
(2007) 06 GAU CK 0029
In the Gauhati High Court

Sadhan Datta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Citation : (2010) 6 GLR 823 : (2007) 4 GLT 273 : (2007) 4 GLT 272

Hon'ble Judges : R.B. Misra, J; Mutum B.K. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. K.N. Bhattacharjee, learned Senior Counsel along with Mr. S. Acherjee, learned Advocate. Heard Mr. A. Ghosh, learned Counsel for the Respondents.

2. The present Writ Appeal have been preferred against the Order dated 01.07.2005 passed in Writ petition 115 of 2001 (Dr. Sadhan Datta, Appellants v. The State of Tripura, Respondents) where by the letter of resignation of appellant writ petitioner dated 31.05.1991 addressed to the Secretary to the Government of Tripura, Department of Health & Family Welfare was treated as resignation and not the conditional resignation as the same was accepted by the Governor by an order dated 13.09.1991 w.e.f. 1.09.1991, and after having been notified in the official Gazette, it was found to have been brought to the notice of all concerned including the writ petitioner and, therefore, no prejudice was said to have been caused to the writ petitioner and all his subsequent correspondences for leave and for acceptance of his voluntary retirement were treated as misplaced, and of no consequence and of no relevance as he ceased to be the member of the Tripura Health Service w.e.f. 1.9.1991.

3. In order to adjudicate the present appeal it is necessary to give brief factual background. The appellant/(Writ Petitioner) a Medical Officer in Grade-III of the Tripura Health Services (for short "THS") was subsequently promoted as Head of Department of Gynecology in the Indira Gandhi Memorial Hospital for short IGM

Hospital). He was, however, not happy with the working condition of the said hospital and has gone on long leave on several occasions. He submitted a conditional resignation on 15.5.91 with expectations that the State respondents would remove difficulties and create congenial workable condition in the hospital for performing his duties properly, however, on 30.5.1991, the State respondents asked him to submit proper resignation addressed to the Secretary of the Department as his earlier conditional resignation was addressed to the Superintendent of the hospital, who was not the competent authority. Accordingly 31.5.1991, the appellant submitted another resignation letter dated 31.5.1991 addressed to the Secretary of the Department in continuation to his earlier resignation letter dated 15.5.1991. According to him, when he received no response to his resignation letters, he sent a notice of demand dated 3.2.1992 stating that in the department, there were no equipments, infrastructure and other materials, which were essential for running the department. By a letter dated 24.2.1992, the Joint Secretary of concerned Department expected from him to submit unconditional resignation within one month, else the department might initiate a disciplinary proceeding for his unauthorized absence. On 29.4.1992, the writ petitioner addressed a letter to the Joint Secretary of the department in reference the above letter dated 24.2.1992. On 5.12.1997, the writ petitioner again addressed a letter to the Secretary of the department showing his willingness to resume duties with further request to provide congenial atmosphere removing impediments and unfavourable situation in the hospital as pointed out by him earlier. On 10.12.1997, he resumed his duties bringing by letter dated 15.12.1997, to the notice of Director of Health Services also. Even after joining duties, the appellant was not comfortable with the working conditions. The writ petitioner's, request to the Chief Medical Officer on 15.1.1998 for issuing registration/licence for running the Nursing Home, was since declined, however, an another application in the name of his wife Smti Paramita Dutta seeking registration, for running home was allowed. However, on 16.12.1997, he sent a notice conveying his intention to go on voluntary retirement w.e.f. 1.4.1998 and had also applied for 30 days leave w.e.f. 16.12.1997 to 14.1.1998 to enable him to proceed to Kolkata for the treatment of his wife. On 30.3.1998, he again resumed his duties and on 31.3.1998, he relinquished his charge unilaterally on voluntary retirement, which took effect from 1.4.1998 though there was no acceptance of his notice for voluntary retirement.

4. After submitting the application for voluntary retirement, the appellant had pursued the matter in the office of the Director of Health Services however on 28.9.2000, he was informed that his resignation dated 15.5.1991 has already been accepted w.e.f. 1.9.1991 vide order dated 13.9.1991 of Governor and all his communications thereafter stood disposed of accordingly. The writ petitioner preferred a writ petition No. 115/2001 with prayer for quashing the notification dated 13.9.1991 (Annexure-19 to writ petition) by which his resignation was accepted and notification dated 28.9.2000 by which it was confirmed that his

resignation was accepted w.e.f. 1.9.1991 disposing thereby all communications subsequently made by him. He has also prayed for a direction to the respondents for acceptance of his voluntary retirement dated 16.12.1997 (Annexure 15 to writ petition) w.e.f. 01.04.1999 and to pay him all arrears of salary and other service benefits including regularization of his leave.

5. Following submissions have been made on behalf of the appellant/writ petitioner:

(a) Both the resignation letters dated 15.5.1991 addressed to the Medical Superintendent, IGM Hospital and the subsequent letter dated 31.5.1991 addressed to the Secretary of the State Government were conditional resignation, therefore, acceptance of the same by the Governor even if at all made by the impugned order dated 13.09.1991 is illegal, and liable to be quashed.

(b) The reliance has been placed upon the decision of Supreme Court in Dr. Prabha Atri Vs. The State of U.P. and Others, where the writ petitioner while working as Anaesthetist in Kamla Nehru Memorial Hospital, Allahabad was issued a Memo dated 5.1.1999, bringing to her notice a lapse that she had left without informing even Dr. Banerjee, when he requested her on around 1300 hrs. to give anaesthesia to one patient admitted in emergency for shock due to ruptured uterus, who needed urgent operation, and such conduct not only amounted to negligence as per Hospital Service Rule 10(i) but was also against medical ethics. She was also asked to submit her explanation by 5.00 p.m. on 6.1.1999, failing which it was to be considered that she had accepted her lapse and the Hospital was at liberty to proceed against her as per Service Rules. Since the writ petitioner did not respond, therefore, she was placed under suspension on 08.01.1993 with immediate effect, pending institution of a domestic enquiry. On receipt of the said Memo on 9.1.1999, the writ petitioner replied to the Secretary of the Hospital that she had already clarified her position verbally in his presence that on that day she was sick and very tired. In her formal replies, she further added in her letter as under:

Your letter is uncalled for and should be withdrawn. I have been working in this Hospital since May 10, 1978 and have always worked in the best interest of the patients. It is tragic instead of taking a lenient view of my sickness you have opted to punish me. If the foregoing is not acceptable to you then I have no option left but to render my resignation with immediate effect.

In Dr. Prabha Atri (supra), the Supreme Court has provided as to what letter constitutes resignation, and observed that such a letter must be unconditional and intending to operate as such. Where an employee, required to submit his explanation for a certain lapse on his part, while submitting his explanation added that if the explanation was found to be not acceptable he would have no option left but to tender his resignation with immediate effect, held, such a letter did not amount to resignation. At best it could amount to a threatened offer to

resign. The words "with immediate effect" in the said letter, held, could not be given undue importance dehors the context tenor of the language used, the purport of the letter and the portion of the letter indicating the circumstances in which the letter was written. Moreover, stopping of the domestic enquiry by the management consequent to acceptance of the alleged resignation, held had no significance in ascertaining the true or real intention of the said letter.

(c) In the notification dated 28.9.2000 (Annexure-10) to the Writ appeal), it has been stated that consequent upon tendering of resignation by letter dated 15.5.1991 (which had been accepted w.e.f. 1.9.1991), the writ petitioner was no longer a Medical Officer of the Tripura Health Service. Emphasizing on the date 15.5.1991, it was impressed that the respondents had accepted the previous resignation letter dated 15.5.1991 of writ petitioner which was full of grievances, whereas it was not a resignation at all as by that letter writ petitioner was trying to seek redressal of his grievances by referring several instances of pathetic working conditions in the hospital.

(d) Reliance has been placed on the decision of the Supreme Court in Punjab National Bank Vs. P.K. Mittal, where a permanent officer of the Punjab National Bank sent a communication to the bank by which he purported to resign from a future date adding that the date of receipt of his letter should be treated as date of commencement of notice period, however, the bank informed him by a letter that his resignation was accepted with immediate effect by waiving a condition of notice, therefore such letter was held to be without jurisdiction as the resignation of the employee would have become effective only on the expiry of three months from the date thereof or from the date on which he wished to resign.

(e) In our considered view, the decision of P.K. Mittal (supra) is not helpful to the writ petitioner, whose specific case is that his resignation was a conditional one and was not accepted by the respondents. Such the writ petitioner in his resignation letter dated 31.5.1991 addressed to the Secretary of the Department had clearly mentioned in the last para that his earlier letter of resignation dated 15.5.1991 should be treated as notice, therefore, on the expiry of three months only his letter of resignation was accepted by the Governor w.e.f. 1.9.1991. In these facts, the decision relied on by the learned Counsel for the writ petitioner does not appear to have any relevance as the facts of present case are different and distinguishable.

6. The State respondents on the other hand have submitted as below:

(a) The writ petitioner has tendered resignation dated 15.5.1991 (raising several issues therein including the difficulties faced by him), addressed to the Superintendent of the IGM Hospital. In response thereto, the writ petitioner was intimated by the Special Secretary (Health) by his letter dated 30.5.1991 that if the writ petitioner was keen to resign from THS, he should address a formal letter of resignation. In that reference, the writ petitioner addressed his resignation letter to the Secretary, Health on 31.5.1991 submitting his

resignation once again mentioning that earlier resignation dated 15.5.1991 be treated as notice. This resignation letter accordingly was processed by the respondents and after expiry of the notice period of three months, the same was accepted by the Governor w.e.f. 1.9.1991 by an order of acceptance dated 13.9.1991, notified in the official Gazette and communicated to the writ petitioner and all other concerned authorities, as such, the writ petitioner had no reason to submit any demand notice on 3.2.1992 or make any correspondence thereafter as he ceased to be a member of the THS.

(b) As regards the subsequent correspondences, particularly the letter dated 24.2.1992, issued by the Joint Secretary, Health intimating that the conditional resignation of the writ petitioner could not be accepted and requesting him to submit a unconditional resignation, the respondents have explained that the letter of acceptance of the resignation was dealt with in a separate file of the hospital establishment and another file was processed earlier on receipt of his notice of resignation and those two files were not linked to each other creating a communication gap leading to the issuance of the letter dated 24.2.1992. Respondents have further contended that such later communication by the Joint Secretary cannot be interpreted to have any effect of reviving the service of the writ petitioner or obliterating the letter of acceptance of resignation issued in the name of the Governor. Several communications of subsequent period with fresh prayer for voluntary retirement, were totally uncalled for, after the writ petitioner was ceased to be the member of the THS, and in that regard, by a notification of 28.9.2000 (Annexure-10 to Writ Appeal) it was clarified that after his resignation letter having been accepted w.e.f. 1.9.1991 by order dated 13.9.1991, he was no longer a Medical Officer of THS and that notification disposed of all communications made by him subsequent thereto and in a way the prayer of the writ petitioner for acceptance of his voluntary retirement treating him in service even after 1.9.1991 deserves no consideration.

7. The said Gazette notification was published by the order of the Governor dated 13.9.1991 issued as F.2 (34) VM/77 (Sub-File-@, which reads thus:

Government of Tripura Health and Family Welfare Department No. F2(34)-VM/77 (Sub-File-C) Dated, Agartala, the 13th September, 1991.

ORDER

The Governor, Tripura is pleased to accept the resignation of Dr. Sadhan Datta, Grade-II of T.H.S., Head of the Department of Obst. & Gynae., IGM Hospital, Agartala with effect from of the forenoon of 1.9.1991.

By order of the Governor N.C. Sinha Joint Secretary to the Government of Tripura.

8. Learned single Judge of this court in the impugned order has observed that the above Gazette Notification dated 13.9.1991 has set at rest the controversy and no subsequent correspondences including the letter dated 24.2.1992 issued

by the Joint Secretary can change the position reviving the service of the writ petitioner or in any way obliterate the order of the Governor.

9. Learned single Judge has also taken a note that as the language and wordings in the resignation letter are very important in order to decide whether that is conditional or unconditional, resignation as the same cannot be explained dehors the context. In the letter dated 31.5.1991, addressed to the Secretary of the Department, the petitioner has not mentioned any specific condition, not even his grievance about the working condition in the hospital. He has simply stated that his earlier letter of resignation should be treated as notice and the latter one as resignation. For reference the resignation letter (Annexure-3) is quoted as below:

To The Secretary to the Government of Tripura, Health & Family Welfare Department, AGARTALA, (Through Proper Channel)

Sir,

I would like to resign from my post vide my letter dated the 15th May, 1991 addressed to the Medical Superintendent, I.G.M. Hospital.

Since I have not been communicated the acceptance of my resignation tendered in that letter and hence, I have performed my duties but the situation has not been made congenial as yet.

I, therefore, submit this resignation to you for your kind acceptance treating my aforesaid letter as a notice.

Thanking you, Yours faithfully Dated, Agartala, Sd/- The 31st May, 1991 (Sadhan Datta) Seal.

10. If we compare the resignation letter of the appellant with the letter of Dr. Atri in the case noted (*supra*), it would appear that the words "if the foregoing is not acceptable to you" used by Dr. Atri are totally absent in the resignation letter of the present appellant. It may not be necessary to examine the former letter dated 15.5.1991 which was full of grievances as the same has to be treated as only a notice or has been replaced by the letter dated 31.5.1991 addressed to the appropriate authority i.e. to the Secretary of the department.

11. The resignation becomes absolute when it is accepted by the Appointing authority, date of communication of acceptance to him is not material in the light of the observations of Supreme Court in *Raj Kumar Vs. Union of India (UOI)*, where it was indicated that once the Appointing authority accepts the resignation submitted by the Government servant, it becomes absolute and cannot be withdrawn thereafter. The date on which he was informed of the such acceptance is not material for the purpose. "Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant has *locus poenitentiae* but not thereafter."

12. The resignation may be effective from a prospective date in view of Union of

India (UOI) and Others Vs. Gopal Chandra Misra and Others,], where a resignation is submitted effective from a prospective date, it is a mute letter till that date when alone it can speak with effect. A withdrawal before that date has the effect of neutralizing the latent vitality in the earlier letter, which becomes non est in the eye of law. The withdrawal of a prospective resignation is in accordance with the basic principles of law and no specific provision is needed in any rule, law or the constitution. However, in P. Kasilingam Vs. P.S.G. College of Technology, P. Kasilingam Vs. P.S.G. College of Technology, the Supreme Court observed that the decision in the above said case has to be seen in context of the words "resigned his office" in proviso (a) to Article 217(1) of the Constitution.

In Gopal Chandra Misra (supra) the Hon^{ble} Supreme Court has specifically held that a complete and effective act of resigning an office is one which severs the link of the resignor with his office and terminates its tenure.

In Balram Gupta Vs. Union of India (UOI) and Anr, the Supreme Court reiterated the principle in Gopal Chandra Misra (supra) and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to Government Servants.

The Hon^{ble} Supreme Court held in P.K. Mittal (supra) that even in the absence of any specific rule, it is open to the employee, on general principles, to withdraw his letter of resignation. That is, in some cases of public service, this right of withdrawal is also made subject to the permission of the employer. But where there is no such condition, the resignation can be withdrawn before it becomes effective. The court relied on its earlier judgments of Balram Gupta Vs. Union of India (UOI) and Anr, . The judgment in P. Kasilingam case was not referred in P.K. Mittal (supra).

13. In terms of employment the employer could terminate his service by giving one month notice and on expiry of one month, of such notice the employee ceased to be in employment and no letter of acceptance is necessary to terminate his service, in the light of the decision of Supreme Court in State of Uttar Pradesh v. Ved Prakash Sharma 1995 (Supp.) 2 SCC 528.

14. In Shambhu Murari Sinha Vs. Project and Development India and Another, the Supreme Court in reference to its earlier decision in Balram Gupta (supra), J.N. Srivastava v. Union of India (1998) SCC 559 and Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, has held that resignation in spite of his acceptance could be withdrawn before the effective date. The above decision of (Shambhu Murari Sinha I) was reiterated by the Supreme Court in subsequent decision of Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, .

15. In Words and Phrases Permanent Edn. Vol. 37 at page 476, it is found stated that:

To constitute a "resignation", it must be unconditional and with an intent to

operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office.

At page 474 of the very same book, it is found stated: "Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignation." It is also stated therein that "A "resignation" of a public office to be effective must be made with an intention of relinquishing the office accompanied by an act of relinquishment.". In the ordinary dictionary sense, the word "resignation" was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim. *Resignatio est juris proprii spontanea refutatio* (Blacks Law Dictionary, 6th Edn.). In *Corpus Juris Secundum*, vol. 77, p. 311, it is found stated:

It has been said that "resignation" is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position.

16. In *Moti Ram Vs. Param Dev and another*, the Supreme Court observed as under: (SCC pp 735-36, para 16)

16. As pointed out by this Court, "resignation" means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up of relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*,]. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment taken effect from the date of such communication where the resignation is intended to operate in *praesenti*. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a 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. As to whether the act of

relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

17. The Supreme Court in *North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar*, while following its earlier decision in *Raj Kumar (supra)* and in reference to the other judgments of Supreme Court in *Raj Narain Vs. Indira Nehru Gandhi and Another*, ; *Union of India v. Wing Commander T. Parthasarathy* (2001) 1 SCC 158 has observed that the resignation becomes effective on acceptance even if not communicated. Non communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal when the relevant rules not postulating communication of acceptance as a condition precedent for coming into effect of resignation. Employee tendering resignation with immediate effect and employer accepting the same on the same day but communicating the acceptance to the employee after 13 days. During the intervening period, the employee withdrawing his resignation. Such delay of mere 13 days, held, not an undue delay so as to infer that resignation has not already been accepted. Even the continued attendance to duty and signing of attendance register by the said employee during the intervening period held, of no assistance to claim that the resignation had not taken effect. More so, when there was no responsible officer in the office during that time and taking the advantage of that situation the employee had marked his attendance, hence the High Court's decision holding that communication of the acceptance of resignation subsequent to withdrawal of the resignation by the employee had become redundant was held improper.

18. In *Srikantha S.M. Vs. Bharath Earth Movers Ltd.*, the Supreme Court observed that:

Employee resigning and seeking to be relieved as per rules. Employer Company accepting the resignation on the same day and directing him to be relieved with immediate effect. However, on the same day the Company granting him casual leave for a subsequent period and informing him that he would be relieved at the close of the day immediately next to the date of expiry of the said casual leave period. In the evening of the day so postulated, the Company relieving him. However, before that day, the employee having sent a letter to the company withdrawing his resignation. In such circumstances, the employee, held, remained in service up to the postulated day, hence, he could lightly withdraw his resignation before that day and the Company was bound to give effect to the withdrawal of resignation.

19. In view of the observation of Hon^{ble} Supreme Court in *Chand Mal Chayal Vs. State of Rajasthan*, principle of law is well settled that an incumbent is entitled to withdraw his resignation before acceptance. After acceptance of resignation jural relationship between the employee and employer ceases and employee cannot claim withdrawal of resignation nor reinstatement to the post. The incumbent cannot claim as a matter of right to be re-employed also when there is no rule relating to re-employment after acceptance of resignation.

20. The Supreme Court in case of Civil Appeal No. 534/2001 (Secretary Technical Education VP and Ors. v. Lalit Mohan Upadhyav and Anr.) decided on 9.4.2007 has observed that Government Servant functionary who cannot under his condition of service or office by his own unilateral act of tendering resignation gives up his service" or office then normally the tendering of resignation becomes effective and his service or office tenure get terminated when competent authority accepts it.

21. We are also of the considered view that the order dated 13.9.1991 accepting the resignation of writ petitioner, notified in the official Gazette, has referred the word "resignation" in the said orders however non- mentioning of date and letter number of resignation specifically shall not effect the text and verdict of the acceptance letter by Governor. In view of this position, the notification dated 28.9.2000 (Annexure-10 to Writ Appeal), which only disposed of all subsequent correspondences received from the writ petitioner, has no relevance for determining resignation, which was accepted by the impugned letter of acceptance. Since, the letter dated 15.5.1991 addressed to a wrong authority was converted into a notice only by the writ petitioner himself and he termed the letter dated 31.5.1991 addressed to the Secretary as his letter of resignation which was rightly held by learned single Judge that the Governor has accepted that resignation letter only and here is no scope to interpret the subsequent notification dated 28.9.2000 having any bearing on the letter of acceptance dated 13.9.1991.

22. In view of the foregoing analysis and observations, this Writ Appeal being devoid of merit is dismissed accordingly.