

(2015) 07 CAL CK 0059
In the Calcutta High Court
Case No : WPST 95 of 2015

Sankha Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 308, 323, 325, 34

Citation : (2015) 4 CALLT 501 : (2015) 5 CHN 82

Hon'ble Judges : Nishita Mhatre, J;Asha Arora, J

Bench : Division Bench

Advocate : Pratik Dhar and Ritwik Pattanayak, for the Appellant; Tapan Kumar Mukherjee, Susanta Pal and Nilotpal Chatterjee, Advocates for the Respondent

Judgement

Nishita Mhatre, J—The neat question of law involved in the present case is whether a police officer who submits his resignation under Regulation 840 of the Police Regulations of Bengal can be refused permission to resign after the notice period.

2. The petitioner was appointed as a Sub-Inspector, Unarmed Branch on 16th May, 1994. He received more than 205 rewards and on the other hand he was also awarded two minor punishments. He was posted in different districts and in August, 2005 he was posted in the district of Burdwan till he was transferred to the district of Uttar Dinajpur on 16th May, 2011. While the petitioner was posted in Burdwan, he recorded an FIR as the officer-in-Charge of Andal police station on 12th December, 2009 which was based on the complaint of a student. Another FIR was lodged by a different student in the same police station which was registered by another police officer. After he was transferred to Uttar Dinajpur on 9th July, 2011, FIR No. 153 of 2011 was registered against the petitioner and several other persons at Andal P.S. under Sections 341, 323, 325, 109, 506 and 34 of the IPC with added Sections 308 and 379 of the IPC. The date of occurrence of these offences has been recorded as 11th December, 2009. The

petitioner approached this Court under Section 482 of the Cr.P.C. by preferring CRR 2357 of 2011 for quashing the proceedings in Andal P.S. case No. 153 dated 9th July, 2011. This Court permitted the investigation to proceed, however it directed that no coercive measure should be taken against the petitioner without the leave of the Court. While he was posted in Uttar Dinajpur, the petitioner suffered various ailments, including psychiatric challenges for which he was treated. He joined duty on 24th January, 2012 and submitted a letter of resignation on the same day at Uttar Dinajpur. A charge-sheet was issued to the petitioner for unauthorised absence. The enquiry officer found the Petitioner had committed the misconduct as he had admitted his guilt during the enquiry. The disciplinary authority, i.e., the Superintendent of Police, Uttar Dinajpur, punished him by stopping two increments with cumulative effect. Directions were also issued regarding the manner in which the unauthorised absence was to be treated.

3. Immediately after the enquiry proceedings were completed but before the punishment was imposed, the petitioner submitted his resignation on 17th April, 2013. It appears that his earlier letters of resignation dated 24th January, 2011, 4th May, 2012 and 8th March, 2011 had fallen on deaf ears. From the annexures to the present petition it is apparent that the petitioner reiterated his desire to resign in his letter of 1st May, 2013. He had been subjected to another disciplinary enquiry on the ground of wilful dereliction of duty. The petitioner had pleaded guilty of the charges levelled against him. The Superintendent of Police, Uttar Dinajpur, by his order dated 2nd May, 2013 stopped his increment for one year without future effect. The petitioner received a message on 26th June, 2013 requiring him to report for duty. The petitioner replied on the same day that he was not required to comply with the direction to resume duty since a period of two months had elapsed after 17th April, 2013. After receiving another letter on 14th July, 2013 and in spite of legal notices sent on behalf of the petitioner a memo was issued on 3rd September, 2013 to the petitioner calling upon him to report for duty and to show cause why action should not be taken for his unauthorised absence. The show cause notice also mentioned that since a criminal case was pending against him and he was undergoing the punishment in respect of the two charge-sheets issued to him earlier, it was not possible to accept his resignation.

4. Aggrieved by this action of the respondents, the petitioner preferred Original Application 1158 of 2013 before the West Bengal Administrative Tribunal. By its order dated 7th February, 2014 as an interim measure the Tribunal directed the respondents not to take any action pursuant to the show cause notice issued to the petitioner on 3rd September, 2013.

5. The respondents contested this application mainly on the ground that since the petitioner was undergoing punishment and a criminal case was pending against him, his resignation could not be accepted. By an order dated 23rd March, 2015 the Tribunal dismissed the Original Application by accepting the

contentions of the respondents.

6. Mr. Pratik Dhar, the learned Counsel for the petitioner, has submitted that once a resignation is submitted by a police officer under Regulation 840 of the Police Regulations of Bengal, it cannot be refused by the authorities. According to the learned Counsel the resignation is deemed to come into effect after the expiry of the notice period of two months. The learned Counsel submitted that since the petitioner had tendered his resignation on 17th April, 2013 about which he had mentioned in his letter of 1st May, 2013 the authorities could not have issued the show cause notice in September, 2013 as there was a cessation of the petitioner's service with the respondents on 16th June, 2013. The learned Counsel urged that the pendency of a criminal case against the petitioner or the fact that he was undergoing a punishment could not act as an impediment in the petitioner's resigning from duty in terms of Regulation 840. The learned Counsel has pointed out that in a similar instance while interpreting the rule applicable to railway servants in the case of Union of India and others Vs. Sayed Muzaffar Mir, AIR 1995 SC 176 : (1994) 6 JT 288 : (1995) 1 LLJ 157 : (1994) 4 SCALE 258 : (1995) 1 SCC 76 Supp : (1994) 3 SCR 729 Supp the Supreme Court had held that when retirement is sought by a Government servant prematurely, it does not require any acceptance and comes into effect on the completion of the notice period unless the rules specify otherwise.

7. Mr. Tapan Kumar Mukherjee, the learned Counsel for the State reiterated the same contentions as were raised by the State before the Tribunal, i.e., during the pendency of the criminal case and the punishment period, the resignation of a police officer cannot be accepted.

8. Before dealing with the contentions of the parties it would be advantageous to set out the Regulation 840 of the Police Regulations of Bengal under which the resignation has been submitted by the petitioner.

840. Resignation - (a) All resignations shall be in writing by the persons making the application.

(b) The resignation of a police officer can be accepted by the officer who has power to dismiss him, and a resignation tendered and accepted cannot be withdrawn without the permission of the officer who has accepted it.

(c) A police officer is entitled to resign on giving two months' notice. Ordinarily the notice should not be insisted on if the reasons for resignation are satisfactory; but if the officer wishes to resign while an enquiry is being made which may lead to his prosecution or dismissal, or when heavy duties are devolving on the force the full term of the notice shall be enforced. On the other hand, the officer resigning has no right to demand to be retained in the service till the expiry of the full period of notice, but the officer empowered to accept his resignation may, for sufficient reasons to be stated in writing, discharge him either at once or any time within the two months from the date the resignation is tendered.

9. The interpretation of Clause (c) of this regulation is in dispute. The regulation stipulates that it is incumbent on a police officer wanting to resign to give two months' notice to the authorities. The regulation further specifies that such notice should not be insisted upon if the reasons for resignation are satisfactory. That means if the reasons for the resignation are satisfactory the police authorities need not insist upon the police officer working for two months before he is released. The police officer can be permitted to leave immediately if the reasons for resignation are satisfactory. However, where an officer wishes to resign while an enquiry is pending against him, which could lead to his prosecution or dismissal, the full term of the notice must be enforced. This situation is equally applicable where there are heavy duties devolving on the police force which require the presence of the police officer for the full term of the notice. Significantly the regulation does not empower the authorities to refuse to accept a resignation once it is tendered. Therefore, the authorities can only insist upon the police officer continuing on duty for a period of two months after he submits his resignation i.e. during the notice period. This could be so when there is a pending enquiry against the police personnel which could lead to his dismissal or if there is a pressing need to continue him because of the pressure of work. The officer authorised to accept the resignation of a police officer may, for sufficient reasons to be recorded in writing, discharge the employee immediately or at any time within two months from the date of resignation is tendered. A police officer who submits his resignation cannot demand to be retained in service in such a situation for the full period of the notice.

10. Thus, the regulation indicates that a resignation once tendered by a police officer has to be mandatorily accepted. There is no question of refusing the same. The only leeway given to the police authorities is that the police officer who submits his resignation may be directed to continue to work for two months which is the notice period. His application for resignation cannot be refused on the ground that a departmental enquiry pending against him could lead to his dismissal or prosecution. It cannot be rejected because the employee is undergoing the punishment awarded to him. The resignation cannot be declined on the ground that a criminal case is pending against the officer. There is no power vested in the authorities at all under Regulation 840 to refuse a resignation once it is submitted. The police authorities have only been empowered to accept the same immediately and not insist on the completion of the notice period if the reasons for resignation are satisfactory. They can insist upon the presence of the officer during the notice period, if an enquiry is pending against him which may lead to his dismissal or prosecution.

11. While deciding the case of *Union of India & Others v. Sayed Muzaffar Mir* (supra) the Supreme Court has relied on its earlier judgments in the case of *Dinesh Chandra Sangma Vs. State of Assam and Others*, AIR 1978 SC 17 : (1977) LabIC 1852 : (1978) 1 LLJ 17 : (1977) 4 SCC 441 : (1978) 1 SCR 607 : (1977) 9 UJ 682 and *B.J. Shelat Vs. State of Gujarat and Others*, AIR 1978 SC

1109(1) : AIR 1978 SC 1109 : (1978) 37 FLR 156 : (1978) 2 LLJ 34(1) : (1978) 2 SCC 202 : (1978) 3 SCR 553 : (1978) 10 UJ 303 .

12. In *Dinesh Chandra Sangma* (supra) a Government servant intimated the authorities that he proposed voluntary retirement from service and requested that it be treated as formal notice under Fundamental Rule 56(c). The Supreme Court held that the High Court had committed an error of law by concluding that consent of the Government was necessary to give legal effect to the voluntary retirement sought under F. Rule 56(c). The Supreme Court further held that the permission accorded by the Government to retire and its subsequent order revoking the permission, were ineffectual in law and were therefore null and void.

13. In *B.J. Shelat* (supra) the Supreme Court considered Rule 161 of the Bombay Civil Service Rules and held that no disciplinary proceedings can be undertaken after the date of voluntary retirement of a Government servant. The Court pronounced that the power vested in the Government to refuse permission in case a disciplinary enquiry is pending or contemplated has to be exercised within the notice period and the refusal has to be communicated to the employee during that period.

14. These judgements are squarely applicable to the facts before us. Considering the provisions of Regulation 840 the Government could not have issued a notice to the petitioner calling upon him to show cause for an alleged act of misconduct after the notice period after he tendered his resignation had expired.

15. In our opinion, the relationship of master and servant between the petitioner and the respondents ceased on 16th June 2013. Therefore, the respondents could not have issued any show cause notice to him with respect to his absence after 16th June, 2013. The show cause notice dated 3rd September, 2013 is thus invalid and cannot be acted upon by the authorities. This is because the resignation letter must be deemed to have come into effect on 17th June, 2013, two months after the letter of resignation was tendered.

16. The impugned order of the Tribunal is therefore set aside. In view of the letter of resignation dated 17th April, 2013 submitted in terms of Regulation 840 of the Police Regulations of Bengal the petitioner's resignation has come into effect from 17th June, 2013. The show cause notice dated 3rd September, 2013 with respect to unauthorised absence is non est, illegal and bad in law. It is therefore quashed and set aside.

17. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.

Later

After the judgment is pronounced in open Court, the learned Counsel appearing on behalf of the State/Respondents seeks a stay of the operation of this order.

The learned Counsel appearing on behalf of the Petitioner opposes this prayer.

We do not consider it appropriate to grant the prayer for stay. Hence the prayer for stay is refused.