

SUPREME COURT OF INDIA

North Zone Cultural Centre

Vs.

Vedpathi Dinesh Kumar

C.A.No.3506 of 2003

(N. Santosh Hegde and B.P. Singh JJ.)

17.04.2003

JUDGMENT

N. Santosh Hegde, J.

1. Leave granted.
2. Heard learned counsel for the parties.
3. The respondent while serving as a temporary Accountant with the appellant-Organisation tendered his resignation from the post held by him on 18.11.1988. The said letter of resignation read thus:-

"To

The Director

North Zone Cultural Centre,

Sheesh Mahal,

Patiala.

Respected Madam,

I hereby tender my resignation with effect from 18.11.88.

Thanking you,

Yours faithfully,

Sd/-

(Dinesh Kr. Vedpathi)"

4. It is the case of the appellant herein that the said resignation was accepted by the Director on the very same day with the following endorsement ; "Accepted, hand over charge. Signed - 18/4."

5. The respondent, however, contends that such acceptance was not made on 18.11.1988 as contended by the appellant and the same was made subsequently. He also contends that he had sent a telegram on 21.11.1988 withdrawing the said resignation, alleging that the resignation was obtained by pressure. It is the further case of the respondent that even after his resignation, he was regularly attending to his work and has signed the attendance register for the relevant days, but he received a letter of 18.11.1988 wherein the Director of the appellant-Organisation intimated him that the resignation tendered by the respondent has been accepted on 18.11.1988 itself and he should hand over complete charge to Shri Mohinder Lal, Assistant and further should consider himself relieved from the service of the Organisation w.e.f. 18.11.1988.

6. Since after the service of acceptance letter, the appellant was not permitted to continue to work in the concerned post, he filed a writ petition before a learned Single Judge of the Punjab and Haryana High Court who by his judgment dated 6th March, 1991 allowed the said writ petition with the direction that the appellant should treat the respondent herein as having continued in the post of Accountant w.e.f. 1st December, 1988 and further directed that, the respondent herein is entitled to all the arrears of salary and allowances etc. which is entitled to under the Rules as if he had not been relieved from his service on 1st December, 1988.

7. An appeal filed by the appellant before the Appellate Bench of the said High Court came to be dismissed, consequent to which the appellant is before us in this appeal.

8. Shri Mahendra Anand, learned senior counsel appearing for the appellant contended that since the appellant had accepted the resignation on 18.11.1988 itself, the resignation had taken effect and there was no need in law for the acceptance being conveyed to the tenderer of the resignation for the resignation to take effect. In this case since the resignation was accepted on 18.11.1988, the same become effective from that day. Therefore, he argued that the courts below erred in holding that a communication of the acceptance of resignation is a mandatory requirement for the resignation to become effective. In support of his case, the learned counsel strongly relied upon the judgments of this Court in the case of *Raj Kumar v. Union of India*¹, *Raj Narain v. Smt. Indira Nehru Gandhi & Anr.*² and *Union of India & Anr. v. Wing Commander T. Parthasarathy*³.

9. Shri D.S. Bali, learned counsel appearing for the respondent contended that the moot question that was decided by the courts below in this case is that there was no acceptance of the resignation on 18.11.1988 and the same was accepted only on 1.12.1988 when a letter communicating the acceptance was conveyed to the respondent. He also contended that the

High Court was justified in relying on the judgment of this Court in the case of *Ravinder Singh v. State of M.P. & Ors.*⁴.

10. It is true as contended by Shri D.S. Bali, learned senior counsel that if actually the appellant had accepted the resignation only on 1.12.1988 then in view of the fact that the respondent had in between withdrawn his resignation, the resignation would not become effective and such withdrawn resignation cannot be accepted subsequently.

11. The question, therefore, for our consideration is whether the resignation of the respondent was accepted by the appellant on 18.11.1988 or not.

12. The respondent had denied this factum of the acceptance of resignation on 18.11.1988. In the writ petition filed by the respondent, he had stated that the resignation was accepted only on 1.12.1988.

13. But the appellants in their reply to the said allegation of the respondent in the writ petition, filed a counter affidavit specifically denying the allegation of the writ petitioner/respondent herein and had contended that the resignation was accepted on 18.11.1988 itself giving certain particulars of the said fact. The appellant herein in the said writ petition also filed two affidavits of the officials of the organisation in support of its stand that the resignation in question was actually accepted on 18.11.1988 itself.

14. No rejoinder was filed as against said reply nor the contents of the affidavits denied. Further from a perusal of the judgment of the learned Single Judge, it is seen that he also accepted the statement in the affidavit of the Director of the appellant Organisation that the resignation was accepted on 18.11.1988 but he held that because said acceptance was communicated only on 1.12.1988, and in the meanwhile the respondent had withdrawn the resignation the subsequent communication of acceptance had become redundant. He further held that permitting the respondent to attend duty till 1.12.1988 also showed that the resignation had not taken effect thus the learned Single Judge gave two reasons for holding that the resignation had not become effective.

(i) The acceptance was not communicated till the withdrawal.

(ii) Respondent was permitted to attend duty even after the acceptance of resignation. In our opinion, both these grounds are unsustainable in law. This Court in *Raj Kumar's case* (supra) held:

"When a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory 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. Undue delay, in intimating to the public servant concerned the

action taken on the letter of resignation, may justify an inference that the resignation had not been accepted."

15. Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal.

16. We will consider the effect of delayed communication of the acceptance of resignation separately hereinafter.

17. It is an admitted fact that so far as the appellant-Organisation is concerned, there is no rule which requires the acceptance of the resignation to be communicated before the resignation could become effective. But the Division Bench in appeal has relied upon a consolidated guidelines and instructions issued by the Government of India vide letter of February 11, 1988 dealing with the subject of acceptance and withdrawal of resignation. We see that these guidelines state that in the case of a resignation which has been accepted by the appointing authority with effect from a future date and if in the meantime the concerned Government servant withdraws his resignation before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. In these guidelines, we do not see any requirement which states that even in cases where the resignation is accepted with immediate effect, the same can be withdrawn before such acceptance is communicated to the Government servant concerned. On the contrary, in our opinion, these guidelines also indicate that the resignation takes effect the moment the same is accepted.

18. The courts below then relied upon a judgment of this Court in the case of Ravinder Singh (supra) where a Division Bench of two-Judges of this Court in a very short order based on the facts of that case held that the resignation of an officer in question was obtained by threat and coercion, therefore, that was an appropriate case where the appellant should continue in service. It is on that factual basis acceptance of resignation was quashed. However, there is a stray observation that "obviously to get over the situation, he might have tendered resignation on January 3, 1991 but he had withdrawn it on February 2, 1991 *before the acceptance was communicated to him.* (emphasis supplied). On the same day, the resignation was accepted." From this observation, we cannot hold that the ratio dissendi of that decision is that the resignation does not become effective until the acceptance is communicated. Assuming that this Court in Ravinder Singh's case has held so then the same would run directly counter to the ratio laid down by this Court in the three-Judge Bench judgment in Raj Kumar's case (supra), hence, we think the High Court was wrong in placing reliance on the judgment of Ravinder Singh's case (supra) which was done without considering the case of Raj Kumar (supra).

19. This takes us to consider the observations of this Court in the case of Raj Kumar wherein this Court stated:-

"Undue delay in intimating to the public servant concerned, the action taken on the letter of resignation, may justify an inference that the resignation has not been accepted".

20. It is to be seen that this observation was made in the context of finding out whether there was an acceptance at all.

21. Be that as it may, in that case, the resignation in question was dated 30th August, 1964 and the same was accepted on 31st of October, 1964 after a gap of nearly two months even then this Court thought on the facts of that case there was no undue delay in accepting the resignation so as to vitiate the same. On the contrary, this is what the court observed in the said case of Raj Kumar that:

"In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently, the State of Rajasthan did not immediately implement the order and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties."

22. As noticed above, in the present case the resignation is dated 18.11.1988 and the same as found by us is accepted on 18.11.1988 itself. The communication was on 1.12.1988 about 13 days thereafter which delay, in our opinion, is not an undue delay so as to make us draw an inference that there has been no acceptance of the resignation. Even the fact that in the meantime the respondent either attended duty or signed the attendant register will be of no assistance to claim his resignation had not taken effect. Even otherwise the appellants have urged that because there was no responsible officer in the headquarter from 18.12.1988 after respondent's resignation was accepted till 1.12.1988 and the respondent took advantage of the same and marked his attendance and such attendance cannot be treated as lawful attendance in view of the acceptance of his resignation on 18.11.1988. We agree with this contention of the appellant.

23. For the reasons stated above, this appeal succeeds, the impugned orders are set aside and the writ petition filed by the respondent stands dismissed.

Appeal allowed.

¹(1968) 3 SCR 857

²(1972) 3 SCC 850

³(2001) 1 SCC 158

⁴(1995)2 SCR 519