

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1614 of 2005

Smt. Razia Begum Qurashi W/o Shri Abdul Chand Quarashi, aged about 40 years, R/o Rehman Gali, Pathruaguda, Para, Post Office Jagdalpur, Distt. Bastar

---- Petitioner

Versus

1. State of Madhya Pradesh through Secretary, Department of Women & Children Welfare, Vallabhavan, Bhopal
2. Collector, Bastar, Distt. Jagdalpur.
3. Joint Director, Panchayat and Samaj Seva, Raipur Division, Raipur
4. Deputy Director, Panchayat & Samaj Seva, Jagdalpur
5. Zila Mahila Balvikas Adhikari, Jila Mahila Balvikas Sakha, Jagdalpur

---- Respondents

For Petitioner	:	Shri R.S Patel, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/11/2017

Heard.

1. The petitioner filed Original Application before the State Administrative Tribunal, Jabalpur. After abolition of the Tribunal, this case was received on transfer by this Court and registered as Writ Petition (S) No.1614 of 2005.
2. The petitioner was initially appointed as Gram Sevika vide order dated 30.3.1976 in a temporary capacity in the then Department of Panchayat. A posting order was issued on 15.4.1976. In course of time, the petitioner's services were made permanent vide order dated 7.10.1982 (filed along with the rejoinder) passed by the Dy. Director, Panchayat and Social Service.
3. As stated in the petition, a resignation letter was submitted by the petitioner on 1.9.1983 before the District Panchayat and Samaj Seva Adhikari, Jagdalpur. However, thereafter, the petitioner did not hear anything. Having submitted resignation letter, the petitioner also stopped attending the duties.

According to the petitioner, a reminder letter was given by her on 15.10.1986 that she has submitted a resignation letter and there is no response of the Department and further that appropriate orders may be passed. This situation, however, continued for more than a decade. Another letter dated 20.9.1994 was submitted by the petitioner. The petitioner submitted an application on 27.11.1995 before the Collector giving her joining. In the said letter, the petitioner stated that due to her own family circumstances, a resignation letter was submitted on 1.9.1983 before the District Panchayat and Samaj Seva Adhikari, Jagdalpur and even after 13 years, her application has not been accepted. In the letter, it was also stated that she was informed that vide letter endorsement No.1235/Establishment/1995-96 dated 20.4.1995 of the Joint Director, Panchayat and Samaj Seva, Raipur, it has been decided that resignation of the petitioner to be accepted by the office of Woman and Child Development, Jagdalpur and vide letter dated 25.11.1995 of the office of District Woman and Child Development, Jagdalpur, the petitioner was informed that her resignation is to be accepted by the Department of Panchayat and Samaj Seva Jagdalpur. Therefore, in these circumstances, as the department finds it unable to accept the resignation and services of the petitioner appears to be required, therefore, the petitioner is submitting her joining and prayed for posting.

However, despite this letter, the petitioner did not receive any response nor any posting order. The petitioner then again submitted an application on 7.1.1997 before the Dy. Director Panchayat and Samaj Seva Jagdalpur.

It appears that there was a dispute between the Department of Panchayat & Social Services and Department of Woman and Child Development as regards the petitioner's status. At the time of appointment of the petitioner, affairs of the Panchayat & Social Services and Woman & Child development were under the administrative jurisdiction of one Department. However, in course of time, there was bifurcation and two separate Departments, one of Panchayat and Social Service and other Woman and Child Development, were created. It was in this background that the petitioner was made to run from pillar to post from the office of Panchayat and Samaj Seva to the office of Woman and Child Development and both the Department attempted to disown the petitioner as their employee with the result that no orders were passed allowing the petitioner to join in any of the office of either Department. In this backdrop, the petitioner approached

the Tribunal by filing Original Application.

4. Learned counsel for the petitioner argues that though the petitioner had tendered her resignation from service, it was never accepted much less communicated to the petitioner. According to him, when resignation was submitted by the petitioner, it was required to be either accepted or rejected and the resignation would not come into effect automatically as there is no specific rule governing terms and conditions of service relating to unilateral act of resignation without acceptance by the employer. Finally, when the petitioner having withdrawn her resignation and having submitted her joining on 27.11.1995, she ought to have been given a posting and paid her salary. In support of his submission, learned counsel for the petitioner relied upon the judgments in the cases of **Raj Narain Vs. Smt. Indira Nehru Gandhi & Anr.** (AIR 1972 SC 1302), **Secy. Technical Education, U.P. & Ors. Vs. Lalit Mohan Upadhyay and Anr.** (2007) 4 SCC 492, **Vijay Shankar Tripathi Vs. The Project Officer and Anr.** 2005 (1) MPHT 24 (DB), **Kishore Kumar Vyas Vs. State of C.G. & Ors.** 2008 (1) CGJL 259 and order dated 24th June 2015 passed by High Court of Chhattisgarh in the case of **Jitendra Kumar Banjare Vs. State of Chhattisgarh & Ors.** (WPS No.1139 of 2015).
5. Per contra, learned counsel for the State would submit that the petitioner had all the intention of resigning from service and with that intention, the petitioner had submitted her resignation and thereafter she abandoned the service. Therefore, no further steps were required to be taken in the matter. The petitioner never claimed to continue in service and taking undue advantages that specific order was not communicated to the petitioner, the petitioner sought to come back in service after about 12 years. The unauthorized absence of the petitioner for such a long period resulted in abandonment of service and therefore the petitioner could not be taken back in service. It is further submitted that the petitioner was a temporary employee and therefore in view of provision contained in Rule 12 of the M.P. Govt. Servants (Temporary and Quasi Permanent) Services Rules, 1960 (in short "*Rules of 1960*") as interpreted by the High Court of Madhya Pradesh in the case of **Harish Chandra Gupta Vs. State of M.P. and Anr** (1972 J LJ 470), the resignation tendered by the petitioner, he being a temporary employee, took effect on the expiry of the period of notice. Therefore, it is argued, even if no order was passed, it will not make any difference as the

service of the petitioner came to an automatic end by lapse of time under the notice. Further, referring to order dated 26.2.1998 (Annexure R-3) of the Commissioner Bastar Division, it is submitted that on account of resignation letter submitted by the petitioner on 1.9.1983, the petitioner's services had already come to an end, it is submitted that the petitioner was not in service.

6. I have considered the rival submissions made by learned counsel for the parties and perused the records.
7. Before dealing with the submissions made by learned counsel for the parties, it needs to be noted that none of the parties have placed before the Court the so called resignation letter dated 1.9.1983 submitted by the petitioner, though it is an admitted position that her resignation letter was submitted on 1.9.1983 but as to what were the terms and conditions of this resignation letter is not known.
8. The edifice of arguments of learned counsel for the State is built up on a factually incorrect assertion of petitioner status. Though in the return, it is sought to be projected that the petitioner was continuing as temporary employee on the date she tendered her resignation, along with the rejoinder, the petitioner has placed on record an order dated 7.10.1982 passed by the Dy. Director, Panchayat and Samaj Seva, Raipur, Division Raipur, by which the petitioner along with other employees was made permanent w.e.f. 15.4.1982. This assertion of the petitioner in the rejoinder and the document aforesaid has not been disputed by the State. Therefore, it can be safely held that the petitioner had become a permanent employee on the date resignation letter was submitted by her. In view of this factual premise, the entire basis of arguments of learned counsel for the State by applying the provision contained in Rule 12 of the Rules of 1960 must fall to the ground.
9. It is well settled legal position that on general principles, in the absence of a legal, contractual or constitutional power, the 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 resigner. This general rule is applicable unless there is a rule to the contrary governing terms and conditions of service. In the matter of **Raj Kumar Vs. Union of India** (AIR 1969 SC 180), following principle was propounded:

“5. But where 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 authoritative pronouncement of the Supreme Court in latter decision in the case of **Union of India & Ors. Vs. Gopal Chandra Misra & Ors. (1978) 2 SCC 301**, it was held (per majority) :-

"41.The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date, can be Withdrawn by him at any time before it becomes effective. i.e. before it effects termination of the tenure of the office/post or the employment."

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 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 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."

In another decision in the case of **Punjab National Bank Vs. P.K. Mittal** 1989 Suppl (2) SCC 175, the legal position was again reiterated in following words:

"8. The result of the above interpretation is that the employee continued to be in service till the 21st April, 1986 or 30th June, 1986, on which date his services would have come normally to an end in terms of his letter dated 21st January, 1986. But, by that time, he

had exercised his right to withdraw the resignation. Since the withdrawal 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 become 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*, *Union of India v. Gopal Chandra Misra* and *Balram Gupta v. Union of India*"

In the case of **Union of India and Anr. Vs. Wing Commander T. Parthasarathy** (2001) 1 SCC 158, it was propounded as below:

"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* 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 Etc. vs Gopal Chandra Misra*. 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 (SCCp.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 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 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 vs P.K. Mittal* . 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.”

10. The settled legal position therefore is that unless there is a rule to the contrary, resignation tendered by an employee would become effective only upon its acceptance and before such acceptance, it is open for the employee to withdraw the resignation. There may be a different situation in service Rules applicable in a given case where an employee may have privilege of quitting service by a unilateral act by giving notice of a particular period or depositing salary in lieu thereof. In many service Rules, resignation is permissible as unilateral act by giving three months notice or salary in lieu thereof. In such cases, the Rules may not postulate any acceptance of resignation by the employer and after expiry of the period of notice, the resignation becomes effective and there is cessation of relation of employer and employee. Conversely, in a case where there is no such Rule, the general principles must prevail that resignation would not automatically result in cessation of service unless it is followed by act of acceptance by the employer. In such cases, resignation takes effect only after the bilateral act, firstly tendering a resignation of the employee and thereafter acceptance by the employer.
11. If aforesaid settled legal position is applied to the facts of the present case, this Court finds that though the petitioner had submitted her resignation way back on 1.9.1983 by which time she had become a permanent employee, there was no order passed accepting her resignation. In fact, the respondent has not produced before the Court any record to show that even on files and note sheet, the competent authority had accepted the resignation of the petitioner. For reasons best known to the respondent, the resignation of the petitioner remained buried in the heap of dust without being adverted to much less any conscious application of mind and decision thereon. As far as petitioner's conduct is concerned, it is found that the petitioner also remained absent from duty ever-since she submitted resignation letter i.e. with effect from 1.9.1983 treating herself having become free from the Govt. service. On petitioner's own case, if the resignation had not become effective, the petitioner acted unauthorizedly in remaining absent from duties.
12. Learned counsel for the State could not point out to this Court that either in

the contract of service or under any rules applicable in the matter, there existed a provision of resignation by way of unilateral act by giving notice for certain period or salary in lieu thereof. In the absence of there being any provision to the contrary, as discussed herein-above, the general rules requiring acceptance of resignation by the employer in order to make the resignation effective, would apply. Therefore, in the absence of any acceptance of resignation of the petitioner by the employer, though in the eyes of law, the petitioner continued in service, while in fact the petitioner stopped working. The representation made by the petitioner show that the petitioner has been making representations for acceptance of her resignation but there is no material on record to show that during this period, the petitioner continued to perform her duties.

13. The legal position therefore would be that the petitioner remained in service though not on duty from 1.9.1983 up to 27.11.1995. This is so because this Court could not be convinced with reference to any of the service Rules that long unauthorized absence would result in automatic abandonment of service. The petitioner was in public employment. The relation of the master and servant in the State service is more a matter of statutory relationship than a mere private contractual affair. The attributes of public employment are governed largely by statutory rules framed by the Governor in exercise of power under Article 309 of the Constitution of India. Once a person is inducted into service his ouster from service has to be in accordance with law and not automatic.

14. Irresistible conclusion, as an upshot of above discussion, is that the petitioner continued in service till the date she submitted an application on 27.11.1995. However, a close reading of letter dated 27.11.1995 of the petitioner would make an interesting study. The letter nowhere mentions that the petitioner intends to withdraw her resignation. It states that as the Govt. requires services of the petitioner, the petitioner has submitted her joining. But, in terms, it does not say that the petitioner has withdrawn her resignation. A letter of acceptance of resignation was necessary to bring into effect the resignation and finally bring about cessation of relationship of master and servant, which never happened. This Court finds that presumably, because of confusion prevailing in two departments i.e. Panchayat and Social Services on one hand and Woman and Child Development on the other, as to whose employee the petitioner should be

treated after bifurcation of the two Departments which were one and the same at the time of petitioner's appointment, the authority of the two Departments conveniently kept on shuttling the petitioner from one office to other until the petitioner approached the Court. With this background, the petitioner's resignation affair could not be settled much less accepted.

15. Finally, it has to be held that the relationship of master and servant between respondent and the petitioner never came to an end by submitting resignation letter as it was never accepted, but the petitioner remained unauthorizedly absent from service from 1.9.1983 to 27.11.1995. In any case from 27.11.1995 when the petitioner submitted her joining, she cannot be faulted with and if she has not been given a posting and work is not taken from her she cannot be blamed.
16. As in the Original Application which was filed by the petitioner in the year 1997, the petitioner declared her age as 40 years. However, the date and month has not been disclosed. That would mean that the petitioner would be attaining the age of 60 years sometimes in the year 2017. This would be a matter of verification on the basis of service records and the declared and accepted date of birth of the petitioner. If the petitioner till date has not attained the age of superannuation which is in force on the date, the respondents shall be obliged to give proper posting to the petitioner and allow her to continue in service till she attains the age of superannuation. However, this would not be necessary if the petitioner has already attained the age of superannuation.
17. At this stage, learned counsel for the State raised an issue by submitting that it will also require verification whether the post of Gram Sevika still exists or not or whether it has been re-designated as any other post.
18. The respondent-State may make proper enquiry in this regard and if it is found that the post of Gram Sevika has been re-designated as any other equivalent post, the petitioner shall be allowed to join. Even though there is no post available, nevertheless, the petitioner would be entitled to salary and other consequential service benefits from 27.11.1995 till the date the petitioner attains/attained the age of superannuation in Govt. service. Considering that the petitioner remained unauthorizedly absent from service from 1.9.1983 till 27.11.1995, no salary can be awarded for the said period. The respondents would be required to pass appropriate orders as to

what treatment should be given to the period of unauthorized absence from 1.9.1983 to 27.11.1995, in accordance with the applicable rules of the department as also fundamental rules.

19.The petitioner shall submit her joining before the Deputy Director Panchayat who had appointed the petitioner.

20.The petition is accordingly allowed in the manner and to the extent indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen