
(1955) 09 AHC CK 0040
In the Allahabad High Court
Case No : Civil Misc. Writ No. 447 of 1955

Sanker Dutt Shukla

APPELLANT

Vs

President, Municipal Board, Auraiya and Another

RESPONDENT

Date of Decision : 05-09-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Uttar Pradesh Municipalities Act, 1916 — Section 74

Citation : AIR 1956 All 70 : (1956) 1 LLJ 736

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : Brij Lal Gupta, for the Appellant; B.S. Darbari, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that (a) writ of certiorari be issued quashing the order of the President dated 31-3-1955, (b) a writ of mandamus be issued directing the opposite parties not to prevent the petitioner from performing his duties as the Superintendent of the Municipal Board.

2. The petitioner was working as the Superintendent of the Municipal Board, Auraiya, in the district of Etawah. Certain charges were framed against the petitioner by the President of the Board. After the said charges had been investigated, they were ultimately dropped on 27-9-1954. On 24-2-1955, a letter, which purports to have been received by the general clerk of the Board in the office of the Board on that date was written by the petitioner. The letter reads as follows:

"Sewa me nivedan hai ki kuchh karon bash prarthi ab Board ki sewa adhik dinon karne me braash hai. Aisi dasa me tyag patra swikar kiye jane ki kripa ki jave."

The purport of the letter is that on account of certain reasons, the applicant was unable to discharge his duties as Superintendent of the Board and under those

circumstances he submitted his resignation which he prayed should be accepted. This letter, though purports to have been received in the office of the Board on 24-2-1955 is dated 1-4-1955. The applicant wrote a letter to the President in which he stated that some time back he was forced under circumstances to write to him a letter, referred to above, but the circumstances had since changed and he saw no reason not to serve the Board from 1-4-1955. He, therefore, requested that the aforesaid previous writings be not placed for consideration and be deemed as withdrawn and unmeant as they were not voluntary and bona fide. The President asked for an explanation from the applicant as to what was the threat or undue pressure under which he submitted the resignation letter and why was it not a bona fide one.

After consideration of his reply, the President rejected his application for the withdrawal of the letter on 31-3-1955 and accepted his resignation with effect from 1-4-1955. He was directed to hand over charge to Sri Triveni Prasad, Assistant Superintendent of the Board. Thereafter a suit was filed by the petitioner for a permanent injunction restraining the opposite parties from taking over charge from the applicant and an interim injunction was granted by the civil Court but that order was subsequently withdrawn with the result that the suit became infructuous and the present petition was filed for the reliefs which are mentioned above.

3. It is alleged in the affidavit filed in support of the petition that the letter of resignation was obtained under undue influence & by fraud & could not be effective. A counter-affidavit has been filed in which the allegations of undue influence and pressure have been denied. The petitioner in his arguments has urged that he had a legal right to withdraw the letter which is said to have been handed over to the President on 24-2-1955, before 1-4-1955 after which it was to become effective.

4. A preliminary objection has been raised by the opposite parties. Their contention is that as the petitioner had an alternative remedy available to him, he cannot be granted any relief under Article 226 of the Constitution. Firstly, it is contended that the petitioner had already filed a suit and has availed of the alternative remedy. He is, therefore, not entitled to any relief. Secondly, it is urged that he has filed an appeal to the State Government and unless that appeal is decided, it is not open to the petitioner to come to this Court under Article 226 of the Constitution. It does not appear under which provision of law an appeal has been filed to the State Government.

There is a statutory provision in Section 74, U. P. Municipalities Act in which a right of appeal is given to a servant of a Municipal Board to the State Government against an order of dismissal or removal from service passed by the President of the Board but there is no provision in the U. P. Municipalities Act which gives any statutory right to a servant of a Board to go up in appeal to the State Government against an order of the President refusing to accept the withdrawal of a resignation.

The petitioner may have gone up by way of a representation to the State Government but unless there is any statutory alternative remedy available, that remedy entirely depends on the discretion of the State Government and cannot be regarded as an adequate and efficacious alternative remedy.

As regards the suit, the reply of the applicant is that the suit has become infructuous inasmuch as the temporary injunction has been refused. The relief claimed in the suit was that the resignation letter of 24-2-1955 could not be regarded as effective and on the basis of the said resignation letter the petitioner could not be treated to be out of service and he could not be asked to hand over charge to the opposite parties.

The main relief sought in the present petition, on the other hand, is that the order of the President by which he rejected the application of the applicant praying that the letter of 24-2-1955 should not be considered at all, should be quashed. It cannot therefore, be said that the relief by means of a suit will be equally adequate and efficacious in the circumstances of the case. The preliminary objections raised by the opposite parties, therefore, have no force and fail.

5. As regards the merits of the case, the contention of the applicant is that the letter of resignation, though handed over to the president on 24-2-1955, was dated 1-4-1955, and was to come into effect from 1-4-1955. Up to the 1st April, in the eye of law, there was no resignation in existence at all. It was open to the applicant to write to the President asking him not to consider his resignation application dated 1-4-1955. It was not a case where an unconditional resignation had been tendered and the petitioner's prayer was to withdraw such unconditional resignation on a subsequent date. Reliance has been placed by the opposite parties on the case of -- Jwala Prasad Vs. State of Uttar Pradesh and Others, . That was a case where a letter was sent by a servant which was as follows:

"I am, therefore, sending this my letter of resignation to you with the request that you may kindly accept it by the 3rd of March, 1953 and relieve me of my responsibilities, otherwise after the expiry of the date I shall consider myself free of the responsibility of this office."

This resignation was accepted on 10-2-1953. On 24-2-1953 a letter was sent by the servant withdrawing his resignation and that was refused. This Court in those circumstances held that the petitioner could not after having tendered his unconditional resignation, claim a right to withdraw the resignation and it was observed in that case that

"We do not want to express any opinion on the question whether if the resignation had been conditional, the party tendering it could claim a right to withdraw it, as the point has not arisen in this case."

In that case the letter of 2-2-1953 was an unconditional resignation. The only

condition in the letter was that the resignation was to be accepted by 3-3-1953 and after that date he was to be relieved of his duties. His resignation did not depend on the acceptance or otherwise of the other party. In those circumstances the servant had no absolute right to withdraw the resignation subsequently. In the present case, the application for resignation was to come into existence . from 1-4-1955. Till 1st April, there was no resignation at all.

The resignation was to become operative from 1st April and, in my opinion, the applicant had the right to intimate to the President that he no longer wished that his application, which was to come into existence from 1-4 1955, should be considered as effective. Reliance has been placed by the applicant on the case of -- " Jai Ram Vs. Union of India (UOI), Particular reference has been made to the following passage at page 586 of the report:

"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 so long as he continues in service and not after it has terminated."

Mr. Darbari, who appears for the opposite parties, contends that this case has no application to the facts of the present case and the point which" has arisen for decision in the present case did not arise in the case referred to above. It is true that the facts of that case are distinguishable from the facts of the present case, and the question, which has been raised here, had not been raised in that form for decision in the case before the Supreme Court, but the observations referred to above do lend support to the applicant's contention that, it is open to a servant to withdraw his. resignation before it becomes actually operative.

As already observed, in the present case the resignation was to become effective from 1-4-1955. Till" 1st April, there was no resignation at all and it was open to the applicant to intimate to the President that he should not regard the letter of 24th February, dated 1-4-1955 as having come into existence before 1-4-1955.

6. I, therefore, allow this petition, quash the order of the President dated 31-3-1955 and direct! that the application of the petitioner dated 25-2-1955 be accepted and the resignation contained in the letter dated 1-4-1955 be not considered as existing.

7. Mr. Gupta states that the opposite parties be directed not to interfere with the applicant's discharging his duties as the Superintendent of the Board, When the order of 31-3-1955 directing the applicant to hand over charge has been quashed the necessary consequence is that he continues as Superintendent.

8. The applicant is entitled to his costs.