IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 1350 of 2018 (O&M)
Date of Decision: 06.09.2018

Central Bank of India and others …..Appellants

versus

Viney Suri …..Respondent

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. R.S.Bhatia, Advocate, for the appellants.
Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Nishant Bhardwaj, Advocate for the caveator-respondent.

****

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM Nos. 3670- and 3671-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 24 days in filing and 255 days in re-filing the appeal is condoned. Both the applications stand disposed of.

LPA No. 1350 of 2018

This intra-court appeal has been filed by the appellant bank challenging the judgment and order dated 25.08.2017 passed by the learned Single Judge allowing the writ petition filed by the respondent herein challenging the order accepting his resignation.

2. Facts relevant for the purpose of the case in brief can be summarized as under:-

Respondent-petitioner Viney Suri was working as Branch Manager in the appellant-bank. Feeling certain bias and prejudice against respondent No.5 and due to some medical problems, he submitted his resignation by giving three months' notice vide letter dated 24.06.1991. However, the resignation was not accepted by the appellant bank on the pretext that disciplinary proceeding against him was under way. Needless to observe that at the time the petitioner submitted his resignation, no disciplinary proceeding was even initiated against him inasmuch as he was not served with any memo or charge sheet. Three months' notice period expired on 24.09.1991. Respondent-petitioner was informed of the fact that his resignation has not been accepted due to pendency of the disciplinary action against him vide letter dated 12.09.1991. However, a charge-sheet is said to have been issued on 17.08.1992. The disciplinary proceedings culminated into an order dated 15.03.1993 awarding the following punishment:-

> "A. With respect to charge No.4 wherein it has been proved that for the acts of Shri Suri whereby he failed to protect the interest of the Bank, the loss likely to be suffered by the Bank to the extent of 50% of the suit amount be recovered from Shri Suri under Regulation 4(d) of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations with further orders amount so recovered may be kept in sundry account.
>
> B. With respect to charge 5(b) is censured under clause 4(a) of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations.
>
> C. With respect to charge No.6 wherein the making of wild allegations against the authorities is established, I take a serious view of the same. Accordingly, I award reduction of one stage in time scale under Clause 4(e) of Central Bank of India Officer Employees' (Discipline & Appeal) Regulations.
>
> All the punishments stated above shall run cumulatively."

3. Vide order dated 08.03.2013 the writ petition was allowed in part and the punishment order qua charge No.4 was set aside. Rest of the punishment awarded to the respondent-petitioner thus stood confirmed. Aggrieved by the non-consideration of the prayer made in respect of his acceptance of resignation, a review application was filed by him which was dismissed vide order dated 20.08.2013. An LPA No. 1981 of 2013 was preferred which was decided on 19.10.2015 by making the following observations:-

> "We have heard counsel for the parties, perused the impugned orders as well as contents of the writ petition, and are satisfied that one of the primary points that arose for adjudication, but has not been decided, is the power of the respondents to accept resignation dated 24.06.1991 after it had been rejected on 12.09.1991. A perusal of the impugned orders reveals that this matter has neither been considered nor answered whether in favour of the appellant or in favour of the respondent. Consequently, without expressing any opinion as to the merits of the present controversy, we partly allow the appeal and remit the matter for consideration on a limited point namely the legality of acceptance of resignation, vide order dated 31.03.1993.
>
> Disposed of accordingly."

4. In view of the aforesaid order passed by the Division Bench, the matter was reconsidered by the learned Single Judge and vide order impugned in this appeal, the order dated 31.03.1993 accepting the resignation was set aside and he was held entitled to all consequential benefits which the bank was directed to calculate and disburse within a period of four months.

5. We have heard Shri R.S.Bhatia, learned counsel appearing for the appellant bank and Shri Rajiv Atma Ram, learned Senior Counsel assisted by Shri Nishant Bhardwaj, learned counsel appearing for the caveator-respondent.

6. Learned counsel appearing for the appellant bank vehemently contended that on account of the pendency of the disciplinary proceedings against the respondent herein and looking into the nature and gravity of the charges leveled against him which related to transaction of public money, as such, the resignation tendered was not accepted but subsequently after conclusion of the disciplinary proceedings the same was accepted and the learned Single Judge has failed to appreciate this aspect of the matter. In reply it has been submitted that at the time of submitting the resignation letter giving three months notice on 24.06.1991, neither any disciplinary proceedings against the respondent herein was either contemplated or pending and the situation continued for the entire notice period of three months as the charge sheet was served only on 17.08.1992. A reference has also been made to Regulation 20(2) of the Central Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 which reads as under:-

> "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 3 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 three months or remit the requirement of notice."

7. At this stage, it may also be relevant to quote Regulation 20(2) and (3) which reads as under:-

> "**20(2)** 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 3 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 3 months or remit the requirement of notice.
>
> **20(3)(i)** An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval, in writing of competent authority and any notice of resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.
>
> **(ii)** Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority."

8. A bare reading of the aforesaid provision goes to show that the regulation envisages the following situations. Firstly, in normal case three months' notice period is required before resignation tendered become effective unless ofcourse the notice period is waived by the competent authority. The second situation envisaged is where the disciplinary proceedings are pending against the concerned incumbent and in that situation any notice of resignation given during pendency of the disciplinary proceedings shall not take effect except it is accepted by the competent authority. The regulation also envisages that disciplinary proceedings shall

be deemed to be pending if either the incumbent has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings may not be instituted against him and the same shall be deemed to be pending unless the proceedings culminate into a final order.

9. In the case in hand, when the resignation was tendered by the respondent-petitioner giving three months' notice, neither any disciplinary proceedings was pending against him nor he was placed under suspension nor he was put to any notice to show cause with respect to any disciplinary proceedings to be instituted against him. It was only after expiry of period of three months, a charge sheet was served upon him. Thus the bar created by Regulation 20(3) of the Regulations, 1976 was not operative and there was no hindrance in accepting the resignation. However, as a fact the resignation was neither accepted nor rejected.

10. In the backdrop of above facts, following two issues which arises for consideration are:-

> (i) whether the resignation tendered by the appellant was unilateral or bilateral act and whether its acceptance by the competent authority was necessary?
>
> (ii) whether in the facts and circumstances, the appellant bank was legally justified in accepting the resignation after conclusion of the disciplinary proceedings which culminated into the punishment order after lapse of three years?

11. Resignation means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. In general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. Such act

of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it.

12. In the case of ***Moti Ram v. Paramdev and another (1993) 2 Supreme Court Cases 725,*** Hon'ble Apex Court in respect of unilateral and bilateral character of relinquishment of an office has observed as under:-

> "………If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in prasenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of anoffice is unilateral or' bilateral in character would depend upon the nature of the office and conditions governing it."

13. It is thus clear that resignation of an employee may assume different forms depending upon the nature of the office and conditions governing it. It could be prospective, unilateral or bilateral. The first becomes effective after expiry of due date, the second immediately. The resignation whether it is unilateral or bilateral, test to determine it can be gathered from Moti Ram's case (supra) where the Chairman of the Board

had send his resignation with immediate effect. The High Court held that if becomes effective only when it is accepted. The Apex Court did not agree as the provision of acceptance of resignation after the notification was for members only. The Court held that where the provision of the Act and the Regulations requires acceptance of the resignation it assumes the character of bilateral but since there was no provision for Chairman it was unilateral.

14. Applying the above test to the facts of the present case and on analysis of the provisions of Regulation-20, it is clear that there is no provision of any acceptance or rejection of resignation by the appellant bank. This view taken by us finds support from the decision of the Hon'ble Apex Court in the case of ***Punjab National Bank v. P.K.Mittal 1989 Supp. (2) Supreme Court Cases 175*** wherein on analysis of Regulation 20(2) of the Regulations, it has been observed as under:-

> "....There is no provision for any acceptance or rejection of the resignation by the employer, as is to be found in other rules, such as the Government Services Conduct Rules.

15. In view of the aforesaid analysis, the answer to issue No.1 is that the resignation submitted by the respondent-petitioner was a unilateral act and it did not require any acceptance or rejection by the appellant bank. In other words, the resignation would have become effective automatically on expiry of a period of three months from the date of tender.

16. Coming to issue No.2, it is clear that under the Rules, the resignation submitted by the respondent was a unilateral act and did not require any acceptance or rejection and would have become automatically effective. However, by conduct both the appellant and the respondent did not treat it to be effective. In so far as the appellant bank is concerned, since it initiated disciplinary proceedings by serving the charge sheet after expiry of

the period of three months notice, thus treated the respondent-petitioner to have continued in service and the respondent-petitioner also by succumbing and submitting himself to disciplinary proceedings by implication treated his resignation as ineffective or in other words withdrawn. Since by conduct of both the parties, the resignation became ineffective and particularly the conduct of the respondent-petitioner clearly indicate that it stood withdrawn by implication, the same could not have been accepted by the appellant bank after conclusion of the disciplinary proceedings and infliction of punishment upon the respondent-petitioner.

17. At this stage it may be relevant to refer to certain factual aspects of the matter whereupon an inference could be drawn that the resignation of the respondent-petitioner could not have been accepted vide order dated 31.03.1993. It is undisputed that a communication was made to the respondent-petitioner stating that the resignation has not been accepted by the Management due to pending disposal of the disciplinary proceedings against him. It is an altogether different matter that the appellant bank failed to establish that any disciplinary proceeding was pending against the respondent-petitioner.

18. The communication dated 12.09.1991 was challenged by the respondent-petitioner by filing a Civil Writ Petition No. 10538 of 1992 seeking a writ of certiorari to quash the communication dated 12.09.1991 with a further prayer to command the bank to accept the resignation. The writ petition was contested by the appellant bank by filing the written statement pleading inter-alia that the resignation could not be accepted because (i) the resignation was not sent to the competent authority and hence the resignation was not proper and cannot be accepted and (ii) pendency of disciplinary proceedings against the petitioner. The aforesaid writ petition

was dismissed by a Division Bench of this Court by making the following order on 30.09.1992:-

> "In the circumstances, we do not consider this a fit case to exercise our jurisdiction under Article 226 of the Constitution. We, consequently dismiss the writ petition but with the direction to the respondent bank to complete the enquiry against the petitioner within three months. It is to be assumed, of course, that the petitioner with cooperate with the enquiry."

19. Thus the rejection of the resignation tendered by the respondent-petitioner stood affirmed by this Court. The order having attained finality it is not open to either of the parties to take any contrary stand insofar as the resignation is concerned and thus it was not at all open to the appellant-bank to have accepted the resignation on 31.03.1993. The same is totally impermissible in view of the order dated 30.09.1992 passed in Civil Writ Petition No. 10538 of 1992 in between the parties.

20. For the facts and reasons stated hereinabove, we do not find any illegality in the view taken by the learned Single Judge in allowing the writ petition and setting aside the acceptance of the resignation vide communication/order dated 31.03.1993. Thus, the impugned order impugned in this appeal does not warrant any interference. The appeal is devoid of merits and accordingly stands dismissed. However, in the facts and circumstances, we do not make any order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.09.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No