

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.895 of 2018

In
Civil Writ Jurisdiction Case No.5731 of 2015

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Kavita Kumari W/o Rabindra Prasad Singh, resident of 36, Nandanpuri, P.O.-
B.V. College, Khajpura Maurya Path, P.S.- Shastrinagar, Patna-14

... .. Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Director General of Police, Bihar Old Secretariat, Patna.
3. Additional Director General of Police, Military Police, Bihar, Patna.
4. D.I.G. of Police Military Police Central Zone, Patna.
5. Commandant, Mahila Military Police, Sasaram.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ram Hriday Prasad, Advocate Mrs. Maruti Kumari, Advocate
For the Respondent/s	:	Mr. Saroj Kumar Sharma, A.C. to A.A.G.-3

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-07-2019

I.A. No. 4882/2018

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.

L.P.A. No. 895 of 2018

Heard learned counsel for the appellant who has come up questioning the correctness of the judgement of the learned Single Judge dated 3rd April, 2018 whereby the prayer of



the appellant for quashing of the order dated 19th June, 2012 accepting her resignation has been declined.

The appellant was a Constable in the Women's Wing of the Bihar Military Police posted at Sasaram. The appellant tendered a resignation letter dated 12th of June, 2012. The tendering of the said letter is not disputed. A perusal of the contents of the said letter of resignation recites that since the appellant is facing resistance from her family members in continuing with the employment, and her husband also does not wish her to continue in the police services which has also been in the past a cause for strained relationship between them therefore she was relinquishing her post. She is also about to attain motherhood and therefore wanted to resign and, accordingly, having no options left, she was tendering her resignation.

The resignation of a personnel of Police services in the establishment is undisputedly governed by Rule 808 of the Bihar Police Manual, 1978. The same is extracted hereinunder:-

“808. Resignations.- All resignations by Police officers shall be in writing, signed by persons making the application. They are required to give two months notice to be relieved under section 8 of the Police Act but higher authorities may relieve them earlier. A



resignation once offered cannot be legally withdrawn but some time should be given to those who offer resignation and the authorities should not be in a hurry to accept it.”

The appellant was thereafter vide letter dated 12th June, 2012 offered a couple of days to make up her mind about the resignation tendered by her. The said letter is also on record.

The appellant is stated to have voluntarily tendered a letter on 13th June, 2012, the contents whereof are also not disputed, where she has indicated that since her mother has died and since her mother-in-law has already passed away, there would be nobody to look after her child which was to be delivered shortly and, therefore, upon an overall assessment of the circumstances, she had tendered her resignation. She further stated that in these peculiar facts and on account of her own helpless state that she was tendering the resignation which should be accepted.

The same was repeated by another letter tendered by her on 14th of June, 2012 itself. All these documents are on record and the contents whereof have not been disputed.

The Commandant vide order dated 19th June, 2012 accepted the resignation and relieved the appellant.

The appellant appears to have moved a



representation before the Deputy Inspector General of Police on 13th of April, 2013 i.e., almost after 10 months of the tendering of the resignation praying that the resignation may be permitted to be withdrawn and she may be permitted to join her services inasmuch as she had under certain compulsions tendered her resignation. In this representation, she asserted that there were adverse family circumstances and she was also pregnant hence she had applied for leave, but she was not granted leave. She has further stated that her mental condition was disturbed and she was not in a position to think any further. She further asserted in her representation dated 16.09.14 that ample time had not been given to her and that the resignation came to be hurriedly accepted by giving her only two days' time.

It is in this background that the appellant preferred the writ petition giving rise to this appeal. Learned counsel for the appellant has vehemently contended that it was on account of the forced circumstances mentioned above and denial of leave that led to the submission of her resignation which was acted upon hurriedly, that too even not by the higher authorities and without waiting for the gestation period as provided for under Rule 808 quoted hereinabove. The acceptance of the resignation is otherwise invalid and, hence, it should be



quashed.

Learned counsel has relied on the judgement of the Apex Court in the case of **Dr. Prabha Atri Vs. State of U.P. & Ors.**, reported in **(2003) 1 SCC 701** and two Division Bench judgements of this Court in the case of **Dr. N.P. Rao Vs. Tata Iron and Steel Company Limited**, reported in **1990 BBCJ 149** and **Rakhi Kumari Vs. State of Bihar 2014 (3) P.L.J.R. 443**. He submits that the facts and circumstances of the present case clearly indicate that the appellant was virtually forced into circumstances which left no option for her but to resign and, therefore, the same was not a voluntary resignation. The contention further is that acceptance is not in accordance with Rule 808 which aspect has not been considered by the learned Single Judge.

Replying to the aforesaid submissions, learned counsel for the State contends that the resignation was absolutely voluntary which is evident from the tenor of the language of the letters written by the appellant, the contents whereof are not disputed and once the resignation has been accepted by the competent authority, then the same cannot be withdrawn for which the learned counsel for the respondent has relied on a judgement of this Court in the case of **Chand Mal**



Chayal Vs. State of Rajasthan reported in **(2006) 10 SCC 258**, where it has been held that it is well settled that an incumbent is entitled to withdraw resignation only before its acceptance and not thereafter.

We have considered the submissions raised and the first issue is as to whether the resignation was a forced resignation or had it been tendered voluntarily. We may clarify at the outset that there is no evidence of the appellant having been refused leave.

We have gone through the contents of the letter of resignation dated 12th of June, 2012 that has been filed as Annexure-A to the counter affidavit of the respondents before the Writ Court. As narrated above, the appellant in unequivocal terms has stated that she was tendering her resignation on account of the resistance of her family members who were against her continuance in service. The second ground taken is that her husband also did not want her to continue in police services and thirdly on the ground of her personal relationship with her husband being strained. She, however, also mentioned about the status of her maternity that she was about to become a mother and, therefore, in view of all the said circumstances, she was left with no option but to resign.



The tenor of the letter of resignation creates a solitary impression that it was not on account of undue influence or coercion on behalf of the employer, but it was only her family circumstances that compelled her to tender the resignation as she was unable to find any other way out. Consequently, we are of the considered opinion that the letter of resignation is not one where any threat or undue influence or any other *mala fide* can be attributed to the employer. It was volitional and intended to relinquish the job on account of the personal family circumstances of the appellant.

The said letter of resignation was tendered before the competent authority who, under Rule 808 quoted above, is entitled to receive it and upon receipt of the same, it is evident that the appellant had been given a couple of days to re-think over the matter.

The appellant in her subsequent letter dated 13th June and 14th June, 2014 respectively did not indicate any such compulsion or any such impression that may amount to a coercion on the part of the employer in not extending the benefit of leave. The letters simply say that since the mother and the mother-in-law of the appellant had died and there was no one to look after the child which was to be shortly delivered, she was



left with no option, but to resign. Thus, even these two letters do not even remotely indicate any such hidden compulsion of refusal of leave or coercion as argued on behalf of the appellant. In the absence of any express or any implied coercion that could be culled out against the employer to contend that the employer took a hurried decision, the arguments raised on behalf of the appellant does not stand to reason.

Apart from this, we find that the letters of acceptance of resignation is after a week i.e., on 19th June, 2012. Rule 808 extracted above grants discretion to the authority to give “some time” to the employee with a rider that the authority should not be in a “hurry” to accept the same. The adjective “some” describes an indeterminate or unstated quantity or number. It also means certain but unspecified. It can also mean an appreciable amount or a considerable quantity or even a rough estimate depending on the context in which it is used. “Hurry” is a transitive verb that means to move quickly or something done in too much haste. It denotes suddenness or undue rapidity. The appellant was given a couple of days and the acceptance came after one week of the tendering of resignation. The period in our opinion was sufficient and the decision to accept the relinquishment was not taken suddenly



but after a week. There was no indication by the appellant in between intending to withdraw the letter of resignation. In such circumstances, it cannot be said that authorities had acted hurriedly or acted in a way which could amount to be an acceptance in undue haste or beyond the purview of Rule 808.

Learned counsel submits that those who intend to resign have to give at least 2 months' notice for being relieved as per Section 8 of the Police Act, 1971. This lapse, if any, is on the part of the appellant and which could not be attributed in the case of a voluntary resignation which the appellant herself insisted upon even after given an opportunity. The provision of the two months appears to be for effective management of the police establishment so as to prevent any sudden instability that may arise on the departure of a member of the force and give ample space to the department for making arrangements in advance. This period of two months cannot be equated with the phrase of "some time" given to the police personnel for rethinking over the matter. The question of a higher authority to reduce the period of two months in the interest of the establishment would have arisen had the appellant given a notice herself. To the contrary she did not express any desire by giving a notice of intending to resign, but straightaway tendered



her resignation and by repetitive letters asked the Commandant to accept her resignation. She did not give any option to the higher authorities by way of any request that she intended to resign after two months. There is yet another dimension from which the matter can be viewed. Even assuming that the period of two months was required to elapse, the resignation after acceptance became effective because it was upon the expiry of ten months that the appellant changed her mind, may be upon some advice. Consequently, the allegation of any non-compliance of any such procedure cannot come to the aid of the appellant.

Another reason not to accept the arguments raised on behalf of the appellants is that the appellant's resignation was accepted on 19th June, 2012 and the representation which was moved by her before the Deputy Inspector General of Police was almost ten months thereafter. It is, therefore, evident that after she had given birth to a child and had settled herself in life, she thought over to make an attempt to return back to the services. This, in our opinion, was only an attempt to retrieve back her services which was impermissible once the resignation had been accepted keeping in view the submissions raised on behalf of the respondents and the judgement relied on.



Out of the three judgements which have been referred to by the learned counsel for the appellant, in the case of Dr. Prabha Atri (supra) we find that the employee therein had tendered her resignation as she had experienced disgust and sheer frustration on account of the conduct of the employer. It is in that context that the Apex Court came to the conclusion that the same did not amount to a voluntary resignation and was an outcome of a veiled threat by the employer that was bordering coercion where the circumstances created by the employer had driven her to the wall.

The next decision relied on by the learned counsel is in the case of **Rakhi Kumari Vs. State of Bihar** passed in **2014 (3) PLJR 443** wherein an Anganwari Sevika had tendered a resignation levelling allegations against the Mukhiya of a Gram Panchayat concerning her safety and security and that of her husband. The same appears to have been taken as a circumstance to construe that the resignation was not voluntary.

Learned counsel for the appellant has placed before the Court the judgement in the case of Dr. N. P. Rao (supra) which is an exhaustive judgement on the subject. In the said case also, the matter had travelled upto the High Court arising out of proceedings before the Industrial Tribunal where the issue



arose as to whether the resignation tendered was voluntary or under a compulsion that was otherwise an act of termination by the employer. While dealing with the issue of voluntary resignation, the Division Bench held that a resignation obtained by force, coercion or threat which is not a voluntary one, would fall within the purview of a forced resignation and would amount to a termination otherwise. Several other observations after having dealt with on the entire law were made and it was also held that requirement of proof of undue influence or coercion has to be established by the person levelling any such allegation. This was necessary in order to determine as to whether resignation was voluntary or not. In the said decision, the finding arrived at was that the Officer who had summoned the employees had already kept with himself pre-typed resignation letters which the employees were virtually compelled to sign. It is in this context that the Court came to the conclusion that the resignations obtained were compulsive and the act of the employees was clearly involuntary.

The said decisions, in our opinion, do not match with the facts of the present case of the appellant where the admitted position in the contents of the letters of resignation and communications subsequent thereto leave no room for doubt



that the resignation tendered by the appellant was prompted by her own desire, willingly and spontaneous without any allegation of threat, coercion or undue influence. The resignation being an outcome of pure family circumstances of the appellant was voluntary and can, in no way, be termed to be a forced resignation. The tendering of the resignation a prelude, the two letters supporting the same an interlude and the acceptance a postlude, all in one assembly line are in perfect tune with no space to doubt the intention of the appellant. The acceptance having been made by the authority competent to do so, we for all the reasons aforesaid find no error in the acceptance of the resignation and, consequently, the impugned judgement of the learned Single Judge does not call for any interference.

The appeal is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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