

(1992) 10 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1627 of 1989

Pabitra Mohan Nayak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-10-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 OLR 75

Hon'ble Judges : B.L. Hansaria, C.J.;B.N. Dash, J

Bench : Division Bench

Advocate : Shyamsundar Mohapatra and Ganesh Mohanty, for the Appellant;
Standing Counsel (Central Govt.), for the Respondent

Judgement

B.L. Hansaria, C.J.—The petitioner's case is that being in personal agony, he tendered his resignation on 20-11-1980 to come into force with effect from 13-1-1981, as stated in Annexure-1. But then, having come over the agonising events with the efflux of time, which is the best healer, he withdrew the offer of resignation by letter dated 16-12-1980. But in the meantime the resignation offer had been accepted on 1-12-1980 and it is because of this, that the withdrawal was not conceded to. Feeling aggrieved, this petition has been filed.

2. Shri Misra appearing for the opposite parties contends that the petitioner's offer of resignation having been accepted on 1-12-1980 and he having withdrawn the offer thereafter, he had lost his locus penitentiae to do so. To substantiate this submission, he refers to Raj Kumar Vs. Union of India (UOI), In that case, the incumbent who belonged to Indian Administrative Service, and was holding the post of Collector and District Magistrate, Kota, submitted his resignation on August 30, 1964 for early acceptance. The State Government recommended acceptance to the Central Government which accepted it on October 21, 1964 and requested the Chief Secretary of the State Government "to intimate the date on which the appellant was relieved of his duties so that a formal notification could be issued in that behalf". By letter dated November 27,

1964 the incumbent requested the Chief Secretary to recommend ""acceptance of the withdrawal" of the resignation. On these facts, it was held by the apex Court that the offer of withdrawal could not be accepted. This shows that Raj Kumar was not a case where the incumbent had proposed to resign from a prospective date and had withdrawn the resignation before the prospective date had expired. This decision, therefore, is of no assistance to the opposite parties.

3. Shri Misra then refers to a Bench decision of this Court in *Magata Dakua v. Secretary to Government of Orissa* 1975 (2) SLR 813, in which it was held that in the absence of any rules or executive instruction to the contrary, it is open to a Government servant to withdraw the resignation before its acceptance. In that case, the petitioner had withdrawn the resignation on 26-10-1967 prior to its acceptance on 29-10-1969. It was, therefore, held that there was nothing before the authority to accept the resignation. This case does not assist us to decide the controversy at hand inasmuch as the acceptance in the present case had come before the resignation was withdrawn. Indeed, that case had not dealt with the controversy with which we are seized because that is not a case where the resignation was to become effective from a prospective date.

4. Shri Mohapatra for the petitioner, however, draws our attention to *Punjab National Bank Vs. P.K. Mittal*, in which it was stated that where resignation has to become effective on expiry of some period from the date of the resignation, the same cannot be accepted by the authority from an earlier date. In the present case, however, the acceptance is not from a date earlier than the one indicated by the petitioner inasmuch as from Annexure-3 we also find that the resignation had been accepted with effect from 13-1-1981. What is really required to be determined is whether in the case of prospective resignation, the same can be withdrawn at any time before the effective date and this question has been answered in affirmative in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, by a constitution Bench in the well known case of Justice Satish Chandra to which our attention is invited by Shri Das, learned Government Advocate. The general principle stated in this regard by the majority is that a "prospective" resignation can be withdrawn at any time before it becomes effective. There is no dispute in the present case that the resignation was to become effective from 13-1-1981. It is also the case of the authorities, as stated in Annexure-3, which indeed could not have been otherwise because the petitioner himself desired to make his resignation effective from 13-1-1981. As he had withdrawn his resignation before 13-1-1981, we are satisfied that the withdrawal could not have been rejected on the ground that the decision to do so had been intimated after it had been accepted, though the same was before the expiry of the effective date.

5. Apart from the aforesaid decision cited at the Bar, reference may be made to *Balram Gupta Vs. Union of India (UOI) and Anr*, in which, while dealing with a case of voluntary retirement, it was held that it is permissible to the incumbent to withdraw his offer of voluntary retirement before the expiry of the date on

which the retirement was to become effective, even though the offer of retirement had been accepted before the incumbent had given the notice of withdrawal.

6. In view of the above, the impugned order in Annexure-3 is set aside and the opposite parties are directed not to give effect to the resignation tendered by the petitioner. After the petitioner joins the post which he was holding at the relevant time, it would be open to file representation relating to service benefits to be given for the interregnum whereupon such orders shall be passed as would be deemed fit and proper. Requisites for issue of writ shall be filed by 26-10 1992.

B.N. Dash, J.

7. I agree.