

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3319 of 2019

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Premchand, aged about 32 years, Gender – Male, Son of Sri Prakash Chandra, Permanent Resident of Premalaya, Behind Punjab National Bank, Tulsigarh, Nalanda, presently Residing at 14, Sahyogpuri, Chitragupta Nagar, Police Station- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. Uttar Bihar Gramin Bank through its Chairman, Head Office at Kalambagh Chowk, P.S.- Muzaffarpur Town, District- Muzaffarpur.
2. The Chairman cum Appellate Authority, Uttar Bihar Gramin Bank through, Head Office at Kalambagh Chowk, P.S.- Muzaffarpur Town, District- Muzaffarpur.
3. The General Manager, Uttar Bihar Gramin Bank through Head Office at Kalambagh Chowk, P.S.- Muzaffarpur Town, District- Muzaffarpur.
4. The Regional Manager, Madhepura Region, Uttar Bihar Gramin Bank, Satish Chandra Ghosh Path, Subash Chowk Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Abhinav Srivastava, Surya Swetabh, Advs
For the Respondent/s : Mr Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 13-09-2019

Heard learned counsel for the parties.

2 Writ petition has been filed for quashing the order dated 06.08.2018 issued by the Chairman of the respondent-Uttar Bihar Gramin Bank (for brevity, the Bank) in appeal affirming petitioner's termination of service. Earlier order of the General Manager of the Bank terminating the services of the petitioner



which is dated 24.01.2017 has also been assailed in the instant proceedings.

3 Brief factual background is that the petitioner was serving in the respondent-Bank as an officer and submitted his resignation on 28.07.2016. Petitioner, thereafter, has given an application for withdrawing his resignation on 21.11.2016. Submission advanced on behalf of the petitioner's counsel is that in view of the communication in between, i.e., the letter issued by the Bank (Annexures 4 and 5), petitioner's resignation could not be said to have taken effect as the clear mandate of the Bank in the said Communication was that the acceptance of his resignation could be processed only subject to fulfillment of certain requirements and payments which were required to be done by the petitioner. Relying upon the other communications from the Bank dated 05.11.2016 as well as the Communication dated 28.11.2016, it is submitted that all along the various correspondences issued from the Bank clearly contemplated the fact that the petitioner's resignation could not be accepted. In the circumstances, it is submitted by the learned counsel for the petitioner that the petitioner all along had locus poenitentiae to resile or withdraw from his option of resignation in terms of Rule 10 of the Uttar Bihar Gramin Bank Officers and Employees Service Regulation,



2010 (for brevity, “2010 Regulation”). Learned counsel for the petitioner has urged that the petitioner’s resignation was not being processed. He has also given a clear application specifically expressing his desire to rejoin/withdraw his resignation prior to processing of the same and, therefore, on account of such discretion having been exercised prior to acceptance of his resignation, the Bank Authority should allow him to rejoin the Bank. The two Communications exercising his discretion to withdraw his application for resignation are 21.11.2016 and 04.12.2016. Petitioner’s counsel has placed reliance on the judgment of the Apex Court in the case of Raj Kumar -Versus- Union of India, AIR 1969 Supreme Court 180 as also the judgment of the Apex Court in the case of Punjab National Bank -Versus- P K Mittal, 1989 Supp (2) Supreme Court Cases 175. He has reiterated the settled legal position that till such time, the application for resignation takes effect by acceptance or otherwise, the person tendering the resignation would have locus poenitentiae to withdraw the same. Placing reliance upon the Communication issued by the Bank imposing conditions for acceptance of resignation, he submits that resignation, in the instant case, was never accepted and, as such, in terms of the settled legal position,



the petitioner's request for rejoining/withdrawing resignation ought to have been accepted.

4 Issue arising in the instant case hinges upon the provisions contained in the 2010 Regulation, which are relevant for terminating service by notice/resignation. This Court would, therefore, consider it useful to reproduce Regulation 10 of the 2010 Regulation which reads as follows:

*"10. Termination of Service by Notice. - (1)
(a) No officer or employee shall leave or discontinue his service in the Bank without first giving notice in writing to the Appointing Authority of his intention to leave or discontinue his service or resign;*

(b) The period of notice required shall be, -

(i) three months, in the case of confirmed officer or confirmed employee,

(ii) one month, in the case of officer or employee who is on probation,

(c) In case of breach of clause (b) of sub-regulation (1), an officer or employee shall be liable to pay to the Bank as compensation a sum equal to his pay for the period of notice required of him.

(2) Notwithstanding anything to the contrary contained in sub-regulation (1), an officer or employee against whom disciplinary proceeding is contemplated or pending shall not leave, discontinue or resign from his service in the Bank without the prior approval of the Appointing Authority and any notice of resignation given by such officer or employee before or during the disciplinary proceeding shall not take effect unless it is accepted by the Competent Authority.



Explanation. - For the purposes of this regulation, disciplinary proceeding shall be deemed to be contemplated or pending against an officer or employee if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceeding should not be instituted against him until final order are passed by the Competent Authority.”

5 Learned counsel for the respondent-Bank has submitted that the order of the Chairman affirming the termination clearly records the stand of the Bank which is duly supported by the provisions contained in Regulation 10 of the 2010 Regulation. Drawing attention of the Court towards the observations made by the Chairman in the order dated 06.08.2018, it is submitted that the resignation of the petitioner, in view of the provisions contained in Regulation 10 of 2010 Regulation took effect automatically on completion of three months, i e, with effect from 27.10.2016. The master-servant relationship ceased thereafter. Submission is advanced by placing reliance on Regulation 10 of 2010 Regulation which clearly contemplates that the termination which is akin to voluntary resignation is to take effect on completion of three months from expression of intention to leave or discontinue. There was no occasion for any acceptance by the Authority under the scheme of the Rule, of such request made by the petitioner.

6 The question of acceptance could arise only if there was any pending and/or contemplated proceeding against the



petitioner. Placing reliance upon Regulation 10 (2) of 2010 Regulation, Mr Ajay Kumar Sinha submits that the only exception to “automatic acceptance” is contained in Clause (2) of Regulation 10 of the 2010 Regulation and that also only where a departmental proceeding is contemplated or already initiated.

7 Learned counsel for the Bank has also relied upon the decision of P K Mittal (supra). He has laid emphasis on the observations made in paragraph 5 of the said judgment in the background of Regulation 20 (2) of the Punjab National Bank (Officers) Service Regulations, 1979 which fell for consideration in the said proceedings. The said Regulation was similar/identical to that which is arising for consideration in the instant proceedings. He submits that Apex Court, in the said judgment, has clearly held that when there is no provision of acceptance or rejection of the resignation by the employer, the same takes effect automatically on cessation of the period prescribed, as has been done in the instant case. Writ petition, therefore, deserves to be dismissed.

8 There is neither any contemplated or pending proceeding against the petitioner. Resignation of the petitioner, therefore, automatically took effect on 27.10.2016. It is further submitted that since Regulation 10 of the 2010 Regulation starts



with a heading which used the word “Termination”, the Bank has been referring the said term in its various correspondences. The same has not been used in the penal sense by the Bank as there was no pending proceeding against the petitioner and in view of automatic cessation of master-servant relationship, none could be initiated after 27.10.2016. The correspondence laying down conditions was only reiterating the obligations of the petitioner under Clause (c) of Regulation 10 of 2010 Regulations and had no other implications. The other submission is that in view of the provisions contained in the Regulations, the Bank had no further discretion in the matter. In view of the provisions contained in the 2010 Regulation, the petitioner as well as the Bank both were conscious that the cessation of the service would take effect upon completion of three months from the date of submission of resignation, i.e., on 27.10.2016. The same at best could have been subject to the three months’ notice periods, or emoluments as contemplated under sub clause (c) of Regulation 10 of 2010 Regulations.

9 Learned counsel for the Bank has also submitted that the provisions of 2010 Regulation were not only known but understood by both the parties in this sense only. In order to support this contention, he placed reliance upon Annexure R 11



which is a Communication from the petitioner dated 25.09.2018. By the said Communication, the petitioner has placed reliance upon cessation of his services by virtue of his resignation with effect from 27.10.2016 and has requested for a detailed Experience Certificate as he was requiring the same for his near career prospects. The Bank, based on the said Communication, has also issued the Experience Certificate to the petitioner on 27.09.2018. In view of the said Communication, it is apparent that the fact that the 2010 Regulation contemplated automatic acceptance of resignation upon completion of three months from the notice and the fact that actually, the same had taken effect, were known to the petitioner and upon such premise, he has even obtained the Experience Certificate from the Bank. Having done so, the petitioner, thereafter, by way of filing this writ petition, has approached this Court about 5 – 6 months thereafter. The submissions advanced by the petitioner are, therefore, not tenable and cannot be sustained, not only on the basis of the Regulations, but having regard to the conduct of the parties.

10 Having considered the rival submissions as well as Regulation 10 of the 2010 Regulations, this Court would observe that the same contemplated automatic cessation of service by giving notice in writing to the Appointing Authority of intention to



leave or discontinue the service, or by resignation. The period of notice was three months in case of the petitioner. Termination of service by notice under Regulation 10 provides for resignation by giving a three months' notice and upon lapse of the notice period. From bare perusal of sub-clause (2) of Rule 10 of the 2010 Regulations, it is apparent that only such officer or employee against whom disciplinary proceeding is contemplated or pending could not resign by invoking Regulation 10, without the prior approval of the Appointing Authority. Sub-clause (2) of Regulation 10 also contemplates one more circumstance where the resignation was not to take effect upon lapse of three months period. The second circumstance is where the notice of resignation is given by an employee or officer before or during the disciplinary proceeding. These are the only circumstances which, as per the mandate of Regulation 10 of the 2010 Regulations require prior approval of the Appointing Authority. In all other cases, the scope and object of Regulation 10 is clear that the resignation would take effect after lapse of three months notice period. The Rules, in respect of employees/officers against whom proceedings were neither contemplated nor pending, such as petitioner, clearly contemplates automatic cessation of service/resignation upon lapse of three months notice period.



11 The Communications “Annexures 4 and 5” relied upon by the petitioner’s counsel do not further the case of the petitioner. By the said correspondence, the Bank has merely called upon the petitioner to make payment of the dues pending against him. There is no contemplated or pending disciplinary proceeding against the petitioner on record in writ proceedings so as to attract sub-clause (2) of Regulation 10 of the 2010 Regulations.

12 In the circumstances, by effect of the provisions contained in the Regulation, petitioner’s resignation has taken effect on lapse of three months notice period.

13 Pleadings on the records also show that petitioner is conscious of his resignation having been accepted by virtue of the 2010 Regulations. It is in these circumstances that he has, by Letter dated 25.09.2018, requested for a detailed Experience Certificate from the respondent-Bank by virtue of his resignation from the services of the Bank with effect from 27.10.2016.

14 In the aforesaid circumstances, the petitioner, by conduct, has shown that he was conscious of automatic acceptance of his resignation and has acted accordingly. Having done so, petitioner cannot be permitted to make a volte face and turn around to contend that the resignation was subject to acceptance and that till date, the same has not taken effect.



15 Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2019
Transmission Date	NA

