

SUPREME COURT OF INDIA

Union of India

Vs.

Hitender Kumar Soni

C.A.No.10645 of 2010

(Vikramajit Sen and Shiva Kirti Singh JJ.)

21.07.2014

JUDGMENT

SHIVA KIRTI SINGH, J.

1. As Appellants the Union of India and its concerned officials are aggrieved by the judgment and order under appeal dated 11.12.2008 passed by a Division Bench of High Court of Himachal Pradesh in Civil Writ Petition No.41 of 2001 whereby the High Court allowed the Writ Petition preferred by the sole Respondent and set aside the impugned order of the Central Administrative Tribunal dated 15.5.2000. The High Court held the Respondent entitled for reinstatement in service to the post of Investigator. The Government was directed to decide the admissibility and entitlement of leave, arrears of pay and allowances and other service benefits of Respondent upon his reinstatement after affording full opportunity to the Respondent, of hearing as well as leading evidence. Before advertng to the facts it is relevant to notice at the outset that the High Court, inspite of resignation of the Respondent dated 07.10.1997 having been accepted by the Competent Authority by order dated 16.6.1998 held that the resignation could not have come into effect because as per clause (4) of Office Memorandum dated 11.2.1988 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, the Respondent was also required to be relieved of his duties which was not done by the Appellants.

2. The question falling for determination in this appeal is whether relevant clause (4)

of the Office Memorandum dated 11.2.1988 takes away the power of the Government to effectively bring to an end the service of an employee by accepting his resignation unless the Government, besides accepting the resignation also proceeds to relieve the employee. In the judgment under appeal, the relevant clauses, i.e., clauses 1, 2, 3 and 4 have been extracted in paragraph 10(iii) and those clauses are reproduced hereinbelow for the sake of clarity and convenience:

Clause (01) : Format of resignation: Resignation is an intimation in writing sent to the competent authority by the incumbent of a post, of his intention or proposal to resign the office/post either immediately or from a future specified date. A resignation has to be clear and unconditional.

Clause (02): Circumstances under which resignation should be accepted.

3. It is not in the interest of Government to retain an unwilling Government servant in service. The general rule, therefore, is that a resignation of a Government servant from service should be accepted, except in the circumstances indicated below:-

4. Where the Government servant concerned is engaged on work of importance and it would take time to make alternative arrangements for filling the post, the resignation should not be accepted straightaway but only when alternative arrangements for filling the post have been made. xxxx xxxx xxxx xxxx xxxx

Clause (03): A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant 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. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably

intimated to the Government servant concerned.

Rules governing temporary Government servants in reference to Rule 5(1) of the CCS (TS) Rules, 1965.

Clause (4): Since a temporary Government servant can sever his connection from Govt. service by giving a notice of termination of service under Rule 5(1) of the Central Civil Services (TS) Rules, 1965, the instructions contained in this Office Memorandum relating to acceptance of resignation will not be applicable in cases where a notice of termination of service has been given by a temporary Govt. servant. If, however, temporary Govt. servant submits a letter of resignation in which he does not even mention that it may be treated as a notice of termination of service, he can relinquish the charge of the post held by him only after the resignation is duly accepted by the appointing authority and he is relieved of his duties and not after the expiry of the notice period laid down in the Temporary Service Rules.

5. Now, the relevant facts. After being selected and recommended by the Staff Selection Committee for appointment as Investigator (Group ~C non- gazetted post), the Respondent joined the said post in the Office of the Assistant Director, National Samples Survey Organisation, Shimla, Field Operation Division on 24.6.1996. His service was still temporary and under probation. He did not report for duty on 06.10.1997 and on the next day a letter of resignation dated 07.10.1997 sent by the Respondent was received in the concerned office through post. The reason for resignation mentioned in the letter was unavoidable family circumstances and ill health of the Respondent. For some administrative reasons, the resignation of the Respondent could not be accepted immediately although he disobeyed directions through various letters to resume his duties and never reported for work although no leave was sanctioned. Through a letter dated 31.10.1997 Respondent was informed that his resignation cannot be accepted for some administrative reasons. The details of relevant correspondences, preceding and succeeding the letter dated 31.10.1997, have been noted by the High Court in paragraphs 4 and 5 of the judgment. By a letter dated 24.10.1997, Respondent was informed that tendering of resignation was not sufficient to absolve him of his official duties unless it was accepted by the Competent Authority. He was asked to submit some other official documents such as Instructions Set, Identity Card, Tour Diary, Kit items and some relevant official papers. He was

also asked to offer clarification regarding a sample survey and was warned that on failure disciplinary action might be initiated against him. In reply, the Respondent through a letter dated 10.11.1997, informed that he had returned Instructions Set, Tour Diary, Random Table and NIC book. He also requested that the cost of kit items may be adjusted from his pending dues. He again made a request that his resignation which he had already submitted may be accepted. Letters were issued to the Respondent in February and April 1998 regarding his obligation to join duties and his failure to submit leave application. However, ultimately the Competent Authority, as noted earlier, by letter dated 16.6.1998 accepted the resignation of the Respondent. On 5.8.1998 the Respondent sent a letter to the effect that the circumstances under which he had submitted his resignation had now changed and hence his resignation letter may be treated as cancelled. The concerned officials got the Identity Card of the Respondent collected on 25.8.1998 for fear of its misuse.

6. Since the Appellants did not accede to the request of the Respondent, he preferred Original Application No.798/HP/1998 before the Central Administrative Tribunal, Chandigarh Bench, Circuit Bench at Shimla, seeking quashing of the order accepting his resignation and for a direction to treat him in service and grant of consequential reliefs. The Tribunal rejected the prayers made in the O.A. by order dated 15.5.2000 but gave liberty to the Respondent to apply for fresh appointment to the post of Investigator. The Appellants were directed to consider such an application sympathetically and offer him employment in case he was found eligible. Accordingly, Respondent made an application dated 26.6.2000 to consider for his fresh appointment sympathetically. That representation/application was rejected on 27.11.2000 pointing out that the Respondent was already over-age at the time of order by the Tribunal. Thereafter, Respondent preferred Civil Writ Petition No.41 of 2001 which has been allowed by the order under appeal.

7. The High Court, in a rather lengthy judgment, has considered a large number of judgments of this Court for recapitulating the well established principles of law such as “ normally, the tender of resignation becomes effective and the service or office tenure of the concerned employee stands terminated, when it is accepted by the Competent Authority. For this, reference may be made to a judgment of a Constitution Bench in the case of Union of India & Ors. v. Gopal Chandra Misra & Ors. (1978) 2 SCC 301; and that notice of voluntary retirement or resignation can be withdrawn at any time before it becomes effective.

8. A plea was taken by the Respondent before the High Court that the decision accepting his resignation was not received by him. The High Court, in paragraph 27 of the judgment, took the view that such a plea would not have any effect upon the order of acceptance of resignation. This view is in accordance with judgment of this Court in the case of Raj Kumar v. Union of India AIR 1969 SC 180. In that case, the concerned employee had withdrawn his resignation before the order accepting his resignation had reached him. This Court, in paragraph 5 of the Report, made a distinction between an order of dismissal on one hand and termination of employment on the other which is invited by a public servant through an offer of resignation. In the latter eventuality, the employee 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..

9. We have heard learned counsel for the Appellants and learned counsel for the Respondent and we find, on a perusal of the order under appeal, that the only ground, on which the High Court has allowed the writ petition and granted relief to the Respondent, is its opinion that in view of requirement of clause (4) of O.M. dated 11.2.1988 it was incumbent upon the Appellants to bring some materials on record to show that the Respondent was relieved from the duties of his office following the acceptance of resignation on 16.6.1998. For the reasons indicated hereinbelow, we are unable to agree with the aforesaid view of the High Court. A perusal of the relevant clauses of the O.M. dated 11.2.1988 discloses that resignation is required to be intimated in writing disclosing the intention to resign the office/post either immediately or from a future date. In the latter case, such future date should be specified. The resignation has to be clear and unconditional. The Respondent did not specify any future date but submitted his resignation in writing giving reasons and his intention to resign is clear and unconditional. Clause (2) contains circumstances under which resignation should be accepted. This is for the guidance of the concerned officials and does not create any right in the concerned employee to resist acceptance of resignation. Clause (3) specifies that a resignation becomes effective when it is accepted and the Government servant is relieved of his duties. A careful reading of this clause throws some light as to why the requirement of relieving a Government servant has been indicated in this Office Memorandum. The second sentence of this

clause states the normal rule that a Government servant can withdraw his letter of resignation before its acceptance by the appointing authority. The next following sentence spells out that in case the resignation had been accepted by the appointing authority and the employee is to be relieved from a future date, if a request for withdrawal of resignation is received from the employee, the normal rule should be to allow the request to withdraw the resignation. But, even in such a case, the request for withdrawal may be refused but the grounds for the rejection should be recorded and intimated to the Government servant concerned. In continuity, clause (4) considers the case of a temporary Government servant who has a right to opt out of Government service by giving a notice of termination of service as per applicable service rules of 1965. In such a case the Office Memorandum in question relating to acceptance of resignation will not be applicable. The subsequent provision of clause (4) has been held applicable to the Respondent because instead of notice of termination he had tendered a letter of resignation. In such a case as per clause (4), .he can relinquish the charge of a post only after resignation is duly accepted by the appointing authority and he is relieved of his duties and not after the expiry of the notice period laid down in the Temporary Service Rules.

10. In our considered view, the part of clause (4) extracted above makes a distinction between the right of a temporary Government servant to sever his connection from Government service by giving a notice of termination and that of a temporary Government servant who chooses not to give such notice but opts to submit a letter of resignation. In the case of notice of termination the concerned employee can relinquish the charge of the post on expiry of the period of notice, but, such right will not be available to a temporary employee in case he tenders a simple resignation. The reason is obvious because a resignation requires acceptance by the appointing authority and till then his right to relinquish is impinged by the requirement, to be relieved of his duties. On a joint reading of clauses (3) and (4) it can be safely inferred that depending upon the facts and circumstances of a case and nature of request made in a resignation letter, the Government has the power to accept the resignation so as to bring about a severance of relationship of master and servant with immediate effect. But in cases where the letter of resignation itself specifies a future date for being relieved or where, as indicated in clause (2) the concerned Government servant is engaged on work of importance etc., the resignation may not be accepted straightaway. It is in such circumstances only that Government may exercise its power to accept the offer but defer the date from which resignation would become effective.

The normal rule, however, remains that Government has the power to accept a resignation with immediate effect. In case the Government for some reasons wishes to defer or specify the date from which resignation would become effective, it is entitled to take work from the concerned Government servant till he is relieved in accordance with the facts and requirements of the case. The letter of Government accepting an offer of resignation itself should normally be conclusive for deciding whether the Government has opted for immediate termination of service by accepting the resignation or has deferred such termination to a future date. Only in the latter eventuality the relationship of master and servant shall continue till the concerned Government servant is relieved of his duties. In the instant case, the letter of acceptance clearly shows that termination of Respondent service as per his offer of resignation was not deferred to any future date and hence there was no requirement to relieve him of his duties. Even the peculiar facts of this case show that the Respondent while on probation had already abandoned his temporary service for almost 8 months and had not cared to report for duty inspite of several requests. In such a situation, it would be impossible to relieve an absconding employee of his duties and if the reasoning of the High Court is accepted such employee, even if he has tendered resignation, must be continued in service till he is actually found or till he presents himself to be relieved of his duties. Such a view would be impractical and run against larger public interest. There may be cases where an employee resigning from service has gone in hiding or is in jail custody etc. The construction placed upon the relevant clauses of the O.M. dated 11.2.1988 by the High Court will render the provisions unworkable, hence such construction needs to be avoided. The word, relieving itself must be understood in the ordinary parlance because it is not defined in the O.M. or in the relevant rules as is apparent from the judgment of the High Court. The meaning of the word relieve given in the Law Lexicon (2nd Edn. 1997 by P. Ramanatha Aiyar) is “ to free or clear a person from an obligation. This result manifests itself from the order accepting the resignation because no reservation has been made by the Government that the Respondent has to continue in service till any particular time or till being relieved. Hence, in the instant case, there was no obligation on the Government to write a formal letter that the Respondent has been relieved. Even if such requirement had been there, in the case in hand it would be an empty formality. The wholesome writ jurisdiction was not required to be exercised in the facts of the present case keeping in view the conduct of the Respondent in escaping away from his duties without obtaining leave when he was only a temporary employee under probation.

11. For the aforesaid reasons, we find no option but to set aside the order and judgment of the High Court under appeal. We order accordingly. The appeal is allowed and as a result, the writ petition of the Respondent shall stand dismissed. In the facts of the case we pass no order as to costs.