

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10116 of 1998

=====

Kashi Nath Sah, son of Late Ram Nagina Prasad, resident of village-
Dumri-Majhi, P.O. Dumri, P.S.-Majhi, District-Chappra(Saran)

.... Petitioner/s

Versus

1. Madhya Bihar Gramin Bank(sponsored by Punjab National Bank),
Head Office-Meena Plaza, South of Museum, Patna-1 through its
Chairman.

2. The Senior Manager(Personnel), Nalanda Gramin Bank, Head
Office, Biharsharif.

3. The Branch Manager, Nalanda Gramin Bank, Amawan Branch,
District-Nalanda.

4. Sri Sanjiv Kumar, Cashier, Nalanda Gramin Bank, Amawan Branch,
District-Nalanda

5. The Punjab National Bank of India, through its General Manager,
Head Office, Exhibition Road, Patna.

.... Respondent/s

=====

=====

Appearance :

For the Petitioner/s : Mr. Akash Deep

For the Respondent/s : M/S Mahesh Narayan Parbat, Sr. Adv. ,
Sanjay Kumar &
Ved Prakash Srivastava

=====

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

C.A.V. JUDGMENT

Date: 25-06-2015

The petitioner, in the present writ application under
Article 226 of the Constitution of India seeks quashing of the letter
dated 21-7-1998 issued by the Manager(P), Nalanda Gramin Bank,
Biharsharif, communicating acceptance of his resignation letter dated
1-7-1998. The petitioner, as a consequence of quashing of the said

letter dated 21-7-1998, has sought for a direction to allow him to join in the Bank as an Officer on the ground that he had withdrawn his resignation on 25-7-1008 itself, before the actual communication of the letter dated 21-7-1998, relating to acceptance of resignation.

2. The case of the petitioner is based on regulation 10 of the Staff Service Regulations, 1980, framed by Nalanda Gramin Bank(hereinafter referred to as Regulations), which requires three months' notice in writing, if an employee of the Bank intends to discontinue his service in the Bank. It is the petitioner's case that the Bank ought to have waited till expiry of three months from the date of submission of his resignation on 1-7-1998, before accepting it in view of the provision, as contained in regulation 10 of the Regulations. The acceptance of resignation becomes meaningless, as the petitioner withdrew his resignation on 25-7-1998, prior to the expiry of the said period of three months, and even prior to actual communication of acceptance of his resignation, the petitioner would contend.

3. Shorn of unnecessary details, the facts asserted in the writ application for the purpose of adjudication of the present dispute are that the petitioner was working as an Officer in Nalanda Gramin Bank(hereinafter referred to as the Bank) in the month of May 1993. He was transferred to Amawan Branch of the Bank as an Officer(Loan). In the year 1997, he fell ill and was advised rest and to



avoid field duty for at least two months. He was being treated in All India Institute of Medical Sciences, New Delhi. He was checked up in the Institute on 28-8-1997, 29-11-1997 and 24-12-1997. It is his case that while performing the field duty, he again fell ill on 28-4-1998 and therefore he applied for leave. It is his further case that on health grounds, he had requested the Branch Manager of the Bank to shift his duties to office work from the field work. On 1-6-1998, he made a representation directly to the Chairman of the Bank seeking his transfer to office work. The said letter dated 1-6-1998 has been brought on record by way of Annexure-3 to the writ application. The petitioner's conduct of making communication with the Chairman of the Bank directly was not treated to be proper one, and he was accordingly warned to be careful in future while making correspondence. It is the further case of the petitioner that on 9-6-1998, he made a request for extension of his leave. From the letter dated 9-6-1998(Annexure-5 to the writ application), it appears that the petitioner had not assigned reason for grant of leave upto 30-6-1998. By a communication dated 12-6-1998, the Branch Manager asked the petitioner to assign the reason for seeking leave. By another letter of the same date i.e., 12-6-1998, the petitioner was asked to explain the circumstance in which he was absenting himself from duties of the Bank regularly. In his response, the petitioner, through his letter dated

15-6-1998 requested the Branch Manager to make him available the photostat copies of his applications submitted for grant of leave.

4.Subsequently, through letter dated 1-7-1998 addressed to the Chairman of the Bank, the petitioner submitted his resignation. The contents of the resignation letter are being reproduced hereinbelow:

“To

1-7-98
Biharsarif

The Chairman
Nalanda Gramin Bank
Head Office, Biharsarif
(Nalanda)

Through---Manager

N.G.B B/O Amawan

Subject-----Resignation letter of K.N. Sah, Officer B/O
Amawan

“Sir,

I want to say on above subject that I was reported for medical leave from 28/4/98 to 10/5/98 and after that I requested leave without pay from 11/5/95 to 30/6/98 for some urgent Domestic work.

“Now I want to rest & peace. Due to this cause today I resign with my Post from this Institution.

“All my institutional loan which is due upon me. I like to say that it should be adjusted by my P.F., gratuity and soon. Please fulfill all formalities if any soon which is necessary for this.

With thanks.

Yours faithfully
Sd/-K.N.Singh
01.7.98
Kashi Nath Sah
Officer N.G.B.
B/O Amawan

Enclo—

Two copy

One for Head Office

Another for Branch Office”

5. It appears that the petitioner's resignation from service came to be accepted by the competent authority, and a letter to this effect was issued on 21-7-1998 by the Manager(P), Nalanda Gramin Bank, Head Office, Biharsharif. The relevant portion of the said letter dated 21-7-1998 is being reproduced :

“With reference to your letter of resignation dated 1-7-98 tendering resignation from service of the Bank, we advise that your resignation has been accepted by the competent Authority and you are hereby relieved of your duties from the service of this Bank w.e.f. 1.7.98, without prejudice to the bank's right and obligation to the letter of undertaking submitted by you.

Please note that in case any irregularity is found at a future date, for which you are responsible during your working period as F.S./Officer of the Bank you are bound to regularize the same at your own cost and will also be liable for any loss/damage caused to the bank due to your negligence during your working period in the Bank.

However, all the Bank's current dues recoverable from you as per the provisions stated in Nalanda Gramin Bank staff service regulation 1980 including upto date outstanding Balance in your vehicle loan, consumer loan, festival advance etc. will be adjusted from provident fund and Gratuity Amount payable to you, except the recovery of training expences under regulation 10(1)(d) which has been waived by the competent Authority exercising his powers under regulation 10(1)(e).”

6. It further appears from Annexure-12 of the writ application that the said letter dated 21-7-1998, which was addressed



to the petitioner, was sent to the petitioner through a letter dated 25-7-1998 issued by the Branch Manager, Amawan, of the Bank. It has been asserted by the petitioner that before receipt of the said letter dated 25-7-1998 issued by the Branch Manager of the Bank, through his letter dated 25-7-1998, he had sought to withdraw his resignation. The said letter dated 25-7-1998 has been brought on record by way of Annexure-10 to the writ application.

7. It is the case of the petitioner that since he did not receive any communication pursuant to his letter seeking withdrawal of resignation, he went to the Branch Office of the Bank on 13-8-1998 for resuming his duties. He was, however, not allowed to join the duties on the ground that he was no longer an employee of the Bank. The petitioner is said to have represented again on 17-8-1998 for allowing him to join his duties as an Officer of the Bank, but his request was not acceded to. It is the further case of the petitioner that family members of the petitioner received the said communication dated 25-7-1998 on 15-9-1998, wherein it was mentioned that his resignation dated 1-7-1998 had been accepted. Along with the said letter, a copy of the letter dated 21-7-1998 relating to acceptance of resignation was enclosed. It is the petitioner's case that the said letter dated 25-7-1998 was received by Dumri Manjhi Post Office on 15-9-1998 and it was served upon the petitioner's family thereafter. In



course of submission, it has been stated by the learned counsel representing the petitioner that in fact, the said letter dated 25-7-1998 was dispatched from the Bank on 11-9-1998, before which the petitioner had already submitted representation seeking withdrawal of his resignation.

8. In the background of these facts, it is the case of the petitioner that since he had already withdrawn his resignation prior to communication of acceptance of resignation, the letter accepting the petitioner's resignation could not be given effect to. It has secondly been contended, referring to regulation 10 of the Regulations that it was not legal for the competent authority to have accepted the petitioner's resignation without waiting for expiry of period of notice, as prescribed therein.

9. A counter-affidavit has been filed on behalf of the respondent-Bank asserting that the said regulation 10 of the Regulations does not prohibit the competent authority from accepting the resignation of an Officer/employee of the Bank in the absence of any intention shown in the letter seeking resignation to discontinue from service after expiry of three months. It has been contended that only in case where an Officer/employee gives three months notice in writing in terms of regulation 10 to the competent authority, expressing his intention to leave or discontinue the service of the



Bank, the competent authority will be required to wait for the said period of three months. It has further been stated that the petitioner had submitted an application on 28-4-1998 seeking leave on medical ground from 28-4-1998 to 15-5-1998, without specifying the nature of leave sought for and the nature of illness. On 14-5-1998, the petitioner again submitted an application for leave from 16-5-1998 to 10-6-1998 on the ground of ill-health, followed by another leave application dated 9-6-1998, wherein the petitioner requested for extension of leave upto 13-6-1998 without specifying any reason for such extension of leave. It has further been stated that none of these applications were supported by any medical report/certificate.

10. Further, such leave applications were required to be sent to the Chairman of the Bank, which he did not do and sent those applications to the Branch Manager. It was in this background, as the petitioner was absenting himself from duties, that an explanation was called from the petitioner, the Respondents contend.

11. Mr. Akash Deep, learned counsel appearing on behalf of the petitioner has laid much emphasis on regulation 10 of the Regulations, and has heavily relied upon the Supreme Court decision in the case of Punjab National Bank Vs. P. K. Mittal(A.I.R 1989 Supreme Court 1083), in support of his submission that it was incumbent upon the competent authority to have waited for three

months, before taking any decision on the petitioner's resignation letter dated 1-7-1998. Since interpretation of regulation 10(1) of the said Regulations is primarily involved in the present case, it would be apt to quote the said provision:

- “10.(1)(a) An officer or employee shall not leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank of his intention to leave or discontinue the service.
- (b) The period of notice required shall be—
- (i) Three months in the case of officers, and
- (ii) One month in the case of other employees
- c) In case of breach by an employee of the provisions of this sub-regulations' he shall be liable to pay to the bank as compensation a sum equal to his emoluments for the period of notice required of him.
- (d) He shall also be liable to refund the pay or allowance or both, if any, drawn by him while on training and make good the training expenses, incurred by the Bank or Sponsor Bank for deputing him for training.
- (e) In exceptional circumstances the payment of such compensation and refund may be waived by the Chairman, at his discretion.”

12. He has also submitted that any order becomes effective only after its actual communication , and before the order accepting resignation could be communicated to the petitioner and thus became effective, the petitioner had every right to withdraw his resignation. He has relied upon the Supreme Court decision in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd. [(2005)8 Supreme Court Cases 314] in support of his contention that a

decision/order can become effective only upon its actual communication. Mr. Akash Deep has relied upon several other decisions of the Supreme Court as well as this Court in support of this plea, which are as follows:-

- (1) AIR 1963 Supreme Court 395(Bachhittar Singh Vs.State of Punjab and another).
- (2) AIR 1966 Supreme Court 1313(State of Punjab Vs.Amar Singh).
- (3)AIR 1970 Supreme Court 214(State of Punjab Vs. Khemi Ram).

13. Mr. Mahesh Narayan Parbat, learned senior counsel representing the respondent-Bank, on the other hand, has relied upon the Supreme Court decision, reported in (2003) 5 Supreme Court Cases 455(North Zone Cultural Centre and another Vs. Vedpathi Dinesh Kumar) in support of his contention that effective date of acceptance of resignation is the date of acceptance itself, even if the acceptance is not communicated by that date. He has submitted that once the petitioner's resignation was accepted on 21-7-1998, it became effective on that date itself, and it was not permissible for the petitioner to have withdrawn his resignation by subsequent letter dated 25-7-1998. He has submitted that in the absence of any specific provision of communication of the letter of acceptance of resignation for the same to become effective under the Regulations, it is impermissible for the petitioner to claim that acceptance of

resignation can become effective only after its actual communication.

14. From a careful examination of regulation 10(1) of the Regulations, it will appear that it prohibits an Officer or employee of the Bank to leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank of his intention to leave or discontinue the service. The period of notice in case of the officers has been prescribed as three months under regulation 10(1)(b) of the Regulations. Regulation 10(1)(c) of the Regulations deals with a situation where there is breach by an employee of the said provision i.e., regulations 10(1)(a) and 10(1)(b), and in such circumstances makes the employee liable to pay to the Bank as compensation, a sum equal to his emoluments for the period of notice required of him. Regulation 10(1)(e) of the Regulations further provides that in exceptional circumstances the payment of such compensation and refund may be waived by the Chairman, at his discretion.

15. It is clear from the said regulation, which has been quoted above that it is the duty of the officer to give three months' prior notice, if he intends to leave or discontinue his service in the Bank. The consequence in case of breach of the requirement to give three months' notice has also been provided, and lays down that there shall be liability of the officer of the Bank to pay as compensation, a sum equal to his emoluments for the period of notice. In the present



case, the petitioner did not give to the Bank, notice of leaving the Bank in terms of regulation 10(1)(a) of the Regulations. He did not indicate in his letter of resignation that he intended to discontinue the service in the Bank, after expiry of the said period prescribed under regulation 10(1) of the Regulations. There is no stand taken in the writ application or anywhere else nor there is any material to show that despite the submission of his resignation on 1-7-1998, the petitioner continued to attend the Bank for discharging his duties. There is nothing to show that after he submitted his resignation on 1-7-1998, he sought for extension of the leave from the competent authority, for any period thereafter. He discontinued from discharging his duties without even seeking permission, immediately after submission of his letter of resignation. In my opinion, the petitioner ,thus, without giving notice of three months, by his conduct expressed his intention to resign with immediate effect, in breach of the provision of regulation 10(1)(a) read with regulation 10(1)(b) of the Regulations. He, thus, became liable to pay to the Bank as compensation a sum equal to his emolument for the period of notice required of him in terms of regulation 10(1)(c) of the Regulations. Mr. Akash Deep, learned counsel for the petitioner has submitted that the letter of resignation dated 1-7-1998 itself ought to have been taken as three months' notice as there is no provision for resignation under the



Regulations, and for leaving or discontinuing the service in the Bank, three months' prior notice is mandatory, which cannot be waived. I do not find much force in the submission so made on behalf of the petitioner. Though the word 'resignation' does not appear in regulation 10(1) of the Regulations, this term means termination of contract of employment at the instance of an employee, which is dealt with by regulation 10(1) of the Regulations, and the said provision contemplates a situation where there is breach of the provision of sub-regulation(1) of regulation 10 of the Regulations. Mr. Akash Deep has attempted to pursue that clause (c) of sub-regulation(1) of regulation 10 has not been invoked , inasmuch as there is no order requiring the petitioner to pay as compensation a sum equal to his emolument for the period of notice required of him nor there is any order of waiver by the Chairman of the Bank from payment of compensation, as required under clause (e) of the regulation 10(1) and therefore it cannot be said that there has been breach of the provision of sub-regulation (1) of regulation 10 of the Regulations. The submission cannot be accepted , as breach of the provision under regulation 10(1)(a) read with regulation 10(1)(b) of the Regulations is evident from the facts available on record. The petitioner cannot take advantage of the breach committed by him, of the provision on the ground that the consequences of such breach have not fallen upon

him, by any order of the competent authority.

16. I must address now to the submissions made on behalf of the petitioner with reference to the Supreme Court decision in the case of Punjab National Bank Vs. P. K. Mittal(supra), paragraph no.6 of which is relevant and is being quoted hereinbelow:

“ Much reliance was placed on the terms of the proviso to Cl.(2) of Regulation 20 to justify the action of the bank in terminating the respondent's services earlier but we do not think that the proviso can be interpreted in the manner suggested by learned counsel for the bank. The resignation letter of the officer has to give at least three months' advance notice under the main part of the clause. What the proviso contemplates is that in a case where the employee desires that his resignation should be effective even before the expiry of the period of three months or without notice being given by him, the bank may consider such a request and waive the period or requirement of notice if it considers it fit to do so. That question does not arise in the present case because the employee had not requested the bank to reduce the period of notice or to waive the requirement of notice. Dr. Anand Prakash seeks to interpret the proviso as empowering the bank, even without any request on the part of the employee, to reduce the period or waive the requirement of notice. In other words, he says the bank has power to accept the resignation with immediate effect even though the notice is only of a proposed future resignation. We do not think this contention can be accepted. As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry or beyond the period of three months but for this



no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that, even though an employee might express a desire to resign from a future date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under Cl.(2) becomes effective at the instance of the employee and the services of the employee cannot be terminated by the employer under this clause.”

17. The Supreme Court, in the said case was dealing with a similar provision, being regulation 20 of Service Regulation of Punjab National Bank. Sub-regulation(2) of Regulation 20 of the said Regulations provided that no officer shall resign from service of Bank otherwise than on expiry of three months from the service on the Bank, of a notice in writing of such resignation. It further provided that the competent authority might reduce the period of three months or remit the requirement of notice. From the said decision of the Supreme Court in the case of Punjab National Bank Vs. P.K. Mittal (supra), it appears that the Bank officer in the said case intended to resign from service of the Bank through communication, mentioning specifically that the date of receipt of the letter should be treated as commencement of the notice period so that his resignation would



become effective from the subsequent date upon expiry of period of notice. The Bank, however, in that case accepted the resignation with immediate effect, waiving the condition of notice. In such situation, the Supreme Court rejected the contention of the Punjab National Bank in that case that the Bank had power to accept the resignation with immediate effect, even though the notice was only of proposed future resignation. In the present case, I find that the petitioner did not give any notice, as contemplated in the statutory Regulations and he stopped discharging his duties immediately after submitting his resignation on 1-7-1998. The Supreme Court decision in the case of Punjab National Bank Vs. P. K. Mittal(supra) does not support the petitioner's case, which is apparently distinguishable on facts.

18.Mr. Parbat, learned senior counsel has rightly relied upon the Supreme Court decision in the case of North Zone Cultural Centre and another Vs. Vedpathi Dinesh Kumar(supra) wherein the Supreme Court specifically held that non-communication of acceptance of resignation does not make the resignation inoperative, provided there is, in fact, the acceptance before the withdrawal. This is not in dispute that in the present case, the petitioner sought to withdraw his resignation by letter dated 25-7-1998 prior to which on 21-7-1998 itself his resignation was accepted. Reference may be made in this regard to the Supreme Court decision in the case of Raj Kumar

vs. Union of India(A.I.R 1969 SC 180) wherein the Supreme Court held in paragraph no.5 as follows:

“ 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 statutory 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 the resignation had not been accepted.”

19. I do not feel any requirement of referring to various judgments cited by the learned counsel for the petitioner on the point that an order can become effective only after its communication. Those cases, referred to by the learned counsel for the petitioner, are based on entirely different set of facts and do not deal with the matter relating to acceptance of resignation. A letter of resignation issued by an employee to its employer is, as a matter of fact, an intention shown by him to the employer for termination of the relationship of employer and employee. By accepting the letter of resignation, an employer, in effect, accepts a request made by the employee for cessation of the contract of employment. The acceptance of resignation in such circumstances, becomes effective the moment it is

accepted by the competent authority. Once a resignation is accepted, it cannot be withdrawn by the employee, on the ground of non-communication of acceptance.

20. I, accordingly, do not find any merit in this application. This application is, accordingly, dismissed.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

BK.Roy/-

U			
---	--	--	--