

MADHYA PRADESH HIGH COURT

Bhairon Singh Vishwakarma

Vs.

The Civil Surgeon,

Misc. Petition No. 345 of 1968
(K.L. Pandey and A.P. Sen, JJ.)

24.07.1970

ORDER

K.L. Pandey, J.

1. By an order dated April 24, 1959, the Director of Health Services, M.P., had appointed the petitioner temporarily until further orders as a lower division clerk and posted him to work in the office of the Civil Surgeon, Narsimhapur. By a subsequent order of the appointing authority, dated August 9, 1965, he was declared to be a quasi-permanent servant. On December 22, 1966, he gave a three months' notice of resignation. By a communication dated February 22, 1967, he withdrew his resignation. Even so, the Civil Surgeon had accepted the resignation on February 21, 1967 and the appointing authority subsequently accepted it on July 17, 1967. The petitioner was required to make over charge of the post held by him on April 14, 1967. His appeal against the acceptance of his resignation was dismissed on May 8, 1968. Being aggrieved, he has filed this petition under Articles 226 and 227 of the Constitution to call up and quash by certiorari the two orders of acceptance of his resignation and prayed for a suitable writ, order or direction for his reinstatement. Among the grounds raised in support of the petition, the following were pressed before us:

- (i) The resignation was conditional operating on a future date and, before it took effect, it could be withdrawn.
- (ii) The Civil Surgeon, Narsimhapur was not the appointing authority and could not accept the resignation. That resignation was admittedly withdrawn before the appointing authority accepted it on July 17, 1967.
- (iii) Even if the Civil Surgeon, Narsimhapur was competent to accept the

resignation, the withdrawal of the resignation was received by him on February 25, 1967 before his acceptance dated February 21, 1967 was put in the course of transmission to the petitioner on February 28, 1967.

Having heard the counsel, we have formed the opinion that this petition must be allowed. It is well settled that until the resignation of a civil servant is duly accepted by the appropriate authority he has a chance of recalling it. So, in *Raj Kumar v. Union of India*,¹ the Supreme Court observed:

Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus penitential but not thereafter.

In the case, the resignation was to take effect three months after the date on which it had been sent, namely, December 22, 1966. That being so, this conditional resignation was not to come into effect before March 22, 1967. Therefore, the petitioner had a right to withdraw that resignation and to intimate to the appropriate authority that he no longer desired that his application for resignation should be considered as effective. A like view was taken in somewhat similar circumstances by the Allahabad High Court in *Shanker Dutt Shukla v. President, Municipal Board, Auraiya*² and it was observed :

The resignation was to become operative from 1st April and, in my opinion, the applicant had the right to intimate to the President that he no longer wished that his application, which was to come into existence from 1-4-1955, should be considered as effective.

In taking that view the Allahabad High Court relied upon the observations of the Supreme Court in *Jai Bam v. Union of India*³ to the effect that a person who expressed his desire to retire from service could be permitted to change his mind subsequently before his services were actually terminated. It is, however, argued that the Civil Surgeon, Narsimhapur, had already accepted the petitioner's resignation on February 21, 1967 before the latter withdrawing, the resignation was received by him on February 25, 1967. This is met by the petitioner by contending that the acceptance of the resignation was not complete on February 21, 1967 because its intimation was put in the course of transmission to the petitioner on February 28, 1967. It does not appear

to us to be necessary to examine the correctness of any of these two contentions, involving as they do dispute questions of fact, because, in our opinion, they do not really arise. In this particular case, the resignation was accepted by the Civil Surgeon who was not the appointing authority. Normally, it is the appointing authority which should accept the resignation and so terminate the services of a person employed by it. It is not that the appointing authority may not delegate its functions limited to the acceptance of resignation to a subordinate authority. But, no such delegation was either urged or established. In these circumstances, the acceptance of resignation by the Civil Surgeon was not legally effective and, long before the resignation was accepted by the Director of Public Health, it had been withdrawn by the petitioner. In the circumstances, the two orders dated February 21, 1967 and July 17, 1967 accepting the petitioner's resignation cannot be sustained. The result is that the petition succeeds and is allowed. The orders dated February 21, 1967 and July 17, 1967 accepting the petitioner's resignation are quashed and the respondents are directed to deal with the case of the petitioner as if his resignation never took effect. The respondents shall bear their own costs and pay those incurred by the petitioner to whom the security amount shall be refunded. Hearing fee ₹ 100.

Cases Referred.

1. AIR 1969 SC 180
2. AIR 1956 All 70
3. AIR 1954 SC 584