

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.652 of 2016

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Madan Kumar Paswan S/O Late Babujan Paswan R/O Mohalla- Pokharia,
Begusarai, P.S.- Town, District- Begusarai

.... Appellant/s

Versus

1. The State Of Bihar Through The Principal Secretary, Deptt. Of General Administration, Govt. Of Bihar, Patna
2. Principal Secretary, Deptt. Of General Administration, Govt. Of Bihar, Patna
3. The Commissioner, Munger Division, Munger
4. Collector-Cum-District Magistrate, Khagaria
5. Public Information Officer Cum-Deputy Collector, Establishment, Collectorate, (Establishment), Khagaria

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Pramod Kumar Sinha, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Chetan Kumar, Advocate
For the Respondent/s	:	Mr. Anil Kumar Sinha, GA-1 Ms. Aditi Hansaria, AC to GA-1

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 06-03-2017

1. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 14.03.2016 in C.W.J.C. No. 13284 of 2013 whereby, the writ application filed by the appellant was dismissed.



2. The appellant was appointed as a Clerk on 1.9.1982. He tendered resignation on 7.3.1988. Though the resignation submitted by the appellant terminates the relationship of employer and employee, but the respondent issued a show cause notice on 15.12.2006 alleging absence from duty. An Enquiry Officer was appointed and after conduct of enquiry, an order was passed on 5.1.2003, refusing to re-appoint the appellant. The appeal against the said order remained unsuccessful.

3. Learned counsel for the appellant refers to a Supreme Court judgment reported as *Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301* to contend that resignation had to be accepted before it can be said to be effective. Since there was no acceptance of the resignation, therefore, the appellant continues to be in service. Thus, the order refusing to re-appoint the appellant is not valid in law. The Court held as under:-

“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principle is that in the absence of a legal, contractual or constitutional bar, a “prospective” resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. 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.....”

4. We do not find any merit in the argument raised.

The judgment referred to deals with a different situation as in the said case resignation was tendered from a prospective date, when it was held that such resignation can be withdrawn at any time before the resignation becomes effective i.e. the date from which it was intended to be effected.

5. In an another judgment reported as *Secy., Technical Education, U.P. v. Lalit Mohan Upadhyay, (2007) 4 SCC 492* , the Supreme Court held a government servant under the conditions of his service, by his own unilateral act of tendering resignation can give up his service, unless the Rules requires the acceptance of resignation. The Court held as:-

“17. The general principle is that 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 gets terminated when it is accepted by the competent authority. Thus, having regard to the letter of resignation (Annexure P-2), in the present case, there can be no doubt that Shri L.M.



Upadhyay had in his letter dated 6-9-1993, indicated his unequivocal intention to resign in the clearest possible terms with immediate effect. The resignation was tendered by Shri Upadhyay voluntarily without any pressure or coercion from the Principal of the College as recorded by all the enquiry officers in their respective fact-finding reports and the counter-allegation of Shri Upadhyay against the Principal was found unwarranted and unfounded. The Principal in fact, had protected the reputation, saved the future career and unnecessary humiliation and embarrassment of Shri Upadhyay from the students, staff members and teachers of the College by permitting him to leave the College immediately before his letter of resignation was forwarded to the competent authority for its acceptance.”

6. In the present case, it is not the case of the appellant that he resigned from a future date and that he has withdrawn the resignation. The resignation submitted by the appellant amounts to cessation of relationship of employer and employee. No action was required by the employer thereafter. Thus, the proceedings taken by the respondents for treating the appellant absent from duty and subsequently refusing to re-appoint the appellant is mere surplusage and is of no legal value.

7. Learned counsel for the appellant could not refer to any provision of the Rules which contemplates that resignation has to be accepted and acceptance communicated to the appellant. In the absence of such condition in the Service Rules, the submission of



resignation leads to cessation of employer employee relationship.

8. Consequently, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

K.C.jha/-

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