
(2008) 05 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition (S) No. 4470 of 2005

Sunil Thakur

APPELLANT

Vs

Hindustan Petroleum Corporation and another

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2008) ILR (MP) 1452 : (2009) 2 MPJR 263 : (2008) 3 MPLJ 470

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Bharat Chitle, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Maheshwari, J.

This petition is filed invoking jurisdiction under Article 226 of the Constitution of India assailing the acceptance of the resignation dated 3-10-2005 Annexure-P/1 and the rejection of the request for withdrawal of the resignation vide letter dated 13-10-2005 (Annexure-P/2).

It is the case of petitioner that he had joined the respondent Corporation as Officer trainee on 9-1-1989 and confirmed with effect from 9-1-1990, he was promoted upto the Officer Grade-C. As per order dated 9-9-2004 and posted as Executive Operation Officer LPG Bottling Plant at Indore. Petitioner has submitted his resignation on 23-9-2005 addressed to General Manager LPG as per Annexure-P/4, due to insufferable humiliation and harassment at the hands of the respondents. It is further stated that the Corporation has framed their Service Rules, having application to all the officers including petitioner and published in the Personal Manual of the Corporation, the Rule 11.1 (iii) deals resignation. The petitioner has received the information through the Executive Director LPG by a registered letter accepting of his resignation Annexure-P/1 dated 3-10-2005. He has objected vide Annexure-P/6 dated 6-10-2006 and said

acceptance of the resignation was unlawful, invalid and against the Rules of the Corporation. It is contended that he has withdrawn his resignation, prior to expiry of notice period of one month; however, rejection thereof by the Corporation as per letter dated 13-10-2005 Annexure-P/2 conveying to receive your that the cheques towards SBFS from the Plant Manager, LPG Plant Manual.

On 15-10-2005 petitioner was intimated telegraphically by the Plant Manager LPG Bottling Plant Indore to collect his dues from the Office; however, by another letter dated 25-10-2005 he had again asked to receive their dues, which was not responded by petitioner, therefore, a letter dated 9-11-2005, along with three cheques were sent to him settling the terminal dues which were not encashed and an intimation has been given in this respect vide Annexure-P/7 and P/10. Petitioner has contended that as per the rules of Corporation, if any departmental enquiry was pending against the employee his resignation could not have been accepted if tendered without sanction by the authority competent to dismiss him. It is said, an enquiry was pending against him; however, without prior sanction acceptance of his resignation was not valid; thus, acceptance of his resignation is contrary to the rules. It is further contended that an employee of the Corporation may resign either by giving one month notice or by depositing one month salary. In the present case he has not deposited one month's salary; however, acceptance of his resignation prior to one month on 3-10-2005 and communicated by the order impugned dated 30-9-2005 is arbitrary and with utmost haste with the bias intention, therefore also, the acceptance of his resignation is arbitrary. It is also said, he has applied for withdrawal of resignation on 6-10-2005, within one month, therefore, rejection thereof is illegal.

It is said that because the petitioner has raised various issues of corruption against the higher officers; however, the respondent Corporation had decided to quit him, and in activation to their motive the resignation of petitioner was accepted within one week, without expiry of notice period of one month, which was not permissible; however, the acceptance of his resignation vide letter dated 3-10-2005 Annexure-P/1 is illegal. It is also stated that a regular employee of the Corporation having legal right to withdraw his resignation prior to expiry of notice period i.e., one month; however, the letter of resignation dated 23-9-2005 ought to have treated as notice and must be accepted after one month, the acceptance of the resignation within 7 days is arbitrary. In support of his contention reliance has been placed on a judgment of the Apex Court in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., and urged if an employee resigns without specifying the date of its acceptance, such resignation must be accepted only after one month. Reliance has also been placed on a judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, . It is further argued by him, that he has not received terminal benefits till withdrawal of the resignation i.e., 6-10-2005; however, the master and servant relationship had continued upto 6-10-2005 i.e., date of withdrawal of the resignation, therefore, withdrawal is illegal. Reliance has also been placed on

a judgment of Dr. Prabha Atri Vs. The State of U.P. and Others, wherein the Court has observed that the letter of resignation to relinquish the job or office once for all may be treated as notice of resignation. While interpreting the word "with immediate effect" as mentioned in the letter of resignation the Court has observed that such letter and wording thereof could not be given undue importance de hors the context tenure of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. However, it is urged that the letter of resignation Annexure-P/4 may be treated as notice of resignation and it may be accepted only after expiry of one month in terms of the Rules.

It is also stated that the respondent Corporation has offered the salary of 22 days in lieu of the notice period after its acceptance; however, the letter of resignation which may be made effective as per the Company's Rules with effect from completion of one month. It is also argued that petitioner was not intimated by the competent authority, under his signatures regarding acceptance of the resignation which, is the Director Marketing and the Director Human Resources, therefore, communication made by the Executive Director LPG dated 3-10-2005 for acceptance of the resignation cannot be treated valid. It is said that petitioner has never sought release from the service of the Corporation with immediate effect as mentioned in the communication of the acceptance of resignation and for this reason he has not deposited one month salary, therefore, the acceptance of the resignation is improper. In the said submissions it is requested that the communication of acceptance of the resignation Annexure-P/1 and of rejection of the letter of withdrawal of resignation Annexure-P/2 may be ordered to be quashed and petitioner may be reinstated with all consequential benefits.

Respondents by filing their reply has not disputed the status of Corporation and admitted it falls within the meaning of the "State" for the purpose of Article 12 of the Constitution. The appointment of the petitioner and his promotion has also not been disputed. It is said that on promotion petitioner was transferred to Shahdol in Jabalpur LPG Regional Office and vide letter dated 15-6-2004 directed to hand over the charge to new incumbent at Indore and to report duty on or before 26-4-2004 at the transferred place, but he has not complied those instructions and remained unauthorized absent for about two months. He had resumed his duties on 29-9-2004 only when his place of posting was changed at Indore as Executive Operation Officer Indore LPG Plant. It is further contended that while remaining at Indore on his new assignment he was continued to remain unauthorized absent upto a long period, chart showing his absence is filed as Annexure-R/2. It is said that various letters were given to him to remain present, but he absented himself wilfully from the duty, on 13-6-2005 he had submitted his first resignation, which was withdrawn prior to its acceptance. He has again submitted his resignation on 23-9-2005, but after its acceptance an unsuccessful attempt of withdrawal of the said resignation was made vide letter dated 6-10-2005. In the return the Service Rules, as referred, having application admittedly and by producing the file notes it is stated that on receiving the letter

of resignation dated 23-9-2005 the respondents took up various steps in accepting the resignation by following the rules.

On 26-9-2005 the Senior Human Resources Officer West Zone has obtained Vigilance and other clearance, thereafter, on 30-9-2005 Director Marketing gave its sanction accepting his resignation with immediate effect as desired by him for taking another employment. It is stated that due to his wilful continuous absence, non-grant of notice period is of little consequence, particularly when he himself requested for acceptance of resignation with immediate effect, therefore, Corporation has not insisted him for one month's notice. It is also said that petitioner is a Salary Grade-"C" Officer and the competent authority was Functional Director (Director Marketing) with Director P and A (Director Human Resources) on obtaining clearance from the Functional General Manager LPG and General Manager Human Resources Development, according to Rule 11.1(iii)(b) the competent authority has concurred with the proposal of acceptance of resignation. In view of the said submissions it is urged that the resignation of the petitioner has rightly been accepted on 30-9-2005 and communicated vide letter dated 3-10-2005, therefore, acceptance of the resignation of the petitioner and its communication is in accordance with the Service Rules. The respondents in their reply has not disputed the letters of petitioner dated 3-10-2005 Annexure-P/5, and 6-10-2005 Annexure-P/6 which was rejected on 13-10-2005 vide Annexure-P/2 by the authority competent. In view of the said facts, it is urged that the acceptance of such resignation cannot be termed as arbitrary or contrary to the Rules, bias or illegal.

Shri Bharat Chitle counsel appearing for the petitioner has taken through me the language of the letter Annexure-P/5 dated 3-10-2005 and tried to justify the action of the Corporation and contended that the language of such letter indicates that petitioner was not willing to withdraw his resignation submitted voluntarily. It is further said that the language of the letter Annexure-P/4 indicate that petitioner wants to quit from the employment immediately; thus, looking to the prayer as made by him the resignation was immediately accepted; however, deviation, if any, from the Rules in accepting the resignation prior to one month is not fatal and the employer is having right to accept the resignation once the employee relinquishes his employment voluntarily. In view of the said submission it is urged that acceptance of the resignation prior to one month notice cannot be termed as arbitrary. In support of the said contention reliance has been placed on a judgment of the Apex Court in the case of Punjab National Bank vs. P.K. Mittal, 1989 Supl. (2) SCC 175 . Reliance has further been placed on the judgment of the Apex Court in the case of The Secretary, Technical Education, U.P. and Others Vs. Lalit Mohan Upadhyay and Another, and submitted that withdrawal of the resignation must be prior to its acceptance and the letter Annexure-P/6 submitted by the petitioner after its acceptance having no consequence. In support of such contention reliance has further been placed on a judgment of the Supreme Court in the case of State of Haryana vs. Ramkumar Mann, (1977) 3 SCC 321.

Shri Chitle has further relied upon the judgment of the Apex Court in the case of The Chief Commercial Manager, South Central Railway, Secunderabad and Others Vs. G. Ratnam and Others, , State Bank of Patiala and others Vs. S.K. Sharma, and the case of J.R. Raghupathy and Others Vs. State of A.P. and Others, . The said judgments were relied to support his contention that the Rules of the Corporation are having no statutory force, therefore, it cannot be enforced through Court by issuing writ in the nature of mandamus, and deviation, if any, from the Rules may not result the action of the respondents as arbitrary or illegal.

After having heard the petitioner in person and Shri Bharat Chitle, counsel appearing for the respondent/Corporation the judgments relied upon by the parties are required to be taken note of. The petitioner has relied upon the judgment of Shrikant S.M. (supra), wherein the facts were: the appellant was the officer of M/s Bharat Heavy Earth Movers Limited, who was not assigned any work; however he got upset and tendered a letter of resignation on January, 1993 that he was thankful to the Chief Managing Director for giving him opportunity to serve the esteemed organization but want to leave the Company. He, therefore, requested to treat it his resignation and relieve him from the duties as per Company rules. The said letter was proceeded with and accepted treating it resignation by the Deputy General Manager (Personnel) on the said day and the appellant was informed accordingly. It was also intimated that the appellant would be entitled to receive pay towards notice period as per Company rules. By another letter of even date he was intimated that his casual leave has been sanctioned and directed to pay balance amount. But prior to its acceptance appellant had submitted 2nd letter indicating the future date of acceptance of resignation i.e., 15th January, 1993 and prior to the said date he has withdrawn such resignation on 8th January, 1993. However, it was argued by a subsequent letter, future date to relinquish the job was given by appellant prior to which date it was withdrawn, therefore, acceptance of the resignation was held improper. In view of these facts the Apex Court in reference to the Company rules has observed as under:

11. Plain reading of the above rule makes it clear that a permanent employee may resign from service by giving one month's notice in writing or by paying one month's basic pay in lieu of notice to the company. Admittedly, the appellant had not paid one month's basic pay in lieu of notice to the company. It is, therefore, clear that since the letter of resignation was as per company rules, it was to become effective after one month. The learned single Judge was also of the same opinion. He observed in the order that the company rules required an employee to resign by giving one month's notice in writing, or if he wanted to be relieved immediately, by paying one month's pay in lieu of notice period. Since the appellant had not paid one month's pay in lieu of notice along with his letter of resignation, it could safely be presumed that he had tendered his resignation letter by giving a notice of one month in writing to the employer. The learned single Judge then observed that the "intention" of the appellant to resign from service was accepted by the employer on the same day, i.e., January 4, 1993

and he was informed that he would be relieved from service at once. According to the learned single Judge, though by another letter of the same date, the appellant was informed that he had been granted casual leave from January 5, 1993 to January 13, 1993 and January 14, 1993 being holiday, he would be relieved from January 15, 1993, it was within the powers of the company under the rules and would not change the legal position that once the resignation was accepted, it was effective. Hence, it was not open to the appellant to withdraw the resignation on January 8, 1993. Referring to several judgments, the learned single Judge held that since the resignation was accepted, the company was fully justified in ignoring and not accepting the request of the appellant made in his letter dated January 8, 1993. In the opinion of the learned single Judge, the act of relieving the appellant was a subsequent act, which had nothing to do with the act of accepting the resignation and the appellant was not entitled to any benefit.

The Apex Court has further considered the meaning of term resignation, which means spontaneous relinquishment of one's own right; however, in the given facts the action of respondents to accept resignation was held arbitrary.

The other judgment of Gopal Chandra Misra (*supra*) was a known case of resignation of a Judge of the High Court, wherein a Judge of the Allahabad High Court had submitted his resignation stating that because he will remain on leave till 31st July, 1977; however, resignation may be made effective from 1st August, 1977. The said letter of resignation was withdrawn on 15th July, 1977 prior to the future date of acceptance. In that context the Apex Court has observed that the intention to give up or relinquish the office is the concomitant act of relinquishment and necessary to constitute a complete and operative resignation; the complete and effective act of resignation from an office must have a link with resigner to terminate its tenure, because the resignation which was submitted by a Judge have taken place on a date different from a date chosen by the Judge, it subverts his exclusive constitutional right to resign his office with effect from a date of his choosing. However, the Apex Court has further observed that in absence of a legal control or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective when it operates to terminate employment or the office tenure of the resigner.

In the case of Dr. Prabha Atri (*supra*) the appellant who was working as Anaesthetist in Kamla Nehru Memorial Hospital, Allahabad, was served with a memo for certain lapses. Thereupon she left the hospital without intimation and even on request to give anaesthesia to one of the patient admitted in emergency she had not cared. In reply to said memo it is stated by her that the appellant has verbally clarified her position; however, prayed for withdrawal of the said memo. In later part of reply it was also mentioned that if her explanation is not acceptable to the Management then treat it my resignation and accept it with immediate effect. In the said facts the Apex Court in reference to a judgment of P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, has

observed, thus:

8. In *P.K. Ramchandra Iyer vs. Union of India* this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and

"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 victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates". (SCC p. 172, para 34)

In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and out of exasperation of the said person wrote the letter stating that the only honourable course left open to him was to resign rather than suffer (SCC p. 173, para 34).

In *Moti Ram vs. Param Dev* this Court observed as hereunder : (SCC pp.735-36, para 16)

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 vs. Gopal Chandra Mishra*.) 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. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. 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.

We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9-1-1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a "resignation", it must be unconstitutional and with an intention to operate as such, At best, as observed by this Court in the decision in P.K. Ramchandra Iyer it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9-1-1999 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so-called resignation. The words "with immediate effect" in the said letter could not be given undue importance de hors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9-1- 1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramchandra Iyer the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9-1-1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the writ Petition.

In view of the foregoing judgments it is apparent that if a resignation has been tendered by an employee it may be given effect with effect from the date which he has chosen and the acceptance prior to the said date is improper and the prospective resignation may be withdrawn prior to the said date. It is further held that merely writing word "accept resignation with immediate effect" should not be given undue importance de hors the context to the letter written by an employee under the circumstances. It is further held that the requirement of the rule must be observed, otherwise it may be presumed that tendering his resignation may amount to a notice to the employer and it should be accepted under the rules after expiry of the period of notice, and it may withdrawn prior to the said date of notice.

On the other hand, as per judgment relied upon by the respondents in the case of Punjab National Bank (supra) the Apex Court had an occasion to deal with the issue of resignation of permanent Bank Officer, who had tendered his resignation on 21st January, 1986 giving future date of 30th June, 1986. The said resignation was accepted with immediate effect waiving the condition of notice under sub-clause (2) of Clause 20 of the Bank Regulation. The Apex Court had held that the resignation could take effect either on the date chosen by the employee in the notice i.e., 30th June, 1986 or on expiry of three months period. But the Bank cannot accept it on any earlier date. The Apex Court had further held that the notice period may be reduced by the Bank on the request of the employee but not otherwise and the resignation may be withdrawn before the date on which it has become effective.

In the case of Delhi Electric Supply Undertaking vs. Tara Chand, (1978) 2 SLR 425 (Del) the Apex Court has held as under:

The regulation permitted the termination of the services of a servant of the undertaking "on notice of three months from either side without any cause to be assigned in case of permanent servants." The employee in that case sent a letter to the employer stating that "he was compelled to resign for various reasons" and this resignation was accepted by the undertaking. The Delhi High Court in its judgment (to which one of us was a party) observed that notice under the regulation was intended for the benefit of the employer which could, if it considered necessary or the period of notice and accept the resignation with immediate effect. But that was a case where the employee, though bound to give three months" notice, expressed his desire to resign with immediate effect and it was also accepted by the employer. It was not the case that he had given notice indicating a desire to be relieved at a future date. The analogy of that case would have applied to the present case as well if the respondent here had expressed his desire to be relieved immediately even before the expiry of the three months" notice period and the bank had accepted it. The employer would then certainly have been entitled to accept the resignation, as requested by the employee, waiving the notice period. The distinction between that case and the present one is that, here, the employee has chosen a future date on which resignation would be effective but he is being forced to "resign" before such date." In view of the foregoing it is apparent that if an employee has made a request to accept his resignation with immediate effect such prayer may be accepted by the employer waiving the condition of notice period because such acceptance by employer is on the request of the employee concerned.

In the case of Secretary Technical Education U.P. (supra) the Apex Court has taken into consideration the right of withdrawal of resignation prior to its acceptance and in paras 17 and 18 it has observed that normally the resignation becomes effective and his service/office tenure gets terminated when it is accepted by the competent authority. An employee is entitled to withdraw his resignation before its acceptance by the competent authority.

In the judgment Ramkumar Mann (supra) the Apex Court has held that once the resignation was submitted voluntarily which was accepted by the Government; however, on and from that date the relationship of employer and employee between the respondent and State ceases and, thereafter, he had no right whatsoever either to claim the post or a right to withdraw his resignation which has already become effective.

The other set of judgments relied upon i.e., the in Chief Commercial Manager, South Central Railway, Secunderabad and others (supra) and J.R. Raghupathy and others (supra) were relied in the context that the administrative rules, regulations and instructions which have no statutory force do not give rise of any legal right in favour of the aggrieved party and cannot be enforced in a Court of Law, but in both these cases the sub-delegated legislation i.e., executive instructions were relied upon and which were not issued under the statute, therefore, the Court has taken the view the administrative rules, regulations and instructions cannot get enforced through Court. There cannot be any doubt to accept such legal proposition, but in the present case the Company has framed its own rules after agreement with the union members which are sacrosanct to the employer and employee both and binding in between as per agreements. Therefore, the respondents cannot derive the benefit of those judgments. The another judgment relied upon by the respondents in the case of State Bank of Patiala and ors. (supra) it was held that the substantive and procedural compliance which may be mandatory can be waived in favour of them to whom it was made. The said analogy cannot also be disputed by this Court, but in the facts and circumstances emerging in the present case it cannot be said that the rules which are relied upon by one party and accepted by other implementation thereto is also admitted in reply, therefore, in the said context the acceptance of the said analogy may be relevant for the purpose of this case.

In the present case it is not in dispute that on account of unauthorized absent a departmental enquiry was pending against the petitioner. Bare reading of the letter Annexure-P/4 indicates that it is not a simple letter of resignation, but written making various allegations in five pages and in the last petitioner has mentioned to resign from the post which was accepted on 30-9-2005 and communicated on 3-10-2005 vide Annexure-P/1. The file notes accepting resignation have been produced for perusal of the Court whereby the HR Department West Zone dated 27-9-2005 the factum of pendency of the domestic enquiry was mentioned, but because the resignation was submitted by the petitioner. However, it was proposed to drop the inquiry, the said file note was concurred by the Director, Marketing and HR on 30-9-2005. It is further seen from the record that the acceptance of resignation during pendency of the departmental enquiry was sanctioned on 30-9-2005 by the authority who is competent to dismiss him and a parallel file note was placed by the HR Department West Zone, wherein the order to accept resignation was simultaneously passed on the same date i.e., 30-9-2005 and communicated vide letter dated 3-10-2005. The Rules relevant which are applicable on both the

parties are reproduced below: "11.1(iii) Resignation

a) Under no circumstances will the resignation of an officer whose conduct is under investigation be accepted, if tendered without the sanction of the authority competent to dismiss him.

b) In all cases, a regular officer resigning from the services of the Corporation is required to give 30 days notice or pay 30 days salary in lieu of notice period under the present terms of appointment or as specified.

c) Resignations are accepted by the Competent authorities as indicated below :

Grades

Authority

A

Functional GM with GM-HRD

B, C, D

Functional Director with Director P and A

E, F, G

Recommended by Functional Director with Director P and A, accepted by C and MD.

H and above

Board of Directors.

Before processing the resignation of an officer, it must be ensured that all outstandings to his account are cleared. It is also necessary to ensure that he vacates Corporation Accommodation, if any, and hands over possession of Corporation property to his immediate Supervisor/Competent Authority on acceptance of his resignation.

In the context of the said Rules, the request made in letter of resignation by petitioner in Annexure-P/4 is reproduced as under:

I do not want to quit the services of the Corporation but in view of the reasons and circumstances mentioned above and to enable me take up another employment to ensure survival of my family I am forced to quit from the services of the Corporation and I hereby submit my resignation from the services of the Corporation. Please note that since it is question of survival of my family, I may be required to take up any employment immediately while still on the payroll of the Corporation during the period form the resignation because this situation has come because my 100% salary is being deducted and that too even before the inquiry is over.

By the file note it is apparent that the authority competent to dismiss the

petitioner has granted sanction on 30-9-2005 to accept his resignation on the same date resignation was accepted, because the petitioner has requested for its acceptance prior to expiry of period of notice due to survival of his family. The said acceptance was acknowledged by him without any objection vide letter Annexure-P/5 on 3-10-2005, the relevant thereof is reproduced hereinbelow:

1....I do not intend to take back the resignation but I can also not accept a situation where Corporation keeps my money with it for I do not how much time because I have experienced that earlier also the Corporation has kept my money illegally.

"3. The circumstances mentioned in my resignation letter described the condition in which I was forced to resign and since management has accepted the resignation it is of little consequence to me what action is taken on the matter and acceptance of resignation without clearing my dues further proves that management wants to harass me."

After two days he had again written a letter of conditional withdrawal of the resignation Annexure-P/6 dated 6-10-2005, which was rejected on 13-10-2005. Thus, the acceptance of resignation Annexure-P/1 and the rejection thereof cannot be said to be arbitrary. In view of the discussions made hereinabove, it is to be further held that acceptance made by the respondent Corporation cannot be held in violation of the procedure as prescribed in Rule 11(i)(iii)(a)(b)(c).

In the facts of the present case, it is the petitioner who himself has submitted the resignation making a request for its acceptance prior to expiry of the period of notice due to survival of his family as apparent from the language quoted hereinabove. However, if the Corporation has accepted the prayer made by the petitioner prior to the period of notice, it cannot be said to be arbitrary, in view of the judgment of the Apex Court as referred hereinabove in the case of Delhi Electricity Supply Undertaking (*supra*). The argument as advanced by the petitioner relying on the judgment of Dr. Prabha Atre (*supra*), Shrikant S.M. (*supra*) and Gopal Chandra Mishra (*supra*) having no application to the facts of the present case, because in case of Dr. Prabha Atre she has submitted reply to the show cause notice and in the last it was observed that if the reply is not found satisfactory it may be treated as resignation which may be accepted with immediate effect. In the case of Shrikant S.M. (*supra*) it was mentioned that the resignation may be accepted as per the Company Rules but by subsequent letter the date of acceptance was given to accept it from prospective date, prior to which it was withdrawing and in the case of Gopal Chandra Mishra (*supra*) the date of resignation was of future date prior to which it was withdrawn. Therefore, the directions as issued by the Apex Court in the aforesaid three cases having no application to the facts of the present case.

In view of the foregoing discussions, it is apparent that it is the petitioner who himself has tendered his resignation, making request of waving the period of notice because he was required to take employment somewhere else for survival

to him and his family, however, on acceptance of such resignation, vide letter Annexure-P/5 dated 3-10-2005, he has prayed for settlement of dues mentioning that he does not intend to take back the resignation. Later on, on 6-10-2005; he has submitted letter of withdrawal of resignation; such action of petitioner is based on afterthought. The arguments regarding arbitrary exercise of the power of acceptance of resignation prior to completion of one month notice period cannot be accepted because it is a case in which the petitioner himself has made a request for acceptance of his resignation with immediate effect and if such request is accepted by the Corporation, it cannot be said to be arbitrary or in violation of rules particularly in view of the acknowledgment of such acceptance vide letter Annexure-P/5. Therefore, irresistible conclusion which may be arrived at in this case is that the acceptance of resignation on 30-9-1995 by the Corporation vide Annexure-P/1 and rejection of the withdrawal letter of resignation vide Annexure-P/2 dated 13-10-2005 has rightly been ordered.

Accordingly, I find no merit in this petition and it is hereby dismissed. However, it is observed that if the Corporation has not settled and paid all the dues of petitioner, the same may be finalized and released within the period of two weeks. In the facts and circumstances of the case, parties are directed to bear their own costs.