposal of respondent No. 3 Corporation. Once the respondent No. 1 is found to have withdrawn his resignation, the consequence is that would have to be deemed to be in continuous service throughout. The question as to whether he is to continue in service of the appellants or the respondent No. 3 is a matter to be decided by those authorities with right reserved, of course, to the 1st respondent to question the decision regarding his absorption, if he feels aggrieved thereby. The 1st respondent is prima facie entitled to be relegated to the position in which he was when he submitted his resignation on October 15, 1988 and direction issued to be taken over by the appellants and his service continued there. It is thereafter, for the appellants and respondent No. 3 to decide the question of his absorption appropriately. But, since much time has elapsed by now, we would, as a part of the equity, dismiss this appeal with the following directions.

1. the respondent No. 1 would be deemed to have been continued in the service of the appellant throughout without any break and is entitled to all the consequential benefits including the payment of backwages if any, due;

2. as the respondent No. 1 is already working in the appellants organisation since the last two years, no further directions regarding his reinstatement is necessary; and

3. the question regarding the transfer of the services of the respondent No. 1 to the respondents 2 and 3 be decided by the appellants and the respondent No. 2 and 3 within themselves with proper notice and opportunity to the respondent No. 1 within three months from the communication of the order from the Court. On such determination, all the service benefits due to the respondent No. 1 including the backwages due to him shall be determined and paid or give to him by either the appellants or the respondents 2 and 3, as the case may be, within a further period of two months thereafter.

13. The appeal is dismissed with costs. Hearing fee Rs. 500/- (Rupees five hundred only).