
(2022) 09 BOM CK 0146
In the Bombay High Court
Case No : Writ Petition No. 5521 Of 2021

Sachin Ganeshrao Maske

APPELLANT

Vs

Member Secretary And Others

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Citation : (2022) 09 BOM CK 0146

Hon'ble Judges : A. S. Chandurkar, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : G.S. Kidambi, D.V. Mahajan

Final Decision : Partly Allowed

Judgement

Urmila Joshi-Phalke, J

1. Heard learned counsel for the parties.
2. RULE. Rule made returnable forthwith.
3. By this writ petition, the petitioner has challenged the order of respondent No.2-Chief Administrative Officer, Maharashtra Jeevan Pradhikaran dated 29/01/2021 by which the notice of resignation was illegally accepted and also directed recovery of Rs.1,31,040/- from the petitioner towards training expenses.
4. The petitioner was serving as an Assistant Executive Engineer in the Maharashtra Jeevan Pradhikaran since 28/02/2017. After joining service he was appointed initially for two years on probation period. During his probation period the petitioner had completed training. On 01/06/2018 due to his personal reason he had submitted an application for resignation. It is the contention of the petitioner that the respondent Nos.2 to 5 had not taken any decision on the resignation application but demanded Rs.1,31,040/- which were incurred against his training. The resignation tendered by him was neither accepted nor rejected by the respondents, on the contrary he was treated to be continued in service by sanctioning his absence as unauthorised absence. The respondents time to time

shown their inability to accept resignation unless the petitioner deposits amount of Rs.1,31,040/- which was incurred towards the training vide various communications. On 21/01/2020, the petitioner had submitted an application for withdrawal of resignation. Subsequently, also on 27/08/2020 and 04/09/2020 he had requested to join him as his resignation was not accepted. On 23/12/2020, respondent No.3-Chief Engineer, Maharashtra Jeevan Pradhikaran, Nagpur Division, Nagpur sought guidance from respondent No.2-Chief Administrative Officer, Maharashtra Jeevan Pradhikaran, Belapur, Navi Mumbai regarding how the petitioner's request of joining could be accepted. On 29/01/2021, respondent No.2 without considering the provisions of the Government Resolution dated 02/12/1997 passed an order accepting the resignation dated 01/06/2018 and directing the recovery of an amount of Rs.1,31,040/-.

5. The respondents opposed the said writ petition by filing their reply. As per the contention of the respondents it is an admitted fact that the petitioner had tendered resignation on 01/06/2018. It is further admitted that the said application for resignation was neither decided nor any communication was made to the petitioner regarding acceptance or refusal of the said resignation. It is the contention of the respondents that the Government Resolution dated 02/12/1997 on which the petitioner has relied upon, the resignation application stands sanctioned after one month from the date of resignation, therefore, the writ petition deserves to be dismissed.

6. Heard Shri G.S. Kidambi, learned Counsel for the petitioner. He submitted that the petitioner was serving as an Assistant Executive Engineer in Maharashtra Jeevan Pradhikaran as he was appointed vide appointment order dated 28/02/2017. After his appointment initially for a period of two years on probation he undergone training successfully. The petitioner had tendered an application for resignation due to his personal reason on 01/06/2018. The respondents ought to have decided the said application seeking permission to resign within one month. The petitioner as per the terms and conditions had deposited one month's salary along with his resignation application. But the respondents neither accepted nor rejected his resignation. On the other hand they issued various communications to him showing inability to accept the resignation unless the petitioner deposited Rs.1,31,040/-. As the respondents had not accepted his resignation, he again approached to the respondents on 21/01/2020 and 04/09/2020 requested to join him and withdrawal of his resignation. The respondents on 29/01/2021 communicated to the petitioner that his notice of resignation was accepted and also directed to recover an amount of Rs.1,31,040/-. In support of his contention he relied upon the Government Resolution dated 02/12/1997 which states that the Competent authority shall consider if any employee submits an application for withdrawing the resignation. He further submitted that his resignation was neither accepted nor rejected prior to his application dated 21/01/2020 which was filed for withdrawal of resignation. On the contrary, his absence from the service was considered as unauthorised absence and he was continued in service. The petitioner submitted that before

withdrawal of the resignation, his resignation was not accepted and, therefore, the impugned communication is illegal and liable to be set aside.

7. In support of his contention learned Counsel for the petitioner relied upon *Madhusudan Govindrao Trivedi Vs. UCO Bank Calcutta & ors.* 2010 (3) AIR Bom. R 41 wherein it is held that actual voluntary retirement takes effect only upon acceptance of application by Competent Authority and not mere exercise of such option. Therefore, option which is exercised for voluntary retirement can be withdrawn before its acceptance. He further placed reliance on *Smt. Ligia G. Godinho Vs. The Speaker, Legislative Assembly (Goa) and ors.* 1997 LAB.I.C. 753 wherein it is held that the resignation is only an offer to put an end to relationship between the employer and the employee and before such an offer is accepted by the employer, the employee is entitled to withdraw it, unless, otherwise, prescribed by rules relating to concerned service. He further placed his reliance on *Punjab National Bank Vs. P.K. Mittal* AIR 1989 SC 1083 wherein it is held that the resignation would become effective on expiry of three months from date of resignation or from future date as desired by employee. Acceptance of resignation by bank from earlier date illegal.

8. On the other hand, Shri D.V. Mahajan, learned Counsel for respondent Nos.1 to 4 submitted that as per Clause 2(4) of the Government Resolution dated 02/12/1997 if the concerned authority has not communicated anything about the acceptance or rejection of resignation then it is deemed to be accepted. As nothing was communicated, resignation was deemed to be accepted. It stands sanctioned after one month after the date of resignation, therefore, the present writ petition deserves to be dismissed. He further submitted that as the petitioner had submitted his application for withdrawal of resignation after more than two years the resignation is as deemed accepted. The petitioner is not entitled for any relief hence the writ petition deserves to be dismissed.

9. Heard both the sides and perused the record.

10. It is not disputed that the petitioner was appointed as an Assistant Executive Engineer on the establishment of respondent Nos.3 to 5. It is also not disputed that initially he was appointed on probation and the petitioner had undergone training during the probation period. The appointment of the petitioner was on various terms and conditions. As per the terms and conditions of the appointment order Clause (8) states that if any employee is willing to resign from the post he should give one month's notice in advance and pay of one month and as per Clause (9) an employee who is appointed on a probation and if he resigns from the post during his probation period then he is liable to pay the expenses which are incurred against his training. It is evident from the record that after the petitioner had submitted an application for resignation on 01/06/2018, respondent Nos.3 to 5 issued several communications demanding the amount of Rs.1,31,040/- which was incurred against his training. It is further evident from the said communication that respondent Nos.3 to 5 had shown their inability to accept his resignation unless and until he deposits said amount. As the

resignation was neither accepted nor rejected, the petitioner again approached the respondents on 21/01/2020, 27/08/2020 and 04/09/2020 requesting to join him on the same post. After his application for withdrawal of the resignation nothing was communicated to him. On the other hand he was directed to deposit Rs.1,31,040/-. Subsequently, on 29/01/2021 by passing the order, his absence was treated as an 'unauthorised absence' and he was treated as continued in service. The learned Counsel for the petitioner as well as the learned Counsel for the respondents relied upon the Government Resolution dated 02/12/1997. Clause 2(A)(4) of the said Resolution shows that the competent authority should take action if any employee tenders his resignation, on priority and to communicate the decision within one month from the date of the said application. Said timeline is to be followed by the competent authority. Clause 2(A)(4) further states that if nothing was communicated to the employee regarding the acceptance or refusal of his resignation then after one month it is to be treated as deemed acceptance. Clause 2(A)(8) of the said Resolution further states that if any employee was absent from duty and submits a resignation then his absence from the duty be treated as unauthorised absence till the date of acceptance of his resignation. Clause 2(D)(1) of the said Resolution deals with the resignation and effective date of the said resignation. Clause 2(D)(2) states that before acceptance of the said resignation if any employee makes request regarding withdrawal of the said resignation, the Competent authority should consider the same by assigning reason.

11. In the present case, admittedly nothing was communicated to the petitioner regarding the acceptance or rejection of his resignation. The communication dated 26/07/2018 shows that one show cause notice was issued to him calling explanation regarding his absence. He was continued in service by treating his absence as unauthorised absence. As per the said Government Resolution it is the duty of the Competent authority to decide the application for resignation within one month from the date of the said application. The responsibility is of the Competent authority to follow the said timeline. It is apparent in the present case that the said timeline was not followed by the respondents. Admittedly, Clause 2(A)(4) further states that if nothing is communicated then it is deemed to be accepted. It is submitted by the learned Counsel for the respondents that in view of Clause 2(A)(4) as there is no communication regarding acceptance or rejection then after one month it is deemed to be sanctioned. This submission could have been accepted if the service of the petitioner was not treated to be continued by treating his absence as unauthorised absence. As absence of the petitioner was considered as unauthorised absence by treating him as continued in service, therefore, the said submission of the learned Counsel for the respondent Nos.1 to 4 cannot sustain. On the contrary, in view of Clause 2(D)(2) if before any decision is taken regarding the acceptance or rejection of the resignation, concerned employee makes any request for withdrawing of the said resignation it is to be considered by assigning the reason. Admittedly, in the present case before acceptance of the said resignation, the petitioner had

submitted his application for withdrawal of the resignation, hence it was a duty of respondent Nos.3 to 5 to consider the same and by assigning reasons pass an order on the said application. As the respondents have not taken any decision either on his application for resignation or the application for withdrawal of the said resignation within the timeline. Subsequently, the notice of resignation was accepted after the petitioner had filed an application for withdrawal of the said resignation which is arbitrary and illegal.

12. The catena of decisions on which the petitioner had relied upon shows that if voluntary retirement application was withdrawn before actual voluntary retirement takes effect then it is to be accepted. The Hon'ble Apex Court in the above said judgments held that the application for withdrawal of resignation can be filed before acceptance of the said application for resignation. Even this Court has also held that the resignation is only an offer to put an end to relationship between the employer and the employee and before such an offer is accepted by the employer, the employee is entitled to withdraw it, unless, otherwise, prescribed by rules relating to concerned service.

13. In view of the above that the Resolution dated 02/12/1997 and the catena of decisions of Hon'ble Apex Court and this Court, the petition deserves to be allowed. Therefore, we proceed to pass the following order :

ORDER

(i) The writ petition is partly allowed.

(ii) The Communication dated 29/01/2021 issued by respondent No.2-Chief Administrative Officer, Maharashtra Jeevan Pradhikaran by which the notice of resignation was illegally accepted, is quashed and set aside.

(iii) The respondent Nos.2 to 5 are directed to reinstate the petitioner on the post of Assistant Engineer with continuity in service without backwages from 01/06/2018 till reinstatement.

14. Rule is made absolute in the aforesaid terms. There will be no order as to costs.