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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 4233/2000

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30th November, 2016

AMIT KUMAR GUPTA

..... Petitioner

Through: Mr. Manish Kumar Srivastava,
Advocate.

versus

INDIAN OIL CORPORATION LTD. AND ORS.

..... Respondents

Through: Mr. V.N. Kaura and Ms. Paramjeet
Benipal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner/Sh. Amit Kumar Gupta seeking directions that the action of the respondent no. 1/employer (and whose officers are respondent nos. 2 to 4 of this writ petition) be quashed whereby the petitioner's resignation has been taken as accepted and communicated to the petitioner vide letter dated 24.9.1999. Petitioner claims that he had withdrawn his resignation before acceptance thereof by the respondent no.1

and hence he cannot be said to have resigned from his services with the respondent no.1.

2. The facts of the present case are that the petitioner was employed by the respondent no. 1 as an Internal Audit Officer in the Internal Audit Department on completion of his probation period on 16.11.1998. Vide office order dated 1.12.1998 the petitioner's services were confirmed and petitioner hence became a permanent employee of the respondent no. 1. Petitioner is a Chartered Accountant. Petitioner tendered his resignation to the respondent no. 1 vide letter dated 10.5.1999. Petitioner thereafter vide his letter dated 12.7.1999 withdrew his letter of resignation dated 10.5.1999. Petitioner contends that till 12.7.1999 the resignation of the petitioner was not accepted and therefore the petitioner could have always withdrawn his resignation before acceptance of the same.

3. The issue before this Court is that whether petitioner's resignation became valid and if so with effect from which date, and that whether the petitioner could have withdrawn his resignation given by letter dated 10.5.1999 in terms of the petitioner's letter dated 12.7.1999.

4. In order to decide the issue we would first have to refer to the letter of resignation given by the petitioner dated 10.5.1999, the response of

respondent no. 1 thereto dated 21.5.1999, petitioner's response dated 3.6.1999 to the letter of respondent no. 1 dated 21.5.1999, and the letter dated 12.7.1999 withdrawing resignation. In addition to these letters, the relevant terms of appointment of the petitioner contained in the letter of appointment providing for resignation will also have to be referred to and these terms of resignation are contained in paragraphs 25.2.0 to 25.2.4 of the India Oil Corporation Personnel Manual (R&P) for Officers. The aforesaid letters and the relevant terms pertaining to resignation are reproduced herein below:-

(i) Letter dated 10.5.1999

“To

The General Manager (IA)
Corporate Office,
Indian Oil Corporation Ltd.,
New Delhi.

Dear Sir,

Resignation due to some unavoidable reasons

I Amit K. Gupta, E. no. 82055 is presently working in your department as Internal Audit Officer.

To have better challenges, professional satisfaction and for a better career, I have decided to go for practice.

Therefore, I am tendering my resignation. You are requested to accept the same and release me at the earliest.

Thanking You,

Dated: 10/5/99

Yours Truly,
Sd/-
(AMIT K. GUPTA)
IAO
E. No. 82055”

(ii) **Letter dated 21.5.1999**

“No. P/F-1/5516
Shri Amit Kumar Gupta
RU-97, M.I.G. Flats
Pitam Pura
Delhi – 110034

Sub: Your letter of resignation dated 10.5.99

Dear Sir,

Please refer to your letter dated 10.5.99 tendering resignation from the service of the Corporation. You are advised to settle the following outstanding dues before your resignation could be accepted by the Competent Authority:

ITEMS	AMOUNT (Rs.)
- One month's pay in lieu of notice period as per the terms & conditions of employment	: 8668.00
- Recoverable adhoc adjustable advance	: 43250.00
- Refund of reimbursement of annual expenses on maintenance/repair of self lease house claimed for the year 1999-2000	: 15888.00
- LTC payment for the block year 1999-2000	: 5032.00
- Security deposit towards Indane Connection	: 2000.00
TOTAL	<u>74838.00</u>

You are, therefore, advised to deposit the above amount forthwith failing which, we shall be constrained to take action for recovery of outstanding dues from you as deemed fit.

Yours faithfully,
-sd-
(SUDHAKAR JHA)
PERSONAL MANAGER”

(iii) Letter dated 3.6.1999

“To

Shri Sudhakar Jha,
Personnel Manager,
Indian Oil Corporation Ltd.,
(Refineries & Pipelines Division),
Scope Complex, Core-2, 3rd Floor,
7, Institutional Area,
Lodhi Road,
New Delhi – 110003

Dear Sir,

Sub: Payment of arrears and acceptance of resignation.

Ref: My resignation letter dated 10-05-1999 and my letter dated 28-05-1999.

Your letter No. P/F-1/5516 dated 21-05-1999.

Please refer to your letter No. P/F-1/5516 dated 21-05-1999 received by me on 28-05-1999 (A.N.) and my letters dated 10-05-1999 and 28-05-1999.

I Amit K. Gupta (E. No. 82055) has resigned on 10-05-1999 given one month notice as per P.S.U. Rules i.e. I am still on the roll of Officers of I.O.C till 09-06-1999 and pay can be deducted only after adjustment of my casual leaves, sick leaves and earned leaves due to me.

Recovery of ad-hoc adjustable advance : 43250.00

I have not applied for any adjustable advance from I.O.C. I understand that I.O.C. has been paying this amount as a part of salary to all employees, since no interest is being charged from any employees and Income Tax is also deducted at source by I.O.C. on this amount.

Refund of reimbursement of annual expenses on maintenance/repair of self lease house claimed for the year 1999-2000 : 15888.00

The amount which I have already spent on maintenance/repair of self lease house for the year 1999-2000 and got reimbursement cannot be refund back on monthly/days basis.

LTC payment for the Block Year 1999-2000 : 5032.00

Facility for encashment of LTC is provided by the IOC and facility once availed cannot be refunded.

Security deposit towards Indane connection : 2000.00

Gas connection facility was provided to me by IOC after completion of one year of service and as per rules facility once provided cannot be withdrawn by retired/resigned employees.

As per News Paper, Govt. has accepted revised pay commission as per Justice Mohan Committee report in toto for PSU i.e. for I.O.C. also.

Therefore I request you to pay me the following outstanding dues and forward my application of resignation to the competent authority for acceptance up to 09-06-1999.

1. Salary for the month of May 1999 and June 1999 after adjustment of my Causal Leaves, Sick Leaves and Earned Leaves.
2. Balance amount of arrears after fixation in New Pay Scale from 17-11-1997 to 09-06-1999 as per revised pay.
3. Balance amount of Provident Fund.

Thanking you,

Yours faithfully,
Sd/-
(Amit K. Gupta)
Internal Audit Officer
E. No. 82055

Copy to: The General Manager (Internal Audit)
Corporate Office, IOC.”

(iv) Letter dated 12.7.1999

“To
The General Manager (IA)
Corporate Office,
Indian Oil Corporation Ltd.,
Scope Complex,
New Delhi.

Dear Sir,

Sub : Withdrawal of my resignation tendered on 10.5.1999 due to unavoidable family circumstances.

Kindly refer to my application for resignation dated 10.5.99 and your letter No. P/F-1/5516 dated 21.5.99 mentioning that my resignation could not be accepted until I deposit the outstanding dues (Photocopy of the letters enclosed)

Due to unavoidable family circumstances and unable to deposit the dues, I decided to withdraw my resignation in the (forenoon) today i.e. 12.7.99.

I request you kindly grant me extra ordinary leaves from 10.6.99 to 11.7.99 and favorably forward my application for withdrawal of resignation.

Thanking you,

Dated 12.7.99

Yours faithfully
sd/-
(AMIT K. GUPTA)
E.No. 82055
RU-97 M.I.G. FLATS
PITAM PURA,
DELHI – 110034”

(v) **Paragraphs/Clauses 25.2.0 to 25.2.4**

“25.2.0 RESIGNATION

25.2.1 An employee under bond to serve the Corporation for a specified period will be governed by the terms of bond applicable in his case when seeking to sever the employment. (Also refer to clause 10.1.4 of Chapter 10)

25.2.2 Officers up to Grade ‘D’ and all non-officer employees may resign from the service of the Corporation after giving one month’s notice. Officers in Grade ‘E’ and above are required to give 3 months notice.

25.2.3 The competent authority for acceptance of resignation of employees in various grades is as under:

<u>GRADE</u>	<u>COMPETENT AUTHORITY</u>
‘H’ and above.	BOARD OF DIRECTORS
‘E’ to ‘G’	CHAIRMAN
‘C’ and ‘D’	DIRECTOR (R&P)
‘A’ and ‘B’	ED/GM
VIII to 1	ED/GM/DGM

Note: ED/GM is empowered to accept resignation in respect of Grade ‘A’ and ‘B’ officers and their release after completion of the notice period, with a report to D (R&P) except in the following types of cases:

- (i) That the officer tenders his resignation under protest.
- (ii) A departmental enquiry or any other vigilance is pending against the officer.

In the above referred two cases the original letter of resignation of the officer along with comments of the concerned unit should be forwarded to R&P HQ.

25.2.4 **If an employee leaves the service of the Corporation without the requisite notice, Management may without prejudice to any other**

action under the contract of service, deduct from his unpaid salary (wages in case of non officers) a sum equivalent to his salary/wage for the period of notice which he is required to give.

Management may, however, in its discretion, accept resignation with immediate effect or from any time before the expiry of notice period. Specific reason for the relaxation of the notice period should be recorded. (Such cases in respect to officers should be reported to R&P HQ.” (emphasis is mine)

5. A reference to the aforesaid clauses pertaining to resignation shows that the resignation of an employee has to be accepted by the Competent Authority as stated in Clause 25.2.3. Clause 25.2.4 provides for the position that an employee can well leave the services of the respondent no. 1 without a requisite notice and the effect thereof would be that the respondent no. 1 without prejudice to any other right is entitled to deduct from the unpaid salary, a salary of notice period of one month. The notice period is of one month and which is found in Clause 25.2.2. Clause 25.2.4 states that the period of one month is not sacrosanct and the respondent no. 1 can accept the resignation with immediate effect or even before the expiry of the notice period by recording the reasons for relaxation of the notice period.

6. The facts of the present case show that when the petitioner tendered his resignation on 10.5.1999 he did not tender it from a prospective date. The letter dated 10.5.1999 states that the resignation is being tendered i.e. the same is being tendered with immediate effect. Petitioner tendered

his resignation because he wanted to go for practice for better challenges and professional satisfaction and also for a better career. I am specifically noting the aspect that there is no prospective date for resignation in the letter dated 10.5.1999, inasmuch as this aspect will also become relevant when the case laws are referred to later.

7. Once the resignation is with immediate effect, then in my opinion, there was no specific requirement of the same being accepted. The effect of the petitioner not giving the requisite notice for resignation of one month and submitting his resignation without being operative from a prospective date then it will have the effect as provided under Clause 25.2.4 whereby on account of the petitioner leaving his services without a notice period, the respondent no. 1 in addition to all other rights as available in law would be entitled to deduct one month's salary. The fact that subsequently the petitioner may have chosen to put up a new and different stand that there is a prospective date of resignation being the date till the resignation is accepted by respondent no. 1, such a stand/argument is a stand/argument which this Court refuses to accept being an argument of convenience and which argument flies in the face of the categorical language contained in the letter dated 10.5.1999 of forthwith resignation. All subsequent actions of the petitioner in variance with the language of forthwith resignation by letter

dated 10.5.1999 are in conflict or in improvement to the language contained in the letter of resignation dated 10.5.1999, and have to be thus ignored. Therefore, once the resignation is given *in presenti* the same comes into immediate effect with the consequence that as per Clause 25.2.4 since employee/petitioner is leaving without the notice period of one month, the respondent no.1 will be hence entitled to deduct one month's salary for the notice period in addition to any other legal rights that respondent no. 1 may have for recovery of any other amounts from the petitioner. Hence, there is no question of the petitioner withdrawing his letter of resignation dated 10.5.1999 by his subsequent acts or letters.

8. The issue can also be looked into from another angle. Admittedly, the notice period is of one month. Assuming there is a prospective date for resignation contained in letter of resignation dated 10.5.1999, though this letter does not contain a prospective date of resignation, this prospective date of resignation will have to be read as one month after the date of the letter dated 10.5.1999 i.e. till 9/10.6.1999. Petitioner *arguendo* withdrew his resignation not before 10.6.1999 but the petitioner withdrew his resignation much later on 12.7.1999. This is therefore another reason to hold that the petitioner was not entitled to withdraw his resignation and the resignation if not became effective

immediately on giving of the letter of resignation dated 10.5.1999, then surely the resignation became effective in any case on expiry of one month period on 10.6.1999, and therefore, petitioner's stance to seek withdrawal of his resignation by a letter of much subsequent date on 12.7.1999 is misconceived and cannot take away the finality of resignation of the petitioner at least with effect from 10.6.1999.

9. There is yet another aspect to show that the petitioner has to be taken as having resigned from the services of the respondent no. 1 with effect from 10.6.1999. This is because admittedly the petitioner never worked and never came to the office of the respondent no.1 for work from 10.6.1999. Petitioner possibly may have sanctioned leaves for the complete period from 11.5.1999 to 10.6.1999, in my opinion, even for the sake of arguments if we take that petitioner has reported for work for all days till 10.6.1999 or had sanctioned leaves for the days he did not work, the fact of the matter is that at least from 10.6.1999 till the letter of withdrawal of resignation was given on 12.7.1999 petitioner did not work with the respondent no.1. This becomes clear from the letter seeking withdrawal of resignation dated 12.7.1999 wherein in the last paragraph the petitioner has prayed that extraordinary leaves be granted to the petitioner from 10.6.1999 to 11.7.1999, thus clearly showing that the petitioner did not work with the

respondent no.1 from 10.6.1999 to 11.7.1999. This aspect lets the cat out of bag and shows the conduct of the petitioner that the petitioner himself treated the finality of his resignation at least as from 10.6.1999, and thereafter petitioner only woke up one fine day on 12.7.1999 realizing that his services would be better instead of private practice and he therefore claimed on 12.7.1999 that the resignation be treated as withdrawn. Therefore, by conduct also it has to be held that the petitioner in fact accepted and acted upon the fact that his resignation became effective at least from 10.6.1999 because admittedly the petitioner never reported for work from 10.6.1999 till when he gave the letter of withdrawal of resignation on 12.7.1999.

10(i) On behalf of the petitioner it was argued that the resignation given by the letter dated 10.5.1999 did not become final because respondent no. 1 vide its letter dated 21.5.1999 stated that the resignation had to be accepted and since acceptance of resignation was a conditional acceptance on payment of various dues by the petitioner to the respondent no. 1, it should be held by this Court that the resignation of the petitioner should not be taken as having become final firstly on 10.5.1999 or on 10.6.1999.

(ii) I have already reproduced the letter dated 21.5.1999 above and no doubt in the first paragraph this letter says before accepting resignation

the petitioner must make payment of various dues as stated in this letter, however, this letter has to be read as per its last paragraph which states that in case the amount claimed from the petitioner is not deposited, the respondent no. 1 will be at liberty to take action for recovery of dues. Obviously, this action for recovery of dues has to be and is in terms of Clause 25.2.4 reproduced above that on illegal resignation respondent no.1 will take legal action to recover its dues from the petitioner. Therefore the letter dated 21.5.1999 cannot be read to have only one meaning that the resignation of the petitioner had not been accepted by the respondent no. 1. Also, I would like to observe that in a theoretical case, suppose an employee without acceptance of resignation simply tenders resignation and walks away and does not report for duty, can then, therefore it still can be said that resignation has not become final till/because a formal letter communicating the acceptance of resignation is not served upon the employee. The answer to this issue has to be an emphatic 'no' because of Clause 25.2.4 of the terms of resignation read with the last paragraph of the letter dated 21.5.1999 and the conduct of the petitioner in not reporting for work from 10.6.1999 till 12.7.1999. In a case wherein an employee is truant and does not give one month's notice, then the resignation becomes effective if not immediately on the expiry of one month of the notice of resignation and when on the 30th/31st day there is deemed resignation on completion of one

month notice period with the effect that the employer/respondent no. 1 will besides not paying one month salary to the employee, it will be forced to take legal action to recover any other dues which are payable by the employee/petitioner to the employer/respondent no. 1. Therefore, it is not permissible for the petitioner to argue that the resignation did not become final on account of the letter of the respondent no. 1 dated 21.5.1999. This aspect would also show that the judgment relied upon by the petitioner in the case of ***Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, (1997) 4 SCC 280*** would not apply to the facts of the present case because in the case of ***Power Finance Corporation Ltd. (supra)*** there was no such clause as Clause 25.2.4 in the present case. Also, the facts of the ***Power Finance Corporation Ltd.(supra)*** case are different because in the said case the issue was with respect to acceptance of a voluntary retirement of an employee from a prospective date as distinguished from the facts pertaining to forthwith resignation, and which was not in issue in the case of ***Power Finance Corporation Ltd. (supra)***, but which is the issue in the present case. Also, it is seen that the observations of the Supreme Court in the case of ***Power Finance Corporation Ltd. (supra)*** were made in the context that an employee wanted to take benefit of a Voluntary Retirement Scheme (VRS) which really never existed and still the employee wanted to seek benefit of the so called scheme of VRS on the ground of estoppel. For all

the aforesaid reasons the judgment in the case of ***Power Finance Corporation Ltd. (supra)*** as relied upon by the petitioner does not help the petitioner.

11. Learned counsel for the petitioner also placed reliance upon the judgment of the Division Bench of the Bombay High Court in the case of ***Rakesh Rai Vs. M/s National Aviation Company of India and Indian Pilots Guild, MANU/MH/0878/2013*** to argue that in this judgment the Bombay High Court has referred to all earlier judgments of the Supreme Court on the point of prospective resignation and that a prospective resignation can always be withdrawn before the date specified for resignation, however, the judgment in the case of ***Rakesh Rai (supra)*** or the observations of the Supreme Court in the cases cited in the case of ***Rakesh Rai (supra)*** including the Constitution Bench judgment of the Supreme Court in the case of ***Union of India and Others Vs. Gopal Chandra Misra and Others, (1978) 2 SCC 301*** would not apply because in the present case the petitioner's letter of resignation dated 10.5.1999 is not a resignation with effect from a prospective/future date but the letter dated 10.5.1999 is a resignation *in presenti*. Petitioner therefore could not by subsequent letters, including by his letter dated 3.6.1999, claim that the letter of resignation has to be taken as capable of being withdrawn till 9.6.1999. Even assuming that

petitioner can claim that resignation could be withdrawn till 9.6.1999, and which is so stated in the letter of the petitioner dated 3.6.1999, then this letter will once again bind the petitioner for resignation to be effective from 10.6.1999 because petitioner had not withdrawn his resignation before 9.6.1999 but has in fact acted upon the resignation by not reporting for duty from 10.6.1999 till 12.7.1999 and suddenly on 12.7.1999 the petitioner claimed that he should not be taken as having resigned from the respondent no. 1/company.

12. This is a writ petition of the year 2000 and today we are in the year 2016. Obviously, the petitioner as a Chartered Accountant wanted to do independent practice but after giving resignation seems to have acquired cold feet. Obviously the petitioner would have thereafter worked as an independent practitioner or have worked with some other company during the pendency of this writ petition. This writ petition therefore is really in the nature of speculation to somehow or the other to extract some amount of moneys from the respondent no. 1.

13. The present writ petition therefore being an abuse of process of law, wholly misconceived, and based on no valid cause of action, is accordingly dismissed with costs of Rs.50,000/-. Costs shall be paid to the respondent no. 1 within a period of six weeks from today.

NOVEMBER 30, 2016
ib/godara/AK

VALMIKI J. MEHTA, J