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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 09.09.2016

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W.P.(C) 2732/2016

SACHIN KUMAR

..... Petitioner

Through: Mr.Naushad Ahmed Khan and
Ms.Astha Nigam, Advocates with
Petitioner in person.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Anurag Ahluwalia, CGSC for
UOI.
Mr.Vaibhav Kalra, Advocate for
Respondents No. 2 to 5.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. In a previous round of litigation in WP(C) No. 9435/2015 this Court passed the following judgment:-

“ Non acceptance of withdrawal of resignation is assailed by petitioner in this writ petition.

On 9th January, 2012, petitioner had resigned from the post of Deputy Manager (Kuwait) while he was under employment of second respondent and the ground of resignation was ‘personal reasons’. Petitioner had sought acceptance of resignation with immediate effect and wanted to be relieved by 16th January, 2012 after adjusting the balance leave against the notice period.

According to second respondent, petitioner's resignation was accepted on 20th January, 2012 by relieving him w.e.f. 16th January, 2012, as sought by petitioner. For settlement of the outstanding dues, petitioner was advised to contact F & A Division of second respondent.

On 19th March, 2012 (*Annexure P-2*), petitioner had sought withdrawal of resignation. Vide letter of 17th April, 2012 (*Annexure P-3*), second respondent had issued Experience Certificate wherein the date of relieving was given as 16th January, 2012 but at the end of the letter, it was stated that this letter may be treated as relieving letter.

Petitioner claims to have represented to Chairman-cum-Managing Director of second respondent on 24th April, 2012 (*Annexure P-4*) for reconsideration of withdrawal of his resignation but according to petitioner, no response was received. Petitioner claims that even to the reminder of 1st January, 2014 (*Annexure P-5*) sent to second respondent, no response was received and then petitioner had submitted a Representation to the Minister concerned seeking reinstatement. But according to petitioner, no response was received.

Petitioner relies upon information obtained in March, 2014 under Right to Information Act by one-Parveen Kumar to show that the Communication of acceptance of resignation was never conveyed to petitioner. In August, 2014, petitioner had written to the Chairman-cum-Managing Director of the second respondent highlighting that he has been victimized but it was refuted by second respondent in September, 2014. Again in November, 2014, petitioner had sent a Representation to the concerned Minister requesting his reinstatement in service of second respondent, on which comments of respondent No.3 were sought in January, 2015 and in

May, 2015, petitioner had sought information under Right to Information Act regarding response to this application by the Minister concerned. In June, 2015, Central Information Commissioner (CIC) had directed that legal opinion obtained by second respondent be supplied to petitioner and it was accordingly supplied. The legal opinion (*Annexure P-16*) furnished to second respondent shows that the letter of acceptance of resignation was communicated to petitioner and that the relationship of employee-employer came to an end and so, it was opined that there was no justification to permit withdrawal of resignation.

During the course of hearing, respondent's counsel had also raised the plea of delay and laches but upon finding that petitioner had all along been obtaining information through Right to Information Act and corresponding with second respondent and the concerned Minister, I find that on the ground of delay and laches, this writ petition cannot be thrown out.

Upon hearing and on perusal of acceptance of resignation letter (*Annexure P-1*), application seeking withdrawal of resignation (*Annexure P-2*) and the material on record, I find that though it is the case of second respondent that resignation of petitioner was accepted on 20th January, 2012 (*Annexure P-1*) but question which falls for consideration is as to whether on which date and by which mode this acceptance of resignation (*Annexure P-1*) was conveyed to petitioner. In view of dictum of Apex Court in *North Zone Cultural Centre and Another v. Vedpathi Dinesh Kumar* (2003) 5 SCC 455, the question of communication of acceptance of resignation has to be considered in the light of the relevant applicable rules. Since the application for withdrawal of resignation has not been duly considered and decided in accordance with the applicable Rules and Regulations, therefore, the appropriate course to adopt

would be to direct the competent authority of second respondent to effectively decide petitioner's application for withdrawal of his resignation.

Learned counsel for respondent has produced record which apparently does not indicate that acceptance of resignation was conveyed to petitioner at any point of time. The application for withdrawal of resignation has not been effectively considered by second respondent the way it should have been done. This application is required to be considered by the CMD of second respondent. The communication of 17th March, 2012 (*Annexure P-3*) by Group General Manager of second respondent to petitioner simply talks of adjustment of the balance amount. It nowhere states that the withdrawal of resignation has been either accepted or declined by second respondent. Even Communication of 17th April, 2012 (*Annexure P-3*) does not talk of withdrawal of resignation, as sought by petitioner, which simply mentions the date of relieving.

Learned counsel for respondent also points out that after seeking relief from service w.e.f. 16th January, 2012 petitioner has been working elsewhere. In any case, this cannot be a ground to reject petitioner's application for withdrawal of resignation because petitioner cannot be expected to come on road and has to earn his livelihood for survival.

Since petitioner's application for withdrawal of his resignation has not been decided by second respondent, therefore, in the facts and circumstances of this case, it is deemed appropriate to direct second respondent to decide petitioner's application (*Annexure P-2*) for withdrawal of resignation within a period of six weeks by passing a speaking order and to convey the fate of the Representation to petitioner within a week thereafter, so

that petitioner may avail of the remedies, as available in the law, if need be.

To ensure compliance of this judgment, its copy be sent to second respondent forthwith.

With aforesaid directions, this petition is disposed of.

Sd/-”

2. Thereafter, respondent no.2/Telecommunications Consultants India Ltd. (hereinafter to be referred as ‘TCIL’) passed a reasoned order dated 11.01.2016, rejecting the petitioner’s representation seeking withdrawal of his resignation, which has been impugned in the present petition.

3. It is the petitioner’s case that although he had resigned from the employment of TCIL vide letter dated 09.01.2012, but prior to its acceptance or intimation of acceptance, he had sought withdrawal of the same vide letter dated 19.03.2012. This was followed up by the petitioner by an e-mail of 23.03.2012. The respondent vide letter dated 19.03.2012 intimated the petitioner that his resignation letter dated 09.01.2012 asking for his being relieved from employment on 16.01.2012 had been accepted. The petitioner was also advised to deposit an amount of Rs.65,515/- by demand draft within ten days thereof. Later the petitioner was issued a letter dated 17.04.2012 as Experience Certificate, which mentions the reason for relieving as his resignation, with a note and direction that the same may also be treated as the relieving order from the services of TCIL.

4. The learned counsel for the petitioner has contended that the non-intimation to the petitioner of acceptance of his resignation letter dated 09.01.2012 by the respondent prior to his having withdrawn it on 19.03.2012 would have to be treated the petitioner as having continued in the service,

therefore, making him entitled to the relief of pension in the service. Consequently, the letter dated 11.01.2016 purporting to have rejected his representation apropos withdrawal of his resignation would have to be quashed. He submits that communication of 02.12.2015 between the respondent and M/s Vyamtech Technologies, where the petitioner had worked, was only to ascertain the date from and the tenure for which the petitioner had worked with the latter; and whether the petitioner had served any documents of TCIL at the time of joining M/s Vyamtech Technologies. The latter confirmed by response on the same day that the petitioner had been working with them since 06.02.2012 and had worked with them till 08.10.2015. They further confirmed that the petitioner had also furnished the document dated 17.04.2012 to them.

5. The learned counsel further submits that the respondent's stand is not clear apropos the acceptance of the resignation letter, because on one hand they say that the resignation was accepted on 20.01.2012 and it was duly communicated to the petitioner, however, there is nothing on record to confirm this communication. Subsequently, vide letter of 17.04.2012, they say that the petitioner's resignation has been accepted with effect from 16.01.2012 and the said letter should be treated as a relieving order. He contends that till the acceptance of resignation of an employee is not communicated to him, the said employee cannot be treated as not being in service.

6. In support of his contention he relies upon the judgement of the Supreme Court, titled as *Shambhu Murari Sinha Vs. Project & Development India Ltd. & Anr.*, (2002) 3 SCC 437, which held as under:-

“19. We, therefore, hold that the respondent could not

have refused to accept the resignation of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service.”

7. The learned counsel also relies upon a judgment of the High Court of Jharkhand in ***Kumar Satyendra Prasad Vs. Coal India Limited & Ors., 2013 (4) JLJR 360*** to contend that the relationship of the employee and the employer does not come to an end till the resignation is duly accepted and a communication in that regard is conveyed to the employee concerned. He relies upon the following observations therein:-

“19. Deprecating the stand taken by the Government, this Court held that it was not proper for the Government not to accede to the request of the employee. "In the modern age we should not put embargo upon people's choice or freedom", stated the Court (SCC pp. 235-36, para 12).

In view of the aforesaid decision, it will be a graceful on the part of the Management to accept the "withdrawal of the resignation" instead of acceptance of resignation itself. Those institutions who are 'State' within the meaning of Article 12 they must behave like a Model Employer. They should never follow easy method to oust the uncomfortable employees.

(xi) It is contended by the counsel for the respondents that employer and employee relationship came to an end no sooner did the petitioner tendered his resignation and no sooner did the petitioner stopped coming to the place of employment and no sooner did he tried to get his livelihood from some other agency as stated in Annexure-6-letter written by the petitioner and therefore, this Court may not revive the employer and employee relationship. This contention is not accepted by this Court mainly for the reason that the relationship of the employer and employee never comes to an end by mere tendering of the resignation. Tendering of resignation is not an end to the employment. The arguments canvassed by the counsel for the respondents is running, counter to, Rule 15.3 of the Common Coal Cadre Rules as stated hereinabove. The whole Rule has been divided in different steps from step (a) to step (f). Before reaching to the step (f) as mentioned hereinabove, at any time employee can withdraw his resignation because act of tendering resignation, is a voluntary action of the employee. It is a right of the employee to tender resignation and therefore, there is a right to withdraw the said resignation. Right to tender the resignation includes the right to withdraw it, provided it has not been accepted. There is nothing like an automatic acceptance, immediately upon tendering of the resignation, looking to Rule 15.3 as stated hereinabove.

(xii). It has been held by the Hon'ble Supreme Court in the case of Shambhu Murari Sinha vs. Project & Development India Ltd. & Another, (2002) 3 SCC 437, that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of an employer and employee did not come to an end and the employee has 'locus penitentiae' to withdraw his proposal for voluntary retirement. He is therefore, entitled to rejoin his duty and the respondents

corporation was bound to allow him to work. The jurisprudence which is applicable in the voluntary retirement is equally applicable to the voluntary resignation. As per Advanced Law Lexicon, 3rd Edition, 2005:--

Locus penitentiae: (Lat.) An opportunity to repent, to be penitent.

Locus penitentiae; An opportunity to withdraw from the commission of a crime.

Locus penitentiae [Latin "place of repentance"]

1. A point at which it is not too late for one to change one's legal position; the possibility of withdrawing from a contemplated course of action, especially a wrong, before being committed to it.
2. The opportunity to withdraw from a negotiation before finally concluding the contract. (Black, 7th Edn., 1999)

Latin for "opportunity to repent". It is an option open to the parties of an illegal contract, who may save it by deciding not to carry out that part which is against the law. (Business Term)

"The requirement of an overt act before conspirators can be prosecuted and punished exists.....to provide a locus penitentiae an opportunity for the conspirators to reconsider, terminate the agreement, and thereby avoid punishment." People vs. Zamora, 557 P. 2d 75, 82 (Cal. 1976).

Place or opportunity for repentance or change of intention.

Thus, there is no cessation of a employer and employee

relationship by mere tendering the resignation as stated by the counsel for the respondents. A man who has tendered resignation is always in need of livelihood for himself and for his family members and therefore, the employee might be trying to get his livelihood from anywhere else.

The petitioner is not an exception to this routine and regular phenomena. He might have attempted to get his livelihood from any employer other than the respondents by per se never extinguishes the right of the petitioner to withdraw his resignation, before it accepted by the respondents.””

8. The learned counsel for the petitioner also relies upon the judgment of the Supreme Court in *Union of India & Ors. Vs. Hitender Kumar Soni (2014) 13 SCC 204*, which held:

“10. A perusal of the relevant clauses of the O.M. dated 11.2.1988 discloses that resignation is required to be intimated in writing disclosing the intention to resign the office/post either immediately or from a future date. In the latter case, such future date should be specified. The resignation has to be clear and unconditional. The Respondent did not specify any future date but submitted his resignation in writing giving reasons and his intention to resign is clear and unconditional. Clause (2) contains circumstances under which resignation should be accepted. This is for the guidance of the concerned officials and does not create any right in the concerned employee to resist acceptance of resignation. Clause (3) specifies that a resignation becomes effective when it is accepted and the Government servant is relieved of his duties. A careful reading of this clause throws some light as to why the requirement of relieving a Government servant has been indicated in this Office Memorandum. The second sentence of this clause states the normal rule that a Government servant can withdraw his letter of

resignation before its acceptance by the appointing authority. The next following sentence spells out that in case the resignation had been accepted by the appointing authority and the employee is to be relieved from a future date, if a request for withdrawal of resignation is received from the employee, the normal rule should be to allow the request to withdraw the resignation. But, even in such a case, the request for withdrawal may be refused but the grounds for the rejection should be recorded and intimated to the Government servant concerned. In continuity, Clause (4) considers the case of a temporary Government servant who has a right to opt out of Government service by giving a notice of termination of service as per applicable service rules of 1965. In such a case the Office Memorandum in question relating to acceptance of resignation will not be applicable. The subsequent provision of Clause (4) has been held applicable to the Respondent because instead of notice of termination he had tendered a letter of resignation. In such a case as per Clause (4), "...he can relinquish the charge of a post only after resignation is duly accepted by the appointing authority and he is relieved of his duties and not after the expiry of the notice period laid down in the Temporary Service Rules".

9. Apropos the respondent's documents from page 200 onwards, now, renumbered as 201 till 208, the learned counsel for the petitioner submits that there has been an interpolation of the documents only to suit the ends of the respondent, so as to defeat the case of the petitioner. He contends that note page 7 has been introduced subsequently and re-numbered as 201, it did not form part of the original records, it is only on the basis of the said letter at p. 201, that note page 7 records that the petitioner had been duly intimated of acceptance. This according to him is incorrect because from the records, it is evident that the petitioner was never served this letter. The learned

counsel for the respondent admits upon instructions and it is evident from the records, that the said letter of 21.01.2012 was neither posted nor otherwise intimated to the petitioner. Therefore, the recording at note page 7 apropos service of the same is erroneous.

10. Lastly, the learned counsel for the petitioner submits that when a thing is prescribed to be done in a particular manner, it ought to be done in that manner only. He relies upon a judgement of the High Court of Jharkhand dated 19.07.2012 passed in WP(S) No. 880/2010, titled: ***Kumar Satendra Prasad vs. The Coal India Limited & Ors.***

11. There can be no dispute about this principle, however, in the present case, what is to be seen is whether ultimately there was any communication of the acceptance of the resignation letter and whether the petitioner had acted thereupon.

12. The learned counsel for the respondent submits that where the employee himself fixed the date he wanted to be relieved from and had indeed absented himself from work after his specified date then it is a deemed resignation apropos that employee and there is no requirement of communicating the acceptance of the resignation. In support of his contention, he relies upon the ***Hitender Kumar Soni's*** case (*supra*), paragraph 12 of which reads as under:-

“12. In the instant case, the letter of acceptance clearly shows that termination of Respondent's service as per his offer of resignation was not deferred to any future date and hence there was no requirement to relieve him of his duties. Even the peculiar facts of this case show that the Respondent while on probation had already abandoned his temporary service for almost 8 months and had not cared to report for duty inspite of several requests. In

such a situation, it would be impossible to relieve an absconding employee of his duties and if the reasoning of the High Court is accepted such employee, even if he has tendered resignation, must be continued in service till he is actually found or till he presents himself to be relieved of his duties. Such a view would be impractical and run against larger public interest.”

13. He also relies upon the case titled as ***Raj Kumar Vs. Union of India, AIR 1969 SC 180***, wherein the Supreme Court held that:-

“6. Our attention was invited to a judgment of this Court in *State of Punjab v. Amar Singh Harika* (1966) IILLJ188SC in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the Officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But when 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. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State

of Rajasthan did not immediately implement the order and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance of in relieving him of his duties.”

14. Having considered the rival contentions and having examined the records, the Court is of the view that there is no dispute that after the resignation letter of 09.01.2012 and before the purported withdrawal of 19.03.2012, the petitioner had joined a competitor company of TCIL. The petitioner had submitted the experience certificate dated 17.04.2012 at the time of joining the competitor company; and had, throughout the period of his engagement with the competitor company, never communicated to TCIL, that he was engaged in the services of a rival company. His communications in the two and a half years of his engagement w.e.f. 06.02.2012 till October, 2015, were few and far between and the first communication was almost two years after his resignation, i.e., on 01.01.2014. Even in that, he did not mention that he was working with a rival company. TCIL sent all communications to the petitioner, at his residential address as per Rule 38 under the HR Manual of TCIL. The letter of 19.03.2012 issued by the TCIL clearly intimated the petitioner that his resignation of 09.01.2012 had been accepted, therefore, the petitioner’s insistence that his representation of withdrawal of resignation of 19.03.2012 was not responded to is untenable because the resignation stood accepted as on 09.01.2012 and the same was communicated to him by the letter dated 19.03.2012, posted on the same date and received by the petitioner on 21.03.2012.

15. The petitioner accepted the settlement of his accounts without any protest and accepted the date of his relieving as 09.01.2012. There is

nothing in the petition apropos this relieving having been under protest or being conditional.

16. An amount of Rs.15,446/- was paid on 29.05.2012 and another amount of Rs.1,11,668/- was paid to the petitioner vide cheque dated 08.06.2012 towards Gratuity and Provident Fund settlement. The application form of settlement of Provident Fund had been duly signed by the petitioner and was not disputed by him. The said cheques were subsequently encashed and the petitioner has enjoyed the benefit of the same. Copies of the said documents have been perused and taken on record during the course of arguments. Thereafter, there has been no protest from the petitioner apropos the receipt of the amount received towards the final settlement of all his accounts. It is not in dispute that the said settlement had taken into consideration the petitioner's request of 23.03.2012, wherein he had requested that the amount of Rs.65,515/- may not be recovered from him, instead it should be adjusted towards gratuity and provident fund. The Court finds that thereafter there has been no communication with the TCIL whatsoever, while the petitioner enjoyed the benefits of his employment with a rival company.

17. The petitioner joined a rival company on 06.02.2012 after resigning from the TCIL on 09.01.2012. His resignation was accepted by the respondent on 16.01.2012. However, there is nothing on record to show that the said decision was communicated to the petitioner immediately. In the record shown to the Court, there is a letter of 20.01.2012 (at page No. 201), which was never communicated to the petitioner. There is an overwriting from page Nos. 201 to 208 and the said letter is alleged, by the petitioner, to have been introduced in it. Furthermore, in the chronology of events, the

said letter appears to be irregular. The substance of acceptance of the resignation letter was intimated to the petitioner by the respondent's letter of 19.03.2012 and subsequently final settlement of accounts. Therefore, the allegations of interpolation in the records would be of no assistance or consequence to the petitioner's case. Apropos the manner of maintenance of records, it is for the respondent to enquire into and fix the liability they may deem appropriate.

18. In the present case, the petitioner was relieved from duties with effect from 17.04.2012. He accepted the adjustment/ payment of monies; therefore, as far as he is concerned, there has been an acceptance in terms of the communication from the respondent. The petitioner worked elsewhere and got the benefit of serving a competitor. An employee cannot serve two masters simultaneously and sail in two boats concurrently. The petitioner would have no lien to his earlier employment with TCIL because having accepted the monies towards full and final settlement, nothing would survive for the respondent to intimate him about the acceptance of his resignation. The respondent had acted in terms of its communication dated 19.03.2012 as well as of 17.04.2012 and subsequently had paid all the monies due to the petitioner and nothing further was required to be done by them.

19. The petitioner may have had a case for claim for remuneration for the period from the date he tendered his resignation till the date of receipt of communication of the acceptance of the same, but the petitioner would not be entitled for any such relief because he had accepted employment with a rival company with effect from 06.02.2012 and himself requested to have been relieved from the service from a specific date after which he did not present himself for work. This could also be deemed as his having

abandoned his employment.

20. The requirement of intimation of acceptance to the petitioner is met in the present case by the letter of 19.03.2012 and his acceptance of Gratuity and Provident Fund dues, thus he had himself accepted his resignation as final for the cessation of employer-employee relationship with TCIL. This was subsequently ratified by the letter of 17.04.2012 and the final settlement of his accounts/ dues. The petitioner is estopped from raising any plea in this regard by his conduct of working with a rival company from 06.02.2012.

21. The petition is an idle after-thought. It lacks merit and is accordingly dismissed.

SEPTEMBER 09, 2016

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NAJMI WAZIRI, J.

