
(2009) 02 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) No. 15429 of 2006

Shri A.K. Arora

APPELLANT

Vs

National Building Constructions Corporation Ltd.

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Citation : (2009) 158 DLT 217 : (2010) 1 SLJ 474 : (2009) 7 SLR 353

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Anisha Upadhyay, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The petitioner is working as an Assistant Engineer with the National Building Constructions Corporation Limited (NBCC Ltd.), the respondent herein. He has moved this Court under Article 226 of the Constitution of India praying that the respondent be directed to accept his resignation with immediate effect. The facts in a nut shell are as follows:

The petitioner joined the respondent, which is a Government of India Enterprise, as Junior Engineer on 28.1.1985. He was promoted to the post of Assistant Engineer and was designated as Project Executive. On 4.10.2005, he wrote a letter seeking voluntary retirement. There he also stated that if his request for voluntary retirement is not granted, that letter be treated as his resignation from service with immediate effect. However, on 8.11.2005, the petitioner was informed that the competent authority had considered his request and had refused the same due to administrative reasons. The letter stated as follows:

In the matter it is to inform you that your aforesaid request has been considered by the competent Authority but the same has not been agreed to due to administrative reason.

2. Another letter sent by the petitioner on 15.12.2005 to the Chairman cum

Managing Director of the respondent repeating his request for voluntary retirement/ resignation did not elicit any response. The petitioner also sent a reminder dated 19.7.2006, requesting the respondent to accept his request for voluntary retirement or resignation with immediate effect. Thereafter the petitioner stopped attending office. On 8.8.2006, the petitioner was again informed by the respondent that his request had been considered carefully by the competent authority but could not be granted due to administrative reasons. The relevant portion of that letter is as follows:

Your request has been considered carefully by the Competent Authority but it is regretted that the same has also not been agreed to due to administrative reason.

Consequently, the petitioner again sent a letter dated 28.8.2006 to the Chairman cum Managing Director of the respondent which also proved to be of no avail.

3. Before delving into the matter, it is important to point out that in spite of a number of opportunities having been granted to the respondent to file its counter-affidavit, the respondent failed to file the same. Consequently, on 8.1.2008, the right of the respondent to file its counter affidavit was closed.

4. The controversy in the instant case deals with the concept of resignation. The term resignation according to Black's Law Dictionary 6th Edition means;

Resignation. Formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by the act of relinquishment.

According to the petitioner the tendering of a resignation is a legal right of the employee which cannot be curtailed or denied by any authority. It has also been contended by the petitioner that his resignation was rejected merely for "administrative reasons" and his efforts to seek clarification with regard to this expression were in vain therefore he is entitled to the relief prayed for.

5. Whilst, it is correct to say that an employee may resign at any time, unless there is something contrary in the service rules or the contract, but for an act of resignation to become complete and effective, other factors also play a pivotal role. While discussing the meaning of the term resignation, these factors were pointed to by the Supreme Court in Moti Ram Vs. Param Dev and another, where the Court held that;

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 or 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 may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [See: Union of India

v. Gopal Chandra Misra.] 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 takes effect from the date of such communication where the resignation is intended to operate in praesenti.... 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.

The Court further held that;

18. A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as Government employees are concerned, there are specific provisions in the service rules which require acceptance of the resignation before it becomes effective....

6. In J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, the Supreme Court held that;

4....Therefore, one of the ways of terminating the contract of employment is resignation. If an employee makes his intention to resign his job known to the employer and the latter accepts the resignation, the contract of employment comes to an end and with it stands severed the employer-employee relationship. Under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation but once the resignation is accepted the contract comes to an end and the relationship of master and servant stands snapped.

7. Although, neither the petitioner nor the respondent has placed on record any service rules or guidelines governing the services of the employees in the respondent corporation; the petitioner's prayer that this Court direct the respondent to accept his resignation, implies his awareness that the service rules governing his employment require his resignation to be accepted by the competent authority. It is thus obvious that in this case also, resignation is a bilateral act in the sense that tendering of the resignation was not sufficient by itself to bring the contract of service to an end. For that, it required an order of acceptance by the competent authority.

8. The Supreme Court in The Secretary, Technical Education, U.P. and Others Vs. Lalit Mohan Upadhyay and Another, held that,

17. The general principle is that a government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office normally the tender of resignation becomes effective and his service/or office tenure gets terminated when it is accepted by the competent authority...

9. In *Raj Narain Vs. Indira Nehru Gandhi and Another*, :

21....The question as to when a Government servant's resignation become effective came up for consideration by this Court in *Raj Kumar v. Union of India*. Therein this Court ruled that 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....

10. The question that is to be decided now is whether the respondent can reject the resignation of the petitioner or not. The Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, whilst pointing out few instances where the employer can reject the resignation of an employee held that;

111.... By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee...

11. The above decision of the Supreme Court was reiterated by the Supreme Court in *Moti Ram's case* (supra). Recently a Single Bench of Bombay High Court in *Dr. Nayna (Patil) Vs. Dr. Vimal Mundada and Shri D.N. Wanawale*, Returning Officer, also reiterated this proposition. Similar was the approach of the Calcutta High Court in the case of *Sisir Kumar Dutta Vs. Union of India and Others*, where the court held that;

11. In the instant case, the petitioner is an employee of a Government owned company and, therefore the act of relinquishment has to be construed as of a bilateral character. The resignation letter to take effect would require to be accepted by the employer. Non-acceptance thereof has to be for valid reasons. In *Central Inland Water Transport Corporation's case* (supra), it has been declared that an employer can also refuse to accept the resignation when there is a

disciplinary enquiry pending against the employee....

From the above judgments it becomes clear that when a disciplinary enquiry is pending against an employee, the employer can refuse to accept his resignation. In such a case, the employee cannot claim a right to resign and compel the employer to accept the same.

12. In the case at hand, after being informed of the rejection of his resignation, the petitioner himself states in his letter dated 15.12.2005 to the respondent that;

... I may appraise your goodself that the reply to the Inquiry Officer in disciplinary case pending against me has been submitted by me about three months back, result of which is still awaited.

In view of the above, I may request your goodself to kindly get my decision in my disciplinary case expedited and accept my Voluntary Retirement as I am under super cession for the last more than two years.

Thus, the fact that a disciplinary inquiry was pending against the petitioner may have been the reason for the non-acceptance of the petitioner's resignation, and possibly the petitioner was also aware of this fact. Significantly, there is not even whisper in the petition of any disciplinary enquiry pending against the petitioner.

13. The power of this Court under Article 226 of the Constitution of India is a discretionary power which has to be exercised looking to the facts and circumstances of the case. In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, , the Supreme Court emphasized the necessity of placing all the relevant facts before the Court, "clearly, candidly and frankly." It held, inter alia, as follows:

24. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136* in the following words:

It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he

can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement.

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts.

In the instant case, the petitioner has not stated all the relevant facts fully and fairly. Instead of being truthful, frank and open in disclosing all the material facts without any reservation, even if they are against him, he has chosen not to disclose the fact that an enquiry was pending against him at the time he sought resignation. This was a material fact which could have a direct bearing on the outcome of this case. At the same time, I notice that on 11.10.2006, this Court noted the statement of the respondent's counsel that the matter is being investigated by the Central Vigilance Commission and that the respondents have sought the advise of that Commission. Furthermore, the petitioner has not bothered to place the relevant service rules governing his employment on the record and, as recorded in this Court's order reserving judgment, petitioner's counsel has addressed the court for only two minutes. No precedents were cited. I feel that all the necessary and material facts and circumstances are not before the Court. Clearly, the petitioner has not placed all the facts before this Court, "clearly, candidly and frankly," as he should have done. [See K.D. Sharma v. Steel Authority of India Ltd. and Ors. (supra)]. The petitioner's conduct does not inspire confidence. The petition deserves to be rejected on this ground alone.

14. If there is an inquiry pending or even contemplated against a delinquent officer on charges that are serious enough to entail a reference to the Central Vigilance Commission, it would certainly be within the scope of sound administrative decision making to prevent such an officer from conveniently stymieing the process and avoiding punishment by using the device of resignation. Most service rules are designed to avoid just such a situation and empower the employer to refuse to accept the resignation tendered. Here, the petitioner's own letter shows that he is facing an inquiry. There is also a statement by respondent's counsel that a reference has been made to the

Central Vigilance Commission against the petitioner. To my mind, in view of these facts, merely because the petitioner is informed that the competent authority has rejected his resignation, "due to administrative reasons," without communicating those reasons, would not by itself entitle him to relief. Furthermore, no arguments have been addressed and no precedent cited to show that the competent authority was obliged to record specific reasons for rejecting the petitioner's request for resignation or that the authority or its officers were obliged to communicate all those reasons to the petitioner failing which any decision refusing to accept the resignation is bad and deserves to be quashed. I might add that it is not as if the request has been refused without any reason whatsoever. What is communicated to the petitioner is that his request was turned down by the competent authority for "administrative reasons". To my mind, therefore, the reasons are certainly there. The only thing is that they have not been spelt out in the communication to the petitioner. The only question can be whether the employer was required to communicate all such reasons that exist on the record. Then again, the question arises whether in such situation, the employer can be compelled by way of certiorari to disclose the reasons for its decision or whether the non-disclosure of the reasons on which the impugned decision is based, to the employee, ipso facto renders that decision bad and further whether under such circumstances, instead of any further directions, such as directing the authority to reconsider the matter and to decide the same after recording its reasons, this Court would have no option but to grant a mandamus directing the authority to accept the resignation tendered by the employee i.e. the petitioner in this case. No arguments were addressed on any of these aspects nor were any precedents cited in this behalf.

15. Under the circumstances and for all the above reasons, the petition does not warrant the exercise of power under Article 226 of the Constitution of India and the same is dismissed.