

(2011) 01 DEL CK 0113

In the Delhi High Court

Case No : Writ Petition (C) 12066 of 2005

Naveen Chandna

APPELLANT

Vs

Indian Immunologicals Ltd. and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0113

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Puneet Aggarwal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner claims to have been first appointed as a Junior Officer (Marketing) with the Respondent No. 1 Indian Immunological Ltd stated to be a wholly owned subsidiary of the Respondent No. 2 National Dairy Development Board on the terms and conditions contained in the letter of appointment dated 11th November, 1998; the Petitioner further claims that he was appointed as an Executive (Marketing) of the Respondent No. 1 on the terms and conditions contained in the letter dated 12th May, 2000. The said letter dated 12th May, 2000 stipulates that the employment of the Petitioner with the Respondent No. 1 was for a period of three years only w.e.f. 1st April, 2000. The Petitioner has not filed any letter of appointment of the period thereafter though he claims to have continued in employment of the Respondent No. 1 and though from the letter dated 1st April, 2004 of the Respondent No. 1 filed by the Petitioner along with the rejoinder it appears that another appointment letter dated 31st March, 2003 and subsequent service letters were also issued to the Petitioner. The Petitioner has however chosen not to file the same.

2. It is further the case of the Petitioner that though he had developed a market for the Respondent No. 1 but the Respondents No. 3 and 4 being officials of the Respondent No. 1 were inimical towards him and started harassing him and on

1st November, 2004 compelled him to write a resignation letter. The Petitioner claims to have lodged a complaint in this regard with the Police Station Meerut, U.P. on 3rd November, 2004. The Petitioner claims to have attempted to join duties on 26th November, 2004 when he was not allowed and/or rather informed that his resignation had been accepted vide letter dated 11th November, 2004 of the Respondent No. 1. Alleging that the letter dated 11th November, 2004 of acceptance of resignation was not sent by the Respondent or received by the Petitioner, this writ petition was filed seeking quashing of the letter dated 11th November, 2004 and mandamus directing the Respondent No. 1 to take back the Petitioner in employment with back wages and benefits etc.

3. Notice of the petition was issued and pleadings completed. The Respondent No. 1 in the counter affidavit filed has inter alia disputed the territorial jurisdiction of this Court and stated that in the year 2004 it had come to its notice that the Petitioner in connivance with the then agents had misappropriated the collection of amounts made from the sale of the goods of the Respondent No. 1 and without forwarding the same to the Respondent No. 1; that when the Petitioner was confronted with the same he tendered his resignation letter dated 1st November, 2004; that the said resignation letter was accepted vide letter dated 11th November, 2004; that the Petitioner thereafter with malafide intention on 26th November, 2004 sought to withdraw the letter of resignation and which was not accepted. It is also stated that the Respondents No. 3 and 4 had also left the services of the Respondent No. 1. The Petitioner in rejoinder claims that he was coerced to submit the resignation.

4. The petition was dismissed for non prosecution on 19th January, 2010. The Petitioner applied for restoration; notice of the restoration application was served on the Respondents but they failed to appear. The restoration application was accordingly allowed and the petition listed for hearing.

5. None has appeared for the Respondents today also. The counsel for the Petitioner has been heard.

6. Though the controversy as to whether the resignation was voluntary or not and whether acceptance of resignation, communicated to Petitioner or not is factual, writ petition is justified on the contention that the Petitioner in the letter dated 1st November, 2004 of resignation had expressed intent to resign w.e.f. 31st January, 2005 so as to give three months notice in accordance with the terms of employment and sought to be relieved from that date. It is argued that even if the letter dated 11th November, 2004 is deemed to have been sent by the Respondent No. 1 and received by the Petitioner, the same would still not come in the way of the Petitioner withdrawing the resignation on 26th November, 2004. It is argued that since the resignation was to be w.e.f. 31st January, 2005, the Petitioner was entitled to withdraw the same at any time before 31st January, 2005. Reliance in this regard is placed on Para 11 of Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Cooperative Ltd. and Others, which is as under:

After giving our careful consideration to the facts and circumstances of the case, it appears to us that the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date. It has also been held by this Court that it is open to the employee concerned to withdraw letter of resignation before the same becomes effective.

It is contended that this writ petition would lie because only this legal issue is to be decided.

7. A perusal of the letter dated 1st November, 2004 shows that the Petitioner had tendered his resignation w.e.f. 31st January, 2005 "As per Point No. 18" of the appointment letter dated 11th November, 1998 and had sought acceptance of resignation. Even though the Petitioner has also filed subsequent appointment letter dated 12th May, 2000, but the "Point No. 18" of appointment letter dated 11th November, 1998 is also incorporated in subsequent appointment letter dated 12th May, 2000. The Petitioner there under was entitled to terminate his services with the Respondent No. 1 by giving three months notice or pay in lieu of notice period. The Petitioner in his resignation letter (supra) chose to serve the notice period. However for termination of service by the Petitioner, acceptance of such resignation letter was not essential under the terms of appointment, even though Petitioner sought acceptance. The service was to stand terminated by unilateral act of the Petitioner. The Petitioner has not shown any other Rules governing his service where under such acceptance of resignation was necessary. Thus, the services stood terminated on the Petitioner submitting the resignation and which was admittedly submitted.

8. Argue do, even if acceptance of resignation were to be necessary, as indeed Petitioner had also sought, it was held as far back as in *Raj Kumar Vs. Union of India (UOI)*, that services normally stand terminated from the date on which the letter of resignation is accepted and it is not open to withdraw resignation after accepted. The Constitution Bench in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, held that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any before it becomes effective-it becomes effective when it operates to terminate the employment-where service cannot be given up by unilateral act of tendering resignation, the tender of resignation becomes effective when resignation is accepted.

9. The passage aforesaid in *Nand Keshwar Prasad (supra)* has to be read in the aforesaid context. What has been laid down by the Apex Court is that it is open to the employee concerned to withdraw the letter of resignation before the same becomes effective. A letter of resignation would become effective, where no acceptance is required, on submission and where acceptance is required, on

acceptance by the employer and irrespective of the date with effect from which the employee seeks to be relieved.

10. Faced with the aforesaid, the counsel for the Petitioner has with reference to the letter dated 11th November, 2004 copy whereof has been filed along with the counter affidavit stated that the Respondent accepted the letter of resignation with immediate effect. Attention is again invited to Para 11 of the judgment (supra) where it has been held that the resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date.

11. The Petitioner in the present case had sought to be relieved w.e.f. 31st January, 2005 so as to give three months notice in accordance with the terms of employment and to avoid forfeiture of any amount in lieu of notice period salary.

12. The letter dated 11th November, 2004 records that though resignation was being accepted with immediate effect but the Petitioner would be entitled to get salary till the period 31st January, 2005. It is thus not as if the Respondent by accepting the letter with immediate effect prejudiced the Petitioner in anymore whatsoever. It is always open to the employer to opt not to avail services of an employee who has tendered the resignation and in whom the employer may have no faith. The employer cannot be compelled to give access to office to an employee serving notice period.

13. The counsel for the Petitioner has next argued that the Respondent had not placed before this Court any proof of dispatch or service of the letter dated 11th November, 2004. He states that though in the last order lower court record was summoned but what was intended to be summoned was the record of the Respondent No. 1. The Respondent No. 1 as aforesaid was not appearing on the last date and as such the question of issuing any direction to the Respondent No. 1 did not arise. The Petitioner also does not claim to have taken any steps for intimating the order to the Respondent No. 1. Moreover, it has been held in North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar, that non communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal.

14. Even otherwise the said questions are questions of fact which cannot be adjudicated in these proceedings.

15. Yet another fact which persuades me to find the Petitioner not entitled to the relief claimed is that as per the last letter of appointment filed by the Petitioner the appointment of the Petitioner was a "term appointment" for three years w.e.f. 1st April, 2000. The said term for which the Petitioner was appointed had lapsed and the Petitioner for this reason also would not be entitled to the relief claimed of reinstatement. The letter dated 12th May, 2000 also shows that the appointment of the Petitioner was terminable by Respondent No. 1 also at any time even prior to three years by giving three months notice or salary in lieu

thereof. Thus, looked at whichever way, the Petitioner cannot claim reinstatement.

16. The counsel for the Petitioner at this stage seeks adjournment of the matter to enable the Petitioner to place the letter of appointment dated 31st March, 2003 and subsequent service letters mentioned in the letter dated 1st April, 2004 annexed to the rejoinder. The Petitioner, having not based the case on the said documents, cannot now after the petition has remained pending for five years and has been fully heard, seek adjournment. No ground for adjourning the matter is made out.

17. The Petitioner is not found entitled to any relief in this writ petition. The same is dismissed with liberty to the Petitioner to avail of appropriate remedies where the factual controversies raised at the time of argument can be adjudicated. No order as to costs.