(1990) 02 CAL CK 0012

In the Calcutta High Court

Case No : Appeal from Original Order No. 743 of 1987

N.C. Chakraborti APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 19-02-1990

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : 94 CWN 1002

Hon'ble Judges : S.K. Hazari, J;G.N. Ray, J

Bench : Division Bench

Advocate : Arun Kumar Motilal and N.C. Saha, for the Appellant; Tapas Banerjee, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against the order passed by the learned trial Judge in Civil Rule No. 393(W) of 1983. By the a foresaid judgment the writ petition of the appellant Shri N.C. Chakraborty was dismissed by the learned trial Judge. The aforesaid writ petition was moved by the appellant Shri Chakraborty challenging the order of termination service of the appcllant by the then Chairrnan-cum-Managing Director of Bharat Brakes and Valves Limited, a Government of India Undertaking on the footing that the appellant had orally tendered his resignation on the 9th November. 1981 and immediately on the said date his oral resignation was accepted and a cheque equivalent to three mouths salary was given to him as a gesture of goodwill of the company. It is the case of the appellant that in November, 1981 the appellant was an employee of the company, Bharat Brakes and Valves Limited. The said, company is a government company and is an instrumentality or an agency of the Central Government and as such an authority and a State within the meaning of the Article 12 of the Constitution of India. At the relevant time the appellant was a Peronnel Manager of the said company and the respondent no. 4 Shri R. Dutta, was the Chairman-cum-Managing Director of the said company. The appellant has contended in the writ petition that there were allegations against Shri A.K. Bhattacharjee, Sales Executive and Shri A. Kujur, Superintendent, Machine Shop of the said company about tampering with the cash memos submitted by them for reimbursement from the company and such improper action was detected by the Accounts Department of the company. The cases were forwarded to the appellant, being the Personnel Manager, for investigation. The appellant has contended that in consultation with the Finance Manager and the Project Manager it was decided that the company''s Medical Officer should be sent along with one officer of the Accounts Department to visit the Drug Stores for verification of the authenticity of the medicines stated to have been purchased by the said officers. Accordingly, the Medical Officer of the Company and Shri Gautam Sen, Accounts Officer, had visited different drug stores and checked the counterfoils of cash memos. It is the case of the appellant that discrepencies were found on such verification and the said officers got those cash memos certified by the respective drug stores indicating the items purchased and price paid. The said. Medical Officer and the Accounts Officer submitted a report in respect and amount claimed from the Company and what were the items of medicines subsequently added in the cash memos. The appellant has contended that as a Personnel Manager he gave a note incorporating the facts and circumstances of the case and the respondents No. 4, the Chairman-cum-Managing Director of the said company after perusal of the said note of the company returned the same to the appellant for further action and the appellant as a Personnel Manager prepared a show cause notice to be served upon the said Shri A.K. Bhattacharjee and Shri A.K. Kujur. He thereafter requested the said Chairman-cum-Managing Director to sign those letters in the afternoon of 7th November. 1981. It is the case of the appellant that he requested the respondent no. 4 when he had come to the office after the meeting with the President of the Mazdoor Union. But the said respondent informed the appellant that he would sign the same on Monday, the 9th November. 1981. On the 9th November, 1981 Shri A.K. Bhattacharjee, who was one of the officer against whom the said allegations of using the tampered documents were made, resumed office. According to the appellant he had also a talk with the Chairman-cum-Managing Director of the company on the said date and the appellant was asked by the Managing Director to have a talk with Mr. Bhattacharjee in presence of the Project Manager and according to the appellant he had such talk as directed and the Finance Manager later on also joined such discussion. The appellant has contended that when the respondent no. 4, the Chairman-cum-Managing Director was asked on the 9th November, 1981 to sign the charge sheets he informed the appellant that the Departmental Manager would sign those letters. The appellant being the Personnel Manager drew the attention of the respondent no. 4 that as per the company''s conduct, Disciplinary and Appeals Rules only the Chairman-cum-Managing Director of the company was authorised to sign those show cause notices against the concerned officers. But the said respondent no. 4 did not agree with the view of the. appellant and appellant thereafter drew his attention to the Company''s Conduct, Disciplinary and Appeals Rules and the same were shown to him. It is the case of the appellant that thereafter a meeting was held in the office of the respondent no. 4, namely, the Chairman-cum-Director that in such investigation the

Company''s doctor was better than any outside doctor. The appellant has contended that the respondent no. 4 had. put question as to why the said officers should be suspended. The appellant drew the attention of the Chairman-cum-Managing Director that the allegations made against the said officers involve serious case of misconduct like theft, fraud, dishonesty and assault. But the respondent no. 4 did not like the report made by the appellant and directed the appellant to delete the portion in which the allegations of theft, fraud, dishonesty and assault were made against the concerned employees. It is the case of the appellant that at that stage the resignation letter of Shri A.K. Bhattacharjee was placed before the Chairman-cum-Managing Director and the Project Manager was of the view that such resignation should be accepted on the expiry of the notice period of three months. Such resignation was however accepted on the next day i.e., 10th November, 1981, with immediate effect and a departmental proceeding was initiated against the other officer Shri Kujur. The appellant has contended that on the said resignation letter submitted by Shri A.K. Bhattacharjee, the Chairman-cum-Managing Director at the said meeting on the 9th November, 1981 asked for the comments of the appellant. It is the case of the appellant that usually no such comment is required to be made by the Personnel Manager. The question of acceptance of such resignation letter of an officer was entirely a matter for consideration of the Chairman-cum-Managing Director. The appellant on being asked to make a comment requested the Chairman-cum-Managing Director that unless the matter would be referred to him officially he could not give such comment. It is the case of the appellant that the said respondent no. 4, namely, the Chairman-cum-Managing Director became visibly annoyed with the appellant and he told the other officers present there that the appellant disobeyed his orders and the said officers were witnesses of such disobedience. It is the case of the appellant that as the appellant became terribly upset and humiliated by the. annoyance of the Chairman-cum-Managing Director, he told to the said respondent that if the respondent would act in that fashion, the Personnel Department could never junction effectively and in that case the appellant would have to consider about tendering resignation. The appellant contended that he did not tender any resignation either orally or in writing but he was surprised to find a memo being sent to him in the afternoon of the said date, namely, on the 9th November, 1981 whereby the Chairman-cum-Managing Director informed that as he tendered resignation the same was accepted with immediate effect and as gesture of goodwill a cheque for three-months'' salary was enclosed with the said letter. It is the case of the appellant that he was completely nonplussed and was taken aback by curious action taken by the Chairman-cum-Managing Director. There was no alternative but to sign and accept the cheque and the Chairman immediately arranged to send the appellant to his home by the company''s car. The appellant has contended that on the 12th November, 1981 he informed the said Chairman-cum-Managing Director that he had not tendered any resignation but such resignation was forced upon him by alleging that he had tendered resignation orally. The appellant explained the facts and circumstances under which he had only indicated in the meeting of the 9th November, 1981 that if the Managing-Director would interfere and act in that manner he might have to consider about tendering resignation. The appellant requested the Chairman-cum-Managing Director by a letter to withdraw the letter issued by him showing acceptance of the alleged resignation and he requested the Managing Director to allow him to resume his normal duties. Such letter was sent under registered post. It is the case of the appellant that unfortunately the Managing Director did not recall the said letter and he drew the attention of Shri V.P. Gupta, Deputy Secretary & Director, Ministry of Industry, Government of India and the Director of the said Company about the facts and circumstances under which the alleged oral resignation was forced on him. It is the case of the appellant that on the advice of Sri Gupta he also met the Chairman-cum-Managing Director at his residence and requested him to recall the said letter of accepting the alleged resignation and it is the case of the appellant that the appellant also by letter expressed regret over the incident which happened on the 9th November, 1981 and although the Managing Director assured him to take him back in service later on the declined to do so. As a result, the appellant was compelled to move the writ petition before this Court. The respondent no.4 the then Chairman-cum-Managing Director, affirmed an affidavit in the said writ proceeding, it has been sated by the said respondent no. 4 in the affidavit-in-opposition that the verification of the memos submitted by the two senior officers of the company should not have been made by the other employees having the same rank or inferior rank. But the respondent no. 4 indicated that he wanted to discuss the matter with very senior officers of the company before taking any action against them. The respondent no. 4 has also stated in his affidavit-in-opposition that on November 9, 1981, Shri A.K. Bhattacharjee, against whom the allegation of tampering with the cash memoes had been made, met him and had verbal discussion with him and the respondent no. 4 has stated that he directed the said Shri Bhattactarjee to talk with the Project Manager, he has, however stated in the said affidavit that he was not aware as to whether or not the said Sri Bhattacharjee subsequently had discussions with the appellant or with the Project Manager or with the Finance Manager. The respondent no. 4 has admitted in paragraph 8 of the affidavit-in-opposition that when the appellant came to him with two show cause notices to be issued against Shri Bhattacharjee and Shri Kujur, he told the appellant that such show cause notices should be signed and issued by the Departmental Manager and not by him. The respondent no. 4 has also stated that the appellant was not within his right to question his decision regarding the signing of the show cause notices to be issued against Shri Bhattacharjee and Shri Kujur. The respondent no. 4 has further stated in his affidavit-in-opposition that the appellant expressed in the meeting of the 9th November, 1981 in the presence of other senior officers that he had tendered resignation from the service and it is not correct to contend that he had Only expressed that he would have to consider about tendering resignation. It may be noted here that the respondent no. 4 is no longer the Chairman of the Company and as a matter of fact when the affidavit was affirmed by him in July, 1984 he was not the Chairman-cum-Managing Director of the Company. The appellant filed the affidavit-in-reply to such affidavit-in-opposition and has reiterated the statements made in the writ petition and denied the allegations to the contrary. It may be noted in this connection that the letter issued to the writ petitioner by the Chairman-cum-Managing Director on 9th November. 1981 informing him that his verbal resignation has been accepted, does not conlain any endorsement made by the other Officers who were present in the said meeting. But in the affidavit-in-opposition a copy of such letter of the Managing Director accepting the resignation of the appellant has been annexed and in such copy there is an endorsement at the bottom of such letter to the effect. "It is continued that Shri N.C. Chakraborty, Personnel Manager desires to resign from the services of this company on the 9th November, 1981." Shri S.K. Chakraborty, Mr. B.K. Dutta Chowdhury and Mr. M. Kundu put their signatures beneath such endorsement. The learned trial Judge has come to the finding that since the oral resignation tendered by the appellant had been accepted by the Chairman on the very same day, there was no occasion for the appellant to contend that he did not intend to tender resignation and there was no occasion to withdraw the same. The writ petition was accordingly dismissed by the learned trial Judge and the instant appeal has been preferred against the said decision of the learned trial Judge.

2. Mr. Motilal, the learned counsel appearing for the appellant has very strongly contended that in the instant case the Chairman-cum-Managing Director, in order to werck vengeance, had imposed an alleged resignation on the appellant when in fact such resignation had not been tendered by him. He has submitted that the appellant by his letter sent under registered post categorically stated that he did not submit any resignation on 9th November, 1981. But in the facts and circumstances, which had occurred in the meeting of 9th November, 1981, he felt very umiliated and frustrated and expressed that if the Managing Director would act in that manner, he might have to think about tendering resignation. Mr. Motilal has submitted that it will appear from the copy of the letter of acceptance of resignation dated 9th November, 1981 annexed to the affidavit-in-opposition of the Managing Director that the three officers only endorsed to the effect that the Personnel Manager, desired to resign but they have not stated that such resignation had in fact been tendered by him. No supporting affidavit has been affirmed by the said officers. Mr. Motilal has further submitted that the learned trial. Judge took serious exception as the appellant had encashed the cheque on the 12th November, 1981. The learned trial Judge was of the view that if the appellant had not tendered resignation but the resignation was imposed on him, he should not have encashed the cheque for three months which was forwarded to him along with the said letter accepting the alleged resignation. Mr. Motilal has submitted that since the appellant denied that he had not tendered resignation and he was in the service of the company, acceptance of three months salary was not improper as the appellant did not think that such acceptance would be per se illegal thereby precluding the appellant to contend that he had not tendered resignation. Mr. Motilal has drawn the attention of the court to another

registered letter sent by the appellant to the Chairman-cum-Managing Director on the 26th November, 1981 being Annexure ''G'' to the writ petition wherein he stated to the following effect:

Moreover, I state that the payment of three months'' salary as a gesture of goodwill is neither in consonance with the purported acceptance of my alleged resignation, nor is it warranted in the facts and circumstances of the case. Mere acceptance of the three months salary does not operate as waiver of my right to challenge your arbitrary, illegal, wrongful, improper and malafide action in purporting to accept the resignation which is wholly nonest.

Mr. Motilal has also submitted that it is an admitted position that after refuting the alleged voluntary resignation stated to have been orally made by the appellant by a letter of 12th November, 1981 which was also sent by registered post, the appellant encashed the said cheque. He has submitted that in such circumstances encashment of cheque cannot debar the appellant to contend that he had not tendered any resignation orally, so that such resignation could been accepted by the Chairman cum-Managing Director.

4. Mr. Motilal has further submitted that when the appellant immediately drew the attention of the Chairman that he did not tender any resignation but his statement was wrongly appreciated by the Chairman-cum-Managing Director, in the normal course of events, it can be reasonably expected that the Chairman would have accepted of the alleged oral resignation made by the appellant. In the instant case, however, the Chairman took an usually hard attitude and wanted to do away with the service of the appellant on the plea that the appellant had tendered voluntary resignation orally in the meeting on the 9th November, 1981. Mr. Motilal has submitted that the action on the part of the Chairman clearly demonstrates that he was annoyed with the appellant and took the opportunity to do away with the service of the appellant on allegations which in the facts of the case, no person would have accepted and/or have acted on it.

5. Mr. Motilal has also submitted that the alleged tendering of resignation was made in a peculiar circumstance when the appellant had pointedly drawn the attention of the Chairman-cum-Managing Director that there was no intention to tender resignation and the expression used by the appellant should not have been understood in the way it was sought to be understood, in the fitness of things, the Chairman-cum-Managing Director should have accepted the explanation and recalled the order. The very fact that the Chairman was bent upon proceeding on the basis of the alleged oral resignation without even giving the appellant a reasonable opportunity to ponder over the matter, demonstrates his anxiety to ensure that the appellant should be out of service on some plea or the other. Mr. Motilal submitted that to say the least, the action taken by the Chairman-cum-Managing Director depicts vindictiveness and lack of bonafide and judicious approach to the matter as was reasonably expected of the head of the executive of the Company. He has, therefore, submitted that simply because a letter noting the alleged resignation of the appellant was handed over to. the

appellant against signature and salary of three months'' cheque was enclosed with such letter and such cheque was encashed, the learned trial Judge should not have held that the oral resignation had been accepted and had been given effect to. Hence, there was no occasion to recall such resignation. Mr. Motilal has submitted that the learned trial Judge failed to take note of the fact that the cheque was encashed after writing the letter of protest and the appellant being the Personnel Manager had encashed the cheque because any advance or overpayment to an officer of the company could be easily recovered from him and as a matter of fact, he had also pointed out in his letter that he was prepared to return the entire amount covered by such cheque.

6. Mr. Banerjee. learned counsel appearing for the respondent company has, however, submitted that an officer of the company was quite competent to tender voluntary resignation from Service and it is not always necessary that such resignation should be made in writing. He has submitted that the contract of service can come to an end by expressing the desire to make such contract terminate on voluntary resignation. Dr. Banerjee has submitted that the Personnel Manager in the presence of other senior officers expressed the desire to resign from service and since he was competent to resign from such service, the Chairman-cum-Managing Director had accepted the same and on such acceptance informed him about such acceptance and also paid three months salary by cheque in recognition of the service rendered by the appellant. Dr. Banerjee has submitted that if the resignation is accepted and is given effect to, it becomes complete and thereafter even if the appellant in tended to resile from his earlier wish to resign, the same cannot be given effect to. Dr. Banerjee has submitted that the appellant on his own tendered resignation, but later on made untrue allegations and also tried to establish that the Chairman-cum-Managing Director out of malice had superimposed the resignation on him. Since such allegations were not correct, the Chairman-cum-Managing Director was justified in not accepting the same and had stuck to the decision of acceptance of resignation tendered by the appellant. Dr. Banerjee has also submitted that the case sought to be made out by the appellant that although the appellant did not actually tender resignation, but only expressed that as the Chairman was behaving in a different manner, he was to think about tendering resignation, but the Chairman seized the opportunity and converted such desire to think about resignation as tendering resignation, cannot be accepted for the simple reason that the appellant being a senior officer of the company and in the charge of the Personnel Department, was quite conscious about the implication of the letter issued to him along with the cheque for salary of three months that the resignation had been accepted. In such circumstances the appellant should not have accepted such letter and in any event, should not have encashed the cheque. Dr. Banerjee has submitted that the conduct of the appellant indicates that he had tendered resignation as a matter of fact and, therefore, had accepted the said letter noting the fact of resignation and acceptance the same by the Chairman-cum-Managing Director and had also accepted the cheque for three

months'' salary. It was only as after-thought that the appellant wanted to resile from the original position and made untrue allegations. But the factum of resignation having been acted upon and thereby made complete could not be revived. Dr. Banerjee, however, in his fairness has conceded that tendering of resignation orally is quite unusual, but he has contended that for such reason the legal effect of such resignation cannot be changed. He has, there fore, contended that the learned trial Judge was justified in dismissing the writ petition and such decision should not be interfered with in the appeal.

7. After considering the respective contentions of the learned counsels for the parties, it appears to us that it is a very unusual case of oral resignation. It is the positive case of the appellant that he did not tender resignation, but as he felt humiliated by the action of the Chairman-cum-Managing Director, he had stated that he might have to think about tendering resignation. Although such statement was alleged to have been made in a meeting in the presence of other three senior officers, no supporting affidavit has been filed by any one of them. It may be noted here that the attention of the court was drawn by the learned counsel for the appellant about not supporting the case of the Managing Director by any of the other senior officers. The arguments were advancved by both the parties and only on the date when the judgment was going to be delivered the learned counsel for the respondents submitted that an affidavit by one of such officer has been made ready. But as the hearing was completed and the judgment was going to be delivered and no such affidavit was filed either in the trial court or in the appeal before the hearing no such permission was given by this court to file such affidavit stated to have been made ready.

8. The letter handed over to the appellant by the Chairman-cum-Managing Director on 9th November, 1981 noting the fact of resignation does not contain any endorsement by any of the other officers present in the meeting. But in the copy of the letter which was annexed to the affidavit-in-opposition of the Chairman-cum-Managing Director it appears that at the bottom of that letter there is an endorsement to the effect that the appellant desired to resign from the services of the company on November 9, 1981. Mr. Motilal, in our view, has very rightly contended that the said endorsement does not go to the extent that the Personnel Manager had orally tendered resignation, but he only desired to resign and such endorsement, in our view, fits in with the case of the appellant that he was thinking to resign because of the attitude being taken by the Chairman-cum-Managing Director.

9. It is also curious that in the letter dated 9th November, 1981 which was immediately handed over to the appellant on the afternoon of 9th November, 1981, such endorsement of the three officers did not appear. Mr. Motilal has submitted that presumably at a later stage, the Chairman-cum-Managing Director got such endorsement from the said officers, but such officers in their fairness did not say that the appellant had resigned orally but only indicated that he desired to resign.

10. In an appropriate case, an employee may be permitted to resign from service even orally. But it is always safe and desirable to get such decision of resignation expressly recorded in writing, more so when the employee is fairly educated and is capable of expressing the desire in writing. In the facts and circumstances of the case, it appears to us that the Chairman-cum-Managing Director, being the Disciplinary Authority of the concerned officers, should have signed the charge-sheet, as pointed out by the appellant, the then Personnel Manager. But it is an admitted case of the Chairman-cum-Managing Director that he was not inclined to sign the charge-sheet. The facts and circumstances disclosed in the petition and the affidavit clearly indicate that there was some unpleasantness in the meeting presided over by the Chairman-cum-Managing Director where the appellant as a Personnel Manager was present. It is quite likely that the appellant felt humiliated and thought about resigning from service. But in the facts of the case, it does not appear that the appellant had in fact resigned from the service in no uncertain term and there was occasion to accept the same. In the facts of the case it appear to us that when the appellant informed the Chairman-cum-Managing Director that he never intended to resign and his expression was wrongly understood, in the normal circumstances the Chairman-cum-Managing Director should have accepted such explanation and have withdrawn the letter accepting the alleged resignation. It is unfortunate that the Chairman-cum-Managing Director, inspite of the same, did not accept the explanation made by the appellant, but insisted on the alleged resignation tendered by the appellant. It is quite apparent that on a spur of the moment, some expression was made by the appellant about resignation. But the Chairman-cum-Managing Director, being the senior most executive of the company, should not have hastily acted on it, but should have apprised the appellant about the implication of such expression and if only the appellant had insisted to resign from service, he should have accepted the same by taking a letter of resignation. It is really unfortunate that such step which was reasonably expected of the head of the executive acting in a bonafide manner was not taken in the instant case and there is enough force in the contention of Mr. Motilal that the Chairman-cum-Managing Director had really intended that the service of the appellant should come to an end and no chance should be given to him and unseeingly hasty action of the Chairman clearly demonstrates his eagerness to do away with the service of the appellant. The facts relating to the disciplinary proceeding against two of the officers also indicate that the charges against the saide officers were quite serious and as a matter of fact, one of such officers had to tender resignation the very next day and such resignation was accepted and the disciplinary proceeding against the other was initiated. It appears that the Personnel Manager took initiative in such disciplinary proceeding to be initiated against the earing officers. But it is really unfortunate that ultimately for such initiative the appellant had to lose his service for the unpleasantness surfacing in the meeting with the Chairman-cum-Managing Director. It appears to us that the appellant sent a letter of protest stating therein that he did not tender any resignation and as such, no question of accepting such resignation did arise. After writing such letter, the cheque for

three months was encashed by him. Simply because such cheque was in fact encashed, it cannot be said that he was estopped from challenging the legality and validity of the alleged resignation. The appellant in a subsequent letter informed the Chairman-cum-Managing Director that as he was an employee of the company, the encashment of the cheque could not have defeated his right to be in service and he also indicated that he was prepared to return the entire amount. It appears to us that as the appellant did not accept the resignation and was proceeding under the impression that encashment of cheque by drawing three months salary in advance would not have defeated his case against. voluntary resignation sought to be imposed upon him, we do not think that such encashment of the cheque would act as an estoppel against the appellant for contending that he did not tender any resignation. In the aforesaid circumstances, it appears to us that the appellant and not really tendered resignation, but such resignation was wrongly imposed on the appellant despite protest made by him.

11. During the pendency of the appeal the appellant has attained the age of superannuation and as such it is not possible to give any infection for reinstatement of the appellant. We, therefore, wanted to ascertain what would be the amount due to the appellant if he had been retained in service. The appellant has submitted a statement showing his claim towards pay, provident fund, house rent allowance, gratuity, unveiled leave, medical reimbursement, telephone (reimbursement), city compensatory allowance, money equivalent for car facilities and interest on P.F. accumulation. The total of these amounts comes to Rs. 6,78,365/-. Without prejudice to the rights and contentions of the respondent company against the claim of the appellant for pay and other allowances on the footing that he was in service till he attained the age of superannuation, calculation of dues on different heads which would have been due to the appellant had he been in service, has been furnished by the respondent company at the time of passing the judgment. According to such calculation made by the respondent company Pay (Basic/DA/SA/Adhoc) amounts to Rs. 2,92,428/-. instead of Rs. 3,51,425/- as claimed by the appellant. The Provident Fund with interest is calculated by the respondent company at Rs. 42,970/- instead of Rs. 95,230/-. House Rent Allowance has been calculated by the respondent company at Rs. 37,664/- in place of Rs. 86,260/- and the Gratuity has been calculated at Rs. 29. 121/- in place of Rs. 33,000/-. The monetary compensation for un-availed leave has been calculated by the respondent company at Rs. 355/- in place of Rs. 55,000/-. So far as the medical reimbursement is concerned, the company has indicated that medical reimbursement is only possible on the basis of actual production of documents as per company''s rules, and in the absence of the same, nothing would be payable. The reimbursement on account of telephone has also been denied by the company on the ground that the same was not admissible since no service was rendered to the company requiring utilisation of the telephone service. City Compensatory Allowance was calculated at Rs. 6,152/- in place of Rs. 6,000/-. Monetary equivalent of car facilities has

not been calculated by the company on the ground that the same was not admissible since pool car facility was not extended as the appellant did not attend service. The company has also indicated that the appellant has withdrawn Rs. 1,930/- from the Provident Fund as a loan. Unadjusted advance taken from the company during the service period of the appellant has been calculated at Rs. 9,860/- Three months salary already paid to the appellant by cheque on 9th November, 1981 amounts to Rs. 6,951/-. All these amounts should be deducted from the admissible claim of the appellant and if such deduction is made, according to the respondent company," the total dues come to Rs. 4,07,949/- instead of Rs. 6,78,365/- as claimed by the appellant. As it appears to us that the appellant had not tendered resignation and there was, therefore, no question to treat him out of employment by resignation, the appellant should be treated to be in service until he attainted the age of superannuation. Accordingly, we allow this appeal by direction that the appellant should be treated in service until he attained the age of superannuation and he should be paid a sum of Rs. 4,07,949/- which according to the respondent company should have been payable to the appellant had he remained in service.

Let such payment be made to the appellant within a period of one month from today.

There will be no order as to costs in this appeal.

Sachi Kanta Hazri, J.

I agree.

