

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.3117 of 2006

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus directing the respondents to reinstate the petitioner in respondent/Bank with back wages, promotions, interest for the arrears at the then prevailing rates and other consequential benefits.

The averments in the affidavit filed in support of the Writ Petition are as under :

The petitioner herein was appointed in respondent/Bank on 27.09.1982 as Technical Officer in the grade of Junior Management (JM-1, Specialist Officer). Immediately after his appointment, the petitioner was posted at Vadodara, Gujarat on 27.09.1982 as Technical Officer, where he claims to have worked with full dedication. After working for a period of one year he was posted at Ludhiana, Punjab, confirming his post as Technical Officer. After working for a couple of months at Ludhiana, the petitioner was re-posted to Punjab. From there, he was posted in different stations and it is said that in all the places where he was posted, he worked to the satisfaction of the authorities. At the time of passing of the impugned proceedings, the petitioner was working in the Regional Office of Andhra Bank at Ananthapuram in Andhra Pradesh. It is the case of the petitioner that he was making repeated requests to the authorities to

transfer him to Chennai where his wife and children are staying or to any other place in Kerala where his old parents are residing. The record discloses that on 26.07.1994 the petitioner submitted his resignation from the Bank service, but however on an alleged oral assurance given by the respondent/Bank, he is said to have withdrawn the letter on 24.10.1994. Since the oral assurance given by the respondent/Bank was not complied with and being disgusted with the attitude of the officials in the Bank, he claims to have tendered three months resignation notice on 06.09.1996. But, however, on 03.12.1996 the petitioner claims to have sent a Fax to the Head Office at Hyderabad withdrawing his resignation, which was received by the Bank on 04.12.1996 at 10.48 a.m. On 05.12.1996 the petitioner is said to have sent another fax message to Regional Office at Anantapuram informing withdrawal of his resignation made in the month of September 1996. It is said that inspite of the fact that he has withdrawn his resignation before the expiry of three months, as contemplated under the Banking Rules, the respondent/authorities accepted the resignation and relieved the petitioner from the services of the Bank after the closing hours of 05.12.1996. A communication to that effect was sent to the petitioner vide letter dated 05.12.1996. Challenging the action of the authorities in accepting the resignation of the petitioner, the present Writ Petition came to be filed.

A counter came to be filed by the Chief Manager, Personal Department, Andhra Bank, Head Office, Hyderabad, denying the averments made in the Affidavit except those which are specifically admitted by him. It has been specifically pleaded in the counter that the allegation of resignation being accepted before the expiry of three months, as contemplated under Banking Rules, is incorrect, for the reason that the resignation was accepted on 15.11.1996 with effect from the closing hours of 05.09.1996 i.e., after completion of the three months from the date of submitting the resignation. It is further stated in the counter that the petitioner never attended to any duties from 06.09.1996 till 05.12.1996 and having regard to the issuance of letter of resignation the same was accepted after the banking hours. It is further stated that immediately thereafter the petitioner received gratuity and the Provident Fund was settled by the Bank on 21.01.1997 which was received by the petitioner without any protest. For a period of two years he kept quiet and later filed Writ Petition No.28363 of 1998 which was dismissed on 18.07.2005 as withdrawn. He made a representation on 19.09.2005 and 18.10.2005 to the competent authority requesting reinstatement which was rejected by a reasoned order dated 17.10.2005. It appears that questioning the said orders the present Writ Petition is filed.

The two main issues, which arise for consideration

are the date of resignation and date of acceptance. Whether the date of acceptance was within the prescribed period or beyond the prescribed period?

In order to appreciate the same, it would be appropriate to refer to Rule 20 (2) of the Bank Officers' Service Regulations, 1982.

Rule 20(2) of the said regulation states that an officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 03 months and shall be submitted to the Competent Authority as prescribed in these regulations.

Provided further that the competent authority may reduce the period of 03 months, or remit the requirement of notice.

From a reading of the said provision, it is clear that it is incumbent on the officer of the Bank, to serve a notice in-writing of his proposed resignation. The clause also makes it clear that the resignation will not be effective otherwise than on the expiry of period of three months from the date of service of such notice. The requirements, which are to be fulfilled are 1) the resignation of employee from the service being a voluntary act, 2) he is entitled to choose the date with effect from which his resignation would be effective and 3) give a notice to the Bank accordingly. The restriction being that the proposed date should not be less than three months from the date on which the notice is given. The leverage of three months is given to the Bank so as to take appropriate steps in accordance with law from their side, more particularly with regard to the recovery of any money from the petitioner if

he is due to the Bank. Applying the above principles, I wish to deal with the case on hand. On 06.09.1996, the petitioner herein sent his resignation to the General manager, Andhra Bank Head Office, Hyderabad which is as under :

“Dear Sir,

Through the Regional Manager, Anantapur I hereby Tender resignation from the post of Technical Officer which I have been holding since 1982 on personal grounds.

Please treat this as a notice of resignation. I may not be working during the entire notice period of 3 months, and request you to relieve me in absentia.

My thanks to the management for having offered me an opportunity to serve the organization since 1982.”

Thereafter on 25.10.1996 the petitioner wrote a letter to the Bank explaining/giving reasons which made him to resign on 06.09.1996. The said letter is silent as to the withdrawal of resignation made on 06.09.1996. Thereafter on 03.12.2006 the petitioner sent a fax message to the Head Office at Hyderabad seeking withdrawal of the resignation. But the said withdrawal of resignation dated 03.12.1996 appears to be a conditional one. It states that the writ petitioner is prepared to withdraw his resignation in case an assurance is given for his posting at Madras. Definitely the same does not amount to withdrawal of resignation, as it was a conditional one. Another resignation letter dated 05.12.1996 was sent to Regional Office at Ananthapur stating that he intends to withdraw the resignation dated 06.09.1996 subject to approval of his representation

dated 25.10.1996 made to Chairman and Managing Director. The said letter dated 25.10.1996, which was referred to earlier, reveal the difficulties faced by him, which led to his resignation on 06.09.1996. In the said letter he seeks transfer to Madras Zonal Office as there is only one Technical Officer posted at that point of time. The second resignation letter which was sent on 05.12.1996 is also a conditional one as he intends to withdraw subject to approval of his request made in the letter dated 25.10.1996. Both the resignation withdrawal letters dated 03.12.1996 and 05.12.1996 are not withdrawal of resignation simplicitor. Things would have been different had the letters of withdrawal being made without any conditions.

One of the arguments which was canvassed is that the Bank could not have accepted the resignation before the expiry of three months from the date of issuance of the said notice. It is to be noted that the letter dated 15.11.1996 issued by the Bank shows that his resignation was accepted with effect from the evening of 05.12.1996 i.e., after the expiry of three months and thereafter the retirement emoluments were paid to the petitioner which he accepted without raising any dispute.

The learned counsel for the petitioner placed much reliance on the judgment of the Apex Court in **Punjab National Bank v. P.K. Mittal**^[1], wherein it was held as under :

“The result of the above interpretation is that the employee continued to be in service till the 21/04/1986 or 30/06/1986, on which date his services would have come normally to an end in terms of his letter dated 21/01/1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal a letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in *Raj Kumar v. Union of India*, (1968) 3 SCR 857 : (AIR 1969 SC 180), *Union of India v. Gopal Chandra Misra*, (1978) 3 SCR 12 : (AIR 1978 SC 694) and *Balram Gupta v. Union of India*, 1987 Supl. SCC 228: (AIR 1987 SC 2354).”

But a reading of the said judgment may not be of any help to the petitioner. It was a case where the appellant sent a communication to the Bank on 21.01.1986 resigning from the services of the Bank due to personal reasons. As per the Banking rules, the said resignation is effective from 30.06.1986. The Deputy General Manager who was the competent authority under the service regulation had agreed that the resignation may be accepted with effect from 30.06.1986. However, what actually transpired was that the respondent received a letter from the bank on 7.02.1986 informing him that his resignation letter dated 21.01.1986 has been accepted by the competent authority with

immediate effect waiving the condition of notice and consequently, he was relieved from the service of the bank with effect from the afternoon of the same date, namely, 7.02.1986. Challenging the same, the Writ Petitions came to be filed. Dealing with the said situation the Apex Court held that the action of the Bank in accepting the resignation with immediate effect without waiting till the completion of the required period is illegal and improper and accordingly confirmed the findings of the High Court. It is to be noted that the employee in the said case sent a communication to the Bank on 21.01.1986 informing about his resignation with effect from 30.06.1986 and the Deputy General Manager who was competent authority had agreed to accept the said resignation with effect from a date prior to 30.06.1986. The said act of authority was never found fault with the said judgment. But the letter received by the employee informing him about his resignation letter dated 21.01.1986 being accepted with effect from 07.02.1986 i.e., before the expiry of three months as contemplated under regulation or before the expiry of six months as offered by the employee was found fault with. Therefore, this judgment, in my view may not be of any help to the petitioner.

In the instant case, the withdrawal of the resignation by the petitioner was after the letter dated 15.11.1996, wherein the Bank accepted the resignation with effect

from the closing hours of 05.12.1996 i.e., the date on which the period of three months expires. Having regard to the fact that the withdrawal of resignation was conditional and as the resignation of the petitioner was accepted after the expiry of three months, the action of the respondents cannot be found fault with.

At this stage, the counsel for the petitioner submitted that the petitioner has attained the age of superannuation and that he has not received all the terminal benefits. But the additional counter filed by the Assistant General Manager (IR) in Human Resources Department, Head Office, Hyderabad shows payment of gratuity amount Rs.1,06,260/- by way of Demand Draft No.0122222 dated 12.12.1996 and provident fund amount of Rs.1,02,561.80 by way of cheque No.12658 dated 21.01.1997. Though payment of pension is concerned, it is not the subject matter of the present Writ Petition, however, the counsel for the petitioner placed on record the option form said to have been submitted by the petitioner on 22.07.1994 seeking payment of pension. The learned counsel for the respondent submits that if such an application was made, the authorities would consider the same in accordance with law.

Accordingly, the writ petition is dismissed with the aforementioned observations. There shall be no order as to costs. As a sequel to it, Miscellaneous Petitions

pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date: 10.06.2016

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[\[1\]](#) 1989 Supp (2) Supreme Court Cases 175