
(2017) 05 UK CK 0030
In the Uttarakhand High Court
Case No : 109 of 2016 (S of B)

Sandeep Kumar Rana and another	Vs	APPELLANT
State of Uttarakhand and others		RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

[Uttarakhand Government Servants Resignation Rules, 2003](#), Rule 4, Rule 6, Rule 7, Rule 13, Rule 5, Rule 15-C

Citation : (2017) 05 UK CK 0030

Hon'ble Judges : K.M. Joseph, Alok Singh

Bench : Division Bench

Advocate : Narendra Bali, Pradeep Joshi, Rajeev Singh Bisht, H.C. Bisht

Judgement

1. Petitioners approached this Court seeking the following reliefs :- "i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 2.3.2016 passed by respondent no. 2 (contained as Annexure No.1 to this writ petition).

ii) Issue a writ order or direction in the nature of mandamus directing the respondent no. 1 to 3 not to permit the joining of the respondent no. 4 as Chief Fire Officer, Uttarakhand."

2. Brief put, the case of the petitioners is as follows: In the year 2013, recruitment to the post of Chief Fire Officer was undertaken by the Uttarakhand Public Services Commission. The petitioners alongwith respondent No. 4 were selected to the post of Chief Fire Officer. The appointment letter is dated 18.02.2013. The respondent No. 4 stood at serial No. 2, the petitioner No. 1 stood at serial No. 3 and the petitioner No. 2 stood at serial No. 6. Thereafter, the respondent No. 4 moved an application, annexure-3, on 09.05.2014, seeking resignation.

3. This application was duly considered by the State Government on 08.01.2015 and accepted the resignation with immediate effect and directed to relieve the

4th respondent. It is also made clear that after the resignation, respondent No. 4 will have no lien over the post he was holding. Copy of the order dated 08.01.2015 is annexed as Annexure No. 4. Pursuant to the said order, Office of Director General of Police vide order dated 13.01.2015 directed to pay all the dues and relieve the respondent No. 4. Copy of the order dated 13.01.2015 is annexed as Annexure No. 5. Application for resignation was considered under the provisions contained in the Uttarakhand Government Servants Resignation Rules, 2003 (hereinafter referred to as "2003 Rules"). After the resignation was accepted, services of the respondent No. 4 were terminated w.e.f. 08.01.2015. Though, Rule 7 provides for withdrawal of resignation but application for withdrawal of resignation can be made prior to the passing of the order of termination as provided under Rule 6. However, respondent No. 4 moved an application on 10.07.2015 for withdrawal of his resignation. Copy of the application dated 10.07.2015 is annexed as Annexure No. 6. It was acted upon and by the impugned order, the resignation was allowed to be withdrawn. It is, accordingly, the writ petitioners, are before us.

4. Counter affidavits are filed.

5. We heard Mr. Narendra Bali, learned counsel for the petitioners, Mr. Pradeep Joshi, Standing Counsel with Mr. Rajeev Singh Bisht, Brief Holder for the State of Uttarakhand / respondent Nos. 1 to 3 and Mr. H.C. Bisht, learned counsel for respondent No. 4.

6. The Rules relating to resignation as far as employees of Uttarakhand Government are concerned, contained in 2003 Rules. Relevant paragraphs of the 2003 Rules read as follows :- "2. Overriding effect. - These rules shall have effect notwithstanding anything to the contrary contained in any other rules made by the Governor under the proviso to Article 309 of the Constitution of executive orders issued in this behalf.

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4. Notice of Resignation. - (1) A Government servant may resign from his service by giving three months notice in writing.

(2) The notice of resignation shall be -

(i) voluntary and unconditional;

(ii) addressed to the appointing authority under intimation to the authority under whom the said Government servant is working at the time of tendering resignation:

Provided that it shall be open to the appointing authority to allow a Government Servant to resign without any notice or by a shorter notice.

5. Acceptance or refusal of resignation. - (1) The resignation of the Government servant shall not be effective unless it is accepted by the appointing authority and formal order is issued thereof. The appointing authority may, in its

discretion, refuse to accept the resignation, if -

(i) the Government servant owes to the Government any sum of money and / or any other liability unless the amount due has been paid or the liability discharged.

Or

(ii) the Government servant is under suspension.

Or

(iii) the inquiry is contemplated or pending against him.

Or

(iv) investigation, inquiry or trial relating to criminal charge is pending and such charge is connected with his official position as the Government Servant.

(2) The appointing authority shall, as far as possible take decision the request of resignation before the expiry of the period of notice.

6. Termination of service. - The services of the said Government servant shall stand terminated with effect from the date of issue of order of the acceptance of his resignation or from such future date as mentioned therein.

7. Withdrawal of resignation. - The Government servant may withdraw his resignation by making available a request in writing to the appointing authority only before the date of termination of his services as provided in rule 6 of these rules."

7. Rule 4 provides that a Government servant may resign from his service by giving three months notice. The notice should be voluntary and unconditional. Rule 5 deals with the acceptance and refusal of resignation. Rules 6 and 7 deal with termination of service and withdrawal of resignation.

8. It is quite clear that 4th respondent moved an application for resignation on 09.05.2014. The said application reads as follows :- "To,

The Dy. Inspector General

Uttarakhand Fire & Emergency Services,

PHQ, Dehradun, UK 09.05.2014

Subject : Resignation from the post of Chief Fire Officer

(Through Proper Channel)

Sir,

With due regards, it is submitted that prior joining as Chief Fire Officer in Uttarakhand Fire & Emergency Services, I was working as Station Officer, Delhi Fire Service in Govt. of NCT of Delhi and my lien has been maintained in parent department as per order no. F 1.(52)/2013/H-III/832 dated 03/09/2013 (copy

enclosed).

Sir, due to unavoidable domestic circumstances I am unable to continue my services in Uttarakhand Fire & Emergency Services , hence I am tendering my resignation from the present post.

You are humbly requested to accept my resignation at the earliest and enable me to join / revert back to my parent department i.e. Delhi Fire Service, Govt. of NCT of Delhi. I shall be highly grateful to you.

Thanking you

Your's Faithfully,

(Nagender Singh)

CFO - Nainital"

9. It was accepted and it apparently came into effect on 08.01.2015. It is after six months, the application for withdrawal of the resignation was made on 10.07.2015. It was acted upon and the impugned order was passed.

10. Mr. H.C. Bisht, learned counsel for the 4th respondent would refer to the judgment of the Hon"ble Apex Court in the case of Raj Kumar Vs. Union of India reported in 1969 AIR page 180. That is the case where an IAS Officer belonging to Rajasthan Cadre made a request for resignation. His application was forwarded to the Central Government. Central Government signified its acceptance of the resignation. The same was forwarded to the State Government. The State Government took some time to communicate its acceptance to the IAS Officer. In the meantime, the IAS Officer moved for the withdrawal of the resignation. The matter reached the Apex Court. The Apex Court, inter alia, held as follows :- "1) When a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and. in the absence of any law or statutory rule governing the conditions of his 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. Undue delay, in intimating to the public servant concerned the action taken on the letter of resignation, may justify an inference that the resignation had not been accepted.

In the present case, on the plain terms of the resignation letters of the appellant the resignation became effective as soon as it was accepted by the appropriate authority. No rule has been framed under Art. 309 of the Constitution, nor is there any other rule having statutory force which requires, that for an order accepting the resignation to be effective it must be communicated to the person submitting his resignation. The circular relied upon by the appellant, according to which resignation becomes effective when it is accepted and the officer is relieved of his duties, merely contains instructions to be followed and has no

statutory force. The resignation was accepted within a short time of its receipt by the Government of India and the delay of the State Government in implementing the order was not inordinate.

11. Quite clearly, the said decision does not support the claim of the 4th respondent.

12. Then, learned counsel for the 4th respondent refers us to the provisions of Civil Service Regulations regarding resignations and dismissals. The said provisions read as follows: "418. (a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency in-efficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

(b) Resignation of the appointment to take up another appointment, service in which counts, is not a resignation of the public service.

13. It is necessary to deal with the arguments based on concept of technical resignation. It may be true that according to respondent no. 4, he had resigned in order to take up employment. We will also proceed on the basis that it will be treated as technical resignation. It may also be true that according to respondent no. 4, he has a lien on the employment, which he had in the Delhi Fire Service of NCT. But we are unable to understand how that will advance the case of respondent no. 4. What is the issue and what is challenged before this Court is the acceptance of withdrawal of resignation, which has become final. Even if resignation is technical, resignation must be accepted. Acceptance of resignation of respondent no. 4 would validly take place only under Rules, 2003 and Rules, 2003 would clearly prevent withdrawal of resignation after a cut off date, the date mentioned in Rule 6. There is no dispute in this case that under the Rules 2003 resignation has been accepted and it has become final and it is incapable of being withdrawn under 2003 Rules. Therefore, we are unable to see any point in the contention that resignation was only a technical resignation. The resignation being technical may have other implications but it cannot be gainsaid that it also must be accepted. And there is no other Rule, which is pointed out to us under which resignation can be accepted except the 2003 Rules. In other words, respondent no. 4 is clearly governed by Rules, 2003.

14. Reliance is placed on AIR 1997 SC 301 which dealt with a case under the Central Forest Act and the need for providing confiscation procedure under the M.P. Act when there was already a procedure under the Forest Act, which is occupying the field. It can have no application to the dispute, which is raised in this case. Apparently, it is a case of legislation falling under Concurrent List. Therefore, we see no merit in the said contention also.

15. He would submit with reference to Article 418 (b) that his resignation was only a technical resignation and resignation was given to take another job in which he had lien. In regard to the aspect of the lien, he referred us to the Financial Hand Book, Volume II. Rule 13 and 15-C reads as follows :- "13. Unless his lien is suspended under Rule 14 or transferred under Rule 14-B, a

Government servant holding substantively a permanent post retains a lien on that post :

- (a) while performing the duties of that post;
- (b) while on foreign service, or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;
- (d) while on leave, except on leave granted under Rule 86 or 86-A, as the case may be; and
- (e) while under suspension.

Orders of the Governor regarding Rule 13. Government servants who are appointed as officers of the Army in India Reserve of Officers, shall retain a lien on their permanent posts under the Government during the period for which they are called to service in the Defence Department.

.....

15. (c) Nothing contained in clause (a) of this Rule or in Clause (13) of Rule 9 shall operate to prevent the retransfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14."

16. All these submissions are apparently made on the basis that he was originally appointed as a Station Officer in Delhi Fire Station of the Government of N.C.T. of Delhi and he has lien in the parent department.

17. He would further refer us to the reasons which impelled the Government in this case to take back the 4th respondent despite the resignation being accepted.

18. There is no dispute in this case that the resignation was made and accepted. The 4th respondent was aware of it and, it is, thereafter, he made application for withdrawal of the resignation. Annexure-6 is the withdrawal of the resignation, which reads as follows:- "To,

The Director General of Police,

Uttarakhand,

Police Headquarters,

Dehradun.

10/07/2015

Subject : Withdrawal of Resignation.

Sir,

With due respect it is submitted that I joined Uttarakhand Fire & Emergency Service as Chief Fire Officer vide order no. 192/xx-4/2013-2(06)/2009 dated 18 Feb 2013 (Copy enclosed) and served as Chief Fire Officer Nainital.

Sir, it is further submitted that my only daughter who was five years old at that time was suffering from allergic bronchitis and her condition was further deteriorated in Nainital. For her treatment use to take her to Delhi on regular basis as she was already under treatment there. (All available records enclosed). Under such emotional stress I tendered my resignation, which was duly accepted and I was repatriated to my parent department i.e. Delhi Fire Service GNCT of Delhi. Copy of relieving order no. A-77/2014 dated 23 January 2015 enclosed). Now my daughter is fit and settled and I wish to serve the State of Uttarakhand.

Sir, it is humbly requested that please accept withdrawal of resignation, allow to serve the State of Uttarakhand as Chief Fire Officer and kindly condone the absence / delay period in the form of Extra Ordinary Leaves.

I shall be highly grateful to you throughout my life.

Thanking you,

Yours faithfully

S/-

(Nagender Singh)

S/o Shri Ramdal Singh"

19. Apparently, the Authority was aware of 2003 Rules under which resignation was made and accepted. Authorities purported to take note of public interest to be secured in taking back respondent no. 4 in service. Learned counsel for respondent no. 4 would refer to his qualifications and experience in the counter affidavit. He also submits that resignation was made under the compelling family circumstances and since those circumstances cease to exist, he promptly pursued application for withdrawal of his resignation. Learned counsel for respondent no. 4 further submits that it is an exceptional case, which persuaded the Authorities to allow respondent no. 4 to retrace his steps in the matter of resignation, which had been accepted.

20. In this regard, he would refer to Annexure No. 4 to the counter affidavit wherein notes were prepared by placing reliance on CCS (Pension) Rules, 1972, which led to the impugned order. In the said Rules, there is reference to procedure for withdrawal of the resignation after it has become effective. The said Rule, no doubt, contemplates that resignation tendered by Government Servant for compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation been made as a result of a material change in the circumstances which originally

compelled him to tender the resignation. Further during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned must not be in any way improper. Also the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not to be more than ninety days.

21. In the order also, it is finally stated that reliance is being placed on the Central Rules. In this regard, when this Court questioned learned counsel for respondent no. 4 as to how Central Rules would be applicable to a government servant, governed by Rules 2003, learned counsel for respondent no. 4 would submit that principle of *pari materia* would apply and in this regard, learned counsel for the respondent no. 4 would submit that the Court may take note of the Central Rules governing the matter. In support of his contention, he relied on the judgment of the Apex Court in the case of *Contship Container Lines Limited Vs. D.K. Lall and others* reported in (2010) 4 SCC 256. There matter arose under the question related to insurer liability in a contract to Marine Insurance and the Court took a view that since the provisions of English Marine Insurance Act are in *pari materia* with those of the Indian Marine Insurance Act, 1963, the decisions of the English Courts would be relevant.

22. We are unable to appreciate how respondent no. 4 can invoke the principle of *pari materia*. The principle of *pari materia* applies in a situation where there are two or more Statutes, which deal with the same subject and where provisions are similar. Admittedly, no provision is brought to our notice, which provides for withdrawal of resignation of employee of Uttarakhand Government. We hold that respondent no.4 cannot be permitted to derive any assistance from the Central Rules.

23. In this regard, it is relevant to notice that in the Constitution, there are two different lists in Seventh Schedule of the Constitution viz. Union List (List I) and State List (List II). Entry 70 of List I deals with Union Public Services, All India Services and Union Public Service Commission and entry 41 of List II deals with State Public Services and State Public Service Commission. This means that if an employee joins services under the control of State Government on the one hand and another employee joins services under the control of Government of India or Central Government on the other hand, then they fall in two separate lists namely List I and List II and they will be governed by separate Rules. In the case of state government servant, matter relating to resignation is governed by 2003 Rules. As far as the Central Rules which provide for taking back of resignation, which has been accepted, it is not shown to us that it applies to respondent no. 4. It would be a matter of jurisdictional excess or plain illegality to apply the said Rules to the Uttarakhand Government Servant.

24. The argument of learned counsel for respondent no. 4 that petition is premature because in the final seniority list respondent no.4 does not figure and

therefore, petitioners cannot approach this Court, does not appeal to us. It is a writ petition where a writ of Certiorari is sought. In the case of writ of Certiorari, the principle of locus standi is to be determined applying concept of aggrieved person. We see in this regard, judgment of Apex Court in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar and others reported in (1976) 1 SCC 671. In the said decision also, it has been recognized that person aggrieved would be person whose interest are affected. In appropriate cases, the courts would allow even a stranger to seek a writ of Certiorari. It is only an intermeddler or interloper, who has no locus standi under the traditional concept of locus standi to challenge the decision under the writ of Certiorari. In this case, we cannot say that petitioners, who were also recruited along with respondent no. 4, have no locus to challenge the legality of acceptance of request of withdrawal of resignation, the result of which would be that respondent no. 4 would also be permitted to rejoin as Chief Fire Officer. Therefore, we reject the said contention.

25. We equally find no merit in the contention of Mr. H.C. Bisht, learned counsel for respondent no. 4 that against the impugned order no demand or representation has been made by the petitioners.

26. We are not here dealing with a writ of Mandamus. In the case of writ of Mandamus, the ordinary rule is that writ applicant must make a demand and either face refusal or there should be undue delay in the matter of dealing with the demand. In the case of Certiorari, there is no such requirement. Secondly, we also notice that in fact, there is no provision for making a representation against a decision of such nature, which we are dealing with. In any case, this Court entertained the case. The matter reached the stage of final hearing and, therefore, we see no reason at all to permit the respondent no. 4 to raise the plea of alternative remedy.

27. It is further submitted that case based on Article 14 has no legs to stand on. We would think that the case of the petitioners is essentially governed by transgression of Statutory Rules. A clear cut case of violation of statutory rule is made out by the petitioners. In such circumstances, we repel the said submission.

28. Lastly, it also submitted that respondent no. 4 is prepared to forego his seniority and he is prepared to be the last man in the seniority list. We are unable to accept such contention. This is for the reason that acceptance of withdrawal of resignation is found to be contrary to the Rules and it is found that there is absolutely no authority with the Government to pass order which is impugned.

29. In such circumstances, this plea also does not have any merit. The upshot of the whole discussion is that writ petition must succeed. Writ petition is allowed. Impugned order is quashed. There will no order as to costs.