

(2022) 06 GUJ CK 0069

In the Gujarat High Court

Case No : R/Special Civil Application No. 2720 Of 2013

Rajesh Kumar Balak Ram Chandrakar

APPELLANT

Vs

Information And Library Network Centre (Inflibnet)

RESPONDENT

Date of Decision : 10-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Central Civil Services (Pension) Rules, 1972 — Rule 48A
Bombay Primary Education Rules, 1949 — Rule 42
University Grants Commission Act, 1956 — Section 12(ccc), 114A
Specific Relief Act, 1963 — Section 14, 42
Bombay Primary Education Act, 1947 — Section 40(C)

Citation : (2022) 06 GUJ CK 0069

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Anand Sharma, Prateek S Bhatia, Akshat Khare, Suman Khare

Final Decision : Dismissed

Judgement

Bhargav D. Karia, J

Heard learned advocate Mr.Anand Sharma for learned advocate Mr.Prateek Bhatia for the petitioner and learned advocate Mr.Akshat Khare for learned advocate Mrs.Suman Khare for the respondent No.1.

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs :

"9. The petitioner respectfully prays that, on the basis of the facts and circumstances as mentioned hereinabove and which may be urged at the time of hearing, the Honourable Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to the respondent authorities and may be pleased to :

(A) quash and set aside the decision of the respondent authority of accepting the

resignation of the petitioner from service, and consequently quash and set aside the office order purported to be dated 19.2.2013, whereby the petitioner is ordered to be relieved of his services from the respondent authority, Annexure-A to this petition, and

(B) quash and set aside the order of the respondent authority dated 22.2.2013 denying the request of the petitioner for deputation to Bastar University, Annexure-T to this petition, and further be pleased to direct the respondent authority to relieve the petitioner on deputation for joining Bastar University, Jagadalpur, and

(C) pending admission and final disposal of the petition, the Honourable Court may be pleased to stay the operation, implementation and execution of the impugned order dated 19.2.2013, Annexure-A to this petition, and thereby the Honourable Court may be pleased to restrain the respondent authority from relieving the petitioner from his service with the respondent authority, and

(D) pending admission and final disposal of the petition, the Honourable Court may be pleased to direct the respondent authority to relieve the petitioner on deputation for joining Bastar University, Jagadalpur, and

(E) award the cost of the petition, and

(F) grant any other relief or pass any other order which the Honourable Court may consider as just and proper in the facts and circumstances of the case.”

2. Brief facts of the case are as under:

2.1. The respondent-Information and Library Network Centre (INFLIBNET) is established as inter university center in the year 1991 by the University Grants Commission(UGC) with the approval of the Government of India as per the provisions of Section 12(ccc) of the University Grants Commission Act, 1956 (for short ‘the Act, 1956’). The petitioner joined the service of the respondent as a direct recruit as Scientific and Technical Officer-I on 06.03.1997.

2.2. The petitioner was thereafter appointed as direct recruit as Scientist-B (LS) on 22nd December, 2008.

2.3. The petitioner tendered resignation on 14.12.2012 citing personal reasons as per the rules. The rules of the respondent requires at least three months notice in writing for tendering the resignation.

2.4. The petitioner withdrew his resignation on 21st February, 2013 before the effective date of resignation i.e. 14th March, 2013. However, the petitioner was relieved from his service as per the office order dated 19th February, 2013 with effect from 14th March, 2013.

2.5. This Court (Coram: Hon’ble Mr.Justice K.M.Thaker As His lordship was then) while admitting the matter passed the following order on 13th March, 2013 :

“1. Heard Mr. Vyas, learned advocate for the petitioner and Mr. Chauhan, learned

advocate for the respondent.

2. In present petition, the petitioner has prayed that:-

"9 (A) quash and set aside the decision of the respondent authority of accepting the resignation of the petitioner from service, and consequently quash and set aside the office order purported to be dated 19.2.2013, whereby the petitioner is ordered to be relieved of his services from the respondent authority, Annexure-A to this petition, and

(B) quash and set aside the order of the respondent authority dated 22.2.2013 denying the request of the petitioner for deputation to Bastar University, Annexure-T to this petition, and further be pleased to direct the respondent authority to relieve the petitioner on deputation for joining Bastar University, Jagadalpur, and

(C) Pending admission and final disposal of the petition, the Honourable Court may be pleased to stay the operation, implementation and execution of the impugned order dated 19.2.2013, Annexure-A to this petition, and thereby the Honourable Court may be pleased to restrain the respondent authority from relieving the petitioner from his service with the respondent authority, and

(D) Pending admission and final disposal of the petition, the Honourable Court may be pleased to direct the respondent authority to relieve the petitioner on deputation for joining Bastar University, Jagadalpur;

(E).....

(F)....."

3. It prima facie appears from the record that the petitioner voluntarily tendered his resignation from service.

3.1 According to the letter of resignation, the petitioner had requested that he may be relieved as per rules counting the day from date of the said letter. The request, which emerges from the letter of resignation, reads thus:-

.... Herewith I am tendering my resignation from the service. You are requested to relieve me as per the rules counting the day from today"

4. Even according to the case of the petitioner, the notice period in cases where employee wants to leave employment by way of resignation, is three months.

4.1 Therefore, the petitioner was supposed to give three months notice.

4.2 According to the stipulation in petitioner's letter of resignation he had requested that he may be relieved as per rules counting the day of resignation i.e. 14.3.2013.

4.3 Thus, according to applicable rules, the petitioner's resignation would be effective from 14.3.2013. The relevant provisions read thus:-

"2.12.2 Resignation

"A permanent employee of the Centre may tender his / her resignation to the Centre, subject to acceptance by the Centre, by giving not less than three month notice in writing. For an employee during the period of probation or for a temporary employee, the period of notice shall be one month.

The appointing authority, or the authority to whom the power has been delegated, may accept a shorter period of notice from a member of the staff in special circumstances. The resignation shall not become effective unless it is accepted by the competent authority and the employee concerned is relieved of this post in the INFLIBNET Centre.

Earned leave on full pay may be counted towards the period of notice required, and for any part not so utilized, pay and allowances may be paid at the discretion of the Director as per Government of India Rules."

5. Having regard to the request made in letter of resignation and the above quoted provisions, the competent authority communicated acceptance of resignation to the petitioner vide communication dated 19.2.2013. The said communication reads thus:-

"OFFICE ORDER

The resignation letter dated 14.12.2012 of Mr. Rajesh Kumar Chandrakar Scientist 'B' (LS) has been accepted by the Competent Authority of the Centre in the greater interest of the organization. Accordingly Mr. Rajesh Kumar Chandrakar Scientist 'B' (LS) will be relieved of his services from the INFLIBNET Centre w.e.f. 14.03.2013 forenoon.

He is required to clear his all dues and hand over his assignments and responsibilities to the officials listed below:-

1. OJAS : Shri Gaurav Prakash,
Scientist-B (CS)
2. MRP : -do-
3. Theses Database: Mrs. Vaishali Shah,
Scientist-B (LS)
4. Publications : Shri P Kannan, Scientist-B
(LS)"

Thus, the petitioner's resignation was accepted w.e.f. 14.3.2013 and acceptance was conveyed to the petitioner vide letter dated 19.2.2013.

5.1 It appears that after the said communication, the petitioner suddenly changed his mind and by communication dated 21.2.2013, the petitioner

intimated the respondent that he wants to withdraw his resignation and that the resignation may be treated as withdrawn with immediate effect i.e. w.e.f. 21.2.2013.

5.2 It appears that since the resignation was already accepted and the decision was also conveyed and also because of the previous events viz. the petitioner had twice tendered his resignation before tendering resignation in question, the said request was not accepted by the respondent.

5.3 Therefore, the petitioner felt aggrieved and preferred present petition which appears to have been filed on or around 7.3.2013 and it was listed for admission hearing for the first time on 11.3.2013 and thereafter, it was heard on 12.3.2013. On 11.3.2013 and 12.3.2013 below mentioned orders were passed:-

"Today, the lawyers are on strike. Mention has been made by Rajesh Kumar Balak Ram Chandrakar-petitioner in person that this matter may be taken up by tomorrow i.e. 12th March 2013. List this matter on 12th March 2013."

"Counsel for the respondent has raised a preliminary objection that the respondent is not an authority of Central Government and the same is a society registered under the Cooperative Societies Act 1961 and Bombay Public Trust Act, 1950. This matter is wrongly placed by the office before this Court, registry is directed to place this matter tomorrow i.e. 13th March 2013, before the learned Single Judge having competent jurisdiction."

5.4 In view of the said orders the petition is listed before this Court and for the first time it has been effectively heard today.

5.5 As mentioned above, the letter of resignation and its acceptance are to become effective from 14.3.2013 i.e. tomorrow.

5.6 The petitioner now seeks above quoted relief and has also prayed for interim relief which reads thus:-

"9 (C) Pending admission and final disposal of the petition, the Honourable Court may be pleased to stay the operation, implementation and execution of the impugned order dated 19.2.2013, Annexure-A to this petition, and thereby the Honourable Court may be pleased to restrain the respondent authority from relieving the petitioner from his service with the respondent authority, and"

5.7 As mentioned above, in light of the communication dated 19.2.2013, the petitioner is to be relieved in view of his voluntary resignation from forenoon of 14.3.2013. It is a matter of record that petitioner's resignation has been accepted vide order dated 19.2.2013 and the decision is duly conveyed to the petitioner and it is after the said decision that the petitioner informed the respondent on 21.2.2013 about his wish to withdraw the resignation.

5.8 So far as petitioner's contention as regards his right to withdraw resignation

before it is accepted or before it becomes effective is concerned, the petitioner has relied on the decisions of the Hon'ble Apex Court in case of Shambhu Murari Sinha vs. Project and Development India Ltd. (AIR 2002 SC 1341) and in case of Punjab National Bank vs. P.K. Mittal (AIR 1989 SC 1083).

5.9 In light of the details mentioned in the petition and the dispute raised by the petitioner about actual date of the acceptance order and the dispute raised by the petitioner that the letter of acceptance of resignation was actually issued after petitioner's letter withdrawing resignation, the Court is of the view that so as to examine said aspect, petition requires consideration. Therefore, petition is required to be admitted.

6. Hence, Rule.

7. However, so far as the issue of granting interim relief is concerned, the Court is of the view that when letter of resignation is not in dispute i.e. it is not the case of the petitioner that letter of resignation was not given voluntarily or was tendered under any influence etc. and in light of the fact that the resignation was accepted before withdraw and the order relieving the petitioner w.e.f. 14.3.2013 was passed before the petitioner took decision to withdraw resignation and requested authority to permit him to withdraw resignation, request for interim relief does not deserve to be and cannot be granted. If such mandatory relief is granted at this stage it would amount to directing the respondent to continue the contract of employment and thereby enforce the contract of employment. In view of this Court such relief cannot be granted as interim relief.

7.1 The appointment letter by which the petitioner was appointed is in nature of contract i.e. contract of employment and that therefore in view of the provisions related to specific relief the relief cannot be granted in light of Section 42 read with Section 14 of Specific Relief Act.

7.2 Besides this if the petitioner succeeds in the petition then, having regard to the fact that despite request made by the petitioner it was the respondent who continued with its decision of acceptance of resignation and did not accept the letter of withdrawal, appropriate direction compensating petitioner in terms of money can be passed at the time of final decision in the matter.

7.3 When the petitioner can be compensated in terms of money, interim relief of the nature which is prayed for by the petitioner cannot be granted at this stage more particularly because the respondent has already, vide communication dated 19.2.2013, informed the petitioner about acceptance of his resignation.

7.4 Besides the aforesaid reasons below mentioned factual aspects, as it emerges from the affidavit filed by the respondent are also required to be taken into consideration while considering the petitioner's request for interim relief. The respondents have averred in the reply affidavit that:-

Dates

Particulars

10-01-2013

The Competent Authority of the Management – Director has accepted the voluntarily resignation dated 14-12-2012 of the petitioner. Thus, as per Clause 2.12.2, the resignation of the petitioner becomes effective from the date of acceptance. Annexed hereto and marked as Annexure-E is a copy of the order dated 10-01-2013 passed by the Competent Authority.

Since, the office of the respondent was shifted from Ahmedabad to Gandhinagar, the acceptance letter of the resignation could not be communicated to the petitioner immediately after 10-01-2013.

19-02-2013

Vide letter dated 19-02-2013, the respondent communicated to the petitioner about acceptance of his resignation dated 14-12- 2012 and asked the petitioner to hand over the charge to other officers of the Center and the petitioner was asked to collect his legal dues. Annexed hereto and marked as Annexure-F is a copy of the acceptance letter dated 19-02-2013.

19-02-2013

The acceptance letter was sent through peon to the petitioner. The petitioner read the contents of the letter dated 19-02-2013 and after reading the same refused to accept the

8. Thus, from the above mentioned details in the reply affidavit, it prima facie appears that the petitioner changed his mind and withdrew his resignation probably because of the fact mentioned in the affidavit.

The aforesaid aspects can be considered at the time of final hearing of the petition. However, for the reasons mentioned hereinabove, interim relief as prayed for does not deserve to be granted. Hence, request for interim relief is rejected at this stage. But having regard to the facts of the case Rule is made returnable on 8.4.2013.”

3. Learned advocate Mr.Anand Sharma for learned advocate Mr.Prateek Bhatia for the petitioner submitted that in similar facts, this Court has allowed the petition in case of Rupal E. Bhagat V/s. Vocational Training College through Acting Principal and Others in Special Civil Application No.9169 of 2003 and therefore, prayed that the prayers made by the petitioner be granted in view of the order passed by this Court in the said case.

3.1. Learned advocate Mr.Sharma submitted that in case of Rupal E. Bhagat (Supra) this Court (Hon'ble Mr.Justice J.B.Pardiwala) after considering the various judgments of the Apex Court has held as under :

“41. Thus, the law on the issue can be summarized that the resignation means the formal renouncement or relinquishment of office having an effect of

termination of employment/service. An employee has a right to resign or seek premature retirement, however, subject to the statutory provisions, if any, governing the same. The retirement may be sought with immediate effect/earliest possible time or prospectively, i.e. to be effective from a future date. The intention of the employee seeking retirement is of paramount importance. The acceptance of the application for retirement is to be considered as per the law applicable, if any, otherwise also it would depend whether it requires acceptance at all. In case the relinquishment of office is of unilateral character, as was found to be in the case of Moti Ram (supra), the resignation stands accepted as soon as it is tendered. But in case resignation requires acceptance, the Authority has to consider it and pass an appropriate order. The Authority may refuse to accept the resignation if an employee is seeking retirement just to avoid the adverse findings in a disciplinary proceeding pending/ contemplated against him or his services cannot be dispensed with because of the nature of work/project. In case the resignation is not of a prospective nature, it becomes effective as soon as it is accepted by the Competent Authority and even the non-communication of the said order to the resignee would be immaterial and the employee cannot seek withdrawal of the application thereafter. In fact, the effectiveness of the resignation would depend upon the facts of an individual case. However, resignation must have been tendered voluntarily and by no means it should have been obtained by coercion or fraud. Employer does not have a right to prepone the date of effectiveness of resignation as it is the sole discretion of the employee as from which date he wants to retire. In case of a prospective resignation, the employee has a right to withdraw the resignation prior to the date it becomes effective and not subsequent to it. (see Union of India vs. Sanohar 2004 (1) SCT 30.

42. So far as the decision of the Supreme Court in the case of Rajkumar (supra) is concerned, the same would not be of any help to the respondent No.1-management because the Supreme Court interpreted clauses-(c) and (d) of a circular issued on 6th May, 1958 by the Ministry of Home Affairs. Clauses (c) and (d) reads as under;

(c) The competent authority should decide the date with effect from which the resignation should become effective. In cases covered by (b) (I) above, the date would be that with effect from which alternative arrangements can be made for filling the post. Where an officer is on leave, the competent authority should decide whether he will accept the resignation with immediate effect or with effect from the date following the termination of the leave. Where a period of notice is prescribed which a Government servant should give when he wishes to resign from service, the competent authority may decide to count the period of leave towards the notice period. In other case also it is open to the competent authority to decide whether the resignation should become effective immediately or with effect from some prospective date.

(d) A resignation becomes effective when it is accepted and the officer is relieved

of his duties. Where a resignation has not become effective and the officer wishes to withdraw, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective, the officer is no longer in Government service and acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break."

43. Thus, interpreting the two clauses referred to above, the Supreme Court took the view that having once accepted the resignation, the subsequent withdrawal of resignation was ineffective. In my view this decision of the Supreme Court is of no avail to the respondent No.1-College.

44. In view of the above, I hold that the acceptance of the resignation by the Management in its meeting convened on 5th April, 2003, was not a valid acceptance. The writ applicant could not be said to have been relieved from the service, thereby putting an end to the relationship of employer and employee. Before such relationship could be said to have come to an end legally, the resignation was withdrawn."

3.2. It was submitted that in the facts of the case also, the petitioner has withdrawn the resignation before the effective date on which the petitioner would have been relieved from the service i.e. 14th March, 2013.

3.3. It was therefore submitted that the petitioner having withdrawn the resignation before the effective date, mere acceptance of the resignation would not debar the petitioner from the subsequent withdrawal of the resignation as the petitioner could not be said to have been relieved from service thereby putting an end to the relationship of the employer and employee and before such relation could have come to an end legally, the resignation was withdrawn.

4. On the other hand, learned advocate Mr.Akshat Khare for learned advocate Mrs.Suman Khare for the respondent submitted that the order passed in Special Civil Application No.9169 of 2003 is challenged in Letters Patent Appeal No.273 of 2017 and the Division Bench (Coram: Hon'ble Mr.Justice M.R.Shah and Hon'ble Mr.Justice Biren Vaishnav) vide order dated 24th January, 2018 has stayed the order passed in Special Civil Application No.9169 of 2003.

4.1. Learned advocate Mr.Khare further relied upon the decision of the Hon'ble Supreme Court in case of Modern School V/s. Shashi Pal Sharma and Others 2007 (8) SCC 540 to submit that in the facts of the present case, the resignation of the petitioner was accepted on 10th January, 2013 by the competent authority and therefore, the petitioner could not have withdrawn the resignation as resignation submitted by the petitioner could be withdrawn only before its acceptance and such acceptance of resignation was to be made within a period of three months and on 10th January, 2013, the resignation of the petitioner was accepted by the competent authority i.e. Director of the respondent.

4.2. Reliance was also placed on the decision in case of the Director General of Police and Another V/s. M. Jeyanthi 2019 SCC online SC 1645 to reiterate that resignation cannot be withdrawn after its acceptance as the petitioner has lost the right to withdraw the resignation and it would not be open to the petitioner to withdraw the resignation within a period of three months even after acceptance.

4.3. Learned advocate Mr.Khare relied upon the decision in case of National Institute of Technology, Calicut through Director Versus Bharat Singh Rawat 2020 SCC online Ker 6509 of the Kerala High Court at Ernakulam and decision in case of Rejeswari Dayal and Another Versus Central Agricultural University 2021 SCC online Tri 1 of High Court of Tripura at Agartala to submit that as the resignation is accepted, the petitioner cannot withdraw the same.

4.4. Learned advocate Mr.Khare also referred to and relied upon the following averments made in the affidavit-in-reply filed on behalf of the respondent in addition to the reliance placed on the aforesaid decisions:

"7. I respectfully say and submit that after considering, the voluntary resignation and the reasons mentioned therein, the respondent — Director accepted the voluntary resignation of the petitioner and vide order dated 10-01-2013 ordered to relieve the petitioner on completion of the prescribed period of 3 months. Thereafter, by the office order dated 19-02-1993, the same was communicated to the petitioner through peon, but, after going through the contents of the acceptance letter, the petitioner refused to accept the acceptance letter on 19-02-2013 itself. I say that the concerned peon had made his endorsement stating that the petitioner had refused to accept the acceptance letter. Again, on 20-02-2013, the respondent sent the acceptance letter through peon to the petitioner, but, again, the petitioner refused to accept the same. The concerned peon had made his endorsement stating that the petitioner had refused to accept the letter dated 19-02-2013.

8. I say that at the be-hest of the petitioner, on 21-02-2013, the Bastar University, Jagdalpur sent an e-mail to the respondent Center, asking the respondent to issue no objection for sparing the services of the petitioner for deputation. On the basis of the said e-mail of the Bastar University, Jagdaipur, the petitioner sent e-mail showing his willingness to join Bastar University, Jagdalpur on deputation and to leave the service of the respondent Institution. Simultaneously, after 2 months and 7 days after tendering the resignation and after knowing that his resignation has already been accepted on 10-01-2013 and communicated on 19-02-2013. And further, after getting the order of deputation from Bustar University, Jagdalpur, the petitioner sent a letter seeking permission to withdraw his old resignation dated 14-12-2012.

9. Since, the petitioner had got the order of deputation from Bastar University, Jagdalpur, after 2 months and 7 days, the petitioner sent letter dated 21-02-2013 to the respondent to withdraw his resignation which was tendered

on 14-12-2012, inter alia stating false and concocted ground that "I have overcome with my personal problems what I had mentioned in my resignation letter". Therefore, herewith I am withdrawing my resignation letter with immediate effect. The respondent immediately, vide letter dated 22-02-2013, informed the petitioner that your resignation was accepted on 10-01-2013, and was communicated on 19-02-2013, 20-02-2013 and 22-02-2013 and therefore, your request to withdraw your resignation can not be accepted. The envelope annexed with the petition at Page 20 is misleading. I respectfully submit that the petitioner has not come before this Hon'ble Court with clean hands. The petitioner has suppressed the material facts from this Hon'ble Court to derive favourable order in his favour.

10. With reference to contents of paras 3.1 to 3.3 of the petition, I deny the correctness of the averments made therein. The facts stated in these paragraphs are not admitted."

5. Having heard the learned advocates for the respective parties and having gone through the material on record, it is not in dispute that the petitioner tendered the resignation on 14th December, 2012. Clause 2.12.2 of the by-laws of the respondent deals with the resignation of the employee and reads as under :

"2.12.2 Resignation

"A permanent employee of the Centre may tender his/her resignation to the Centre, subject to acceptance by the Centre, by giving not less than three month notice in writing. For an employee during the period of probation or for a temporary employee, the period of notice shall be one month.

The appointing authority, or the authority to whom the power has been delegated, may accept a shorter period of notice from a member of the staff — in special circumstances. The resignation shall not become effective unless it is accepted by the competent authority and the employee concerned is relieved of this post in the INFLIBNET Centre.

Earned leave on full pay may be counted towards the period of notice required, and for any part not so utilized, pay and allowances may be paid . at the discretion of the Director as per Government of India Rules."

6. On plain reading of the aforesaid by-laws, it is clear that the resignation tendered by the petitioner became effective once it is accepted by the competent authority and the employee concerned is relieved from the post with effect from 14th March, 2013. The petitioner has tendered the resignation by referring to the aforesaid by-law. The resignation tendered by the petitioner reads as under :

"Sub: Tendering Resignation from the Service — Regd.

It is indeed a painful decision for me to tender the resignation from the service after serving the INFLIBNET Centre for a long period of almost 16 years and since throughout this period I am away from the parents and relatives. As such

my family misses them now during various family occasions due to staying far away from them. My children are feeling lonely and they are needed my and my parents supports. Therefore, it has become difficult for me to continue the service at Centre. Herewith I am tendering my resignation from the service. You are requested to relieve me as per the rules counting the day from today.

The INFLIBNET Centre being the first institution for me to start the journey wot amy service, I have learn a lot from this institution and whatever I am today is because of this institution. The every moment spent in the Centre was a lesson for my life. I am sure, the knowledge and experience acquired from this institute will cherish me through out my life in my future endeavor. I thank INFLIBNET Centre from the bottom of my heart for making me the person what I am today. I was really a luckiest person to get opportunity to serve the INFLIBNET Centre as my first job, where I am also proud of the various Unique achievements I have acquired while working in this centre during the period. I am also grateful for having been associated with you during this period. I may please be relieved me accordingly.

Thanking you

Rajesh Chandrakar

Scientist B (LS)”

7. Thus on perusal of the above resignation letter, the petitioner was to be relieved from 14th March, 2013 on completion of three months as per clause 2.12.2 of the by-laws. The resignation of the petitioner was accepted on 10th January, 2013 by the Director of the respondent below the show-cause notice dated 8th January, 2013 prepared by the Admin Officer (PA&F). It transpires from the said show-cause notice that the petitioner was earlier issued show-cause notice on 29th November, 2012 for his various acts of omission, commissions, indiscipline, misconduct and disobedience and he was also provided information as sought by him. The petitioner again by letter dated 13.12.2012 asked for some clarification and documents to give reply to the show-cause notice which were also provided to the petitioner on 24.12.2012.

8. The petitioner submitted the reply on 21.12.2012 for his various acts of omission, commissions, indiscipline, misconduct and disobedience and in the meanwhile, he also submitted his resignation from service vide letter dated 14.12.2012. Therefore, it was suggested in the draft show cause notice to accept the resignation and in view of such opinion, the Director accepted the resignation in the light of the facts mentioned in the draft letter dated January 8, 2013 which is produced on record at Annexure-E along with the affidavit-in-reply.

9. Accordingly, office order dated February 19, 2013 was issued by the respondent which was refused by the petitioner and therefore, the same was sent through Registered Post Acknowledgment Due. It appears that in the meanwhile, the petitioner received an offer from Bastar University as Assistant

Librarian and therefore, he changed his mind and on 21.02.2013 withdrew his resignation. Thus, it is apparent that the petitioner withdrew the resignation after the acceptance of the resignation and therefore, withdrawal of the the resignation of the petitioner is rightly rejected by the respondent.

10. In the case of Rupal E. Bhagat (Supra) in similar facts, this Court by interpreting the provisions of Section 40(C) of the Bombay Primary Education Act, 1947 read with Rule 42 of the Bombay Primary Education Rules, 1949 are interpreted by this Court, held that as per Rule 42, three months' notice was mandatory and resignation will not be effective otherwise than of expiry of three months from the service of such notice.

11. This Court in the case of Rupal E. Bhagat (Supra) has also dealt with similar situation arising in the facts of the present case as to whether the resignation would be effective otherwise than on the expiry of the three months from the service of notice or not even if it is accepted by the employer. In this regard this Court has analysed the various judgment of the Apex Court and held as under :

"19. Having regard to the rule referred to above, the resignation will not be effective otherwise than on the expiry of three months from the service of such notice. There are two ways to look at the matter. One is that the resignation of an employee from the service, being a voluntary act on the part of an employee, he or she is entitled to choose the date with effect from which his/her resignation would be effective and give a notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation. On this interpretation, the letter dated 3rd March, 2003 sent by the writ applicant fully complied with the rule. The writ applicant made herself clear that she wished to resign with effect from 3rd June, 2003 and so the resignation would have become effective only on that date. The other interpretation is that when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation, the respondent's resignation would have taken effect on or about 3rd June, 2003 even if the employee had mentioned a later date. In either view of the matter, the writ applicant's resignation did not become effective till 2nd June, 2003. It would have normally automatically taken effect on 3rd June, 2003. I have not been shown any rule which permits the employer to accept the resignation before the expiry of the period, i.e., three months' notice period. The fact that the management accepted the resignation before the expiry of the three months' notice period, by itself, is not sufficient to say that the writ applicant, thereafter, had no right to withdraw her resignation, i.e. before the expiry of the 90 days period.

20. Let me look into the case law on the subject. In *Jai Ram Vs. Union of India & ors.*, AIR 1954 SC 584, the Apex Court considered the case of self-seeking retirement of an employee under the Fundamental Rules and held as under:-

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so as long as he continues in service and not after he has been terminated"

21. In *Raj Kumar Vs. Union of India & ors.*, AIR 1969 SC 180, the Apex Court considered the case of resignation tendered by a member of the Indian Administrative Service on 21-8-64. His case for acceptance of resignation was recommended by the State Government and the Government of India accepted his resignation vide order dated 31-12-64 but asked the Chief Secretary to the Government of Rajasthan "to intimate the date on which the (employee) was relieved of his duties so that a formal notification could be issued in that behalf." The officer filed an application on 27-11-64 to withdraw his resignation. However, vide order dated 29-3-65, he was directed to be relieved. When he approached the High Court for quashing the order dated 29-3-65 and also the order dated 31-10-64, the High Court rejected his case holding that till the resignation was accepted by the Authority in consonance with the rules governing the acceptance, the public servant concerned had locus poenitentiae but not thereafter. The resignation became effective on the date of its acceptance by the Government of India and a subsequent withdrawal of the resignation was ineffective even if acceptance of the resignation was not intimated to him. The Court held as under:-

"The letters written by the appellant on 21-8-64 and 30- 8-64 did not indicate that the resignation was not to become effective until acceptance thereof was intimated to the appellant. The appellant informed the Authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority."

22. The Apex Court further held that there may be some executive instructions dealing with the subject, having no statutory force, but the same cannot come to the rescue of either side in such a case; however, not passing any order on the application for resignation for a long period, may justify an inference that the resignation has not been accepted.

23. The Constitution Bench of the Hon'ble Supreme Court, in *Union of India Vs. Gopal Chandra Misra & ors.*, AIR 1978 SC 694, dealt with the case of resignation by a Sitting Judge of Allahabad High Court to become effective from a future date. The majority view reads as under:-

"It will be repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resign or..... If he chooses to resign from a future date, the act of resigning office is not complete

because it does not terminate his tenure before such date and the Judge can, at any time before arrival of prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

24. In *P. Kasilingam Vs. P.S.G. College of Technology*, AIR 1981 SC 789, the Apex Court approved the law laid down in the cases of *Raj Kumar & Gopal Chandra Misra* (supra), but did not decide as to whether the resignation tendered and accepted immediately thereafter on 19-3-1976, could be withdrawn on a subsequent date as the employee- a teacher was directed to be relieved with a future date considering the interest of the students and the dominant issue remained as to whether the resignation, in the facts and circumstances of the case, had been tendered voluntarily in view thereof, the matter was remanded to the Government to decide afresh on certain points.

25. In *Central Inland Water Transport Corporation Ltd. Vs. Brojonath Ganguli*, AIR 1986 SC 1571, the Hon'ble Supreme Court observed that if an employee is not permitted by terms of his contract of employment to determine the relationship of master and servant, such an employment may tantamount to practicing bounded labour. The Court held as under:-

"By entering upon a contract of employment, a person does not sign a bond of salary and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective."

26. The Court further held that in certain circumstances, the employer may be justified in not accepting the resignation if the employee wants to leave in middle of the work which is of an urgent nature or very important and for the completion of which his participation is necessary. Resignation may also not be accepted if an employee wants to escape the consequences of an adverse finding against him in a domestic enquiry.

27. In *Balram Gupta Vs. Union of India & Anr.*, AIR 1987 SC 2354, the Hon'ble Apex Court considered the case where rules required that the withdrawal of resignation may be subject to the approval of the Authority. The Court also considered the guidelines, on the basis of which the Competent Authority could consider the application for withdrawal which, inter alia, contained a condition that there must be a material change in the circumstances, in consideration of which a notice was originally given. The Court held that in ordinary circumstances, there should be no embargo on the employee's choice or freedom not to continue in employment. "If, however, the administration had made arrangement acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter, but the employee's offer to retire or withdraw" should not be in quick succession. The withdrawal should not adversely affect the administrative set-up or its arrangement. The Court further observed as under:-

"In the modern and uncertain age it is very difficult to arrange one's future with

any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardise the Government or Administration, administration should be graceful enough to respond and acknowledge flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement."

28. However, that was a case wherein the resignation was tendered to be effective with a future date as the letter under Section 48-A of the Central Civil Services (Pension) Rules, 1972 was given with a three months' notice on 1-1-81 to be effective on 31-3-81.

29. In Punjab National Bank Vs. P.K. Mittal, AIR 1989 SC 1083, the Supreme Court again examined the case wherein the employee tendered his resignation on 21-1-86 to be effective on 30-6-86. The resignation was accepted on 7-2-86 pointing out that it had been accepted by the Authority with immediate effect. The Apex Court held that the Authority had no competence to advance the date of its effectiveness and resignation, if accepted, could have become effective only on 30-6-86 and as the resignation was to be effective with future date, the employee had a right to withdraw the same prior to 30-6-86. The Court further observed that there has to be specific provisions to regulate the process of acceptance of resignation and its withdrawal. However, if there are certain Statutory Rules then the same have to be observed, but once an employee has chosen a future date on which resignation would be effective, he cannot be forced to resign before such a date.

30. In M/s. J.K Cotton Spg. & Wvg. Mills Company Ltd., Kanpur Vs. State of U.P. & ors., AIR 1990 SC 1808, the Hon'ble Supreme Court considered the meaning of "resign" and "retire" as under:-

Name of the Meaning of 'Resign' Meaning of 'Retire'

Black's Law Formal renouncement or To terminate employDictionary
relinquishment of an ment or service upon (5th Edn.) office. reaching retirement
age. Shorter Oxford To relinquish, surrender The act of retiring English give up or
hand over or withdrawing to Dictionary (something); esp., an or from a place
or(Revised Edn. office, position, right, position. Of 1973) claim, etc. To give up
an office or position.The Random To give up an office, To withdraw from House
position etc.; to office, business or Dictionary relinquish (right, active life.
(College Edn.) claim, agreementetc.)

31. In Moti Ram Vs. Param Dev & Anr., AIR 1993 SC 1162, the Hon'ble Supreme Court examined the case of resignation in relation to the election petition as to whether on a particular date, the candidate was holding the office or not as he happened to be the Chairman of Himachal Pradesh Khadi & Village Industries Board. Karam Singh had resigned w.e.f. 31-1-90 with immediate effect and filed his nomination thereafter. The last date of scrutiny was 5-2-90 and on that date

his nomination was accepted. The Court pointed out that the resignation may be with immediate effect or may be prospective, i.e. to be operative from a future date and as resignation means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. In a general juristic sense, in order to constitute a complete and operative resignation, there must be intention to give up or relinquishing the office or the concomitant act of its relinquishment. The Court further observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character depending upon the nature of office and the conditions governing it. In cases where the act of relinquishment is of bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g. acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. In that case, the relinquishment was of a unilateral character requiring no acceptance, i.e. stood accepted as soon as it was tendered. On this basis, his nomination was held to be valid.

32. In *Power Finance Corporation Ltd. Vs. Parmod Kumar Bhatia*, (1997) 4 SCC 280, the Supreme Court examined the case of a conditional resignation. The employee tendered the resignation under a Scheme on 20-12-94 to come into effect on 31-12-94 with demand of outstanding dues and to hand over the relieving certificate. The submission made before the Court was that as the voluntary retirement of the employee was a conditional one and he himself understood that unless he was relieved of the duties after payment of the outstanding dues, the voluntary retirement would not be effective. The Court held that as the employee rightly understood that unless he was relieved of the duty of the post after payment of the outstanding dues, the order accepting his voluntary retirement did not become effective. However, the Court observed as under:-

"It is now settled legal position that unless employee is relieved of the duty, jurat relationship of the employee and employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the condition ought to have been complied with. Before the condition could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective, therefore, no vested right has been created in favour of respondent."

33. In *Nandkeshwar Prasad Vs. Indian Farmers Fertilizers Co-operative Ltd. & ors.*, (1998) 5 SCC 461, the Apex Court held that unless the issue of resignation is controlled by the Conditions of Service or the Statutory Provisions, the retirement or 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 and

the employee concerned has a right to withdraw the letter of resignation before the same becomes effective.

34. In *J.N. Srivastava Vs. Union of India & Anr.*, AIR 1999 SC 1571, the Apex Court again considered the case of prospective resignation tendered on 31-10-89 to come into effect on 31-1-90 and withdrawn on 2-11-89. The Court held that as it was a prospective resignation, it could be withdrawn prior to the date of its being effective. Similar view was reiterated by the Supreme Court in *Shambhu Murari Sinha Vs. Project & Development India Ltd. & Anr.*, AIR 2002 SC 1341; and *Bank of India & ors. Vs. O.P.Swanakar*, 2003 AIR SCW 313.

35. In *Union of India Vs. Wg. Comm. T. Parthasarathy*, (2001) 1 SCC 158, the Apex Court considered the case of a prospective resignation submitted on 31-7-85 to become effective on 31-8-86 and withdrawn on 19-2-86 but the withdrawal application was rejected on the ground that under the existing policy, there was no scope of withdrawal. The Court reiterated the law that a prospective resignation becomes effective from the date given by the employee and it can be withdrawn prior to the date of its commencement into effect. The Court further held that the right to withdraw cannot be curtailed by any Executive Instructions or Policy Decision and unless there are statutory rules prohibiting such withdrawal, the right of an employee to withdraw is not acceptable. However, the Court distinguished the case from *Raj Kumar* (supra) and held that the facts in that case were quite distinguishable and observed as under:-

"The reliance placed for the appellant on the decision reported in *Raj Kumar* is inappropriate to the facts of this case. In that case this Court merely emphasized the position that when a public servant has invited, by his letter of resignation the termination of his employment, his services clearly stand terminated from the date on which the letter of resignation is accepted by the Appropriate Authority and in absence of any law or Rules governing the conditions of 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."

36. The Court further held that right of an employee to continue in service till he reaches the age of superannuation, i.e. even withdrawal of resignation of a prospective nature, cannot be curtailed by circulars/ policy decision etc. having no Statutory force.

37. In *K.L.E.Society Vs. Dr. R.R.Patil & Anr.* (2002) 5 SCC 278, the Hon'ble Supreme Court examined a case where the notice for voluntary retirement submitted by the employee to retire him at the earliest, but the employer instead of passing any order on his application vested him with the additional duties and the employee accepted the same without any protest. The Court held that the retirement could have become effective immediately after the expiry of the notice period provided under the Statute, but as the employer continued working with additional duties even after the expiry of the said period, the conduct of the employee and employer made the application for voluntary retirement

infructuous and inoperative.

38. In *P. Lal Vs. Union of India & ors.*, 2003 AIR SCW 849, the Apex Court held that the retirement becomes effective, when notice for it by the employee stands accepted by the employer, if it is not to become effective with a future date, even if it has not been communicated to the employee. Thus the Court rejected the contention that even in such a case order of acceptance shall not become effective unless it is communicated to the employee as happens in other cases where the termination order is passed after initiating disciplinary proceedings or employee being convicted by the competent criminal court.

39. In *Vruddhula Kalyana Rama Rao vs. National Bank for Agriculture & Rural Development*, Bombay, 1994 (4) SLR 166, a learned Single Judge of the High Court of Andhra Pradesh, held as under;

"9. Coming to the next point with regard to the date of effectiveness of the resignation, Mr. D. V. Seetharama Murthy, the learned Counsel for the petitioner relies upon the judgments rendered by the Supreme Court in *Union of India v. Gopal Chandra*, , *Balram Gupta v. Union of India*, AIR 1977 SC 2354, *D. Sundera Rao v. Visakhapatnam Port Trust*, 1973 (2) APLJ 382, *K. L. MHAJ Sekhar v. Osmania University*, 1989 (1) ALT 365. Mr. K. Srinivasa Murthy has placed reliance on the judgments rendered by the Supreme Court in *Raj Kumar v. Union of India*, and *Raj Narain v. Indira Gandhi*, . The judgment in *Gopal Chandra's* case (supra) is that of Constitutional Bench and ruled that a prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment, office or tenure of the resignor. It was further held that in the case of a Government servant, the resignation is not an unilateral act, but it is a bilateral act and until resignation is accepted, the same does not become effective and that before becoming effective, the said resignation can be withdrawn.

The distinction stated regarding the constitutional functionary is not relevant for this case. Following the said judgment, it was held in *Balram Gupta's* case (supra) that a notice of 3 months of voluntary retirement given by the employee could be withdrawn within the time prior to the expiry of the notice period. The Supreme Court emphatically held that the order allowing to retire prospectively on expiry of notice period without allowing the withdrawal of the notice is bad and illegal. A Division Bench of this Court in *Sundera Rao's* case (supra) took the same view that till the expiry of the period mentioned in the notice of resignation, the relationship of master and servant continues and that the employee continues in service and that the employee has a right to withdraw his offer of resignation before it becomes irrevocable and it would be irrevocable only on the expiry of three months and the acceptance become binding on the parties and that the resignation cannot be accepted before the expiry of the term specified in the notice. A learned single Judge of this Court has followed the view in *K. L. MHAJ Sekhar v. Osmania University*, 1989(1) ALT 365 and held that before the period mentioned in the notice the resignation cannot be accepted and

cannot be given effect to. The said judgment is based on the judgment of the Supreme Court in Balram Gupta v. Union of India, AIR 1977 SC 2354.

10. In view of the authoritative pronouncement in Balram Gupta's case (supra) following the earlier Supreme Court Judgment in Gopal Chandra's case (supra), I cannot countenance the argument of Mr. K. Srinivasa Murthy. That apart, the decisions rendered in Raj Kumar's case (supra) and Raj Naraian's case (supra) are based on their own facts which are not similar to the one on hand. The judgment rendered in Balram Gupta's case (supra) which is in consonance with the earlier Constitutional Bench judgment of the Supreme Court in Gopal Chandra's case (supra) and followed by this Court, applies to this case on all fours. In the circumstances, I hold that before 31st July, 1987, there was no power or authority for the respondents to accept the resignation of the petitioner and his letter dated 11-6-1989 withdrawing his resignation letter dated 29-4-1987 was valid in law and as such the resignation letter dated 29-4-1987 has become inoperative and consequently the act of the respondents in depriving the petitioner of his continuance in duties is illegal, arbitrary and without jurisdiction."

40. In V Vishnu Vardhan Reddy S/o. V Venkat Reddy vs. Andhra Bank (A Govt of India Undertaking) Personnal Department, 2008(3) ALT 428, a learned Single Judge of the High Court of Andhra Pradesh, N.V. Ramana, J. (as his lordship then was), relying on Punjab National Bank (supra) and Balram Gupta (supra), held as under;

"There is no doubt that the Deputy General Manager (Per) vide his letter dated 21.04.2004 informed the petitioner that his application dated 12.04.2004 for voluntary retirement under the Pension Regulations has been accepted and that he will be relieved from the Bank's service on 11.07.2004, but the fact remains, in such acceptance, the respondents did not sever the relationship of employee and employer between the petitioner and the respondents immediately on acceptance, for the petitioner was informed that he would be relieved from service on 11.07.2004. The fact whether the date of acceptance or the date on which the employee is to be relieved is crucial for determining the eligibility of the employee to withdraw his resignation/voluntary retirement, was considered by the apex Court in Balram Gupta v. Union of India. The apex Court, in the said case, while rejecting the contention of the government that once notice of resignation is issued and accepted, it would amount to dissolution of contract between the employee and the employer immediately, held that the dissolution of contract would be brought about only on the date indicated, that is the date of relieving, and up to that date the employee was a government employee, and as such, he has locus poenitentiae to withdraw his application for voluntary retirement. The apex Court in Punjab National Bank v. P.K. Mittal, while finding fault with the decision taken by the Bank in accepting the resignation of the employee with immediate effect, held that resignation of the employee would become effective only on the expiry of the three months notice from the date

thereof or from the date on which he wished to resign, and as such, it was open to the employee to withdraw his letter of resignation before the expiry of the notice period. In holding so, it referred to its earlier judgments in *Raj Kumar v. Union of India*, *Union of India v. Gopal Chandra Misra and Balram Gupta*. The apex Court in *J.N. Srivastava v. Union of India*, following the judgment in *Balram Gupta*, held that the appellant before it cannot be said to have no locus standi to withdraw his proposal for voluntary retirement before 31.01.1990, on which date he was to be relieved from service. Again in *Shambhu Murari Sinha v. Project & Development India*, the apex Court following its judgments in *Balram Gupta*, *J.N. Srivastava* and *Power Finance Corporation Ltd. v. Pramod Kumar Bhatia*, held that resignation, in spite of its acceptance, can be withdrawn before the "effective date".

In *Srikantha S.M. v. Bharath Earth Movers Ltd.*, the apex Court while upholding the contention of the employee that even though the company accepted his resignation on 04.01.1993 and ordered that he would be relieved on that day, but having regard to the fact that by subsequent letter, granted casual leave from 05.01.1993 to 13.01.1993, and informed him that he would be relieved from service after office hours on 15.01.1993, held that in its opinion *vinculum juris* continued and the relationship of employer and employee did not come to an end on 04.01.1993, and that it continued up to 15.01.1993, and as such, the employee was entitled to withdraw his resignation. "

In view of the ratio laid down by the apex Court in the aforementioned judgments, it can safely be said that since the petitioner was to be relieved from service after expiry of the three months notice period on 11.07.2004, he shall be deemed to be continued to be employee of the respondents-Bank upto that date and as such, he had the locus poenitentiae to withdraw his application for voluntary retirement before the said date. Accordingly, question No. 1 is answered in favour of the petitioner and against the respondents."

12. This Court relying upon the decisions in cases of *Jai Ram versus Union of India* and others AIR 1954 SC 584, *Raj Kumar Versus Union of India and Others* AIR 1969 SC 180, *Union of India Versus Gopal Chandra Misra and Others* AIR 1978 SC 694 and other decisions, held that the acceptance of the resignation by the management before the expiry of ninety days was not valid acceptance and the applicant could not be said to have been relieved from the service putting an end to the relationship of the employer and the employee and before such relationship said to have come to an end legally, the resignation was withdrawn and in such circumstances, this Court allowed the Writ Petition.

13. However, in the facts of this case, the petitioner tendered the resignation on 14.12.2012 which was to come into effect from 14th March, 2013. On perusal of clause 2.12.2, it is clear that the resignation shall not be effective unless it is accepted by the competent authority and the employee concerned is relieved of his post. Thus, once a resignation is accepted within period of three months, only effect of such acceptance would be that the concerned employee would be

relieved on completion of three months.

Therefore, in view of the decision of the Apex Court in the case of Modern School (Supra), the respondent has rightly rejected the withdrawal of the resignation by the petitioner.

14. In case of Modern School (Supra), the Apex Court held that as the resignation was validly accepted and only because the employee was to be relieved with effect from a future date, the same would not mean that even thereafter it was open for the employee to withdraw his resignation. The facts of the present case are different than that of the case of Rupal E. Bhagat (Supra) wherein, the service of the employee was terminated on acceptance of the resignation before the period of notice of three months as per the Rules. The Apex Court in the facts similar to the facts in case of Modern School (Supra) held as under :

"14. It is neither in legalities apart, the doubt nor in dispute that Managing Committee of the appellant-School accepted the resignation submitted by the First Respondent on 19.03.1997. Acceptance of the said resignation was, however, subject to the approval of the Director of Education. It is not in dispute that the Director of Education did not communicate his decision in regard to approval or refusal thereof within a period of 30 days from the date of receipt of the said letter and in that view of the matter, subject of course to the withdrawal of the resignation by the concerned employee, the approval would be deemed to have been accorded.

15. Two principal questions, therefore, arise for our consideration herein namely, (i) whether the First Respondent has legally withdrawn his letter of resignation; and (ii) whether the First Respondent could withdraw his resignation prior to 16.06.1997.

16. Resignation submitted by the First Respondent could be withdrawn by him before its acceptance. Such acceptance of resignation was to be made within a period of one month. Within the said period itself, the Director of Education should have accorded or refused to accord his approval. We have noticed hereinbefore, the findings of the learned Single Judge of the High Court holding categorically that the purported letter dated 18.03.1997 was never received by the authorities of the school. The said finding of fact has not been interfered with by the Division Bench of the High Court.

17. Once the resignation of the First Respondent had validly been accepted, the question which would arise for consideration is as to whether the same could be done before 17.06.1997. It is not a case where acceptance of the resignation was made effective from a future date. Resignation of the First Respondent having been accepted, only he was to be relieved from 17.06.1997. We have noticed hereinbefore the purport of Section 114A of the Act, in terms whereof resignation was to be accepted within a period of 30 days. In view of the aforementioned statutory provision, in our opinion, only because the First

Respondent was to be relieved with effect from 17.06.1997 the same would not mean that even thereafter it was open to the First Respondent to withdraw his resignation. In fact, if the aforementioned letter dated 18.03.1997 is excluded from consideration, he had not withdrawn his resignation at all. We may at this juncture notice the telegram sent by the First Respondent, which is as under :

"DEPARTMENT OF TELECOMMUNICATIONS INDIA

TELEGRAM

X 1850 N-120 NEW DELHI RAJOURI GARDEN 14/5 30/36 PRINCIPAL MODERN SCHOOL VASANT VIHAR NEW DELHI MY RESIGNATION OF SEVENTEENTH MARCH 1997 WAS DULY WITHDRAWN THE NEXT DAY YOUR ACCEPTANCE IS NOT ACCEPTED BECAUSE IT IS INFRUCTUOUS - S.P.SHARMA."

18. In terms of the said telegram the First Respondent did not withdraw his resignation. He merely purported to have communicated that the same stood withdrawn on the next day of his submission of resignation, namely, 18.03.1997. If the contention of the First Respondent that he had withdrawn his resignation on 18.03.1997 is found to be correct, as has been held by the learned Single Judge of the High Court, in our opinion, receipt of the said letter by itself would not amount to withdrawal of his resignation before it is accepted. There is no doubt whatsoever that the Director of Education acted in terms of the representation made by the First Respondent that he had withdrawn his resignation. If the same was factually incorrect, the said authority was obligated in law to communicate his decision to the school authority within a period of 30 days from the date of communication of the letter of the First Respondent.

19. The decision of this Court in Srikantha S.M. (supra), in view of the factual situation obtaining in the instant case, cannot be said to have any application whatsoever. In that case even after the purported acceptance of the resignation of the appellant, he had been granted casual leave from 05.01.1993 to 13.01.1993 and was informed that he would be relieved after office hours on 15.01.1993. In the aforementioned fact situation obtaining therein, this Court opined :

"26. On the basis of the above decisions, in our opinion, the learned Counsel for the appellant is right in contending that though the respondent-Company had accepted the resignation of the appellant on 4.1.1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5.1.1993 to 13.1.1993. Moreover, he was informed that he would be relieved after office hours on 15.1.1993. The *vinculum juris*, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4.1.1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company upto 15.1.1993.

27. In affidavit in reply filed by the Company, it was stated that resignation of

the appellant was accepted immediately and he was to be relieved on 4.1.1993. It was because of the request of the appellant that he was continued upto 15.1.1993. In the affidavit in rejoinder, the appellant had stated that he reported for duty on 15.1.1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs. 13,511/- was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that upto 15.1.1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8.1.1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside."

20. As we have noticed hereinbefore, the terms and conditions of service are governed by the statute and the statutory rules. As acceptance of the resignation of the First Respondent was communicated to him within a period of 30 days, the same would take its effect in terms thereof."

15. Therefore, in view of the decision of the Apex Court in case of Modern School (Supra), the decision relied upon by the petitioner in the case of Rupal E. Bhagat (Supra) may not be applicable in the facts of the present case as the respondent has rightly rejected the withdrawal of the resignation by the petitioner in view of the acceptance of resignation on 10th January, 2013 which would be effective from 14th March, 2013 and only because the petitioner was to be relieved from 14th March, 2013, the same would not mean that even after the acceptance of the resignation, it was open to the petitioner to withdraw his resignation.

16. In view of the foregoing reasons, the petition fails and is accordingly rejected. Rule is discharged.