

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1139 of 2015**

- Jitendra Kumar Banjare, S/o Shri Shravan Banjare, aged about 24 years, House No. 957, Tikoriya Gali, Satnami Para, Near Minimata Chowk, Gudhiyari, Raipur, (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Urban Administration, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (CG)
2. District Education Officer, Education District Durg, Durg, (CG)
3. Jamul Municipality through the Chief Municipal Officer, Jamul Municipality, Jamul, District Durg, (CG)
4. President-In-Council, Jamul Municipality, through Its President, Jamul, District Durg, (CG)
5. Chief Municipal Officer, Jamul Municipality, Jamul, Distt. Durg, (CG)

---- Respondents

For Petitioner : Shri Amrito Das, Advocate.
 For Respondent No.1 & 2 : Shri Bhaskar Payashi, Panel Lawyer.
 For Respondent No.3 to 5 : Shri OP Sahu with Shri CJK Rao, Advocates.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****24/06/2015**

1. The petitioner is challenging the decision/resolution of the President-In-Council, Municipal Committee, Jamul, District Durg whereby resignation tendered by the petitioner from the post of Assistant

Teacher (Nagriya Nikay) has been accepted and the same has been communicated to the petitioner by the letter issued in his name from the office of Chief Municipal Officer, Jamul, District Durg.

2. Facts of the case, briefly stated, are that the petitioner was appointed as Assistant Teacher (Nagriya Nikay) on 3.2.2014. The petitioner tendered his resignation on 30.10.2014 (Annexure-P/4). Before any decision on the petitioner's resignation could be taken, he visited the office of the District Education Officer (DEO), Durg on 1.12.2014 along with an application for allowing him to resume the duties. The DEO issued a communication to the Chief Municipal Officer (CMO) on 1.12.2014 mentioning that if the petitioner's resignation has not been accepted, he may be allowed to join at the place of posting. The petitioner moved an application before the CMO on 3.12.2014 seeking permission to join at his original place of posting. It appears, the CMO sought guidance from the District Education Officer by letter dated 5.12.2014 in response to which the DEO, Durg wanted to know as to whether the petitioner's resignation has been accepted or not. The DEO again informed the CMO on 16.1.2015 that if the petitioner's resignation has not been accepted, he can be allowed to resume his duties.
3. Shri Das, learned counsel for the petitioner would refer to the judgments rendered by the Supreme Court in the matters of **Raj Kumar Vs. Union of India**¹ and **Union of India and another Vs. Wing Commander T. Parthasarathy**² to submit that resignation can be withdrawn before it is accepted and in such situation resignation does not take effect and the employee can be permitted to join at his original place of posting.
4. Learned counsel for respondents 3 to 5 and learned State counsel would submit that resignation having been accepted by the President-In-Council, the same has already taken effect and the petitioner is ceased

¹ AIR 1969 SC 180

² (2001) 1 SCC 158

to be in service.

5. The issue as to when resignation begins to operate is no longer *res integra*, as the same is covered by the judgment of the Supreme Court in the matter of **T. Parthasarathy** (Supra). In the said matter, the following has been held in paragraphs 6 & 7:-

“6. We have carefully considered the submissions of the learned counsel appearing on either side. The reliance placed for the appellants on the decision reported in *Raj Kumar case* (Supra) is inappropriate to the facts of this case. In that case this Court merely emphasised the position that when a public servant has invited by his letter of resignation determination of his employment his service clearly 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 condition of the 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 and that till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned had *locus poenitentiae* but not thereafter. This judgment was the subject-matter of consideration alongside the other relevant case law on the subject by a Constitution Bench of this Court in the decision reported in ***Union of India v. Gopal Chandra Misra***³. A request for premature retirement which required the acceptance of the competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before it became so complete. It is all the more so in a case where the request for premature retirement was made to take effect from a future date as in this case. The majority of the Constitution Bench analysed and declared the position of law to be as hereunder: (SCC p. 317, para 50)

“50. It will bear repetition that the general principle is that in the absence of a legal contractual or constitutional bar, a ‘prospective’ resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the

3 (1978) 2 SCC 301

employment or the office tenure of the resigner. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. *But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.*”

(emphasis supplied)

7. This Court had again an occasion to consider the question as to the principle of law to be applied to a case of resignation made to become effective on the expiry of a particular period or from a future date as desired by the employee in ***Punjab National Bank v. P.K. Mittal***⁴. It was held therein that resignation being a voluntary act of employee, he may choose to resign with immediate effect or with a notice of less than 3 months if the employer agrees to the same or he may also resign at a future date on the expiry or beyond the period of 3 months as envisaged under the governing regulation in that case, even though there is no such consent from the employer, and that, it was always open to the employee to withdraw the same before the date on which the resignation could have become effective.”

6. Applying the observations made by the Supreme Court in the matter of

T. Parthasarathy (Supra), in the case at hand, the facts emerging from the documents are that though the petitioner had tendered his resignation in praesenti i.e. the date on which it was tendered, yet the fact remains that no order was passed by the competent authority immediately on the date of tendering resignation or before the date when the petitioner sought to withdraw resignation and resume his duties. In such a situation, it always remains open for the concerned employee to withdraw resignation, as the same has not been acted upon by the employer.

7. The service conditions of Teachers working in the Municipalities are governed by the Chhattisgarh Shikshak (Nagariya Nikay) Samvarg (Recruitment and Conditions of Service) Rules, 2013. In Rule 12 thereof, it is provided that conditions of service other than mentioned in the rules shall be the same as applicable to the employees of urban body concerned. The services of municipal employees are governed under the provisions of the Chhattisgarh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968. In both the above set of Rules, there is no provision dealing with resignation of municipal employee and its acceptance.
8. For the foregoing, as the impugned resolution having been passed after withdrawal of resignation by the petitioner, the same has no legal effect, therefore, the impugned resolution and the consequential communication issued by the CMO are quashed. The petitioner be allowed to resume duties in accordance with law.
9. The writ petition is accordingly allowed.

(Sd/-)
(Prashant Kumar Mishra)
Judge