

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

W.A.No.1271 OF 2016

JUDGMENT:

(per Hon'ble Sri Justice Suresh Kumar Kait)

The present appeal is preferred challenging the order dated 10.06.2016 passed in W.P.No.3117 of 2006 by this Court, whereby the learned Single judge has dismissed the petition filed by the appellant.

2. The brief facts of the case are that :

The appellant was appointed in respondent-bank on 27.09.1982 as Technical Officer in the grade of Junior Management (JM-1, Specialist Officer). Thereafter, he worked at different places, and at the time of passing the impugned proceedings, the appellant was working in the Regional Office of Andhra Bank at Anantapuram in Andhra Pradesh. The case of the appellant is that he was making repeated requests to the respondent authorities to transfer him to Chennai where his wife and children are staying or to any other place in Kerala where his old parents are residing. Since the request of the appellant was not considered by the authorities, the appellant, on 26.07.1994 submitted his resignation from the bank service, but however, on an alleged oral assurance given by the respondent-bank, he had withdrawn the letter on 24.10.1994. Since the oral assurance given by the respondent-bank was not complied with and

being disgusted with the attitude of the officials in the bank, the appellant claims to have tendered three months resignation notice on 06.09.1996. But however, on 03.12.1996 the appellant claims to have sent a fax message to the Head Office at Hyderabad withdrawing his resignation, which was received by the bank on 04.12.1996 at 10.48 a.m. On 05.12.1996 the appellant is said to have sent another fax message to the Regional office at Anantapuram informing withdrawal of his resignation made in the month of September 1996. In spite of the fact that he has withdrawn his resignation before the expiry of three months, as contemplated under the Banking Rules, the respondent authorities accepted the resignation and relieved the appellant from the services of the bank after the closing hours of 05.12.1996. A communication to that effect was sent to the appellant vide letter dated 05.12.1996. Challenging the action of the authorities in accepting the resignation of the appellant, he filed Writ Petition in the year 2006 and the same was dismissed as noted above.

3. Learned counsel appearing on behalf of the appellant submits that the learned Single Judge has erred gravely in dismissing the writ petition mainly on the ground that withdrawal of resignation of the appellant vide letter dated 03.12.1996 sent to the Head Office, Hyderabad and vide letter dated 05.12.1996 sent to the Regional Office at Anantapuram being a conditional one without considering the fact that the

respondent authorities did not follow the mandatory laid down procedure, to be followed in case of resignation vide Circular No.24, Ref.No.3/4, dated 12.04.1989.

4. He further submits that the learned Single judge has failed to see that as per letter dated 06.09.1996 addressed to the General Manager, Head Office at Hyderabad, the period of three months notice shall be computed from the date of receipt of the said letter by the Head Office and not the date mentioned in the aforementioned letter which is the settled proposition of law laid down by the Supreme Court in catena of cases.

5. Learned counsel further submits that the learned Single Judge has ignored the fact that the appellant was nominated for “Recovery Management Programme” commencing from 09.12.1996 to 11.12.1996 which was supposed to be conducted at Staff College, Hyderabad, and nomination letter dated 22.11.1996 which is contrary to the stand taken by the respondent about relieving the appellant.

6. He further submits that the learned judge ought to have seen that, the letter dated 15.11.1996 mentioned that resignation letter dated 06.09.1996 has been accepted with effect from 05.12.1996 which is contrary to the law laid down by the Apex Court in a case of **Punjab National Bank v. P.K Mittal**¹ .

¹ 1989 Supp(2) SCC 175

7. Learned counsel for the appellant has also relied upon a case of **Srikanth S.M. Versus Bharat Earth Movers Limited**², wherein the authority had accepted the resignation of the appellant on 04.01.1993 and was ordered to be relieved on that day, however, by a subsequent letter, he was granted casual leave from 05.01.1993 to 13.01.1993. Moreover, he was informed that he would be relieved after office hours on 15.01.1993. Accordingly, the Hon'ble Supreme Court held that the relationship of employer and employee did not come to an end on 04.01.1993, and he continued in service. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the company up to 15.01.1993.

8. Learned counsel for the appellant has also relied upon a case of **Rajkuamr Vs. Union of India (UOI)**³, wherein held that 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.

9. Learned counsel for the appellant submits that the meaning of "locus *poenitentiae*" is that the employee has a right to withdraw the resignation before he is relieved from the service. In the present case, the resignation of the

² (2005) 8 Supreme Court Cases 314

³ AIR 1969 SC 180

appellant was accepted on 15.11.1996 with effect from 05.12.1996. Whereas, the appellant's withdrawal of resignation vide letter dated 03.12.1996 was sent to the Head Office at Hyderabad and letter dated 05.12.1996 to the Regional Office at Anantapuram. Thus, the order passed by the learned Single Judge deserves to be set aside by allowing the present appeal.

10. The case of the respondent is that the allegation of resignation being accepted before the expiry of three months, as contemplated under Banking Rules, is incorrect, for the reason that the resignation was accepted on 15.11.1996 with effect from the closing hours of 05.12.1996 i.e., after completion of three months from the date of submitting the resignation.

11. It is an admitted fact that the appellant never attended any duties from 06.09.1996 till 05.12.1996 and having regard to the issuance of letter of resignation the same was accepted after banking hours. Immediately thereafter the appellant received Gratuity and the Provident Fund settled by the Bank on 21.01.1997 without any protest. Therefore, if name of the appellant was nominated for "Recovery Management Programme" commencing from 9.12.1996 to 11.12.1996, by mistake, that does not make his claim to be continued in service.

12. In addition to above, it is on record that for a period of two years the appellant kept quiet and later filed Writ

Petition No.28363 of 1998 which was dismissed on 18.07.2005 as withdrawn. Thereafter, he made a representation on 19.09.2005 and 18.10.2005 to the competent authority requesting reinstatement which was rejected by the reasoned order dated 17.10.2005. Questioning the said orders, the appellant filed Writ Petition before learned Single Judge.

13. It is important to refer to Rule 20(2) of the Bank Officers' Service Regulations, 1982 :

“**Rule 20(2)** of the said regulation states that an officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 03 months and shall be submitted to the Competent Authority as prescribed in these regulations.

Provided further that the competent authority may reduce the period of 03 months or remit the requirement of notice.”

14. It is clear from the said rule that the resignation will not be effective otherwise than on the expiry of period of threes months from the date of service of such notice. The requirements, which are to be fulfilled are :

- (i) *the resignation of employee from the service being a voluntary act;*
- (ii) *he is entitled to choose the date with effect from which his resignation would be effective; and*
- (iii) *give a notice to the Bank accordingly.*

15. The restriction being that the proposed date should not be less than three months from the date on which the notice is given. The leverage of three months is given to the bank so as to take appropriate steps in accordance with law from their side, more particularly with regard to recovery of any money from the appellant, if he is due to the bank.

16. The appellant sent his resignation to the General Manager, Andhra Bank Head Office at Hyderabad on 06.09.1996, as under:

“Dear Sir,

Through the Regional Manager, Anantapur, I hereby Tender resignation from the post of Technical Officer which I have been holding since 1982 on personal grounds.

Please treat this as a notice of resignation. I may not be working during the entire notice period of 3 months, and request you to relieve me in absentia.

My thanks to the management for having offered me an opportunity to serve the organisation since 1982.”

17. Thereafter on 25.10.1996, the appellant wrote a letter to the bank explaining/giving reasons which made him to resign on 06.09.1996. The said letter is silent as to the withdrawal of the resignation made on 06.09.1996. Thereafter on 03.12.1996, the appellant sent a fax message to the Head office at Hyderabad seeking withdrawal of the resignation. But the said withdrawal of resignation dated 03.12.1996 is a conditional one with a condition that in case an assurance is given for his posting at Madras he prepared to withdraw his resignation. Undisputedly the same does not

amount to withdrawal of resignation as it was a conditional one.

18. Another resignation letter dated 05.12.1996 was sent to the Regional office at Anantapuram stating that he intends to withdraw his resignation dated 06.09.1996 subject to approval of his representation dated 25.10.1996 made to the Chairman and Managing Director. The said letter dated 25.10.1996, which was referred to earlier, reveal the difficulties faced by him, which led to his resignation on 06.09.1996. In the said letter, the appellant sought transfer to Madras Zonal Office as there is only one Technical Officer posted at that point of time.

19. The second withdrawal of resignation letter which was sent on 05.12.1996 is also a conditional one as he intends to withdraw subject to approval of his request made in the letter dated 25.10.1996. Both the resignation withdrawal letters dated 03.12.1996 and 05.12.1996 are not withdrawal of the resignation simplicitor.

20. Admittedly the withdrawal of the resignation by the appellant was after the letter dated 15.11.1996, wherein the Bank accepted the resignation with effect from the closing hours of 05.12.1996 i.e., the date on which the period of three months expires. Having regard to the fact that the withdrawal of resignation was conditional and as the resignation of the appellant was accepted after the expiry of

three months, the action of the respondents cannot be found fault with.

21. Moreover, the appellant on attaining the age of superannuation has already been retired and he has received all the terminal benefits, without protest, like payment of gratuity amount of Rs.1,06,260/- by way of Demand Draft No.0122222 dated 12.12.1996 and Provident Fund amount of Rs.1,02,561.80ps. by way of Cheque No.12658 dated 21.01.1997, if it is left, the pension, which is not the subject matter of the present appeal.

22. Keeping in view the facts recorded above, the cases relied upon by the appellant are no way help to the case of the appellant.

23. We find no illegality or irregularity in the order dated 10.06.2016 passed in W.P.No.3117 of 2006 by the Single Judge, we hereby confirm the same.

24. Finding no merit in the instant appeal, the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

ABHINAND KUMAR SHAVILI, J.

Date : -03-2018
Gvl

