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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 17/2017

SACHIN KUMAR

..... Appellant

Through Appellant in person

Versus

UNION OF INDIA & ORS

..... Respondents

Through

Mr.Saket Sikri, Mr. Junaid Nahvi
and Mr. Pranav Sharma, Advocates for
respondents No.2 to 5

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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24.10.2017

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL (ORAL)

1. The present appeal under Clause 10 of the Letters Patent Appeal assails the judgment dated 09.09.2016, rendered by a learned Single Judge of this court in WP(C) No. 2732/2016 titled as "*Sachin Kumar vs. UOI & Ors.*", whereby the said petition was rejected as being devoid of merit.

2. This is admittedly the second round of litigation between the parties based on the same subject matter.

3. On 09.01.2012, the appellant/Sachin Kumar tendered his resignation as Deputy Manager (Kuwait) to respondent No. 2/

Telecommunication Consultants India Limited (hereinafter referred to as “TCIL”), with immediate effect. It would be profitable to extract the said communication annexed as Annexure B (Colly), which forms the genesis of the present dispute in full. The said communication dated 09.01.2012 reads as follows:-

“Resignation from the post of Deputy Manager

Dated: Jan 09, 2012

*Regional Director (Kuwait)
Telecommunications Consultants India Ltd.
TCIL (Kuwait), Khaitan
Kuwait.*

Subject: Resignation from the post of Deputy Manager

Through proper channel

Sir,

I, Sachin Kumar (Deputy Manager, EN-4387) joined TCIL on Aug 25, 2004 as an Executive Trainee. In TCIL, I was provided opportunities to work on various prestigious national and international projects. After successfully serving the TCIL for more than last 7 years, due to my personal reasons, I do hereby tender my resignation.

Therefore, I would like to request you to please provide me the followings:

- 1. Relieving letter*
- 2. Salary for the month of Nov 2011, Dec 2011 (which is transferred to Kuwait Project) along with the salary disbursement statements*
- 3. FDA for Oct 2011 for deputation in Kuwait (22 days: Oct 01 to Oct 22, 2011) along with the FDA disbursement statements.*
- 4. Work experience certificate.*
- 5. Pay certificate.*

6. *Earning Card for 2011-12.*
7. *Form 16(Income Tax details) for 2011-12*
8. *PF Statement for 2011-12*
9. *Form-11(PF Exemption form)*
10. *Security deposit on account of foreign posting*
11. *Gratuity*
12. *NOC*
13. *No dues certificate*
14. *Encashment of EL (balance after adjusting the notice period)*
15. *Any other leftover item.*

*I request you to please accept my resignation **with immediate effect and relieve me by Jan 16, 2012 (after adjusting my balance leave against the notice period).***

Once again, I would like to sincerely thank TCIL management for providing me the opportunity to work at TCIL.

Thanking you.

Yours truly,

(Sachin Kumar)

Deputy Manager (Kuwait)

Emp. No. 4387”

(emphasis supplied)

4. A plain reading of the above reveals the following facts:-

a) The appellant joined TCIL on 25.08.2004 as an Executive Trainee and purportedly worked with the said company for more than seven years, when on 09.01.2012 he tendered his resignation with immediate effect, as above mentioned.

b) The appellant asked respondent No.2 to be relieved from duties w.e.f. 16.01.2012, after adjustment of his balance leave against the notice period.

c) Furthermore, the appellant desired that the necessary formalities in relation to his resignation as an employee of TCIL be concluded.

5. It is an admitted position that the appellant thereafter joined M/s Vyamtech Technologies w.e.f. 06.02.2012. On a specific query of the Court from the appellant, who appears in person, the latter has stated that he had applied to M/s Vyamtech Technologies (sometime towards the end of January, 2012) for appointment as Manager-SPM.

6. In an earlier round of litigation, namely, WP(C) No. 9435/2015 titled as “*Sachin Kumar Vs. UOI & Ors.*”, a learned Single Judge of this Court by way of order dated 03.12.2015 disposed off the petition filed by the petitioner herein, assailing non-acceptance of withdrawal of the said resignation letter dated 09.01.2012 by way of a subsequent communication to TCIL dated 19.03.2012, with the following directions:

“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 Chairmancum-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-cumManaging 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/- "

(emphasis supplied)

7. Pursuant thereto, respondent No.2 rendered a reasoned order dated 11.01.2016, rejecting the appellant's representation seeking withdrawal of his resignation dated 19.03.2012.
8. The order impugned in the present appeal has been rendered in the petition, being said W.P.(C) No. 2732/2016, which essentially challenged the rejection by respondent No.2 of the appellant's representation seeking withdrawal of his resignation.
9. The appellant has urged that although he had tendered his resignation with immediate effect, it did not become operative till the time the same was accepted by the appointing authority in accordance with the rules applicable to respondent No.2. Further, that the resignation having been withdrawn by him on 19.3.2012, prior to its purported acceptance by the appointing authority, the relationship of employer and employee between the parties continued to subsist and

consequently he was entitled to continue in service; which right had been denied to him by TCIL, contrary to its own rules and regulations, and in the teeth of judicial precedents.

10. In the impugned judgment dated 09.09.2016, the learned Single Judge after considering the rival contentions as well as the relevant decisions relied upon by the parties, found that the petition was an idle after-thought, lacked in merit, and dismissed it accordingly. The operative portion of the impugned judgment dated 09.09.2016 reads as follows:-

“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.”

11. A plain reading of the above would clearly reflect that immediately pursuant to his resignation letter dated 09.1.2012, which it is pertinent to observe, was with immediate effect, the appellant joined M/s Vyamtech Technologies, which is purportedly a competitor of TCIL in the business of telecommunication. It is further evident that, at no stage, in the subsequent communications made to TCIL, did the appellant allude the former of his appointment as Manager -SPM with M/s Vyamtech Technologies; having joined it on 06.02.2012. Admittedly, on 19.03.2012, the appellant addressed a communication to TCIL seeking to withdraw the resignation submitted by him on 09.01.2012; with immediate effect as aforementioned. It would be further relevant to observe that even in the said communication dated 19.03.2012, annexed as Annexure B (Colly), the appellant did not disclose that he had been employed with M/s Vyamtech Technologies. Not only that, the appellant upon being informed by TCIL, by way of their communication dated 19.3.2012, that his said resignation dated 09.1.2012 has been accepted; the communication having been received by the appellant on 21.3.2012; the appellant did not immediately assail the action of TCIL, in the matter of his resignation and continued to serve with M/s Vyamtech Technologies till the month of October, 2015. It was only when his service with M/s Vyamtech Technologies

ended that the appellant filed the said WP(C) No.9435/2015 belatedly and; three and a half years from the date of tendering his resignation to TCIL, which came to be disposed of by a learned Single Judge of this Court, as mentioned hereinbefore. It would also be relevant to observe that the appellant has received his entire gratuity and provident fund, settlement dues from TCIL, as far back as in the month of June, 2012, without much dispute.

12. Although the appellant disputes the date of the acceptance of his resignation by TCIL, inasmuch as, the latter states that it was accepted on 16.1.2012 itself, whereas, the former contends that the resignation was accepted on 19.3.2012; upon receipt by the latter TCIL of his withdrawing the subject resignation, in our view, this question may be irrelevant in view of the circumstance that once the competent authority has accepted the resignation of the appellant and passed the order on file, that date would be required to be treated as the date when the resignation was accepted.

13. Furthermore, as held by Hon'ble Supreme Court in ***North Zone Cultural Centre and Another vs. Vedpathi Dinesh Kumar*** reported as (2003) 5 SCC 455, the resignation of an employee becomes effective on acceptance even if the acceptance is not communicated to the him.

14. Reliance has also been placed by the learned counsel for the respondents on ***Praveen Kumar vs. The Director General of CISF and Ors.***, arising out of the decision of a Division Bench of this court in WP(C) No. 55/2010 decided on 19.01.2011, wherein it was held as follows:-

“13. Thus, on the settled law that once a resignation is accepted and the date from which resignation has to be effective is in the past, the resignation cannot be withdrawn.”

14. From a perusal of the letter of resignation submitted by the petitioner it is clear that the petitioner made the resignation effective with immediate effect and stopped reporting for duty from the next day. Thus, even if we treat 4.8.2009 as the date of communication of the acceptance of the Petitioner's request for resigning, the question of the resignation being withdrawn on 17.8.2009 does not arise.”

(emphasis supplied)

15. In addition, it is an admitted position that the appellant joined the services of a rival company, i.e. M/s Vyamtech Technologies, which fact he conveniently failed to disclose to TCIL till the time of filing of the said WP(C) No.9435/2015, assailing the actions of TCIL. The present is clearly a case of suppressing oversight. In our view, this suppression of material facts by itself is sufficient to disentitle the appellant to any relief under the provisions of Article 226 of the Constitution of India. Even otherwise, we are of the view that having tendered his resignation “*with immediate effect*” and seeking relieving from his duties with immediate effect from 16.1.2012 and, thereafter, having accepted his gratuity and provident fund dues without any protest, the appellant on his own admission sought cessation of the employer-employee relationship with TCIL. Having done so, the appellant cannot now be heard to say that the acceptance of his

resignation by TCIL is violative of rules governing the said organisation, and that the non-receipt of acceptance of resignation till the date of withdrawal of the same entitled him to continue as an employee of TCIL. It is also an undisputed fact that after tendering his resignation on 09.01.2012, the appellant had also absented and did not attend his duties with TCIL.

16. In other words, the unilateral action of the appellant and his consequent conduct severed his relationship with TCIL and the appellant cannot seek to turn the clock back by instituting the proceeding three and a half years afterwards.

15. Before parting, it would be relevant to allude to the appellant's submissions with regard to the conduct of the TCIL and in particular his allegations that record has been interpolated and fabricated in his personal file. Suffice to say that there is no material on record to establish such a serious allegation and the same in our view is unfounded and scandalous.

17. In view of the foregoing discussion, in our view, the present appeal lacks merit and the same is accordingly dismissed without any order as to costs.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

OCTOBER 24, 2017/mw