
(2002) 12 DEL CK 0043

In the Delhi High Court

Case No : LPA 345 of 1998

Sameer Aggarwal

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Citation : (2003) 102 DLT 702 : (2003) 67 DRJ 198 : (2003) 2 LLJ 85 : (2003) 1 SLJ 202

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Pradeep Gupta, for the Appellant; Jagat Arora and Rajnish Kumar, for the Respondent

Final Decision : Allowed

Judgement

Anil Dev Singh, J.—This Letters Patent Appeal is directed against the Order of the learned Single Judge in CWP No. 1826. of 1998 dated 20.04.1998. By that Order, the learned Single Judge rejected the prayer of the appellant herein, for being reinstated in the service of the second respondent M/s. PNB Asset Management Co. Ltd.

2. The facts giving rise to the present appeal are as follows:-

3. On 06.01.1996, the appellant was appointed by the second respondent as Management Trainee on probation for a period of one year. The appellant joined the service of the second respondent in the aforesaid capacity on 01.05.1996 and completed his period of probation on 01.05.1997. On 04.07.1997, the appellant was offered a job by M/s. J.M. Capital Management Ltd. and was asked to join by 10.11.1997. M/s. J.M. Capital Management Ltd. also required the appellant to produce discharge certificate from the second respondent.

4. Pursuant to the offer made by M/s J.M. Capital Management Ltd., the appellant by its letter dated 11.11.1997 addressed to the second respondent tendered his resignation. The letter of resignation was accompanied by a cheque for a sum of

Rs. 7,868/- which represented one months' salary in lieu of notice period. In response to the aforesaid letter, the second respondent by its letter dated 21.11.1997 communicated its acceptance to the resignation tendered by the appellant with the condition that the appellant shall be relieved only after he hands over the complete charge of the post to the nominated officer of the second respondent. Since the appellant was not able to produce the discharge letter immediately, the offer of appointment made by M/s. J.M. Capital Management Ltd. was withdrawn.

5. Consequent to withdrawal of the letter of appointment by M/s. J.M. Capital Management Ltd., the appellant withdrew his resignation vide legal notice dated 15.12.1997. However, the second respondent did not allow the appellant to joint duty.

6. Aggrieved by the action of the second respondent in not allowing the appellant to joint duty, he filed a writ petition being CWP No. 1826 of 1998. The learned Single Judge before whom the matter came up declined to entertain the writ petition and accordingly dismissed the same.

7. Being not satisfied with the Order passed by the learned Single Judge, the appellant has filed the instant Letters Patent Appeal.

8. Learned counsel appearing for the appellant submitted that as the appellant was not relieved by the second respondent the jural relationship between the appellant and the second respondent continued and, Therefore, the appellant could always withdraw his resignation. Once the resignation was withdrawn before the termination of jural relationship, the second respondent was bound to allow the appellant to joint duty. Learned counsel further contended that it was because of the second respondent that the offer of employment given by M/s. J.M. Capital Management Ltd. was withdrawn inasmuch as the second respondent did not relieve the appellant in time.

9. On the other hand, the learned counsel for the second respondent submitted that the appellant after having resigned from the post, which he was holding as the employee of the second respondent organisation, was not entitled to withdraw his resignation as it stood accepted by the second respondent on 21.11.1997. In other words it was contended that once the resignation was accepted, the right of the appellant to withdraw the resignation came to an end.

10. We have considered the respective submissions of the learned counsel for the parties.

11. It is not disputed that though the appellant had resigned on 11.11.1997, he was not relieved by the second respondent. It is also not disputed that when the appellant withdrew his letter of resignation, still the jural relationship between the appellant and the second respondent was not snapped.

12. In Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, , the Supreme Court after taking stock of various judgments on the

subject came to the following conclusion:-

"18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the "release memo along with detailed particulars would follow". Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries, etc. till his date of actual release i.e. 26-9-1997, and, Therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end."

(emphasis supplied)

13. Thus, it is evident from the aforesaid observations that till jural relationship between the employer and the employee is terminated, it is always open to the employee to withdraw his resignation. To the same effect is the judgment of the Supreme Court in Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, wherein it was held as follows:-

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."

14. Learned counsel for the second respondent cited certain judgments before us in support of his submission that after the appellant submitted his resignation and the same was accepted, the appellant was not entitled to withdraw the same. it is not necessary to refer to these judgments in view of the judgments of the Supreme Court in the case of Shambhu Murari Sinha (Supra) and Power Finance Corporation Ltd. (Supra).

15. In view of the aforesaid discussion, the appeal is allowed and the order of the learned Single Judge is set aside. The net effect of our order is that the appellant shall be reinstated in service by the second respondent with all consequential benefits except back wages as the appellant has been in employment elsewhere.

16. The appeal is accordingly disposed of.