
(1987) 11 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 307 of 1985

Sri Bipin Chandra Thakuria

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 1 GLR 226

Hon'ble Judges : T.C. Das, J;S.N. Phukan, J

Bench : Division Bench

Advocate : G.K. Bhattacharyya and G. Gopal, for the Appellant; H.N. Sarma, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—On 9.11.70 the Petitioner was appointed as a Forester-1 by the Divisional Forest Officer, Nowgong, and he worked at various places and also got logging training. It is alleged that while he was posted at North Lakhimpur Division he was subjected to all kinds of harassment, such as his pay was held up, he was suspended and thereafter reinstated after departmental proceedings and his leave was also not regularised. Out of frustration on 11.7.79 the Petitioner submitted his resignation from the service. The resignation letter is at Annexure ?I? to the petition and is reproduced below:

I have the honour to state that the D.F.O. concerned out of his personal grudge gave me unnecessary harassment, immense troubles and doomed my service career, thus my sincerity and honesty in my 7 (seven) years service in the department have gone unrewarded.

That Sir. I have not yet received ray pay, leave allowances etc. with effect from June/77 till now as detailed in my petition referred to above, but I have not received the justification to this effect from the authority concerned as yet.

Under the above facts and circumstances I have got very much depression in my

mind and become completely destitute which become unbearable to me for which I am not going to serve in the department any more, so. I hereby submit my resignation of my services as Forester-1 with effect from this date which may kindly be accepted.

Thereafter the Petitioner reminded the authorities by sending several representations and copies of two representations dated 13.7.81 and 12th May, 1983, have been annexed as Annexures "II" and "III" to the petition. As the Petitioner did not receive any information from the Respondents, on 7th September, 1983, he addressed a letter to the Chief Conservator of Forests, Assam (vide Annexure "IV") withdrawing his resignation. The Chief", Conservator of Forests, Respondent No. 3, by a letter dated 29th September, 1983 (vide Annexure "V" to the petition) informed the Petitioner that his resignation had been accepted, vide Office Order No. 231 dated; 18.8.83 and as such his prayer for withdrawal of resignation could not be considered and accordingly rejected. A copy of the said Office Order was annexed to the said letter. Against the aforesaid decision the Petitioner filed an appeal dated 29.12.83 before the State Government, which was rejected by a cryptic order without assigning any reason and a copy of the letter of the Government addressed to the Chief Conservator of Forests was forwarded to the Petitioner, vide Annexure "VI". The Petitioner preferred an appeal before the learned Administrative Tribunal, Assam, which was registered as Case No. 61 ATA/84 and after hearing, the learned Tribunal by the judgment and order dated 23.3.85 rejected the appeal, inter alia, on the ground that as his resignation had been accepted by the Chief Conservator of Forests on 18 8.83 it was not open for the Petitioner to withdraw his resignation on 7.9.83. Hence the present petition under Article 226 of the Constitution praying for an appropriate writ.

2. Before this Court no affidavit-in-reply has been filed on behalf of Respondents. Mr. Sarma, the learned Government Advocate tried his best to defend the Respondents before us without any such affidavit.

3. From the resignation letter it is clear that the petitions tendered resignation with the request to accept it on the ground that he was harassed by his superior officers. By a subsequent letter dated 13.7.81 the Petitioner give a long list of harassment and injustice alleged to have been done to him praying to the Chief Conservator of Forests to look into the matter and to direct the Conservator of Forests to pay his leave salary, T.A. bills at an early date which was followed by another reminder, as stated above, sent; on 12th May, 1983. We are surprised to find that inspite of the grievances made by a junior officer the senior officers sat over the matter for more than four year and only after lapse of four years his assignation was accepted. Such a callous and heartless attitude senior officers of the forest department is shocking.

4. The first question to be decided is whether the registration letter dated 11.7.79, which has been reproduced, can be treated as resignation from service or not. If we have a close look at the letter we find that this was a protect for the

alleged harassment of the Petitioner by his superior officers. Government being an ideal employer, it was the duty of the superior officers to find out the cause of frustration of this young officer and to settle the matter. Nothing was done by the superior officers. In our opinion this letter cannot be termed as a resignation letter but it is only a protest lodged by the Petitioner before the superior officers. We get support of our views from the contents of the subsequent letter sent by the Petitioner on 13th July, 1981. We are therefore, of the view that the Respondents committed an error treating this letter as a letter of resignation.

5. In this respect we would like to refer to a decision of the Apex Court in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, wherein their Lordships at Para 34 of the report considered the case of Dr. Gupta, a Scientist of the Indian Council of Agricultural Research ("ICAR" for short). Dr. Gupta due to discrimination and victimisation resigned from ICAR. and the relevant portion of his letter as quoted by their lordships in the aforesaid para is quoted below:

As such, after showing so much patience in the matter. I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimisation shown to me by the Head of the Division in the allotment of students of 1969 and 1969 batches and departmental candidates.

This letter was placed before the meeting of the Academic Council and the said letter of resignation was accepted. Their Lordships expressed shock at such a callous and heartless attitude of the Academic Council. However, the administration of the ICAR took a reasonable attitude when the matter came up before the Hon'ble Court for hearing and through their counsel gave an assurance that the Council would consider the question of taking back the Petitioner as a member of the Faculty and accordingly their Lordships directed ICAR. to carry out the said undertaking within a period of three months from the date of the judgment. But unfortunately not to speak of any such undertaking at the time of hearing, the Respondents, as stated earlier, even did not care to file an affidavit-in reply or to produce the records of the case in hand.

6. Be that as it may, let us accept that the letter of resignation dated 11th July, 1979, sent by the Petitioner was legal and valid one consider" whether the letter of withdrawal of the aforesaid resignation dated 7th September, 1983, that is, after the alleged acceptance of the letter of resignation on 13th August, 1983, was legal and valid. Mr. Bhattacharjee, learned Counsel for the Petitioner raised two contentions, namely, that as the Petitioner had no knowledge that his resignation letter was accepted after a period of more than four years, he was legally entitled at the time of sending his withdrawal letter to presume that his said resignation had not been accepted and that in any event the acceptance of resignation with retrospective date from 11.7.79 was illegal and invalid. On the other hand, Mr. Sarma, learned Government Advocate has submitted that according to the established law the resignation once accepted cannot be withdrawn.

7. In *Jai Ram Vs. Union of India (UOI)*, the Petitioner-Appellant having completed 33 years of service sought permission to retire but subsequently he wanted to withdraw the said letter, which was not allowed. The summit Court held that it was open to a servant, who had 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 asked for cancellation of the permission thus obtained; but he could be allowed to do so long as he continued in service and not after it was terminated. As the service of the Petitioner-Appellant ceased long before, the Court held that the Petitioner had no right to withdraw. Subsequently his letter asking permission to retire.

8. In *State of Punjab Vs. Amar Singh Harika*, it was held that the order of dismissal passed against an officer could not be said to have taken effect until the officer came to know about it. But this case was considered by the Apex Court in *Raj Kumar v. Union of India* AIR 1989 SC 180, which is a case of resignation of a Government servant from service and subsequent withdrawal of the said resignation after it was accepted. In this case, their lordships held that the law laid down in *Amar Singh* was not applicable to the above case. We quote below the law laid down by their Lordships.

The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee, But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or 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. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus paenitentiae* but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted.

(Emphasis supplied)

In that case the resignation was accepted within a short time after it was received by the Government of India, as observed by their Lordships. The above law laid down by the Apex Court was also followed in *Raj Narain Vs. Indira Nehru Gandhi and Another*, In that case their Lordships, however, expressed that it was necessary to examine whether Government servant's resignation can be accepted with effect from an earlier date and kept the question open, In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, at Para 50 of the report their Lordships held that in the case of a Government servant/or functionary who cannot, under the conditions of his service, 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 terminated, when

it is accepted by the competent authority. In a recent decision of the Supreme Court in *Balram Gupta v. Union of India and Anr.* 1987 III SVLR (L) 212, the law laid down in *Raj Kumar (supra)* was reiterated including the law that undue delay in intimating in the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. (Emphasis supplied). Mr. Sarma, learned Government Advocate has also drawn our attention to a decision of the Single Bench of the Calcutta High Court in *Durga Prasanna Gupta Vs. State of West Bengal and Others*, Wherein the law laid down in *Raj Kumar (supra)* was followed.

9. Situated thus, we find that the law regarding acceptance of resignation has been clearly laid down by their Lordships of the Supreme Court, which we summarise hereunder:

In the case of a Government servant, who cannot under the conditions of his service, by his own unilateral act of tendering resignation, give up his service, normally, his resignation, becomes effective, when it is accepted by the competent authority till such resignation is accepted by the appropriate authority in consonance with the rules, if any, governing such acceptance, the Government servant concerned has locus paenitentiae to withdraw his offer of resignation. Undue delay in intimating to the public servant concerned the action taken on the letter of registration may justify an inference that his resignation has not been accepted.

10. There is no dispute that the Petitioner sent his resignation letter on 11th July, 1979 and that he submitted his letter withdrawing this said resignation on 7th September, 1983. It is alleged that his resignation was accepted on 18.8.83 and as such his letter withdrawing his resignation could not be accepted. In Para 7 of the present petition, the Petitioner has stated that till 7th of September, 1983, he was not favoured with any reply to his letter of resignation and subsequent reminders and this statement on oath goes unrebutted in absence of any affidavit-in-reply on behalf of the Respondents. We find from the Office Order No. 231 dated 18th August, 1983 (Annexure "V" to the petition) by which the letter of resignation was accepted with effect from 11.7.79 that a copy of the said Office order was not forwarded to the Petitioner and that it was sent as an enclosure to the letter of the Chief Conservator of Forests dated 28th September, 1983, to the Petitioner. So, it is absolutely clear that till 29th of September, 1983, the Petitioner was not informed about the fate of his resignation letter dated 11.7.79. There is no dispute that the Petitioner could not have resigned by his own unilateral action by submitting his letter of resignation and his resignation becomes effective only from the date of acceptance by the competent authority. Though the resignation was submitted by the Petitioner on 11th July, 1979 he had no information about the fate of the said resignation letter till 7th September, 1983, on which date the Petitioner sent his letter of withdrawal. Definitely the delay of four years is a long delay and as held by their Lordships of the Supreme Court this undue delay in intimating to the Petitioner regarding the action taken

on his letter of resignation would justify an inference by the Petitioner that his said resignation had not been accepted till he sent his letter of withdrawal on 7.9.83. We, therefore, hold that in the eye of law the letter of withdrawal of resignation by the Petitioner was sent within time and as such the Respondents ought to have taken action on the said letter. On going through the said letter of withdrawal we also find that the Petitioner has given cogent and valid reasons for withdrawing his earlier resignation.

11. For the reasons stated above, we are constrained to hold that the letter of the Chief Conservator of Forests, Assam, dated 29th September, 1983, rejecting the prayer of withdrawal of resignation of the Petitioner is illegal and liable to be quashed, which we hereby do and in consequence the Office Order No. 231 dated 18th August, 1982. is also set aside. The learned Tribunal committed an error of law in not considering the appeal in the light of the law laid down by the Apex Court and accordingly we also set aside the judgment and order of the learned Tribunal dated 23.3.85 passed in Case No. 61 ATA/84.

12. In the result, the petition is allowed by setting aside the impugned orders and the Petitioner shall be deemed to be in service from 11th July, 1979 and be shall be entitled to his salaries etc., as per rules. The Rule is made absolute.

13. Under the facts and circumstances of the case, we leave the parties to bear their own costs.

14. There is some delay in pronouncing the judgment and order in view of pressing personal problem of one of us (Phukan, J.) and the long Puja vacation of this Court.