

GAHC040016872023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/597/2023

Gangdiap Gangsa
S/o Late Gangnyan Gangsa, Village Khasa, P.O/P.S Pongchau, Longding district,
Arunachal Pradesh.

VERSUS

The State of AP and Anr.
represented through Secretary, Geology and Mining, Government of Arunachal
Pradesh, Civil Secretariat, Itanagar, Pin 791111. 2:The Director
Age: 0
Occupation

Advocate for the Petitioner : Mr. T. T. Tara, Adv.

Advocate for the Respondent : Mr. S. Tapin, Sr. Govt. Adv.

B E F O R E
HON'BLE MR. SANJAY KUMAR MEDHI
JUDGMENT & ORDER (ORAL)

24.01.2024

Heard Shri T. T. Tara, learned counsel for the petitioner and also heard Shri S. Tapin, learned Senior Govt. Advocate, Arunachal Pradesh who has filed an affidavit-in-opposition.

2. Considering the subject matter of the dispute and as agreed to by the learned counsel for the parties, the instant writ petition is taken up for

disposal, at the admission stage.

3. The issue is with regard to the acceptance of the resignation of the petitioner.

4. The petitioner was appointed as Assistant Mining Development Officer in the Department of Geology & Mining vide an order, dated 03.08.2009. It is the case of the petitioner that he has rendered unblemished service for about 14 years.

5. Contemplating to contest the forthcoming Assembly Election, 2024, the petitioner had submitted a resignation letter on 08.09.2023 to the appropriate authority. However, the same was not acted upon which was required to be done within a period of 90 days. By an additional affidavit, the petitioner has also brought on record that though a No Objection Certificate (for short, 'NOC') was given, the same was cancelled and such cancellation was the subject matter of the dispute in another writ petition being WP (C) 489 (AP) 2023. The said writ petition was disposed of by this Court vide order, dated 07.12.2023 directing the authorities to reconsider the matter by granting appropriate opportunity to the parties. For ready reference, the operative part of the order is extracted hereinbelow:-

“9...On the basis of general consensus arrived at the point, the Court is inclined to observed that (i). considering that the cancellation of NOC will have civil consequence, the Court is inclined to direct the Deputy Commissioner, Longding (respondent No. 3) to grant opportunity to the concerned parties to adduce evidence and to produce documents in their support and thereafter, make an endeavour to dispose of the objection relating to cancellation of NOC within an outer period

of 60 (sixty) days from the date of receipt of the certified copy of this order and (ii). That the order of cancellation of the NOC dated 18.09.2023, shall be subject to further adjudication that would be made by the Deputy Commissioner, Longding; in other words, the said order dated 18.09.2023 shall not create any permanent right in favour of any person and shall be subject to outcome of a fresh determination".

6. This Court is, however, has been informed that, though the order, dated 07.12.2023, whereby 60 days time was given for re-consideration, till date, no orders, whatsoever, have been passed.

7. Shri Tara, learned counsel for the petitioner has placed on record the relevant O.M. dated 11.02.1988 & 31.05.1994. He submits that there is no disciplinary proceeding pending against the petitioner and he was not holding any sensitive post, for which there would arise any difficulty for the Department to accept the resignation. He, otherwise, submits that since the period of 90 days is over since the date of submitting the resignation letter on 08.09.2023, this Court may assume deemed acceptance of the resignation. It is reiterated that the severance of the employer-employee relationship would not affect any interest of the Department.

8. In support of his submission, the learned counsel for the petitioner has relied upon the cases of ***Punjab National Bank-vs-P.K. Mittal***; reported in ***1989 Supp (2) SCC 175*** and ***Sanjay Jain-vs- National Aviation Company of India Limited***; reported in ***(2019) 14 SCC 492***.

9. In the case of ***Punjab National Bank (Supra)***, it has been held that if an employee submits a notice for resignation, the employer cannot

unilaterally reduce the period of notice inasmuch as, the employee would have the liberty to withdraw his resignation before it becomes effective.

10. In the case of ***Sanjay Jain (Supra)***, the Hon'ble Supreme Court had dealt with the O.M. and has made the following observations:-

"16... The learned counsel appearing on behalf of the respondent has relied upon the decision in Moti Ram v. Param Dev⁵, (1993) 2 SCC 725.

"16. 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. Union of India v. Gopal Chandra Misra, SCC pp. 310-11. SCR p. 21. 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".

18. A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as government employees are concerned, there are specific provisions in the service rules which require acceptance of the resignation before it becomes effective. In *Raj Kumar v. Union of India*, it has been held: (AIR p. 182, para 5).

"5...But where a public servant has invited by his letter of resignation determination of his employment, his 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. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus poenitentiae* but not thereafter".'

"17...Relying on the said decisions, the learned counsel for the respondent has contended that in the case of a contract of employment, the same is required to be terminated. It cannot be unilateral action. The factual matrix of the aforesaid decision was totally different. Though the employee had tendered the resignation it had not been accepted on the date on which he filed the nomination form in order to contest an election. In that context, observations have been made. However, it was observed that it would depend upon the phraseology used in a particular provision whether there is a necessity for acceptance or any other formality is required when it could be said that the person ceases to hold the office. With all fairness, the aforesaid proposition has not been disputed by the learned counsel appearing on behalf of the respondent. In this case, there is no such requirement of acceptance by such an employee under the provisions of Standing Order 18 read with Standing Order 17. Thus, the decision in *Moti Rams* is not applicable".

11. Per contra, Shri S. Tapin, learned Senior Govt. Advocate, Arunachal Pradesh has submitted that an offer of resignation cannot take effect unless the same is accepted and such acceptance is required in the interest of the Department. He submits that without fulfilling the conditions precedent, a letter of resignation cannot be accepted in a mechanical manner. He submits that the clearance is required both from the Deputy Commissioner of the concerned District and the Vigilance Department. So far as the NOC from the Deputy Commissioner is concerned, though such NOC was initially granted, it was detected that there was allegation of encroachment of Government land and accordingly, the said NOC was revoked. Though, the revocation was the subject matter of the earlier writ petition, this Court have not *per se* interfered with the said revocation and had only remanded the matter for fresh consideration after giving opportunities to all the stake holders. The learned State counsel submits that so far as NOC by the Vigilance Department is concerned, the same is under consideration.

12. On a specific query by this Court, the learned State counsel, however, submits that he does not have any instructions as to whether there is any Departmental proceeding pending or initiated against the petitioner. The act of resignation by an employee may not be a one way traffic and therefore, the Rules governing the field has laid down a certain period for such acceptance before which, the employer would be in a position to reject such offer of resignation, which, in this case, does not appear to have been done.

13. The Hon'ble Supreme Court in the case of ***Dinesh Chandra Sangma-***

vs-State of Assam and Others; reported in **(1997) 4 SCC 441**, has held in the context of voluntary retirement under FR 56 (c) has held that non-acceptance of such proposal within the stipulated period would amount to deemed acceptance on expiry of the said period. In the instant case, it is not a dispute that the letter of resignation was issued on 08.09.2023 and more than 90 days is over. There is no specific rejection of the said offer of resignation and this Court had noticed that there is no embargo put by this Court to act upon the said resignation offer. This Court had also noticed that the submission of the petitioner that there is no disciplinary proceeding against him and he was not holding any sensitive post are not denied by the respondents. As regards the allegation of encroachment of Government land, this Court is of the opinion that even if there is no employer and employee relationship, the authorities would have all the rights to initiate appropriate proceeding under the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003.

14. Having come to a finding that the offer of the petitioner for resignation is deemed to be accepted, the question would arise as from which as to from which date, such resignation is to be given effect.

15. The offer of resignation by the petitioner did not stipulate any future date from which such resignation was to be given affect. The law is well settled in this regard by the decisions mention above that in the event the employee does not stipulate any future date for giving effect to such resignation, the employer may not have the discretion to have another date. As mentioned above, there is no express denial of the request for the resignation.

16. In that view of the matter, the deemed acceptance which have been

held, as above, would take effect from the date of communication of the resignation i.e. 08.09.2023.

In terms of the above directions, as mentioned above, the writ petition stands allowed. No order as to cost(s).

JUDGE

Comparing Assistant