

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 5th May, 2011

% Judgment Pronounced on: July 04, 2011

+1. **WP (C) No. 555/2011**

INDIAN TOURISM DEVELOPMENT
CORPORATION LTD.

..... Petitioner

Through: Mr.Ujjawal K. Jha and Mr. Kanwaljit
Singh, Advocates.

Versus

SRI KANT SHARMA

..... Respondent

Through: Mr.Som Dutt Sharma and Mr.Gaurav
Bhardwaj, Advocate.

2. **WP (C) No.2522/2011**

SRI KANT SHARMA

..... Respondent

Through: Mr.Som Dutt Sharma and Mr.Gaurav
Bhardwaj, Advocate.

Versus

INDIAN TOURISM DEVELOPMENT
CORPORATION LTD.

..... Petitioner

Through: Mr.Ujjawal K. Jha and Mr. Kanwaljit
Singh, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

- | | | |
|---|---|-----|
| 1 | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2 | To be referred to the Reporter or not? | Yes |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

In these two writ petitions the assail is to the order dated 8.10.2010 passed by the Central Administrative Tribunal, Principal Bench (for short the tribunal) in OA No.3616/2009 whereby the tribunal has allowed the original application on the bedrock that the plea of acceptance of resignation by the employer, Indian Tourism Development Corporation Ltd. (for short the Corporation) cannot be countenanced in law and, hence, the employee is entitled to reinstatement in service but without backwages along with all consequential benefits including considering of his claim for promotion to the post of Manager from the due date within a period of two months from the date of the receipt of the order passed by it.

2. Be it noted, the Corporation has preferred W.P.(C) No. 555/2011 by which challenge is made to the order of the tribunal, inter alia, directing reinstatement of employee and the employee has preferred W.P.(C) No.2522/2011 as there has been denial of backwages to him while directing reinstatement. Regard being had to the singular order passed by the tribunal and the inextricable link between the two writ petitions, they were heard analogously and are being disposed of by this common order.

3. The factual score, which is required to be expounded after filtering the unnecessary details, is that the applicant in the original application before the tribunal (hereinafter referred to as 'the applicant - employee') had joined the Corporation as an Accountant and was promoted as Senior Accountant in 1994. On 16.6.1998, he was again promoted as Assistant Manager (F&A) and was confirmed on the said post in June 1999. He was posted as Assistant Manager (Accounts) at Hotel Ashok. On 27.11.2003, a voluntary retirement scheme was introduced and the applicant - employee applied for the same, but his claim was turned down. He was recommended for officiating promotion as Manager (Accounts) by the reviewing officer on 8.6.2007. Prior to that, on 15.9.2006, eligible candidates for 16 posts of Manager which is a selection post were notified and the Departmental Promotion Committee met on 14th and 19th December, 2006. As set forth, the applicant-employee was placed at serial no. 4 amongst the successful candidates, securing 137 marks out of 165 but the management Corporation instead of filling 100% vacancies withheld 20% of the posts for direct recruitment. Because of the aforesaid situation, the applicant-employee could not be promoted but the persons junior to him, though had secured lower marks than him, were selected. This led the applicant-employee to send a letter of request on 30.3.2007 to the

Chairman-cum-Managing Director of the Corporation tendering his resignation.

4. It was averred in the original application that when the resignation was tendered he was called by the General Manager and was assured of redressal of his grievances and due to that he had written a note on his resignation letter that he did not want to pursue the matter. Despite assurance given by the General Manager, when nothing positive ensued, the applicant-employee feeling depressed, withdrew his note/letter giving assurance that he would not pursue the matter and sought resignation by writing a letter on 11.6.1997. On 18.6.2007, he was issued 'No Objection Certificate' to pursue part time MBA course from a University and thereafter he performed his duties and marked his attendance. At this stage, he received an order on 28.9.2007, whereby his resignation was accepted despite expiry of the notice period as per the resignation tendered on 11.6.2007 and he was advised to handover the complete charge and to get settled his accounts. An order was passed on the same day, postponing his relieving till a suitable candidate was posted. On 27.10.2007, he was asked to look after the charge of day-to-day functioning of the finance and accounts, in addition to his own duties.

5. It was contended before the tribunal that the resignation tendered by the applicant-employee was on account of non-promotion and heartburning. The initial tender resignation was not accepted and an assurance was given to reconsider the matter of his promotion. Therefore, the application for resignation cannot be treated as a resignation. It was urged that it was a conditional resignation and, therefore, the Corporation would not have accepted it.

6. The stand and stance put forth was resisted by the Corporation contending, inter alia, that the resignation tendered by the applicant – employee was voluntary without any condition attached to it which would be reflectible, if letters dated 30.3.2007 and 11.6.2007 are scrutinized in proper perspective. It was also put forth that the letter of postponement of relieving clearly stipulate that it was being done in administrative exigency and would not be construed as an act of the respondent Corporation to decide against the acceptance of the resignation of the applicant.

7. The tribunal referred to the decisions in *P.K. Ramachandra Iyer Etc. Etc. v. Union of India Etc. Etc.* 1984 I LLJ SC 314 and *Dr. Prabha Atri v. State of U.P. and others*, 2003 SCC (L&S) 118 and came to hold that the

applicant had given three months' notice in advance for resignation; that the resignation was not acted upon on intervention of C&MD who had assured that 100% vacancies would be filled through departmental candidates; that despite writing on the earlier resignation by the applicant that it would not be pursued by him but realizing the assurance and promise made by the authorities to consider his claim in right perspective for promotion and that they having failed to live up to that, a letter written on 11.6.2007 causing heart-burning or depression to the applicant which had affected his working, he had withdrawn his earlier assurance not to pursue the resignation and sought acceptance of his resignation which was accepted on 28.9.2007; that the applicant instead of relieving immediately was not relieved immediately but his relieving date was postponed and admittedly he had worked upto November 2007; that his tendering of resignation on both occasions was on account of non-promotion, which he was deprived of and by no standards could be treated as an unconditional voluntary request for resignation and a clear intent to relinquish the position; that after acceptance of resignation on 28.9.2007 as the Corporation allowed the applicant to function by virtue of postponement of relieving date due to non-availability of a suitable substitute the relationship of master and servant had not been severed despite

acceptance of resignation and, hence, the acceptance of resignation had become otiose; that the applicant was consciously allowed to continue for more than two months after acceptance of the resignation and was treated as an employee of Corporation having been paid the salary and thus, the acceptance of resignation was not acted upon for the said period. Being of this view, the tribunal allowed the original application and issued directions which we have mentioned hereinbefore.

8. We have heard Mr. Ujjawal K. Jha, learned counsel appearing for the Corporation and Mr. Som Dutt Sharma, learned counsel appearing for the applicant – employee.

9. The central issue that emerges for consideration is whether there has been voluntary resignation by the employee and the acceptance in the real sense of the term by the employer. We may note with profit that the tribunal has commenced its order on the issue of promotion and how it has to be considered on fair and equitable basis, and in that regard placed reliance on *Union of India & another v. Hemeraj Singh Chauhan & others*, 2010 (3) SCALE 272 and *A. Satyanarayana & others v. S. Purushotham & others*, (2008) 2 SCC (L&S) 279, but we are disposed to think that the same has really no nexus with the adjudication of the lis that had arisen in the

Original Application and also that has crept up in these two writ petitions, for it is not a case of conditional resignation, to which aspect we shall advert to while dwelling upon the issue whether the Corporation has appositely dealt with letter/s of resignation and the relationship between the employer and employee had ceased to exist. Thus, we proceed to deal with the communications and resultant effect thereof.

10. The first letter of resignation is dated 30th March, 2007. The said letter reads as follows:

“To,

C & MD
ITDC Ltd.
SCOPE Complex
Core 8, 6th Floor,
7 Lodi Road,
New Delhi – 110 003

Sir,

I, Shri Kant Sharma presently working as Asstt. Manager (B&C) in ‘The Ashok’ for the last six years against the much higher post, being dissatisfied with the promotional policy of the corporation which demoralizes its good workers and favour the butlers only specially in Finance & Accounts department. I am deeply demoralized by not getting promotion even after putting nine years of my service in the same scale whereas in other departments officials of much junior service have been promoted and are now senior to me.

I put best of my efforts and gave results despite of all the odds. Now unable to work to my full potential, I hereby submit my resignation by giving three months advance notice.

I hope you will accept the same under intimation to me.” [Emphasis added]

11. The second resignation letter dated 11th June, 2007 reads as follows:

To,

Director (F)
ITDC Ltd.
SCOPE Complex
Core 8, 6th Floor,
7 Lodhi Road,
New Delhi-110003

Sir,

Re: RESIGNATION

Kindly refer to my resignation as per copy dated 30th March, 2007 enclosed, submitted through General Manager (Ashok) and further discussions held with you on the subject matter. You know about my performance very well throughout my carrier in ITDC. I have been result oriented. On receipt of my resignation, you called me in your office, praised about my effective and efficient discharge of duties and also conveyed that nothing unjustified has been done in the selection process of promotions. I was pursued and made agreed to write on my resignation that I don't want to pursue the matter further. I get nothing accept consolation.

Sir, I have learnt that on the concerned file, in which my case for promotion was being considered, the competent authority i.e., C&MD have given the approval for filling up cent-per-cent posts through departmental candidates at par with other departments. This approval was ignored and the 80:20 selection/promotion (80% for departmental) and (20% for direct recruits) has been implemented.

I am not able to find out any convincing reasons for depriving the fit candidates in this manner even after successfully working for 9 long years in the same scale and 5 years against the much higher post even after achieving good rank in the interview. Out of frustration and dismay in my carrier development, seeing the bleak future & prospects in ITDC I am going into further depressing on adaptation of different yardsticks for promotions by the corporation. Continuous depression is affecting my workings.

Therefore, my assurance, not to pursue the resignation stands withdrawn and I request you to please accept my resignation dated 30th March, 07 and relieve me after expiry of the notice period. Hope you will do the needful and inform me accordingly.

[Emphasis supplied]

12. On 28th September, 2007, the following order was passed by the Management-Corporation:

“Please refer to your letter dated 11.06.2007 tendering resignation from the post of Asst. Mgr. (A/cs), Ashok Hotel, New Delhi.

Your resignation has been considered and I am directed to inform you that the Competent Authority has

decided to accept your resignation w.e.f. 28.9.2007 (AN).

You are advised to hand over the complete charge of your post to Sr. Manager (A/cs), Ashok Hotel, New Delhi and collect your dues in full and final settlement of your accounts with this Corporation after furnishing "No Demand Certificates" from the concerned Department.

This issues with the approval of the Competent Authority."

[Underlining is by us]

13. Thereafter, on 28th September, 2007 itself, a further order came to be passed by the management. The said order reads as under:

"This is with reference to our memo of even number dated 28.09.2007 conveying the acceptance of the resignation of Sh. Shri Kant Sharma, Asstt. Mgr. (A/cs), Ashok Hotel, New Delhi.

As desired by the Director (Finance), the relieving of Sh. Shri Kant Sharma, AM (A/cs), may be postponed till a suitable substitute is posted at Ashok Hotel."

[Emphasis added]

14. On 30th November, 2007, the petitioner was relieved with effect from that date and he was directed to submit No Demand Certificates for settlement of his dues. It is urged by the learned counsel for the Corporation that the resignation was accepted as per the communication

dated 28th September, 2007 but relieving from the post was postponed awaiting to get a suitable substitute and, hence the tribunal has fallen into error by recording that the resignation tendered by the applicant was not accepted by the Corporation. It is also contended by him that the tribunal has faulted by treating the resignation as a conditional one inasmuch as the petitioner had submitted the resignation because of the discontent with regard to his non-promotion. We have already indicated earlier that the issue of promotion is totally immaterial as the factual matrix would unfurl that the correspondences relating to resignation do not postulate any condition. Hence, what is required to be scrutinized is whether there has been lawful resignation and lawful acceptance.

15. It is noteworthy that there has been no dispute with regard to the facts. To have a complete picture, we have reproduced the contents of the documents to understand the import and purport of the communications made between the parties. On a perusal of the first resignation letter dated 30th March, 2007, we do not perceive the same to be a conditional resignation. What has been stated by the employee is that he was unable to work to his full potential and, therefore, he submitted his resignation by giving three months advance notice. He repeated the same on 11th June,

2007 again tendering his resignation with three months notice. That was accepted on 28th September, 2007 but thereafter he was not relieved for almost two months. As is revealed from the pleadings, the employee was paid the retiral dues on 7th October, 2008 amounting to Rs.3,08,303/-. The said cheque was accepted and encashed. The employee also filed an application on 30th January, 2009 before the controlling authority under the Payment of Gratuity Act, 1972 for payment of Rs.47,132.30 towards the interest on the amount of gratuity paid. Under these circumstances, it is required to be seen whether there has been acceptance of resignation and how the applicant-employee had accepted it.

16. Keeping in view the aforesaid scenario, we think it appropriate to refer to certain authorities in the field which relate to the concept of voluntary resignation and when it takes effect. In *Moti Ram v. Param Devi and Anr.*, (1993) 2 SCC 725, the Apex Court while dealing with the concept of resignation has held thus:

“As pointed out by this Court 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act

of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the offence and the conditions governing it. (See : Union of India v. Gopal Chandra Misra, AIR 1978 SC 694 : 1978 Lab IC 660 : [1978 (1) SLR 521 (SC)]. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in prasenti. A resignation may also be prospective to be operative from a future date that in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g. acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of any office is unilateral or bilateral in character would depend upon the nature of the office and conditions governing it."

17. In *Prabha Atri (Dr.) v. State of U.P.*, 2003 SCC (L&S) 118, the appellant who was working as an Anaesthetist was asked for an explanation for certain lapses committed by her and she was put under suspension. On receipt of the said memo, the appellant replied to the Secretary of the Hospital that she had already clarified her position

verbally. After so stating, she further added that the letter issued by the authority was uncalled for and should be withdrawn since she has worked in the best interest of the patients and instead of taking a lenient view, he had opted to punish her. Towards the end, she commented, "*if the foregoing is not acceptable to you then I have no option left but to tender my resignation with immediate effect*". Thereafter, the appellant was informed that the suspension order could not be withdrawn since her explanation was not found to be satisfactory and on that day, a separate order was passed accepting the resignation and dropping the domestic enquiry. In that context, their Lordships referred to the concept whether the letter written by the appellant could be said to mean or amount to a letter of resignation or merely an expression of her intention to resign. In factual backdrop, their Lordships referred to the *Words and Phrases* (Permanent Edn.) Vol.37, at p.476, wherein it has been stated thus:

"To constitute a 'resignation', it must be unconditional and with an intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office."

Thereafter, their Lordships proceeded to state as follows:

At p.474 of the very same book, it is found stated: "Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignation." It is also stated therein that "A 'resignation' of a public office to be effective must be made with an intention of relinquishing the office accompanied by an act of relinquishment". In the ordinary dictionary sense, the word "resignation" was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim: *Resignatio est juris proprii spontanea refutatio* (Black's Law Dictionary, 6th Edn.). In Corpus Juris Secundum, Vol. 77, p.311, it is found stated:

"It has been said that 'resignation' is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position."

8. In P.K. Ramachandra Iyer v. Union of India, (1984) 2 SCC 141 : 1984 SCC (L&S) 214, this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and

"as such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of

students of 1968 and 1969 batches and departmental candidates". (SCC p.172, para 34)

In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer (SCC p.172, para 34).

After so stating, their Lordships referred to the decision in *Moti*

Ram (supra) and came to hold as follows:

"....To constitute a "resignation", it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in *P.K. Ramachandra Iyer* (supra) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the Hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9-1-99 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so-called resignation. The words "with immediate effect" in the said letter could not be given undue importance de hors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the hospital took up

such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9-1-1999. Consequently, it appeals to be reasonable to view that as it in the case reported in *P.K. Ramachandra Iyer* (supra) the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9-1-1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the writ petition."

[Emphasis supplied]

18. The aforesaid authorities lay down what exactly constitutes resignation and under what circumstances it gets hedged by any condition or earns the status of a conditional one or constitutes a threat to resign but not the intention to resign. As has been held in the case of *Prabha Atri* (supra), the appellant therein had really not expressed her intention to sever the relationship with the employer by resigning but had entered into communication with the authorities which had the character of stating the grievance. Their Lordships have observed that the tenor and purport of the language are to be seen whether there has been real resignation or not. The communication has to be considered from the right perspective and apposite understanding of the contents thereof. The Apex Court has

further held that undue significance should not have been given to the terms “with immediate effect”.

19. In the case at hand, as has been perceived, the first letter of resignation was submitted with clear-cut statement that the respondent-employee was unable to work to his full potential and, therefore, he was submitting his resignation by giving three months advance notice. True it is, he had made a grievance that his case for promotion was not considered and the juniors had become senior to him but he had expressed his view in categorical terms to resign. In the second communication dated 11th June, 2007, he has referred to his earlier letter of resignation dated 30th March, 2007 and the discussions held with the General Manager and stated that his assurance not to pursue the resignation stands withdrawn and his resignation dated 30th March, 2007 should be accepted and he should be relieved after expiry of the notice period. Thus, the intention expressed and the language employed are absolutely clear and categorical. In view of the aforesaid, we have no hesitation in holding that the resignation was absolutely unconditional and the decisions rendered in *Prabha Atri* (supra), *Moti Ram* (supra) and *P.K. Ramachandra Iyer* (supra) would not apply to the case at hand, being distinguishable on facts.

20. Presently, we shall proceed to refer to certain rulings about the factum of resignation, belated acceptance of resignation, concretization of resignation and the effect of continuance in service after acceptance of resignation. That apart, also we shall fruitfully refer to the authorities to highlight when exactly the jural relationship between the employer and the employee comes to an end.

21. In *North Zone Cultural Centre & Anr. v. Vedpathi Dinesh Kumar*, (2003) 5 SCC 455, the Apex Court scanned the language employed in the letter of resignation and referred to the decision in *Raj Kumar v. Union of India*, AIR 1969 SC 180, wherein it has been held thus:

“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 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 resignation has not been accepted.”

Thereafter, their Lordships opined that non-communication of the acceptance does not make the resignation inoperative, provided there is in

fact withdrawal before the acceptance. In the said case, there was belated communication of 13 days and in that context, their Lordships stated thus:

“...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 attendance 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 headquarters 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.”

22. In *Power Finance Corporation Ltd. v. Pramod Kumar Bhatia*, (1997) 4 SCC 280, the Apex Court has opined that unless the employee is relieved of the duty after acceptance of the voluntary retirement or resignation, jurial relationship of the employee and the employer does not come to an end. In the said case, as the order accepting the voluntary retirement was a conditional one, and before the conditions could be complied with, the appellant-employer had withdrawn the scheme. In that context, their Lordships held thus:

“7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, the relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently.”

23. In *J.N. Srivastava v. Union of India and another*, (1998) 9 SCC 559, the question that emerged for consideration was whether the appellant was entitled to withdraw the voluntary retirement notice of three months submitted by him which was to come into effect from a particular date. Their Lordships referred to the decision in *Balram Gupta v. Union of India*, 1987 Supp SCC 228 and came to hold that the appellant had the *locus poenitentiae* to withdraw the proposal for voluntary retirement before the date mentioned.

24. In *Bank of India & Ors. v. O.P. Swarankar etc.*, 2003(1) SLR 1, the Apex Court while dealing with the validity of the scheme of the Bank of India and other banks referred to the decision in *Union of India v. Gopal*

Chandra Misra, 1978 (1) SLR 521 wherein the concept of resignation in praesenti and the deferred date was dealt with. Be it noted, in the said case their Lordships have referred to the decision in *Jai Ram v. Union of India, AIR 1954 SC 584* wherein it has been held thus –

“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 also as long as he continues in service and not after it has terminated.”

Thereafter, the Apex Court referred to the decisions in *Balram Gupta* (supra), *Pramod Kumar Bhatia* (supra) and *J.N. Srivastava* (supra) and eventually came to hold as follows: -

“90. For the reasons aforementioned, we direct that:

1. The appeals preferred by the Nationalised Banks arising from the High Courts are dismissed except the cases where the concerned employees have accepted a part of the benefit under the scheme; However, in respect of such of the employees who despite acceptance of a part of the retirement benefit under the scheme had continued under the orders of the High Court and has retired on attaining the age of superannuation, this order shall not apply;

2. The appeals filed by the State Bank of India are allowed;
3. The appeals arising from the judgments of the Uttaranchal High Court are allowed and the judgments of the said High Court are set aside;
4. The appeals arising from the judgments of the Punjab and Haryana High Court in relation to ten writ petitions which were filed by the employees for a direction upon the bank that the benefits under the scheme be paid to them are set aside and the matters are remitted to the High Court for consideration thereof afresh on merits and in accordance with law."

25. In *Srikant S.M. v. Bharath Earth Movers Ltd.*, (2005) 8 SCC 314, after the purported acceptance of the resignation of the appellant therein, he had been granted casual leave from 5th January, 1993 to 13th January, 1993 and was informed that he would be relieved after office hours on 15th January, 1993. In the fact situation obtaining therein, the Apex Court has held thus –

"26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5-1-1993 to 13-1-1993. Moreover, he was informed that he

would be relieved after office hours on 15-1-1993. The *vinculum juris*, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company upto 15-1-1993.

27. In the affidavit-in-reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on 4-1-1993. It was because of the request of the appellant that he was continued upto 15-1-1993. In the affidavit-in-rejoinder, the appellant had stated that he reported for duty on 15-1-1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs.13,511/- was paid to him at 1730 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that upto 15-1-1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8-1-1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside."

26. In *Modern School v. Shashi Pal Sharma & Ors.*, (2007) 8 SCC 540, the aforesaid decision was distinguished as the terms and conditions of

service are governed by the statute and the statutory rules and further as in the said case acceptance of resignation of the first respondent was communicated to him within a period of 30 days, it was held that the same would take effect in terms thereof. Being of this view, their Lordships opined that the resignation of the first respondent having been validly accepted, but he was only to be relieved with effect from 17th June, 1997.

27. In the said case, the communication that was sent to the respondent read as follows: -

“This is to inform you that we accept with regret your resignation letter dated 17th March, 1997. You have our sympathies for the domestic problems you face.”

28. Thereafter, the first respondent by letter dated 15th May, 1997 withdrew the letter of resignation. There was cavil with regard to the letter in question. Their Lordships posed two questions, namely, (i) whether the first respondent has legally withdrawn his letter of resignation; and (ii) whether the first respondent could withdraw his resignation prior to 16-6-1997. While dealing with the second question, the two-Judge Bench opined that an acceptance of resignation of the first

respondent was communicated to him within a period of 30 days and the same would take its effect in terms thereof.

29. In *Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. & Ors.*, (1998) 5 SCC 461, the Apex Court ruled that law is well settled that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date. That apart, it is open to the employee concerned to withdraw the letter of resignation before the same becomes effective.

30. In *Shambhu Murari Sinha v. Project & Development India Ltd. & Anr.*, (2002) 3 SCC 437, the appellant therein applied for the voluntary retirement on 18.10.1995 under the Voluntary Retirement Scheme and the same was accepted by the management on 30.7.1997 with the condition that the release memo along with detailed particulars will follow. The appellant on 7.8.1997 sent a letter withdrawing his option from voluntary retirement scheme by registered post but no response was received by him from the respondents. On 25.9.1997, the respondent company issued a

memorandum releasing the appellant from service of the company with effect from 26.9.1997 (afternoon). The said order was challenged before the learned Single Judge of the High Court who dismissed the writ petition and the same was confirmed by the Division Bench. The Apex Court vide order dated 13.4.2000 in *Shambhu Murari Sinha v. Project & Development India*, (2000) 5 SCC 621 expressed the view that the appellant was not relieved from service and was allowed to continue in service till 26.9.1997 which, for all practical purposes, would be the effective date as it was that date on which he was relieved from service and as the appellant had already withdrawn the offer from voluntary retirement scheme on 7.8.1997, the resignation in respect of its acceptance could be withdrawn before the said effective date and, thus, the withdrawal was valid in law. A review petition was filed by which the order dated 13.4.2000 was recalled. The Apex Court opined that once an option to voluntary retirement is exercised by the employee and the same is accepted by the employer, the employee is not entitled to withdraw from voluntary retirement, but the question that arose for consideration was what was the effective date in the case in hand before which the appellant could have withdrawn his offer of voluntary retirement under the scheme. Their lordships referred to the Constitution Bench decision in *Gopal Chandra WP (C) 555/2011 & 2522/2011*

Misra (supra), *Balram Gupta* (supra), *J.N. Srivastava* (supra), *Nand Keshwar Prasad* (supra), *Raj Kumar* (supra) and *Pramod Kumar Bhatia* (supra) and opined thus:

18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the “release memo along with detailed particulars would follow”. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had *locus poenitentiae* to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

19. We, therefore, hold that the respondent could not have refused to accept the resignation of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his

duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service.

31. The present obtaining factual matrix is to be tested on the touchstone of aforesaid decisions in the field. There can be no scintilla of doubt that the employee concerned can withdraw the letter of resignation before the same becomes effective and till such an event takes place, the employee has the *locus poenitentiae* to withdraw the proposal for voluntary retirement before the date mentioned. In the case at hand, the employer by communication dated 28th September, 2007 had accepted the resignation with effect from that date. However, he was not relieved and the same was postponed till a substitute is posted. There is no dispute that the employee continued till 30th November, 2007 and on that day, he was relieved. He had accepted the retiral dues on 7th October, 2008. He had also claimed interest over the amount of gratuity paid by filing an application. In the case of *Shambhu Murari Sinha* (supra), their Lordships have opined in the said case that before the appellant was actually relieved

from his service as he had withdrawn his option for voluntary retirement by sending letters, the jural relationship of employee and employer had not come to an end and, hence, he had the *locus poenitentiae* to withdraw the letter of resignation. By applying the same logic to the case at hand, the petitioner could have withdrawn his resignation while he was not relieved and his date of relieve was postponed till 30th November, 2007. He chose not to do so. He allowed himself to be relieved. He also accepted the reitral benefits. Thus, the jural relationship became extinct. There was severance of status. The relationship between the employer and the employee came to an end. Prior to that date, the resignation had already been accepted. Had the employee submitted an application for withdrawal of resignation during the postponed period, the matter would have been totally different. That is not the factual scene. Ergo, we are disposed to think that the tribunal is not correct in holding that the acceptance of resignation was not acted upon.

32. In view of the aforesaid analysis, the writ petition No.555/2011 preferred by the corporation is allowed and the order passed by the tribunal is quashed. Once the order passed by the tribunal is quashed, the claim of back wages by the respondent-employee in WP(C) No.2522/2011

is unsustainable and hence, it has to pave the path of dismissal which we direct. The parties shall bear their respective costs.

CHIEF JUSTICE

JULY 04, 2011
dk/pk

SANJIV KHANNA, J.