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

% *Judgment delivered on: 16th May, 2012*

+ **W.P.(C) No.3584/2010**

RAGHUBIR SINGH Petitioner
Through : Mr.Sanjoy Ghose, Adv.

versus

AGRICULTURE PRODUCE MARKET
COMMITTEE, GNCT OF DELHI Respondent
Through : Ms.Avnish Ahlawat & Ms.Urvashi
Malhotra, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, the petitioner has sought quashing of the impugned order of respondent dated 28.05.2009 whereby petitioner has been retired voluntary with effect from 31.05.2009 from the service of respondent.
2. It is further prayed that respondent be directed to reinstate the petitioner in service with effect from June, 2009.
3. The facts of the case in brief are that the petitioner appointed as a Security Guard in the year 1983 and vide order dated 01.01.1987, he was

confirmed by the respondent.

4. On 19.11.2008, petitioner applied for voluntary retirement due to his domestic problems, however, same was accepted vide impugned communication dated 28.05.2009 which was enforceable with effect from 31.05.2009.

5. On receiving this information from the office on the next date i.e. 29.05.2009, petitioner intimated, for withdrawal his request, to the respondent as under:-

*“To
The Vice-Chairman
DAMB, Pankha Road
Janakpuri, New Delhi-58.*

Sub: Request for withdrawal of voluntary retirement.

I am to state that due to personal domestic problems, I had earlier requested for seeking voluntary retirement from service while working as Security Guard in APMC Azadpur. It is further intimated that my request had been accepted by your good self w.e.f. 31.05.2009. (Copy enclosed) It is intimated that the circumstances which compelled me for taking such decision exist no more.

It is therefore, kindly requested that decision / approval granted earlier may kindly be withdrawn and I may be allowed to continue in service w.e.f. 01.06.2009.”

6. Though, the petitioner got salary for the month of June, 2009;

however, respondent rejected his application for withdrawal of the voluntary retirement on 14.09.2009 i.e. after laps of more than four months from the intimation of withdrawal given by the petitioner i.e. on 29.05.2009.

7. Mr.Sanjay Ghosh, learned counsel appearing on behalf of petitioner submitted that for acceptance, it is prerogative of the respondent to accept the same or to reject. Simultaneously, it is the right of the petitioner also to withdraw the same before the final decision taken by the respondent.

8. To strengthen his arguments, on this issue, learned counsel has relied upon ***Dr. Prabha Atri v. State of U.P. & Ors: AIR 2003 SC 534*** wherein the Apex Court has referred ***Moti Ram v. Parma Devi & Anr : 1993 2 SCC 725***, has held by the Apex Court as under:-

"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 its relinquishment. It has also been observed that 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. [See: Union of India Vs. Gopal Chandra Misra]. 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 praesenti. A resignation may also be prospective to be operative from a future date and 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 an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

9. Learned counsel submitted that 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.
10. It is further submitted, as to whether the act of relinquishment of an

office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

11. Learned counsel while referring to Section 7 of the Indian Contract Act, submitted that acceptance must be absolute and unqualified. The impugned order was not absolute; as it was enforceable with effect from 31.05.2009, whereas, petitioner withdrew the same two days prior to its effect i.e. on 29.05.2009.

12. By summing up, he further submitted that the communication dated 28.05.2009 accepting the voluntary retirement was not the absolute and unqualified. The said communication was conditional i.e. to be enforceable with effect from 31.05.2009; whereas the petitioner withdraw the said offer (offer for voluntary retirement) just two days prior to the enforcement of the said order.

13. On the other hand, Ms.Avnish Ahlawat, learned counsel for respondent submitted that undisputedly, petitioner made a representation for voluntary retirement on 19.11.20085 and same was accepted vide order dated 28.05.2009 with effect from 31.05.2009, after getting the vigilance clearance and other formalities.

14. She further submitted that the petitioner even stopped from coming to the office with effect from 19.05.2009 and he continued to remain off from the duty till he made application for withdrawal.

15. Learned counsel submitted that though the respondent paid salary to the petitioner upto June, 2009; however thereafter, by the subsequent order it

was clarified by stating that the said salary for the month of June, 2009 was disbursed inadvertently.

16. She urged that the settled law on the issue is that the petitioner has right to withdraw before the final decision of the respondent. In the present case, voluntary retirement was accepted on 28.05.2009 and he withdraw the same on the very next day i.e. 29.05.2009, which is not acceptable.

17. Reliance has been placed on ***State Bank of Patiala v. Romesh Chander Kanoji & Ors : 2004(2) SCC 651*** wherein the Apex Court referred to *Chitty on Contracts (28th Edn. P 125)* in which learned author has stated as under:-

“An offer may be withdrawn at any time before it is accepted. That this rule applies even though the offeror has promised to keep the offer open for a specified time, for such a promise is unsupported by consideration.”

18. After considering the submissions of learned counsel for parties and the legal proposition, I am of the view that petitioner had withdraw his offer well in time i.e. two days before the effect of the impugned order. The impugned order/acceptance is conditional to the offer of the petitioner. If the offer has been accepted conditionally, then right of the petitioner accrued to accept or withdraw the same. In the present case, the petitioner withdraw well within time, before it came into effect.

19. For the reasons stated above, instant petition is allowed.

20. I here make it clear that the petitioner shall treated in service of

respondent till today; however shall not get any back wages for the intervening period. But, for the purpose of service and pensionary benefits, this period shall be counted in the services of petitioner.

21. Copy of order be given *dasti* to both parties.

22. No order as to costs.

SURESH KAIT, J

MAY 16, 2012

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