Union of India and Others

Vs

Gopal Chandra Misra and Others

Civil Appeal Nos. 2644 and 2655 of 1977

(Jaswant Singh, Syed M. Fazal Ali, R. S. Sarkaria, A. C. Gupta, N. L. Untwalia JJ)

15.02.1978

JUDGMENT

SARKARIA, J. (for himself and Gupta, Untwalia and Jaswant Singh, JJ.) -

1. By a short Order, dated December 8, 1977, we (by majority) accepted these two appeals and announced that a reasoned judgment shall follow in due course. Accordingly, we are now rendering the same.

2. Whether a High Court Judge, who sends to the President, a letter in his own hand, intimating to resign his office with effect from a future date, is competent to withdraw the same before that date is reached - is the principal question that falls for consideration in these two appeals, directed against a judgment, dated October 28, 1977, of the High Court of Judicature at Allahabad, allowing the writ petition of Shri Gopal Chandra Misra, respondent herein, and issuing a direction under Article 226 of the Constitution, restraining Shri Satish Chandra (hereinafter referred to as appellant 2) from functioning as a Judge of the Allahabad High Court.

3. Appellant 2 was appointed to the High Court of Allahabad as Additional Judge on October 7, 1963, and a permanent Judge on September 4, 1967. He will be attaining the age of 62 years on September 1, 1986. On May 7, 1977, he sent a letter under his hand addressed to the President of India, through a messenger. This letter may be reproduced as below :

> #
>
> To
>
> The President of India,
>
> New Delhi.
>
> Sir,
>
> I beg to resign my office as Judge, High Court of Judicature at Allahabad. I will be on leave till 31st of July, 1977. My resignation shall be effective on 1st of August 1977.With my respects,
>
> Yours faithfully,
>
> (Sd.)

Satish Chandra.

##

4. On July 15, 1977, appellant 2 wrote to the President of India another letter in these terms :

#

To

The President of India,

New Delhi,

Sir,

I beg to revoke and cancel the intention expressed by me to resign on1st of August, 1977, in my letter dated 7th May, 1977. That communication may very kindly be treated as null and void.

Thanking you and wishing to remain,

Yours sincerely,

(Sd.)

Satish Chandra.

##

5. The receipt of this letter of revocation or withdrawal, dated July 15, 1977, was acknowledged by Shri T. C. A. Srinivasavardharan, Secretary, Ministry of Law Justice and Company Affairs, New Delhi, as per his D.O. No. 2/14/77-Jus., dated July 28, 1977. By a separate letter, appellant 2 cut short his leave and resumed duty as a Judge of the Allahabad High Court on July 16, 1977, and from July 18, 1977 he commenced sitting in the Court and deciding cases.

6. On August 1, 1977, Shri Gopal Chandra Misra, an Advocate of the High Court, filed a petition under Article 226 of the Constitution, contending that the resignation, dated May 7, 1977, of appellant 2, having been duly communicated to the President of India in accordance with the provisions of Article 217(1), proviso (a) of the Constitution, was final and irrevocable, and as a result, appellant 2 had ceased to be a Judge of the Allahabad High Court with effect from May 7, 1977, or, at any rate, with effect from August 1, 1977; therefore, his continuance to function as a Judge from and after August 1, 1977; was usurpation of the office of a High Court Judge, which was a public office. On these premises, the writ petitioner prayed for a writ, order or direction in the nature of quo warranto calling upon Mr. Satish Chandra to show under what authority he was entitled to function and work as a Judge of the High Court. The petition came up for final hearing before a Bench of five learned Judges of that Court, which by a majority of 3 against 2, allowed the writ petition and issued the direction aforesaid. Against that judgment, these two appeals, on a certificate granted by the High Court under Articles 132 and 133(1) of the Constitution have been filed before this Court. Civil Appeal 2644 of 1977 has been preferred by the Union of India, and

Civil Appeal 2655 of 1977 by Shri Satish Chandra.

7. A preliminary objection was raised by Shri Yogeshwar Prasad, learned Counsel for the respondent, Shri Gopal Chandra Misra, that the Union of India has no locus standi to prefer an appeal against the Order of the High Court. Simultaneously, with the raising of this objection at the bar, a petition to that effect was also presented to us, directly. The grounds of this objection, as canvassed by Shri Yogeshwar Parsad, are :

> (a) That the Union of India was jointed merely a pro forma party in the writ petition, inasmuch as no relief was claimed against it;
>
> (b) That the Union of India is not a party aggrieved by the Order of the High Court, because no relief has been granted against it;
>
> (c) That the Union of India is not a person interested; and
>
> (d) That the appeal by the Union of India will not further any public policy; that it has already incurred heavy expenditure in defending the action of an individual person after he has relinquished his office. Such expenditure is not permissible and should not be encouraged.

8. We find no merit in this objection.

9. The Union of India was impleaded as a respondent in the case before the High Court by the writ petitioner, himself. It filed a counter-affidavit contesting the writ petitioner's claim.

10. Mr. Soli Sorabji, Additional Solicitor-General addressed arguments before the High Court on behalf of the Union of India. No objection to the locus standi of the Union of India to contest the writ petition was raised, at any stage, before the High Court. It is, therefore, not correct to say that the Union of India was not a contesting party in the Court below.

11. As rightly pointed out by the learned Attorney-General, the Union of India is vitally interested in the case. It is the President of India who had appointed appellant 2 as a Judge, and the stand of the Union of India throughout has been that the withdrawal of the intimation to resign by the Judge, is valid and therefore, he continues to hold the office of a Judge even after August 1, 1977; but the High Court has held otherwise. The Union of India, therefore, has reason to feel aggrieved by the decision of the High Court.

12. In order to give a person locus standi to appeal on a certificate granted under any clause of these articles, it is necessary that he was a "party in the case before the high Court". The Union of India was admittedly such a party having a stake in the dispute. The substantial question of law involved in the case, is of general importance and concerns the interpretation of the Constitution.

13. We are not concerned with the matter of incurring expenditure by the Union of India; whether it is justified, proper or not. We are surely of the view that the Union had a substantial interest in this proceeding. Thus, from every point of view, the Union of India is entitled to come in appeal in this Court and question the correctness of the High Court's finding on the question of law involved. We, therefore, overruled the preliminary objection, and requested the learned Attorney-General to proceed with his address.

14. The contentions advanced by the learned Attorney-General, Mr. Gupte, on behalf of the Union of India, may be summarised as follows :

(i) 'Resignation' within the contemplation of proviso (a), to Article 217(1), takes place on the date on which the Judge of his own volition chooses to sever his connection with his office, and not on any other date. Since in terms of the letter, dated May 7, 1977, the Judge proposed to sever his link with his office with effect from August 1, 1977, he could not be said to have resigned his office within the meaning of proviso (a) on May 7, 1977, or at any time before the arrival of the prospective date indicated by him.

(ii) The letter, dated May 7, 1977, written and sent by appellant 2 to the President, read as a whole, is a mere intimation of an intention to resign from a future date. Before the arrival of that date, it was not final and complete, nor a "juristic" act, because it had no legal effect and could not sever the link of the Judge with his office or cut short its tenure.

(iii) Since the mere sending of the letter, dated May 7, 1977 to the President, did not constitute a final and complete act of resignation, nor a juristic act, it could be withdrawn at any time before August 1, 1977 up to which date it was wholly inoperative and ineffective.

(iv) The withdrawal by appellant 2 of his proposal to resign, does not offend public interest. The common law doctrine of public policy cannot be invoked in such a case (Gherulal Parakh v. Mahadeodas Maiya (1959 Supp 2 SCR 406 : AIR 1959 SC 781)).

(v) The general principle is that in the absence of a provision prohibiting withdrawal, an intimation to resign from a future date can be withdrawn at any time before it operates to terminate the employment or the connection of the resignor with his office.

15. This principle, according to Mr. Gupte, was enunciated by the Supreme Court as far back as 1954 in Jai Ram v. Union of India (AIR 1954 SC 584 : 1954 SCA 1251 : 1954 SCJ 809); and followed by the Allahabad, Kerala, Delhi and Madhya Pradesh High Courts in these cases : Sanker Dutt Shukla v. President, Municipal Board, Auraiya (AIR 1956 All 70); Bahori Lal Paliwal v. District Magistrate, Bulandshahr (AIR 1956 All 511 (FB) : ILR (1956) 2 All 593 (FB)); M. Kunjukrishnan 1956 AII 70); Bahori Lal Paliwal v. District Magistrate, Bulandshahr (AIR 1956 All 511 (FB) : ILR (1956) 2 All 593 (FB)); M. Kunjukrishnan Nadar v. Hon'ble Speaker, Kerala Legislative Assembly (AIR 1964 Ker 194); Y. K. Mathur v. The Commissioner, Municipal Corporation of Delhi (AIR 1974 Del 58) and Bhairon Singh Vishwakarma v. Civil Surgeon, Narsimhapur (1971 Lab IC 127 (MP)). The same principle has been reiterated in Raj Kumar v. Union of India ((1968) 3 SCR 857, 860 : AIR 1969 SC 180 : 1969 Lab IC 310).

16. Mr. Gupte further referred to the case, Rev. Oswald Joseph Reichel v. The Right Rev. John Fielder, Lord Bishop of Oxford ((1889) 14 AC 259), decided by the House of Lords in England, which has been relied upon by the High Court and submitted that Reichel's case stood on its own facts and was clearly distinguishable.

17. Mr. F. S. Nariman, appearing for appellant 2, adopted the arguments of Mr. Gupte. He reiterated, with emphasis, that the expression "resign his office" used in proviso (a), means "relinquish or vacate his office", and the requirement of this expression is not satisfied unless and until the writing sent by the Judge effects severance of the link between the Judge and his office and terminates his tenure. It is submitted that by holding that though the letter of resignation in its terms, would effect termination of the tenure prospectively from August 1, 1977, yet it would be deemed to have caused immediately on its despatch to and receipt by the President on May 7, 1977, itself, by curtailment of the judge's tenure of office until August 1, 1977 the High Court has engrafted in proviso (a) a wholly unwarranted fiction.

18. As against the above, Mr. Jagdish Swarup, learned Counsel for the respondent has substantially reiterated the same arguments which found acceptance with the High Court (majority).

19. Article 217(1) fixes the tenure of the office of a High Court Judge. It provides that a Judge shall hold office until he attains the age of 62 years. The three clauses of the proviso to Article 217(1) indicate that this tenure can be terminated before the Judge attains the age of 62 years, in four contingencies, namely, where he -

(i) resigns his office in the manner laid down in its clause (a);

(ii) is removed from his office in the manner provided in Article 124(4) [vide its clause (b)];

(iii) is appointed a Judge of the Supreme Court [vide its clause (c)];

(iv) is transferred to any other High Court in India.

20. Here, in this case, we have to focus attention on clause (a) of the proviso. In order to terminate his tenure under this clause, the Judge must do three volitional things : Firstly, he should execute a "writing under his hand". Secondly, the writing should be "addressed to the President". Thirdly, by that writing he should "resign his office". If any of these things is not done, or the performance of any of them is not complete, clause (a) will not operate to cut short or terminate the tenure of his office.

21. The main reasoning adopted by the learned Judges of the High Court, (per R. B. Misra, M. N. Shukla and C. S. P. Singh, JJ.) appears to be that since the act of appellant 2 in writing and addressing the letter, dated May 7, 1977, to the President, fully satisfied the three-fold requirement of clause (a) of the proviso, and nothing more was required to be done under that clause either by the "Judge" or by the President at the other end, the resignation was "complete", "final" and "absolute". It was a complete "juristic" act as immediately on its receipt by the president on May 7, 1977, itself, it had the effect of cutting short the tenure of the Judge until August 1, 1977; and, in the absence of a constitutional provision warranting that Course, it could not be withdrawn or revoked even before the date, August 1, 1977; on which in terms of the letter dated May 7, 1977, the resignation was to be effective. Withdrawal is always linked with acceptance. Where no acceptance is required and the resignation has been made in accordance with the prescribed procedure, the process gets exhausted and the resignation becomes a fait accompli. Article 217(1), proviso (a) of the Constitution is a self-contained provision. It gives the Judge a unilateral right to cut short his tenure by following the procedure prescribed therein, of his own volition. Such a resignation to be effective does not require acceptance by the President. Article 217 does not give a right to withdraw

the resignation, once given in accordance with the manner prescribed therein. Since Article 217(1), proviso (a) sets out a complete machinery with regard to the resignation by a Judge, the right to withdraw a resignation cannot be implied, the maxim being "expressum facit cessare tacitum" (when there is express mention of certain things, then anything not mentioned is excluded). Recognition of a right of withdrawal of resignation will leave the door wide open to abuse and offend public policy.

22. It may be observed the entire edifice of this reasoning is founded on the supposition that the "Judge" had completely performed everything which he was required to do under proviso (a) to Article 217(1). We have seen that to enable a Judge to terminate his term of office by his own unilateral act, he has to perform three things. In the instant case, there can be no dispute about the performance of the first two, namely : (i) he wrote a letter under his hand, (ii) addressed to the President. Thus, the first two pillars of the ratiocinative edifice raised by the High Court rest on sound foundations. But, is the same true about the third, which indisputably is the chief prop of that edifice ? Is it a completed act of resignation within the contemplation of proviso (a) ? This is the primary question that calls for an answer. If the answer to this question is found in the affirmative, the appeals must fail. If it be in the negative, the foundation for the reasoning of the High Court will fail and the appeals succeed.

23. Well then, what is the correct connotation of the expression "resign his office" used by the founding fathers in proviso (a) to Article 217(1) ?

24. 'Resignation' in the dictionary sense, means the spontaneous relinquishment of one's own right. This is conveyed by the maxim : Resionatio est juris propii spontanea refutatio [See Earl Jowitt's Dictionary of English Law). In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office, or to "loose hold of" the office (cf. Shorter Oxford Dictionary); and to "loose hold of office", implies to "detach", "unfasten", "undo or untie the binding knot or link" which holds one to the office and the obligations and privileges that go with it.

25. In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (see, e.g. American Jurisprudence, Second Edn., Vol 15A, page 80), although 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. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting asunder from the office. Indeed, the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same event.

26. From the above dissertation, it emerges that a complete and effective act of resigning office is, one which severs the link of the resignor with his office and terminates its tenure. In the context of Article 217(1), this test assumes the character of a decisive test, because the expression "resign his office" - the construction of which is under consideration - occurs in a proviso which excepts or qualifies the substantive clause fixing the office-tenure of a Judge up to the age of 62 years.

27. Before applying this test to the case in hand, it is necessary to appreciate the true nature of the letter, dated May 7, 1977, sent by the Judge to the President.

28. The substantive body of this letter [which has been extracted in full in a forgoing part of this

judgment] is comprised of three sentences only. In the first sentence, it is stated : "I beg to resign my office as Judge, High Court of Judicature at Allahabad". Had this sentence stood alone, or been the only content of this latter, it would operate as a complete resignation in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read : "I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977". The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an intimation or notice of the writers, intention to resign his office as judge, on a future date, viz., August 1, 1977. For the sake of convenience, we might call this communication as prospective or potential resignation, but before the arrival of the indicated future date, it was certainly not a complete and operative resignation because, by itself, it did not and could not, sever the writer from the office of the Judge, or terminate his tenure as such.

29. Thus tested, sending of the letter dated May 7, 1977 by appellant 2 to the president, did not constitute a complete and operative resignation within the contemplation of the expression "resigns his office" used in proviso (a) to Article 217(1). Before the arrival of the indicated future date (August 1, 1977), it was wholly inert, inoperative and ineffective, and could not, and in fact did not, cause any jural effect.

30. The learned Judges of the High Court (in majority) conceded that appellant 2 "cannot be taken to have resigned on a date prior to August 1, 1977", and "the vacation of the sent may be on (the) future date", "because he made his choice to resign from August 1, 1977", yet, they hold that "the factum of resignation became complete the moment respondent 1 (Shri Satish Chandra) in his handwriting, sent a letter of resignation to the President of India" and on May 7, 1977, itself, cut short the date of retirement of the Judge from September 1, 1986 to August 1, 1977, and there could be "no withdrawal of the same unless the Constitution so provided".

31. With respect, we venture to say that this reasoning is convoluted logic spiraled up round a fiction for which there is no foundation in the statute. To say that the resignation or relinquishment of his office by the Judge could not take place before August 1, 1977, and yet, the factum of resignation became complete on May 7, 1977, would be a contradiction in terms. To get over this inherent contradiction, the High Court (by majority) has introduced a two-fold fiction : (1) That if in a written communication to the President, the Judge chooses to resign his office from a future date, the resignation will be deemed to be effective and complete from the moment the communication is sent to the President and received by him. (2) That since it has not been provided in proviso (a) or elswhere in the Constitution, that such communication of a "prospective", resignation can be withdrawn, its withdrawal would be deemed to have been prohibited, on the maxim expressum facit cessare tacitum.

32. No. 1 is manifestly incompatible with the letter and intendment of Article 217(1), since by deeming the resignation to have taken place on a date different from the date chosen by the Judge, it subverts his exclusive constitutional right to resign his office with effect from a date of his choosing. No. 2 is equally unjustified. There is nothing in proviso (a) or elsewhere in the constitution which expressly or impliedly forbids the withdrawal of a communication by the Judge to resign his office before the arrival of the date on which it was intended to take effect. Indeed, such a futuristic communication or prospective resignation does not, before the indicated future date is reached, become a complete and operative act of 'resigning his office' by the Judge within the contemplation of proviso (a) to Article 217(1).

33. Thus considered, it is clear that merely by writing the letter to the President on May 7, 1977, proposing to resign with effect from August 1, 1977, the Judge had not done all which he was required to do to determine his tenure, of own volition, under proviso (a) to Article 217(1). He had not, as yet, resigned his office on May 7, 1977, itself, he had not done everything which was necessary to complete the requirement of the expression "resign his office". He had not relinquished his office and this delinked himself from it. He had not - as the learned Judges of the High Court have erroneously assumed - crossed the Rubicon - Rubicon was still afar, 85 days away in the hazy future. At any time, before that dead-line (August 1, 1977) was reached, the Judge could change his mind and choose not to resign, and withdraw the communication dated May 7, 1977.

34. We have already seen that there is nothing in the Constitution or any other law which prohibits the withdrawal of a communication to resign from a future date, addressed by a Judge to the President, before it becomes operative. Could he then be debarred from doing so on the ground of public policy ?

35. In this connection, Shri Jagdish Swarup contended that, but for the words "President and Vice-President", the language of proviso (a) to Article 217(1) is identical with that of proviso (a) to Article 56(1) of the Constitution which gives an identical right to the President to resign his office by writing under his hand, addressed to the Vice-President. If this Court evolves a principle - proceeded the argument - whereby it permits a Judge who is a constitutional functionary of the same class as the President or the Vice-President, whereby he can withdraw his resignation, it will lead to starting results. The constitutional functionaries would misuse such implied power of withdrawal of resignation. The President may hold the Parliament to ransom and make a farce of parliamentary sovereignty and the functioning of the Constitution. On these premises, it was urged that public policy demands that no such interpretation should be put on these constitutional provisions which would lead to abuse to power by the constitutional functionaries.

36. The contention appears to be misconceived.

37. The argument assumes that a tender of prospective resignation is always motivated by sinister considerations and, therefore, to permit its withdrawal is never in the public interest. We are unable to concede this as a rule of universal application. Any number of cases are conceivable where a prospective resignation is tendered with the best of motives. A Judge renowned for his conscientiousness and forensic skill may send an intimation under his hand to the President proposing to resign from a future date, 2 months away, covering this interregnum by two month's leave due to him, in the belief, founded on his doctor's advice, that he is stricken with a malady which will progressively render him deaf in two month's time. The motive behind the tender is that the Judge feels that he will no longer be able to discharge his official duties to the entire satisfaction of his conscience. But before the date on which the prospective resignation is to take effect, a surgical operation completely and permanently cures him of the disease and restores his full hearing power, and the Judge immediately thereupon, sends a communication withdrawing the tender of his resignation. Will not such withdrawal be in the interest of the public and justice to the Judge ? Conversely, will not refusal of such withdrawal deprive the public of the benefit of his forensic talents in exposition of law and at the same time work hardship and injustice to the Judge ?

38. It must be remembered that the doctrine of public policy is only a branch of the common law, and its principles have been crystallised and its scope well delineated by judicial precedents. It is sometimes described as "a very unruly horse". Public policy, as Burroughs, J. put it in Fauntleroy's case (Amiable Society v. Boeland, (1830) 4 Bligh, (NS) 194 : 2 Dow & CI 1), "is a restive horse

and when you get astride of it, there is no knowing where it will carry you." Public policy can, therefore, be a very unsafe, questionable and unreliable ground for judicial decision and Courts cannot, but be very cautious to mount this treacherous horse even if they must. This doctrine, as pointed out by this Court in Gherulal Parakh's case (ibid.), can be applied only in a case where clear and undeniable harm to the public is made out. To quote the words of Subba Rao, J. (as he then was) :

> Though theoretically it may be permissible to evolve a new head (of public policy) under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days.

There are no circumstances, whatever, which would show that the withdrawal of the resignation by the appellant would cause harm to the public or even to an individual. The contention, therefore, is repelled.

39. Shri Jagdish Swarup's argument that a right to withdraw such a resignation will have wide and unhealthy repercussions on the other constitutional functionaries, particularly the President, and encourage them to abuse this right, appears to be false alarm. We are here considering the case of withdrawal of a 'prospective resignation' by a Judge of a High Court and not of any other constitutional functionary. It may not be correct to say that whatever principle we evolve with reference to the interpretation of Article 217(1), proviso (a), will automatically govern the withdrawal of such a prospective resignation by the President of India, because the provisions of Articles 56 relating to a resignation by the President are not, in all respects, identical with those of Article 217. There is no provision in Article 217 corresponding to clause (2) or clause (1) (c) of Article 56, and in this case, in accordance with the well-settled practice of the Court, we refrain from expressing any opinion with regard to the interpretation and effect of those distinctive provisions in Article 56.

40. We are also unable to agree with the High Court that the mere sending of the letter, dated May 7, 1977 by the Judge to President and its receipt by the latter, constituted a complete juristic act. By itself, it did not operate to terminate the office tenure of the Judge, and as such, did not bring into existence any legal effect. For the same reasons, the principle underlying Section 19 of the Transfer of Property Act is not attracted.

41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment.

42. This principle first received the imprimatur of this Court in the context of a case of self-sought retirement from service, in Jai Ram v. Union of India (supra). In that case, the plaintiff entered the service of the Government as a clerk in the Central Research Institute, Kasauli, on May 7, 1912. Rule 56(6) (i) of Chapter IX of the Fundamental Rules, which regulated the Civil Services, provided that a ministerial servant may be required to retire at the age of 55, but should ordinarily be retained in service if he continues efficient, till the age of 60 years. The plaintiff was to complete 55 years on November 26, 1946. On May 7, 1945, he wrote a letter to the Director of the Institute to the following effect :

> Sir, having completed 33 years' service on the 6th instant, I beg permission to retire and shall feel grateful it allowed to have the leave admissible.

43. The Director refused permission on the ground that the plaintiff could not be spared at that time. The plaintiff renewed his prayed by another letter, dated May 30, 1945, and also asked for leave preparatory to retirement - four months on average pay and the rest on half average pay - from June 1, 1945, or the date of his availing the leave, to the date of superannuation which was specifically stated to be November 26, 1946. This request was also declined. Two subsequent requests to the same effect, also met the same fate. On May 28, 1946, plaintiff made a fourth application repeating his request. This time, the Director of the Institute sanctioned the leave preparatory to retirement on average pay for six months from June 1, 1946 to November 30, 1946, and on half average pay for five months and 25 days thereafter, the period ending on May 25, 1947. Just 10 days before this period of leave was due to expire, the plaintiff on May 16, 1947 sent an application to the Director stating that he had not retired and asked for permission to resume his duties immediately. In reply, the Director informed him that he could not be permitted to resume his duties as he had already retired, having voluntarily proceeded on leave preparatory to retirement. The plaintiff made representations. Ultimately, the Government of India, by a letter dated April 28, 1948, rejected his representation, repeating the reasons intimated by the Director earlier to the plaintiff.

44. In special appeal before this Court, two points were urged on behalf of the plaintiff-appellant : First, that under Rule 56(b) (i), the age of retirement is not 55 but 60 years, and before a Government servant could be required to retire at 55, it is incumbent upon the Government to give him an opportunity to represent against his premature retirement in accordance with the provisions of Section 240(3) of the Government of India Act, 1935; and since this was not done, the order terminating his services, was invalid. Second, that although the plaintiff on his own application, obtained leave preparatory to retirement, yet there was nothing in the Rules which prevented him from changing his mind at any subsequent time and expressing a desire to continue in service, provided he indicated this intention before the period his leave expired.

45. B. K. Mukerjea, J. (as he then was), speaking for the Court, negatived the first contention on the ground that since the plaintiff had himself sought permission for retirement at the age of 55 years, it was a useless formality to ask him to show cause as to why his services should not be terminated. While disposing of the second contention, which had lost its force in view of the Court's decision on the first point, the Court made these crucial observations :

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

46. The rule enunciated above was reiterated by this Court in Raj Kumar v. Union of India (Supra), in these words :

> When 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 poenitentiae but not thereafter.

It was also observed that, on the plain terms of the resignation letters of the servant (who was a member of the I.A.S.), the resignation became effective as soon as it was accepted by the appropriate authority.

47. The learned Judges of the High Court (in majority), if we may say so with respect, have failed to appreciate correctly the amplitude and implications of this rule enunciated by this Court in Jai Ram v. Union of India (supra). R. B. Misra, J. bypassed it casually on the short ground that the above extracted observation was only "casually made" by the Supreme Court in a case of retirement. M. N. Shukla, J. did not even refer to it. C. S. P. Singh, J. tried to distinguish it with the summary observation :

> Jai Ram's case of retirement, and the request for retirement required acceptance. The act was not complete till accepted. In such a situation, the request could definitely be withdrawn. This case is not helpful in case where no acceptance is required.

48. Before us, Shri Jagdish Swarup had reiterated the same argument.

49. In our opinion, none of the aforesaid reasons given by the High Court for getting out of the ratio of Jai Ram's case (supra), is valid. Firstly, it was not a 'casual' enunciation. It was necessary to dispose of effectually and completely the second point that had been canvassed on behalf of Jai Ram. Moreover, the same principle was reiterated pointedly in 1968 in Raj Kumar's case (supra). Secondly, a proposal to retire from service/office and a tender to resign office from a future date, for the purpose of the point under discussion, stand on the same footing. Thirdly, the distinction between a case where the resignation is required to be accepted and the one where no acceptance is required, makes no difference to the applicability of the rule in Jai Ram's case (supra).

50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of 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 terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

51. The learned Attorney-General has cited authorities of the Allahabad, Kerala, Delhi and Madhya

Pradesh High Courts, wherein the rule in Jai Ram's case (supra) was followed. The High Court has tried to distinguish these cases and in regard to some of them, said that they were not rightly decided. We do not want to burden this judgment with a discussion of all those decisions. It will be sufficient to notice two of them, in which issues analogous to those which arise before us, were pointedly discussed.

52. The first of those cases is, M. Kunjukrishnan Nadar v. Hon'ble Speaker, Kerala Legislative Assembly (supra). The petitioner in that case became a member of the Kerala Legislative Assembly on election in February 1960.

On November 23, 1963 he wrote to the Speaker :

> #
>
> Sir,
>
> As I wish to devote more time for meditation and religious purposes, I shall not be able to continue as a Member of the Legislative Assembly, Kerala. So, I request you to kindly accept this letter as my resignation as a Member of this Assembly, to take effect from December 1, 1963.
>
> ##

53. On November 26, 1963, the Speaker read the letter in the Assembly, announcing thereby the petitioner's resignation to take effect on December 1, 1963.

54. On November 29, 1963, the petitioner wrote to the Speaker :

> #
>
> Sir,
>
> In my letter dated November 23, 1963, I have expressed my intention to resign my membership of the Legislative Assembly from, December 1, 1963. After mature consideration, I feel that it will be proper not to resign at this juncture. I therefore hereby withdraw my letter of resignation dated November 23, 1963.
>
> ##

This letter was received by the Speaker on November 30, 1963. This letter was not given heed to, and a notification was published in the Kerala Gazette dated December 10, 1963, saying that the petitioner "has resigned his seat in the Kerala Legislative Assembly from December 1, 1963". The petitioner challenged this Gazette notification praying that it be declared null and void and of no effect. He claimed a further declaration that he continued to be a Member of the Kerala Legislative Assembly.

55. On these facts, Article 190(3) of the Constitution, as it stood prior to its amendment by constitution Amendment (Thirty-third Amendment) Act, 1974 came up for interpretation. At that time the material part of Article 190(3) ran as under :

(3) If a member of a House of the Legislature of a State -

(a) becomes subject to any of the disqualifications mentioned in clause (1) of Article 191; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.

It will be seen that at that time, there was no provision in this article requiring such resignation to be accepted by the Speaker before it could become effective. Clause (b) of Article 190(3), as it stood at that time, was, but for the words "the Speaker or the Chairman" and the last phrase "his seat shall thereupon become vacant", identical with clause (a) of the proviso to Article 217 (1). Indeed, what is expressly provided by adding the words "his seat shall thereupon become vacant" in clause (b) of Article 190(3), is implicit in clause (a) of the proviso to Article 217(1).

56. Two questions arose for determination : (i) Whether the letter dated November 23, 1963, constituted a valid resignation under Article 190(3); and (ii) if so, whether it could be withdrawn by the Member before the future date on which it was intended to be effective. A learned single Judge of the High Court answered these questions in the affirmative, with these observations :

..... the petitioner's letter of November 23, 1963, has to be held a letter resigning his seat in the Assembly on December 1, 1963 deposited with the Speaker on November 23, 1963. It remains a mute letter till December 1, 1963, when alone it can speak with effect. On November 29, 1963, the petitioner has withdrawn that letter by writing under his hand addressed to the Speaker himself .... It is in effect the neutralization of the latent vitality in the former letter deposited with the Speaker. The withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker, which must thereafter be found to have become non est in the eye of law. The absence of a specific provision for withdrawal of prospective resignation in the Constitution or the Rule is immaterial as basic principles of law and procedure must be applied wherever they are relevant.

57. R. B. Misra, J. felt "difficulty in agreeing with the observation (in the above case) that the letter of resignation to be effective on a future date remains deposited with the Speaker or remains a mute letter till the arrival of that date when alone it can speak with effect". Singh, J. also expressed that this Kerala case had not been decided on correct principles.

58. In our opinion, what has been extracted above from the decision in the Kerala case correctly enunciates the principle that a prospective resignation remains mute and inoperative till the date on which it was intended to take effect is reached, and can be withdrawn and rendered non est at any time before such date.

59. The next decision worthy of notice is Y. K. Mathur v. The Municipal corporation of Delhi (supra). In that case, two Municipal Councillors of the Corporation of Delhi sent their resignation letters on November 16, 1972 to the Mayor of the Municipal Corporation, resigning their seats. One of those letters was a resignation in praesenti and was dated November 16, 1972. The other letter of resignation sent by O. P. Jain read as under :

> I resign from my seat. Please accept.
>
> # Sd. Om Prakash Jain 16.12##

This letter being in the nature of a post dated cheque, was construed as a letter of resignation to be effective from a future date, viz, December 16, 1972. On these premises, question arose whether this resignation could be withdrawn by the member concerned before that date. Sachar, J., speaking for the Division Bench, answered this question, in these terms :

> It is the free volition of the councillor concerned as to the date from which he wishes to resign. There is no logic in saying that even though a councillor deliberately mentions in his resignation letter that it should be effective from a given future date, he would nevertheless be deemed to have resigned from an earlier date, i.e. date on which the letter is delivered. This would be contrary to the deliberately expressed intention of the councillor to resign from a particular future date. But it there any prohibition that once the resignation letter has been sent which is to be effective from a future date it cannot be withdrawn even before that date ? The statute does not in any way limit the authority of the councillor who has sent his resignation from a prospective date to withdraw it before that date is reached. The resignation which is to be effective from a future date necessarily implied that if that date has not reached it would be open to the councillor concerned to withdraw it.

In support of this enunciation, the learned Judges relied on the ratio of the decisions of this Court in Jai Ram v. Union of India (supra) and Raj Kumar v. Union of India (ibid)

60. It was also contended - as has been argued before us - that if a resignation has been sent prospectively, the only effect is that the seat would become vacant from that date, but the resignation would be effective from the date it was delivered to the competent authority. The Court repelled this argument with these pertinent observations :

> Under Section 33(1)(b), both the resignation and the vacancy of the seat are effective from the same time. There cannot be different times, one for resignation and the other for vacation of seat. Vacancy will only occur when resignation is effective, and if it is from future date both resignation and vacation of seat will be effective simultaneously.

61. The approach adopted to the problem by the Delhi High Court appears to be correct in principle, and meets our approval.

62. We do not want to add more to the volume of our judgment by noticing the numerous decisions of the English and American Courts that have been referred to by the High Court in its judgment. It will suffice to notice one of those cases, which appears to have been relied upon by the High Court as the best authority" in support of its reasoning that the letter of resignation, dated May 7, 1977, by the appellant 2, had become "final or irrevocable", on that very day when it was received by the President, "though he could not be asked to actually relinquish his post prior to August 1, 1977". That English case is Reichel v. Bishop of Oxford. ((1889) 14 AC 259)

63. The facts of that case were as follows :

63A. Scandal having arisen with regard to the conduct of a Vicar, he was informed by the Bishop

that he must either submit to an inquiry or cease to hold his benefice. Thereupon, in accordance with a proposal made by the Bishop in the interests of the parish and in mercy to the Vicar, the Vicar on the second of June executed before witness, but not before a notary, an unconditional deed of resignation and sent it to the Bishop's Secretary on the understanding that the Bishop would postpone formal acceptance until the first of October. On the tenth of June the Vicar executed a deed cancelling and revoking the deed of resignation, and on the sixteenth of July he communicated the fact to the Bishop's Secretary. The Bishop after the revocation, signed a document dated the first of October accepting the resignation and declaring the vicarage void.

64. The Vicar brought an action against the Bishop and the patrons of the benefice, claiming a declaration that he was Vicar, the resignation was void, and an injunction to restrain the defendants from treating the benefice as vacant.

65. The House of Lords, affirming the decision of the Court of Appeal (Reichel v. Bishop of Oxford, 35 ch D 48) held that the resignation was voluntary, absolute, validity executed and irrevocable and that the action could not be maintained.

66. The principal contention canvassed before the House of Lords by the appellant Vicar was that assuming the resignation to be valid, it was naught without the Bishop's acceptances. The acceptance of the Ordinary is absolutely necessary to avoid a living. Until acceptance the effect of the incumbent's resignation is to make the benefice voidable, not void; he remains incumbent with all his powers and rights, including the power of revocation; he is in the position (at the utmost) of one who has made a contract to resign.

67. The Noble Lords rejected this contention. Lord Halsbury, L.C. observed :

> The arrangements for resignation on the one side and acceptance on the other seem to me to have been consummated before the supposed withdrawal of the resignation of Mr. Reichel. It is true the Bishop agreed not to execute the formal document to declare the benefice vacant till the following first of October; but I decline to decide that when a perfectly voluntary and proper resignation has once been made and by arrangement of formal declaration of it is to be postponed, that is not a perfectly binding transaction upon both the parties to it; and I doubt whether in any view of the law such an arrangement could have been put an end to at the option of only of the parties.

Lord Watson further amplified :

> His resignation was delivered in pursuance of a mutual agreement which rendered formal or other acceptance altogether unnecessary; the terms of the agreement shewing plainly that the Bishop not merely was ready to accept, but insisted upon having it, in order that it might receive full effect upon the first of October following. The agreement was perfectly lawful, it being entirely within the discretion of the Bishop to judge whether the adoption of proceedings against the appellant, or his unconditional resignation as from a future date, would most conduce to the spiritual interest of parish. The appellant assented to the arrangement, and on June 2, 1886 did all that lay in his power to complete it .... He cannot in my opinion be permitted to upset the agreement into which he voluntarily agreed ..... upon the allegation that there was no formal acceptance of his resignation till October 1, 1886.

Lord Herschell opined :

> I do not think the word "acceptance" means more than the assent of the Bishop, or that it need take any particular form. Now, in the present case, the Bishop had intimated to the plaintiff that he was willing to assent to his resignation, and it was in pursuance of this intimation that the resignation was placed in the hands of the Bishop. At the time .... the Bishop received it, and thenceforward down to and after the time of the alleged revocation, the Bishop was an assenting party to the resignation.

68. While declining the contention of the appellant, the Noble Lord closed the discussion on the point with this significant reservation :

> It is, however, unnecessary in the present case to go to the length of saying that a resignation can never be withdrawn without the consent of the Bishop, for I am of opinion that it certainly cannot be so under circumstances such as those to which I have drawn attention.

69. Reichal is no authority for the proposition that an unconditional prospective resignation, without more, normally becomes absolute and operative the moment it is conveyed to the appropriate authority. The special feature of the case was that Reichal had, of his own free will, entered into a "perfectly binding agreement" with the Bishop, according to which, the Bishop had agreed to abstain from commencing an inquiry into the serious charges against Reichal if the latter tendered his resignation. In pursuance of that lawful agreement, Reichal tendered his resignation and did all to complete it, and the Bishop also at the other end, abstained form instituting proceedings against him in the Ecclesiastical Court. The agreement was thus not a nudum pactum but one for good consideration and had been acted upon and "consummated before the supposed withdrawal of the resignation of Mr. Reichal" who could not, therefore, be permitted "to upset the agreement" at his unilateral option and withdraw the resignation "without the consent of the Bishop". It was in view of these exceptional circumstances, Their Lordships held Reichal's resignation had become absolute and irrevocable. No extraordinary circumstances of this nature exist in the instant case.

70. In the light of all that has been said above, we hold that the letter, dated May 7, 1977 addressed by appellant 2 to the President, both in point of law and substance, amounts but to a proposal or notice of intention to resign at a future date (August 1, 1977) and not being an absolute, complete resignation operative with immediate effect, could be, and, in fact had been validly withdrawn by the said appellant through his letter, dated July 15, 1977, conveyed to the President.

71. Accordingly, we allow these appeals set side the majority judgment of the High Court and dismiss the writ petition, leaving the parties to bear their own costs throughout.

FAZAL ALI J. (dissenting)

These two appeals by certificate are directed against an order or the Allahabad High Court issuing a writ of quo warranto against Justice Satish Chandra, a Judge of the Allahabad High Court on the ground that he ceased to be a Judge with effect from August 1, 1977 as he was not competent to withdraw the resignation submitted by him earlier. Appeal 2644 of 1977 has been filed by the union of India supporting the case of the second respondent Satish Chandra while appeal 2655 of 1977 has been filed by the second respondent Satish Chandra himself against the order of the High Court as

indicated above. As the points involved in the two appeals are identical and arise from the same judgment, I propose to deal with the two appeals by a common judgment.

73. The facts of the case lie within a narrow compass and the whole case turns upon the interpretation of Article 217(1)(a) of the Constitution of India. I would also like to mention that the question of law that has to be determined in this case is one of first impression and no direct authority of any court in India or outside appears to be available in order to decide this case. There are however number of authorities from which certain important principles can be deduced which may assist me in adjudicating the point in issue.

74. Justice Satish Chandra hereinafter referred to as the second respondent was a practising lawyer of the Allahabad High Court. He was appointed as a Judge of the Allahabad High Court on October 7, 1963 and was later made permanent on September 4, 1967. Since then he had been continuing as a Judge of the said High Court.

75. On May 7, 1977 the second respondent wrote a letter to the president of India resigning his office with effect from August 1, 1977. The second respondent however indicated to the President that he would proceed on leave from May 7, 1977 to July 31, 1977 the period intervening between the application and the date from which the resignation was to be effective.

76. On July 15, 1977 however the second respondent wrote another letter to the President by which he revoked the resignation which he had sent on May 7, 1977 and prayed that the communication containing the resignation may be treated as null and void. In order to understand the exact implication of the intention of the second respondent it may be necessary to extract the two letters in extenso :

> #
>
> To
>
> The President of India,
>
> New Delhi.Sir,
>
> I beg to resign my office as Judge, High Court of Judicature at Allahabad.I will be on leave till 31st of July, 1977. My resignation shall be effective on 1st of August, 1977.With my respects,
>
> Yours faithfully,
>
> (Sd.)
>
> Satish Chandra
>
> ##
>
> #
>
> To

The President of India,

New Delhi.

Sir,

I beg to revoke and cancel the intention expressed by me to resign on1st of August, 1977, the office of Judge, High Court at Allahabad, in my letter dated 7th May, 1977. That communication may very kindly be treated as null and void.

Thanking you and wishing to remain,

Yours sincerely,

(Sd.)

Satish Chandra

##

77. A careful perusal of the first letter leaves absolutely no room for doubt that the Judge had clearly intended to resign his office with effect from August 1, 1977. Similarly, the second letter shows the unequivocal intention of the second respondent to revoke the resignation sent by him earlier. The reasons for the resignation have been given neither in this first letter nor in the second. The question that has been mooted before the High Court was whether or not having resigned his office the second respondent had any jurisdiction to revoke his first letter sending his resignation. It might also be mentioned that it is common ground that before the second letter was written to the President the first letter had not only been communicated to but was actually received by the President as found by the majority judgment of the High Court. Thus, the sole question to be determined in this case is whether it was within the competence of the second respondent to revoke the resignation sent by him to the President by his letter dated May 7, 1977 after the same had been communicated to and received by the President. The stand taken by the Attorney General before us was that as the second respondent had categorically expressed his intention in the first letter that he would resign only with effect from August 1, 1977, it was open to him to withdraw his resignation at any time before the crucial date was reached and there was no provision in the Constitution which debarred the appellant from doing so.

78. The Attorney General, however, conceded before us that having regard to the provisions of Article 217 there is absolutely no question of the resignation of a Judge being effective only on the acceptance of the same by the President. In other words, the Attorney General submitted that the resignation would become effective from the date mentioned therein and the question of the acceptance of resignation by the President would not arise in case of constitutional functionaries like Judges of the High Courts. Thus, in view of the concession of the Attorney General and the provisions of Article 217 any resignation submitted by a Judge was not dependent on its acceptance by the President and would operate ex proprio vigore from the date mentioned in the letter of resignation. It appears that after the second respondent sought to revoke his resignation an application praying for a writ of quo warranto was filed by the respondents Gopal Chandra Misra and Others before the Allahabad High Court on the ground that the second respondent had no right to withdraw the resignation. The writ was heard by a Full Bench consisting of R. B. Misra, M. N. Shukla, Hamid Hussain, S. B. Malik and C. S. P. Singh, JJ. and the High Court by a majority

judgment accepted the writ petition and issued a writ of quo warranto holding that the second respondent ceased to be a Judge as he was not competent to withdraw his resignation once the same had been communicated to, and in fact reached, the President. The learned Judges who took the majority view against the second respondent were R. B. Misra, M. N. Shukla and C. S. P. Singh, JJ. whereas Hamid Hussain and S. B. Malik, JJ. were of the view that it was open to the second respondent to withdraw his resignation at any time before the date from which the resignation was to be effective and were, therefore, of the opinion that the writ petition should be dismissed. It seems to me that the High Court has devoted a considerable part of its judgment to the consideration of two questions which were really not germane for the decision of the point in issue. Secondly, the High Court appears to have exhaustively considered the question of the theory of pleasure which obviously did not apply to a Judge of the High Court appointed under the Indian Constitution and after the said Constitution had come into force. In other words, a Judge appointed under Article 217 cannot be said to hold his assignment at the pleasure of the President, but under the provisions of Article 217 he was to hold his office until the following contingencies arose :

> (1) The Judge attained the age of 62 years;
>
> (2) The Judge was removed from his office under Article 124 of the Constitution;
>
> (3) The Judge was transferred to another High Court under Article 222;
>
> (4) The Judge resigned his office by writing a letter under his hand addressed to the president.

79. It is needless to state that a Judge vacates his office the moment he dies, and although this contingency is not mentioned in Article 217 yet it follows from the very nature of things. It would thus be clear that the constitutional provisions embodied in Article 217 have expressly provided for the various contingencies in which a Judge of the High Court may vacate his office or cease to be a judge. The relevant part of Article 217 may be extracted thus :

> 217. Appointment and conditions of the office of a Judge of a High Court -
>
> (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years :
>
> Provided that -
>
> (a) a Judge may, by writing under his hand addressed to the President, resign his office;
>
> (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;
>
> (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

80. While analysing the various clauses of Article 217 it is pertinent to observe that while clause (a) contains an express provision empowering a Judge to resign, there is absolutely no provision which confers upon him any power to withdraw or revoke his resignation once the same has been submitted to the President. This is one of the moot point that has engaged the attention of the High Court as also of this Court in deciding the issue. The majority view was of the opinion that in the absence of any express provision to empower the Judge to revoke his resignation, the Judge was not competent to withdraw his resignation having once submitted the same. The minority view of the High Court which has been relied upon by the Attorney General and the second respondent proceeds on the doctrine of implied powers under which it is said that the power of submitting a resignation carries with it the power of revoking the same before the resignation becomes effective.

81. I shall deal with these points a little later and before that I would like to indicate the position and the status conferred by the Constitution on a High court Judge. The first thing which is manifestly plain is that there is no relationship of master and servant, employer and employee between the President and the Judge of the High Court, because a Judge is not a Government servant so as to be governed by Article 310 of the Constitution. A Judge of the High Court appointed under Article 217 has a special status and is a constitutional functionary appointed under the provisions of the constitution by the President. The mere fact that the president appoints him does not make him the employer of the Judge. In appointing a Judge of the High Court, the President is discharging certain constitutional functions as contained in Article 217(1). This aspect of the matter was considered by this Court in the case of Union of India v. Sankalchand Himatlal Sheth ((1977) 4 SCC 193) where Krishna Iyer, J. dwelling on this aspect observed as follows (SCC p. 264, para 94) :

> So it is that we must emphatically state a Judge is not a government servant but a constitutional functionary. He stands in a different category. He cannot be equated with other 'services' although for convenience certain rules applicable to the latter may, within limits, apply to the former. Imagine a Judge's leave and pension being made precariously dependent on the executive's pleasure ! To make the government - not the State the - employer of a superior court Judge is to unwrite the Constitution.

It is, therefore, indisputable that a Judge of the High Court enjoys a special status under the Constitution, because of the very high position that he holds and the dignity and decorum of the office that he has to maintain.

82. The special guarantees contained in Article 217 are for the purpose of ensuring the independence of the judiciary as observed by Chandrachud, J. in the case of Union of India v. S. H. Sheth (supra) (SCC p. 216, para 13) :

> Having envisaged that the judiciary, which ought to act as a bastion of the rights and freedom of the people, must be immune form the influence and interference of the executive, the Constituent Assembly gave to that concept a concrete form by making various provisions to secure and safeguard the independence of the judiciary.

The High Court Judges are the repository of the confidence of the people and the protectors of the right and liberty of the subjects. Having regard, therefore, to the onerous duties and the sacrosanct functions which a Judge of the High Court has to discharge he has to act or behave in a manner which enhances the confidence of the people in the judiciary. The Constitution itself contains a number of provisions for promoting an independent judiciary and striving for a complete separation of the judiciary from the executive.

83. Having regard to these circumstances therefore once a Judge decides to accept the high post of a High Court Judge he has to abide by certain fixed principles and norms as also some self-imposed restrictions in order to maintain the dignity of the high office which he holds so as to enhance the image of the court of which he is a member and to see that the great confidence which the people have in the courts is not lost. To resign an office is a decision to be taken once in a lifetime and that too for very special and cogent reasons because once such a decision is taken it cannot be recalled as a point of no return is reached. Indeed, if Judges are allowed to resign freely and recall the resignation at their will this privilege may be used by them as a weapon for achieving selfish ends or for striking political bargains. Not that the Judges are likely to take resort to these methods but even if one Judge does so at any time the image of the entire court is tarnished. It was, in my opinion, for these reasons that the High Court Judges have been assigned a special place by the Constitution and are not equated with other services, however high or important they may be. Thus, in these circumstances, therefore, it is manifest that any decision that the Judge may take in regard to resigning his office must be taken after due care and caution, full and complete deliberation and circumspection, so that the high office which he holds is not held to ridicule. The power to resign is not intended to be used freely or casually so as to render the same as a farce because after a Judge resigns important and far-reaching consequences flow. Shukla, J. in the judgment under appeal has very aptly and adroitly observed as follows :

> Therefore, if a Judge is permitted to recant his resignation, born of free volition, it would savour of a precipitance which would not redound to his credit. A voluntary resignation of a High Court Judge deserves to be looked upon with utmost sanctity, and cannot be treated lightly as if it was the outcome of a momentary influence ... In other words, a Judge may resign and then with impunity rescind his resignation and thus go on repeating the process at his sweet will. That would be ridiculous and reduce the declaration of resignation by a Judge to a mere farce.

I find myself in complete agreement with the observation made by the learned Judge and fully endorse the same. What is good of Article 217 equally applies to other similar constitutional functionaries like the President, the Vice-President, the Speaker, the Deputy Speaker, and the Supreme Court Judges. So far as the President is concerned. Article 56(a) contains a provision identical to Article 217(2) and runs thus :

> The President may, by writing under his hand addressed to the Vice President, resign his office.

84. So far as the Vice-President is concerned, the provisions is contained in Article 67(a) and runs thus :

> A Vice-President may, by writing under his hand addressed to the President, resign his office.

So far as the Speaker and the Deputy Speaker are concerned, the provision is contained in Article 94 which runs thus :

> Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker. - A member holding office as Speaker or Deputy Speaker of the House of the People -

(a) shall vacate his office if he ceases to be member of the House of the People;

(b) may, at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House :

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen day's notice has been given of the intention to move the resolution :

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

So far as the Supreme Court Judges are concerned, the provision is contained in Article 124(2)(a) which runs thus :

A Judge may, be writing under his hand addressed to the President, resign his office.

85. For all these constitutional functionaries a special procedure has been prescribed by the Constitution regulating their resignation and in each one of these cases two things are conspicuous. First, that there is absolutely no provision for revocation of a resignation, and secondly, that there is nothing to show that in the case of these functionaries the resignation would become effective only on being accepted by the authority concerned. It was contended by Mr. Jagdish Swarup, Counsel for the resignation at their will they may use the powers of the Constitution by treating the resignation at their will they may use the powers of the Constitution by treating the resignation as a bargaining counter. For instance, it was suggested that where a President is not happy with a particular bill passed by Parliament, he may submit his resignation and thus pressurise Parliament to withdraw the bill and after that is done, he could withdraw the resignation also. Such an action will lead to a constitutional crisis of a very extraordinary nature. The argument is based on pure speculation yet it merits some consideration. Thus, on a parity of reasoning the same principles have to be applied to other constitutional functionaries including a High Court Judge and that will create a very anomalous situation. I think, it must have been this important consideration that must have heavily weighed with the founding fathers of the Constitutional functionaries including a High Court Judge and that will create a very anomalous situation. I think, it must have been this important consideration that must have heavily weighed with the founding fathers of the Constitution in not providing for an express power to withdraw the resignation or a provision for the acceptance of the resignation by any particular authority. From this point of view also the irresistible inference that arises is that the absence of power in Article 217(1)(a) or the other articles in the case of other constitutional functionaries indicated above is deliberate, and, therefore, a Judge has no power to revoke his resignation after having submitted or communicated the same to the President.

86. Another important aspect which may reveal the intention of Parliament is to be found in Article 101(3), sub-clause (b) of the Constitution which runs thus :

101(3) If a member of either House of Parliament - (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be his seat shall thereupon become vacant.

It would be seen that like other constitutional functionaries mentioned above even a member of either House of Parliament could resign his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and once that is done the seat would become vacant. A similar provision exists so far as the members of the Legislature of a State are concerned which is contained in Article 190(3)(b) which runs thus :

> 190(3) If a member of a House of Legislature of a State -
>
> (b) resigns his office by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

By virtue however of the Constitution Thirty-fifth Amendment Bill 1974 Parliament amended both Articles 101(3)(b) and 190(3)(b) and made the resignation being effective dependent on the acceptance of the same by the Speaker or the Chairman concerned. The amended provisions run thus :

> 101. (3) If a member of either House of Parliament -
>
> (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant :
>
> Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.
>
> 190. (3) If a member of a House of the Legislature of a State -
>
> (b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant :
>
> Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

The Statement of Objects and Reasons of this Bill mentions why this amendment was brought about and the relevant portion may be extracted thus :

> In the recent past, there have been instances where coercive measures had been resorted to for compelling members of a Legislative Assembly to resign their membership. If this is not checked, it might become difficult for Legislatures to function in accordance with the provisions of the Constitution. It is therefore proposed to amend the above two articles to impose a requirement as to acceptances of the resignation by the Speaker or the Speaker or the Chairman, and to provide that the resignation shall not be accepted by the Speaker or the Chairman, if he is satisfied after making such inquiry as he thinks fit that the resignation is not voluntary or genuine.

87. This aspect of the matter has been adverted to by Shukla, J. who observed as follows :

> This provision made the resignation of a member of the Legislature self-executing. No acceptance was required. Later, however, political events created a situation in which it became imperative not to let a resignation become effective until it was accepted by the Chairman or the Speaker and he was satisfied on enquiry that it was voluntary or genuine. In some States there was political turmoil leading to 'en masse' resignations of the members of Legislature. Some of these resignations were also faked and engineered by interest factions in order to serve their political ends. So it was felt necessary to provide in the Constitution that the seat of a member of Parliament shall become vacant only after his resignation had been accepted. That is why Articles 101(3)(b) and 190(3)(b) were suitably amended by the Constitution (Thirty-fifth Amendment) Act, 1944 ... The notification is indicative of two things, firstly, in the absence of any such provision acceptance was not to be read into Article 101 when it talked of the resignation of a member of Parliament. Secondly, as soon as the Parliament intended that a resignation should not take effect until it received assent or acceptance, it introduced a specific provision to that effect.

It would be noticed, therefore, that at the time when Articles 101(3) and 190(3) were being amended by the Constitution Thirty-fifth Amendment Act the Constitution-makers had also other similar provisions like Articles 217, 94, 67 and 124(2)(a) etc. before them and if they really intended that acceptance was made a condition precedent to the effectiveness of a resignation in case of other constitutional functionaries under Article 217 and other articles then such an amendment could have also been incorporated in the Thirty-fifth Amendment Bill as well either by conferring a power of revocation on the constitutional functionaries or by introducing a provision for acceptance of the resignation. The very fact that no such amendment was suggested or brought about in Article 217 and other articles clearly reveals that the Constitution-makers intended circumstances which fortifies my conclusion that the power of revocation or withdrawal of resignation once communicated to the President has been deliberately omitted by the founding father from Article 217 and other similar articles.

88. Coming now to the second point regarding the application of implied powers to the facts of a case the matter was considered in the case of Union of India v. S. H. Sheth (supra) where this Court was construing the provisions of Article 222 of the Constitution of India and the case turned upon the question as to whether or not when a Judge was transferred from one High Court to another it was necessary for the President to take his consent. This Court by majority of 3 : 2 held that consent could not be implied in Article 222 in the absence of an express provision. Krishna Iyer, J. while expounding this aspect of the matter and speaking for himself and Fazal Ali, J. observed as follows (SCC p. 268, paras 104 and 105) :

> It would be seen that there is absolutely no provision in this article requiring the consent of the Judges of the High Court before transferring them from one High Court to another. Indeed, if the intention was that such transfers could be made only with the consent of the Judges then we should have expected a proviso to Article 222(1) in some such terms as :
>
> Provided that no Judge shall be transferred from one High Court to another without his consent.

The absence of such a provision shows that the founding fathers of the Constitution did not intend to restrict the transfer of Judges only with their consent. It is difficult to impose limitations on the constitutional provisions as contained in Article 222 by importing the concept of consent which is conspicuously absent therefrom.

If consent is imported in Article 222 so as to make it a condition precedent to transfer a Judge from one High Court to another then a Judge, by withholding consent, could render the power contained in Article 222 wholly ineffective and nugatory. It would thus be impossible to transfer a Judge if he does not give his consent even though he may have great personal interests or close associations in his own State or by his conduct he brings about a stalemate in the judicial administration where the Chief Justice would become more or less powerless. In our opinion, the founding fathers of the Constitution could not have contemplated such situation at all. That is why Article 222 was meant to take care of such contingencies.

Similarly, Chandrachud, J. took the same view and observed (SCC p. 218, para 16) :

> The hardship, embarrassment or inconvenience resulting to a Judge by reasons of his being compelled to become a litigant in his own Court, cannot justify the addition of words to an article of the Constitution making his consent a pre-condition of his transfer. In adding such words, we will be confusing our own policy views with the command of the Constitution.

89. In view of the decision of this Court which is binding on us, can it be said that if the power of revocation of resignation is not expressly contained in the Constitution the same may be supplied by the application of the doctrine of implied powers. The question as to how far the doctrine of implied powers can be invoked has also been considered by this Court in several cases. To quote one, viz, in the case of Bidi, Bidi Leaves & Tobacco Merchants' Association, Gondia v. The State of Bombay (AIR 1962 SC 486 : (1961) 2 Lab LJ 663 : 64 Bom LR 375) where Gajendragadkar, J. speaking for the constitution Bench of this Court observed as follows :

> The definition of the term 'wages' postulates the binding character of the other terms of the contract and brings within the purview of the Act only one term and that relates to wages and no other. That being so, it is difficult to hold that by implication the very basic concept of the term 'wages' can be ignored and the other terms of the contract can be dealt with by the notification issued under the relevant provisions of the Act. When the said other terms of the contract are outside the scope of the Act altogether how could they be affected by the notification under the Act under the doctrine of implied powers ?

Therefore the Act has made a specific provision for the enforcement and implementation of the minimum rates of wages prescribed by notification ..... That is another reason why the doctrine of implied powers cannot be invoked in support of the validity of the impugned clauses in the notification.

Thus, an analysis of this decision would clearly reveal that where express provisions are made by a status the doctrine of implied powers cannot be invoked to supply the provisions which had been deliberately omitted. Same view has been taken by the Patna High Court in Sukhdeo Narayan v. Municipal Commissioners of Arrah Municipality (AIR 1956 367, 373) where the Court observed as follows :

> I hold, accordingly that the withdrawal of the resignation of the Chairman (Opposite Party No. 2) as expressed in his letters, has no effect in law and the Municipal Commissioners, in their meeting on January 9, 1956 had jurisdiction to proceed on the question whether they should accept it or not.
>
> I fully endorse these observations. For these reasons, I am clearly of the opinion that in the absence of any express provision in Article 217 empowering a Judge to revoke his resignation, it is difficult to accept the view that the power of resigning which has been conferred on the Judge under Article 217(a) carries with it the inherent power to withdraw his resignation. In this view of the matter, I am afraid, I am not in a position to accept the submission of the Attorney General on this point.

90. I might mention that the High Court had gone into the question as to whether the act of submitting resignation by the Judge to the president was a juristic act, and therefore once the position was altered, it could not be recalled. For the purposes of the present case and having regard to the reasons that I have already given, I would refrain from going into this question as it is hardly necessary to do so. Furthermore, it seems to me that the act of resignation by a Judge is a matter personal to him and however careful or cautious he may be in exercising this power, the concept of juristic act cannot be assigned to a document which is nothing but a letter of resignation, pure and simple. However, I do not want to dilate on this point, because in view of my finding that there is no express provision in Article 217 empowering a Judge to withdraw his resignation after the same is communicated to and submitted to the President, it is not necessary for me to spell out the concept of a juristic act.

91. Another important angle of vision from which the point in issue can be approached is this. Once it is conceded that the resignation becomes complete without the necessity of the President accepting the same, the very concept of withdrawal of the resignation arises only if the resignation has to be accepted by an employer, because so long as a resignation is not accepted it remains an incomplete document and totally ineffective. In such circumstances, it is always open to the resignor to withdraw his resignation which has not reached the stage of completion. Such are the cases of resignation given by persons who are governed by usual master and servant relationship. It appears that in America even though a provision for resignation is there, there is an additional provision that the resignation has to be accepted by a particular authority and it is only in the context of this peculiar relationship that the American authorities have taken the view that a resignation can always be withdrawn until it is accepted. This state of affairs is completely foreign to (sic) the provisions of our Constitution are concerned which do not at all require the President to accept the resignation of a Judge. If once the concept of resignation is totally absent, in my opinion, the question of withdrawal of the resignation does not arise at all, because the resignation having been submitted and communicated to the President becomes complete and irrevocable once it is communicated to and received by the President. In fact, Article 217 does not envisage or enjoin a conditional or prospective resignation. But assuming that the power to resign carries with it the power to resign from a particular date, the conclusion appears to me to be inescapable that once the resignation is communicated to the authority concerned, viz, the President in the instant case, the resignation will become irrevocable and will take effect automatically ex proprio vigore from the date mentioned in the letter. The mere fact that the resignor mentions a particular date from which he wants to resign does not at all empower him to withdraw or revoke his resignation at any time before the date is reached. Such a conclusion would have been possible only if the completeness of a resignation depended on the acceptance of the resignation by the authority concerned, because in such a case until the resignation was accepted it was no resignation in the eye of law and could always have

been recalled. But where the concept of acceptance of resignation is totally absent, it seems to me to be contradiction in terms to say that even though the resignation has been submitted to the proper authority and received by him still it can be recalled before the date is reached. I am not in a position to hold that a resignation revealing an intention to resign from a particular date is a conditional resignation. It is only a prospective resignation, but in view of the peculiar provisions of Article 217(1) (a) it becomes irrevocable the moment it is received by the President or is communicated to him though it may take effect from the date mentioned in the letter or if no such date is mentioned from the date of the letter itself.

92. I now turn to Full Bench decision of the Allahabad High Court in the case of Bahori Lal Paliwal v. District Magistrate, Bulandshahr (AIR 1956 All 511 : 1955 Cri LJ 1232; 1955 ALJ 687 : (1955) 1 LLJ 11) which is being relied on by the appellant. Chaturvedi, J. while drawing a distinction between the Indian Law under the U.P. Town Areas Act which was the subject-matter of review by the Court and the English Law on the subject observed as follows :

> The Indian Law under the U.P. Town Areas Act, however, has not followed the English statutory law in this respect because the provisions of Section 8A of the Indian Act provide for acceptance of the resignation by the District Magistrate, which clearly shows that the resignation is not effective till it is accepted.
>
> Furthermore, it would appear that under the provisions of the statute in that case the resignation had to be accepted by the appropriate authority and it was on this basis that the Court held that the person had a right to withdraw his resignation before it was accepted or before his office had come to an end. The Court further observed as follows :
>
> A resignation which depends for its effectiveness upon the acceptance by the proper authority is like an offer which may be withdrawn before it is accepted.

93. These observations do not help the case of the appellant but fortify the conclusion that I have reached. It is manifest that where effectiveness of a resignation depends upon acceptance of the same by the proper authority it can always be withdrawn until accepted because the resignation is not complete in the eye of law. This is what has been held by the Full Bench of the Allahabad High Court in the aforesaid case.

94. Another decision to which our attention was drawn by Counsel for the appellant is the case of Bhairon Singh Vishwakarma v. The Civil Surgeon Narsimhapur (1971 Lab IC 121 : (MP HC) : 1970 Lab LJ 847). This case also contains the same principle which has been enunciated in the Allahabad case referred to above, viz., that where a resignation is dependent for its effectiveness on the acceptance by the proper authority, it can be withdrawn at any time before the acceptance is given. This case was also dealing with a public servant to which Article 311 applied and the resignation had to be accepted by the Director of Public Health. I do not see how this case helps the appellant in any way.

95. Thus, the position that emerges from the aforesaid decision is that where a resignation given by a government servant is dependent for its effectiveness on the acceptance by the appropriate authority, the government servant concerned has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resignor has a right to resign but the resignation can be effective only after acceptance, it is a bilateral act.

That is to say, resignation by one authority and acceptance of the resignation by the other authority. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say a resignation sent by a servant is no resignation in the eye of law until accepted by the employer and so long as it is not an effective resignation, there can be no bar to withdrawing the same. The same however cannot be said of a resignation tendered by a High Court Judge under Article 217(1) or other constitutional functionaries referred to hereinbefore because in cases of such functionaries the act of resignation is purely an unilateral act and once the resignation is written and communicated to the president it acts ipso facto and becomes fully effective without there being any question of acceptance by the President. I have already held that where a particular date is given in the letter of resignation, the resignation will be effective from that particular date, but it does not mean that the resignor had any right to recall his resignation merely because he has chosen a particular date from which the resignation is to take effect. On the other hand, the resignation becomes complete and irrevocable and cannot be recalled either before or after the date mentioned is reached. Having signed the resignation and put the same in the course of transmission to the President the Judge loses all control over the same and becomes functus officio and the resignation becomes effective as soon as the date arrives without leaving any room or scope to the resignor to change his decision. This appears to be the constitutional scheme prescribed for the resignation of High Court Judges, Supreme Court Judges and other constitutional functionaries. In fact, all the cases cited by the appellant excepting some are cases where the effectiveness of the resignation depends on the acceptance of the resignation.

96. I am fortified in my view by the observations made in the American Jurisprudence Vol 53 page 111 Section 34 where the following observations are to be found :

> The contract of employment is terminated where the employee tenders his resignation and the proffer is accepted by the employer.
>
> These observations clearly illustrate that a contract of employment can only be terminated by a bilateral act, that is to say resignation by the employee and acceptance by the employer.

97. In short, it seems to me that a resignation contemplated by Article 217(1)(a) is a unilateral act which may be compared to an action of withdrawing a suit by the plaintiff under Order 23 Rule 3, C.P.C. Once a plaintiff files an application withdrawing a suit, the suit stands withdrawn and becomes effective as soon as it is withdrawn. In the case of Smt. Raisa Sultana Begam v. Abdul Qadir (AIR 1966 All 318, 321) a Division Bench of the Allahabad High Court observed as follows:

> Since withdrawing a suit is a unilateral act to be done by the plaintiff, requires no permission or order of the Court and is not subject to any condition, it becomes effective as soon as it is done just as a compromise does ... The act is like a point and not continuous like a line having a beginning and an end. Either it is done or not done; there is nothing like its being done incompletely or ineffectively. The consequence of an act of withdrawal is that the plaintiff ceases to be a plaintiff before the Court.

The same principle applies to resignation submitted by a High Court Judge under Article 217(1)(a). The resignation, which is a unilateral act, becomes effective as soon as it is communicated to the President.

98. The appellant, however, placed great reliance on a decision of the Kerala High Court in the case of M. Kunjukrishnan Nadar v. Hon'ble Speaker, Kerala Legislative Assembly, Trivandrum (AIR 1964 Ker 194). This was a case under Article 190(3) of the Constitution by a member of the Assembly who addressed a communication to the Speaker tendering his resignation. A single Judge of the Kerala High Court held that the letter of resignation could not be effective until the date prescribed therein had reached and the notification published in the Gazette regarding the vacancy of the seat of the member was not warranted by law. In the first place, the Court was really concerned with the point of time as to when the actual vacancy of the member would arise and the seat would become vacant so as to justify a notification for fresh election. The point which is in issue before us did not arise in this shape in the Kerala case at all. In this connection, the learned Judge observed as follows :

> I hold therefore that it is open to a member of the Legislature to tender his resignation on a prior date to take effect on a subsequent date specified therein. The letter of resignation has then to be construed as been deposited with the Speaker on the earlier date, to be given effect to only on the date specified by the member therein.

The withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker, which must thereafter be found to have become non est in the eye of law. The absence of a specific provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial as basic principles of law and procedure must be applied wherever they are relevant.

While I find myself in complete agreement with respect to the first portion of the observation of the learned Judge viz, that it was open to the member to submit his resignation to be effective from a subsequent date, I express my respectful dissent from the view taken by the learned Judge that a withdrawal would nullify the resignation completely and even if there was no provision for withdrawal of the resignation the same will become non est after it is withdrawn. The Judge has not at all discussed the law on the subject nor has he referred to the constitutional provisions relating to resignation. In fact, the Thirty-fifth Amendment Act itself shows that the concept of acceptance of resignation was completely absent before the amendment was brought about and the legal position before the amendment was that the resignation would operate ipso facto and ex proprio vigore and could not be withdrawn. That is why a specific power of acceptance was introduced by virtue of the amendment. As however Parliament did not intend to disturb the position in case of other constitutional functionaries like the High Court Judges, Supreme Court Judges, President, Vice-President, Speaker etc. no such amendment introducing the concept of acceptance of the resignation was brought about in Article 217 and other similar articles. Indeed, if Parliament really intended that the resignation given by a High Court Judge or other constitutional functionaries indicated above could withdraw the resignation after communicating the same to the appropriate authority or even before the date from which the resignation was to operate a suitable amendment could have been made in these articles so as to confer an express power on the constitutional functionaries to do so. The fact that no such provision was made confirms my view that Parliament clearly intended that the resignation of constitutional functionaries being a sacrosanct act should remain as it was intended by the founding fathers of the Constitution, viz,. once a resignation is submitted or communicated to the President, it becomes final and irrevocable and cannot be recalled by the functionary concerned. Thus, Parliament maintained the unilateral nature of the act of resignation. In these circumstances, therefore, I am not able to place any reliance on the judgment of the Kerala High Court cited by Counsel for the appellant.

99. The Full Bench decision of the Delhi High Court in the case of Y. K. Mathur v. The Commissioner, Municipal Corporation of Delhi (AIR 1974 Del 58 : ILR (1973) 1 Del 1045) appears to have been the sheet anchor of the arguments of the Attorney General for the proposition that a prospective resignation submitted to the appropriate authority could be withdrawn by the resignor at any time before the date mentioned in the letter of resignation is reached. I have carefully perused the aforesaid decision and I am unable to agree with the view taken by the Delhi High Court for the reasons that I shall give hereafter.

100. To begin with, the Court was considering the provisions of Section 33(1)(b) of the Delhi Municipal Corporation Act which may be extracted thus :

> 33. (1) If a councillor or an alderman -
>
> #(a) .....##
>
> (b) resigns his seat by writing under his hand addressed to the Mayor and delivered to the Commissioner his seat shall thereupon become vacant.

It was vehemently contended by the appellant that Section 33(1)(b) supra was in absolute pari-materia with Article 217(1)(a) and, therefore, the interpretation placed by the Delhi High Court on this section would clearly apply to the facts of the present case which depends on the interpretation of Article 217(1) (a). In the first place, I am unable to agree with the Attorney General that the provisions of the Municipal Act can be equated with the provisions contained in the Constitution of India. There is a world of difference between a constitutional functionary which has been assigned a special status and given a high place under the constitutional provisions and a Municipal Councillor elected under the Local Municipal Act. It is obvious that in both these cases the selfsame considerations and identical principles cannot be applied because of the nature of the position held by these two authorities. The High Court held that as the statute did not limit the authority of the Councillor to resign from a prospective date, the authority concerned had the undoubted power from a prospective date, the authority concerned had the undoubted power to withdraw it before the date is reached. In this connection, the Court observed as follows :

> The statute does not in any way limit the authority of the Councillor who has sent his resignation from a prospective date to withdraw it before that date is reached. The resignation which is to be effective from a future date necessarily implied that if that date has not reached it would be open to the Councillor concerned to withdraw it.

101. These observations suffer from an apparent fallacy. In the first place, the Court seems to assume that there is an implied power to withdraw the resignation where the resignor gives a particular date from which the resignation is effective. In the absence of any express provisions conferring such a power, it was not open to the High Court to invoke the doctrine of implied powers as pointed out by me earlier. An implied power cannot be conferred on an authority by a process of legal assumptions in the absence of any express provision.

102. Another argument which weighed heavily with the High Court was that there was no law which compelled a councillor to give his resignation if he did not want it, and therefore, if a councillor chose to resign, he could not be debarred from withdrawing it at any time before the date from which the resignation was to be effective is reached. This argument fails to take into consideration the hard realities of the situation contemplated both by Section 33(1)(b) and Article

217(1)(a) of the Constitution. There is no question of there being any compulsion on the resignor to submit his resignation. In fact both Section 33(1)(b) and Article 217(1)(a) merely conferred a privilege on the resignor to offer his resignation if he so desired. It depends upon the sweet will of the councillor to resign or not to resign. From this however it cannot be inferred that where once a resignation is submitted and results in certain important consequences, namely, that the resignation acts ex proprio vigore, yet the resignor can still withdraw his resignation and thus nullify the effectiveness of the resignation as contemplated both by Section 33(1)(b) and Article 217(1)(a). Such an interpretation appears to be a contradiction in terms and against a plain interpretation of Section 33(1)(b) of the Municipal Act and Article 217(1)(a) of the Constitution. Furthermore, the provision of Section 33(1)(b) does not appear to be in complete pari-materia with those of Article 217(1) (a) inasmuch as Section 33(1)(b) provides that as soon as the resignation was delivered to the Commissioner the seat of the councillor shall become vacant. On the interpretation of this provision the Delhi High Court held that the vacancy could occur only when the resignation became effective vacation of the seat could be simultaneous. In this connection, the Court observed as follows :

> Under Section 33(1)(b) both the resignation and the vacancy of the seat are effective from the same time .... Vacancy will only occur when resignation is effective, and if it is from future date both resignation and vacation of seat will be effective simultaneously.

103. So far as Article 217(1)(a) is concerned it is differently worded and the consequence of the resignation is not at all indicated in this article. Thus the provisions of Article 217(1)(a) cannot be said to be in complete pari-materia with Section 33(1)(b) of the Municipal Corporation Act.

104. Thirdly, as I have already pointed out the consideration by which the Court is governed and the principles which it may seek to apply to a municipal councillor cannot by any process of reasoning or principle of logic be applied to a High Court Judge or other constitutional functionaries governed by constitutional provisions. Fourthly, the Delhi High Court has applied the doctrine of implied power which as discussed above cannot apply where there is no express provision justifying a particular situation. For these reasons, with due deference to the Judges constituting the Full Bench of the Delhi High Court I find myself unable to agree with the view taken by them. In my opinion, the Delhi case referred to above is either distinguishable or even if it be taken to be directly in point, it is wrongly decided.

105. On the other hand, there are some English cases which throw a flood of light on the view that I propose to take in this case and which have been relied upon by the majority judgment of the Allahabad High Court. In the case of Reichal v. Bishop of Oxford (1887 Ch D 48) it was held that a clerk who had tendered his resignation to the Bishop cannot withdraw it, even before acceptance, if in consequence of the tender, the position of any party been altered. In that case the Bishop had been thereby induced to abstain from commencing proceedings in the Ecclesiastical Court for the deprivation of the clerk, in view of his resignation. Lord North after considering all the aspects of the case observed as follow :

> Applying that to the present case, the plaintiff, by sending in his resignation, procured a postponement of legal proceedings against himself, and thereby, according to ecclesiastical law, incapacitated himself from withdrawing it during the interval before the first of October : and this result would follow, even if the true view of the facts be, that the Bishop did not accept the resignation until that date.

Under these circumstances, it appears to me that the plaintiff's attempt to withdraw his resignation fails entirely, and that, having failed on all points, the action must be dismissed with costs.

The decision was affirmed by the Court of Appeal ((1889) 14 AC 259) and it was held that the resignation was validly executed and irrevocable. In the Appeal Case Lord Halsbury observed as follows :

> But there was no condition here at all. As I have already said, I find as a fact Mr. Reichal agreed absolutely to resign rather than undergo the inquiry which the bishop would have felt himself otherwise compelled to institute. Neither in form nor in substance was the resignation conditional.

Lord Watson expressed his view in the following terms :

> In these circumstances it is idle to consider what the appellant's position might have been, if there had been no such arrangement, and he merely had sent in his resignation without knowing whether it was to be accepted or not. He cannot in my opinion be permitted to upset the agreement into which he voluntarily entered, and which he has done all that he could to complete, upon the allegation that there was no formal acceptance of the resignation until October 1, 1886.

Lord Herschell observed as follows :

> It was argued further by the appellant that inasmuch as his resignation was tendered to the Bishop on the understanding that it was not to be accepted until a subsequent date, resignation was a conditional one, and therefore void. I can see no ground for such a contention. The resignation was absolute. It was intended to take effect in any event.

106. These observations also show that merely because the resignation is to take effect from a particular date, it does not become a conditional resignation and its absolute nature is not changed at all, because the Law Lords as also the Chancery Division proceeded on the footing that even though the resignation of the clerk was to take effect from a certain date it was not conditional but absolute. The learned Counsel for the appellant sought to distinguish this case on the ground that in the Bishop's case (supra) a material change had already taken place, which could not be reversed and that is why it was held that the resignation could not be withdrawn. It is true that this was one of the ground taken both by the Chancery Division Court and the Appeal Court, but the same reason will apply to the present case also because once a resignation was submitted by Satish Chandra to take effect August 1, 1977, the President was clearly entitled to fill up the vacancy of the Judge from August 1, 1977, and may take steps accordingly. Thus, by virtue of his resignation Satish Chandra had invited the President to take steps to fill up the vacancy which will arise on August 1, 1977. By virtue of this representation, therefore, a material change undoubtedly took place. For these reasons, therefore, I am not in a position to accept the arguments of Counsel for the appellant on this score.

107. In the case of Finch v. Oake ((1896) 1 Ch D 409) a member under Trade Protection Society was entitled to retire at any time without the consent of other members. On the receipt by the society of a latter from a member stating his wish to retire, he at once ceased to be a member without the necessity of the acceptance by the society of his resignation. It was held that the member could not withdraw his resignation even before acceptance and he could only become a member

again after re-election. It would be seen that the principles decided in this case apply directly to the facts of the present case where also under the provisions of Article 217 the effectiveness of resignation does not depend upon the acceptance of the same by the appropriate authority. In the aforesaid case Lindley, L.J. observed as follows :

> By paying his subscription he on doubt acquires certain rights and benefits. But what is there to prevent him from retiring from the association at any moment if he wishes to do so ? Absolutely nothing. In my opinion no acceptance of his resignation is required, though of course he cannot get back the 10s. 6d. which he has paid ..... I can see no principle of law which entitles him to withdraw his resignation.

Kay, L.J. observed as follows :

> It is said that, before his resignation had been accepted by the association, he withdraw it. But why was any consent to his withdrawal from the society required ? As a voluntary member of a voluntary society he had said, "I do not wish to continue a member any longer ...". In my opinion, after his letter of resignation had been received, the plaintiff could not become a member of the society again without being re-elected.

In my opinion, the principles laid down by this case seem to be in all fours with the facts of the present case.

108. In the case of People of the State of Illinois Ex. Rel. Benjamin S. Adamowski v. Otto Kerner (82 ALR Secound Series 740) what happened was that a County Judge submitted his resignation to the Governor which was to become operative on a specified date. But the Judge sought to withdraw the resignation before the date mentioned in the resignation and before the Governor had acted thereon. It was held by the Illinois Supreme Court that the resignation could not be withdrawn. In this connection, Davis, J. while delivering the opinion of the Court observed as follows :

> However, public policy requires that there be certainty as to who are and who are not public officers .... Therefore, the resignation of an officer effective either forthwith or at a future date may not be withdrawn after such resignation is received by or filed with the officer authorized by law to full such vacancy or to call an election for such purpose.
>
> It is true that Schaefer, J. and Hershey, J. dissented from the view taken by Davis, J., but I would prefer to follow the view taken by Davis, J. which falls in line with the tenor and the spirit of the constitutional provisions which we are called upon to interpret here.

109. Similarly, in the case of Glossop v. Glossop ((1907) 2 Ch D 370) it was held that the Managing Director could not withdraw the resignation without the consent of the company, and by his letter of resignation he vacated his office. Neville, J. while adumbrating the aforesaid principles observed as follows :

> I have no doubt that a director is entitled to relinquish his office at any time he pleases by proper notice to the company, and that his resignation depends upon his notice and is not dependent upon any acceptance by the company, because I do not think they are in a position to refuse acceptance. Consequently, it appears to me that

> a director, once having given in the proper quarter notice of his resignation of his office is not entitled to withdraw that notice, but, if it is withdraw, it must be by the consent of the company properly exorcised by their managers, who are the directors of the company.
>
> It would appear from a conspectus of the authorities cited above and on a close and careful analysis of the provisions of Article 217(1) of the Constitution of India having regard to the setting of the spirit in which this provision was engrafted that the more acceptable view seems to be that where the effectiveness of a resignation by a Judge does not depend upon the acceptance by the President and the resignation acts ex proprio vigore on the compliance of the conditions mentioned in Article 217(1)(a) (that is by writing under his hand addressed to the President and being communicated the same to the President) the judge has no power to revoke or recall the aforesaid resignation even though he may have fixed a particular date from which the resignation is to be effective. In other words, the act of resignation is a purely unilateral act and the concept of withdrawal or recalling or revoking the resignation appears to be totally foreign to the provisions of Article 217(1)(a).

110. Counsel for the appellant relied on Corpus Juris Secondum, American Jurisprudence and other books of eminent authors, which do not appear to me to be very helpful in deciding the point in issue in the present case. In the first place, the provision of the American Constitution as regards resignation of Judges is quite different. In fact, there is no provision at all in the American Constitution entitling a Judge to resign. Article 3 Section 1 of the American constitution as edited by Corwin shows that although Article 3 Section 1 of the American Constitution confers the judicial power on the United States in one Supreme Court and other inferior Courts as may be established by the Congress it provides that Judges both of the Supreme Court and inferior Courts shall hold their office during good behavior. Apart from this provision there is no provision in the Constitution regarding the mode and manner in which the Judges could resign their office. In the absence of any such provision, the general principles have been applied which include cases where a Judges tenders his resignation either prospectively or with a condition attached to the same and such a resignation has to be accepted by the President and can be withdrawn at any time before the date fixed is reached. The principles, however, cannot be applied to our Constitution where a definite mode and a prescribed procedure has been formulated for the resignation of a Judge and the consequences flowing thereof. In these circumstances, therefore, we can derive little help from the provisions of the American Constitution on the question at issue. In the absence of any express provision, the Court have applied the common law which is to the effect that in the absence of any express provision, the Courts have applied the common law which is to the effect that in the absence of a statute providing for resignation, the resignation becomes effective on its acceptance by the proper authority. Similarly, it is laid down that a prospective resignation may be withdrawn at any time before its acceptance vide Corpus Juris Secundum (Vol. 48, p. 973, para 25) which runs thus :

> The term or tenure of a Judge, with respect to the incumbent, may become terminated by reason of his resignation. In the absence of a statue providing otherwise, a resignation becomes effective on its acceptance by the proper authority, but in order to become effective it must be accepted. A prospective resignation may be withdrawn at any time before it is accepted, and after it is accepted it may be withdrawn by the consent of the accepting authority, at least where no new rights have intervened.

Similarly, in Corpus Juris Secundum (Vol. 67, p. 227, para 55) the following observations are to be found :

However, under a statue providing that a resignation shall take effect on due delivery to the officer to whom it is addressed without making provision for a prospective resignation, a resignation to take effect at a future date is not permissible, and such resignation becomes effective on due delivery and creates a vacancy as of the date of delivery.

These observations do not seem to be directly in point but come as close as possible to the view taken by me.

111. The High Court as also the learned Counsel for respondent 1 Mr. Jagdish Swarup took us through extracts of a number of books including Paton's Jurisprudence and Salmond's Jurisprudence with a view to explain the incidents and qualities of a legal right. The extracts, however, do not appear to me to be relevant to the facts of the present case where we are dealing with a codified right which has to be performed within the four corners of the constitutional provisions. The general principles contained in the book of the eminent jurists referred to by Mr. Jagdish Swarup cannot be disputed. The main question, however, is as to what is the effect of the provisions of Article 217(1)(a) of the Constitution of India which prescribes a particular mode for the resignation of High Court Judges. I, therefore, do not think it necessary to advert to the books referred to by the High Court or by Counsel for the first respondent.

112. Thus, from the conclusions arrived at by me on the questions involved in this appeal the following propositions in my opinion emerge :

(1) That the concept of the acceptance of resignation submitted by a High Court Judge is completely absent from Article 217(1)(a) and the effectiveness of the resignation does not at all depend upon the acceptance of the resignation by the President, nor does such a question ever arise. This is how the Executive Government has implemented the law for wherever notifications regarding the resignation of High Court Judges or Supreme court Judges have been made they have merely mentioned the date of the resignation and not the fact of acceptance. The High court has elaborately dealt with this question.

(2) That in view of the provision of Article 217(1)(a) and similar provisions in respect to constitutional functionaries like the President, Vice-President, Speaker etc. the resignation once submitted and communicated to the appropriate authority becomes complete and irrevocable and acts ex proprio vigore.

(3) That there is nothing to show that the provisions of Article 217(1)(a) exclude a resignation which is prospective. That is to say, a resignation may take effect from a particular date. Even so, the resignation may be effective from a particular date but the resignor completely ceases to retain any control over it and becomes functus officio once the resignation is submitted and communicated to the appropriate authority.

(4) That the resignation contemplated by Article 217(1)(a) is purely a unilateral act and takes effect ipso facto once intention to resign is communicated to the President

in writing and addressed to him.

(5) That on a true interpretation of Article 217(1)(a) a resignation having once been submitted and communicated to the President cannot be recalled even though it may be prospective in nature so as to come into effect from a particular date. It is not possible to hold that such a resignation can be withdrawn at any time before the date from which the resignation is to be effective is reached.

(6) That as the Constitution contains an express and clear provision for the mode in which a resignation can be made it has deliberately omitted to provide for revocation or withdrawal of a resignation once submitted and communicated to the President, in the absence of such a provision, the doctrine of implied powers cannot be invoked to supply an omission left by the founding fathers of the Constitution deliberately.

113. The principles enunciated above flow as a logical corollary from the nature and character of the privilege, right or power (whatever name we may choose to give to the same) conferred by the Constitution on a Judge of the High Court or other constitutional functionaries mentioned hereinbefore. Salmond on Jurisprudence (Twelfth Ed. by Fitzgerald) describes a species of legal rights thus (p. 229) :

> All these are legal rights - they are legally recognised interests - they are advantages conferred by law ... They resemble liberties, and differ from rights stricto sensu, inasmuch as they have no duties corresponding to them ... A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons. Power is either ability to determine the legal relations, either of himself or of other persons ... Power is either ability to determine the legal relations of other persons, or ability to determine one's own. The first of these - power over other persons - is sometimes called authority; the second-power over oneself - is usually termed capacity.

Similarly, Paton on Jurisprudence (Third Ed. by Derham) while illustrating the right of liberty observed as follow :

> I have liberty to breathe, to walk in my own fields, to play golf on my private links. Here on precise relationship to others is in question, save that the law will protect my liberty if others interfere with its exercise. But it is more accurate to say that I have a liberty to play than that I have a claim, for I may exercise my liberty without affecting others, whereas my claim can be enforced only by coercing another to act or forbear.

114. It would thus appear that the privilege or power enshrined in Article 217(1)(a) is an absolute one and not relative. In other words, the aforesaid power is an independent one and has no corresponding rights to be performed by any other authority. The only privilege given to a Judge of the High Court is to resign without there being any corresponding right to the President to accept the same, nor is there any power in the resignor to recall or revoke the resignation once it becomes effective. The provisions of Article 217(1)(a) really contemplate that the decision of a judge to resign his office must be taken with due deliberation after considering all the pros and cons of the matter and not under any emotional inspired by undue haste or momentous (sic momentary) fury.

One of the essential qualities of a judicial power is restraint and a Judge before resigning must be prepared to take a decision once for all so that having taken the decision he is not in a position to repent on the same or to brood over it. The decision once taken by the Judge in this regard is irrevocable and immutable and is just like an arrow shot from the bow which cannot be recalled or a bullet having fired and having reached its destination cannot come back to the barrel from which it was shot.

115. Thus having regard to the letter of resignation in the present case, there can be no doubt that Satish Chandra had in his letter dated May 7, 1977 indicated his unequivocal intention to resign in the clearest possible terms to the President with effect from August 1, 1977 and the letter having been communicated to the president and received by him, it was not open to Satish Chandra to withdraw or revoke that letter. Consequently, the letter dated July 15, 1977 addressed to the President by Satish Chandra revoking his resignation was null and void and must be completely ignored.

116. The position, therefore, in my opinion, is that Satish Chandra ceased to be a Judge of the High Court with effect from August 1, 1977. For these reasons, therefore, I fully agree with the majority view of the High Court (Misra, Shukla and Singh, JJ). I am unable to persuade myself to agree with my Brother Judges who have taken a contrary view. I, therefore, uphold the judgment of the High Court and dismiss the appeals. We have already pronounced the operative portion of the order on December 8, 1977 and we have now given the reasons for the order pronounced. In the circumstances, there would be no order as to costs.

</html