

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.23160 of 2015

Date of Decision : 28.01.2020

Dalip Kumar Bhattacharya

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Namit Kumar, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Mukesh Kumar Verma, Advocate
for respondent Nos.4 and 5.

B.S. Walia, J.

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order Annexure P/10 dated 20.10.2015, relieving the petitioner from service on the basis of notice for resignation, Annexure P/3 dated 21.07.2015 despite the same having been withdrawn vide communication Annexure P/5 dated 07.10.2015. Prayer is also for the issuance of an appropriate writ, order or direction for declaring the action of the respondents in forcibly relieving the petitioner from service on 20.10.2015, as illegal, arbitrary and violative of Articles 14

& 16 of the Constitution of India. Lastly, prayer is for the issuance of a writ of Mandamus for directing the respondents to reinstate the petitioner in service and to grant him the pay scale of Rs.8000-13500 along with arrears and all consequential benefits.

2. Brief facts of the case leading to the filing of the writ petition are that initially the petitioner was serving as Headmaster in the Hindu High School, Model Town, Rewari (hereinafter referred to as 'the School') from October, 1999 to 31.04.2002, whereafter the petitioner was appointed as Headmaster in terms of letter Annexure P/1 dated 30.06.2009 and he joined as such on 01.07.2009. Grievance of the petitioner is that although he along with other staff of the school had been performing duty to the entire satisfaction of the management, yet their salary was not released w.e.f. September, 2014 onwards despite requests and representations, some of which are collectively attached along with the writ petition as Annexure P/2, dated 08.07.2015 and 29.07.2015 and as the petitioner was the only bread winner in the family and was living in a rented accommodation and had to look after the education of his children, in the absence of any source of income except salary that was not paid to him, the petitioner out of frustration submitted notice of resignation Annexure P/3 dated 21.07.2015 for being given full and final payment of dues including gratuity, annual increments for the year 2014 and 2015, dearness allowance, besides arrears on account of revision of pay scale of Headmaster before acceptance of resignation.

3. In response to the conditional notice, the school management vide letter dated 10.08.2015, wrote back that salary had

been blocked by the state authorities and not the management, that full and final payment of balance salary and arrears, would be paid as per government norms/instructions, Annexure P/4 and that the petitioner would be relieved from service after three months in view of the notice of resignation dated 21.07.2015. However, vide Annexure P/5 dated 07.10.2015, the petitioner via speed post, wrote amongst others to the school authorities controverting the stand of the management of salary having been delayed because of government policy, that notice regarding acceptance of resignation had not been issued by the competent authority, therefore, it be treated as null and void, his notice was conditional that the school management make full and final payment before the expiry of the notice date but no payment had been made, therefore, he withdrew his notice and informed of his intention to serve the institution till retirement. The District Education Officer, Rewari on the representation of the petitioner vide Annexure P/6 directed the school management vide order dated 14.10.2015 *‘do not relieve the petitioner from official duty till further orders or till approval was received from the department’*. Thereafter, the petitioner submitted representation Annexure P/7 dated 20.10.2015 to the District Education Officer, Rewari, in continuation of order Annexure P/6 dated 14.10.2015, to take immediate steps to prevent the school management from relieving him from service. However, on 20.10.2015 itself, the petitioner was forcibly compelled to hand over the official keys with all necessary record without supplying relieving order or no dues certificate while informing him that a sum of Rs.3,19,943/- had been deposited in his salary account on 20.10.2015.

In the circumstances, the petitioner submitted another representation Annexure P/8 dated 20.10.2015, to the District Education Officer, Rewari, requesting intervention and issuance of directions to the respondents to allow him to perform duty. Although the petitioner was forcibly relieved on 20.10.2015, without issuing him any order/relieving order, the petitioner managed to get a copy of the relieving order i.e. Annexure P/10 dated 20.10.2015, from the office of the District Education Officer, Rewari.

4. Grievance of the petitioner is also that pay scale of Headmasters in non-government aided schools in the State of Haryana had been revised vide notification Annexure P/11 dated 30.04.2010, w.e.f. 01.01.2006 from Rs.7500-12000 to Rs.8000-13500, but the said pay scale was not granted to the petitioner, although the same was granted to various other Headmasters working in non-government aided schools like Shri Anil Kumar Yadav, who was working as Headmaster in Satish Public Senior Secondary School, Delhi Road, Rewari and despite the petitioner having submitted representation Annexure P/12 (colly) dated 20.03.2012 with endorsement dated 31.03.2012, which was forwarded by the District Education Officer, Rewari to the Manager, Hindu Senior Secondary School, Rewari, to fix the pay of the petitioner as per notification. The petitioner has also given details of the dues which were to be paid by the management to him. The same are reproduced as under :-

1.	Salary from December, 2014 to July, 2015= 18 months October, 2015= 20 days	8x40,000=3,20,000 20x1500=30,000
2.	DA arrears w.e.f. 1st January 2013 till date	50,000/-

	@ 8% w.e.f. July, 2013 till date @ 10% w.e.f. 1 st January, 2014 till date @ 10% w.e.f. 1 st July 2014 till date @ 7% w.e.f. 1 st July 2015 to October 2015 @ 6%	
3.	July, 2014 and July 2015 annual increments 3%+3%	3200
4.	Leave encashment	67,500
5.	Gratuity	1,35,000
6.	Difference of pay scale from Rs.7500-12000 to 8000-13500	60,000
	Total dues	6,65,700-00
	Money transferred to the account by the school on 20.10.2015	3,90,943-00
	Difference balance	2,74,757-00

5. In the aforementioned background, learned counsel for the petitioner contended that once notice of resignation Annexure P/3 dated 21.07.2015, which was to be effective on 20.10.2015, was withdrawn by the petitioner vide Annexure P/5 dated 07.10.2015, the petitioner could not have been relieved, but despite the same the petitioner was forcibly relieved contrary to settled law that resignation could always been withdrawn before it was accepted in view of the decision of the Supreme Court in *Balram Gupta versus Union of India AIR 1987 (Suppl. Supreme Court Cases) 228*, *J.N. Srivastava versus Union of India AIR 1998 (9) SC 995*, *Nand Keshwar Prashad versus Indian Farmers Fertilizers Cooperative Ltd. and others 1991 (1) SCT 276* and *Shambu Murari Singh versus Project and Development India Ltd. 2002 (2) SCT 400*, therefore, the petitioner was entitled to continue in service till attaining the age of superannuation, that even otherwise, notice of resignation Annexure P/3 dated 21.07.2015 was

conditional as a number of dues were to be paid by the school management but the same were not paid to the petitioner and in view of the said conditions not having been fulfilled and as on date of filing of the writ petition an amount of Rs.2,74,757/- being due to the petitioner from the school, the resignation could not have been accepted, therefore the action of the school management in accepting the resignation of the petitioner despite even the directive vide Annexure P/6 from the District Education Officer, Rewari suffered from legal malice. In the circumstances, the writ petition was liable to be allowed and the petitioner reinstated in service with all consequential benefits till attaining the age of superannuation.

6. Written statement has been filed on behalf of respondent Nos.2 and 3 by the District Education Officer Rewari and on behalf of respondent Nos.4 and 5 by Shri Mukesh Kumar Verma, Advocate, without the same having been signed by any of the school authorities. In the written statement filed on behalf of respondent No.2 and 3, it has been pleaded that the petitioner himself intended to resign and the resignation having been accepted by the management before the request for withdrawal was made, the writ petition was not maintainable.

7. In the written statement filed by Mr. Mukesh Kumar Verma, Advocate, on behalf of respondent Nos.4 and 5, reference has been made to Rule 104 of the Haryana School Education Rules, 2003. The same is reproduced as under :-

“104. Resignation - Sections 24(2) and 8. - The resignation submitted by a temporary employee of an aided school shall be

accepted within a period of thirty days and that by permanent employee within a period of ninety days from the date of receipt of the resignation by the managing committee with the approval of the appropriate authority :

Provided that if no approval is received from appropriate authority within thirty days, then such approval shall be deemed to have been received after the expiry of the said period.”

8. Stand taken by respondent No. 4 and 5 in the written statement is that notice of resignation dated 21.07.2015 submitted by the petitioner was accepted by the management as per Rule 104 within 90 days from the date of submission of the resignation and the same was accepted in terms of meeting of the management held on 02.08.2015 and intimated to the petitioner through the Secretary vide letter dated 10.08.2015. Thereafter, vide letter dated 18.08.2015, request was made to the Director, School Education Haryana, Chandigarh, for approving the acceptance of resignation being the appropriate authority in terms of Rule 104 of the Haryana School Education Rules, 2003 and since no approval of the appropriate authority was received by the school management within 30 days, the approval was deemed to have been received after the expiry of the said period. Accordingly, request letter of the petitioner withdrawing resignation was ignored and he was relieved from service w.e.f. 20.10.2015. Besides the petitioner had handed over the keys to one Amardeep Singh, that the balance salary and arrears i.e. Rs.3,90,943/- were transferred in the account of the petitioner on 20.10.2015 before issuing relieving letter to him, but two years annual increment was not

paid to him since the performance of the school and the results of the school were bad and during the principal-ship of the petitioner, the result had gone from bad to worse, that the petitioner was not entitled to leave encashment and gratuity as per the provisions of the Haryana Aided Schools (Special Pension & Contributory Pension Fund) Rules, 2001. Likewise, neither re-fixation of salary has been done in favour of the petitioner by the department vis a vis claim of pay scale of Rs.8000-13500, further since the resignation of the petitioner had been accepted in accordance with the statutory rules and had been communicated to the petitioner, the same had become effective, therefore, it was not open to the petitioner to withdraw the resignation, that three months notice prior to resignation was mandatory as per the terms and conditions of the appointment letter Annexure P/1 dated 30.06.2009, however, acceptance of the offer of resignation was governed by Rule 104 of the Haryana School Education Rules, 2003, that the management wanted to help the petitioner and other employees by giving refundable loan on account of non-disbursal of salary but the petitioner failed to avail the same, resignation of the petitioner having already been accepted, the petitioner's letter withdrawing resignation while relieving him on 20.10.2015, was ignored and charge of the post of Headmaster was given to the next senior most faculty on 20.10.2015.

9. Learned counsel for the respondents contended that the writ petition was not maintainable against the respondents school as it was not a state instrumentality, secondly that if the petitioner had not been relieved on 20.10.2015, he would now have completed 58 years

of age i.e. the age of retirement, therefore, even otherwise, the writ petition had become infructuous, that in terms of Rule 104 of the Rules ibid and decision of the Supreme Court in *Modern School Vs. Shishpal Sharma and others*, 2007 (8) SCC 540, resignation could not be withdrawn pursuant to acceptance of the same. Learned counsel also relied upon the decision of the Supreme Court in *Air India Express Limited and others vs. Capt. Gurdarshan Kaur Sandhu* 2019 (4) SCT 183.

10. I have considered the submissions of learned counsel for the parties and am of the view that the writ petition is liable to be allowed for the reasons recorded hereunder. Admittedly, there is no dispute with the proposition of law settled in *Modern School's* case (supra) as well as in *Air India Express Ltd.'s* case (supra). However, the factual situation in the instant case is on a different footing. In *Modern School's* case (supra), no doubt, it was held that resignation submitted by an employee could be withdrawn before its acceptance. In *Modern School's* case (supra), the employee had submitted resignation dated 17.03.1997 and claimed to have withdrawn the same on the next date i.e. 18.03.1997. The resignation tendered by the employee was accepted by the management and forwarded to the Director of Education. The Court found that the purported letter dated 18.03.1997 was never received by the authorities of the school. As per Rule 104-A of the Delhi School Education Rules, 1973, resignation submitted by an employee ought to have been accepted within a period of 30 days from the date of receipt of the same by the Managing Committee with the approval of the Director and if no such approval

was received within 30 days, then such approval was to be deemed to have been received after the expiry of such period of 30 days. Since no order of approval was received by the management from the Director of Education in terms of Rule 104-A, the management vide its letter dated 13.05.1997, informed the authority that they were accepting the request and going to hold fresh recruitment as per rules. Hon'ble the Supreme Court in paragraph No.15 of its judgment held that if resignation was submitted by an employee of a recognized school, it was obligatory on the part of the Managing Committee to accept the same within 30 days and ***such acceptance must be preceded by the approval of the Director in this behalf***. As per the proviso to the Rule in the event approval was not received within 30 days, the same would be deemed to have been received. Paragraphs No.13 and 14 of Modern School's case (supra) are reproduced as under:-

“13. The terms and conditions of the service of the First Respondent are governed by the provisions of the said Act and the rules framed thereunder. We have noticed hereinbefore that if resignation is submitted by an employee of a recognised school, it is obligatory on the part of the Managing Committee of the school to accept the same within a period of 30 days from the receipt of the letter. Such acceptance must be preceded by the approval of the Director in this behalf. Proviso appended to Section 114A of the Act, however, raises a legal fiction that in the event no approval is received within the period

of 30 days, the same would be deemed to have been received.

14. It is neither in doubt nor in dispute that legalities apart, the Managing Committee of the appellant-School accepted the resignation submitted by the First Respondent on 19.03.1997. Acceptance of the said resignation was, however, subject to the approval of the Director of Education. *It is not in dispute that the Director of Education did not communicate his decision in regard to approval or refusal thereof within a period of 30 days from the date of receipt of the said letter and in that view of the matter, subject of course to the withdrawal of the resignation by the concerned employee, the approval would be deemed to have been accorded."*

11. Hon'ble the Supreme Court further held that it was not a case where acceptance of resignation was made effective from a future date and resignation of the employee having been accepted, only he was to be relieved on 17.06.1997 and in view of the statutory provisions, only because the employee was to be relieved on 17.06.1997, the same would not mean that even thereafter it was open to the first respondent to withdraw his resignation and if the purported letter dated 18.03.1997 withdrawing the resignation was excluded from consideration he could not withdraw his resignation at all.

12. In *Air India Express Pvt. Ltd.*'s case (supra), the question in issue was as to whether the respondent who was working with the

appellant could withdraw her resignation tendered on 03.07.2017. Hon'ble the Supreme Court by referring to the resignation letter of the respondent therein held that the same revealed that intimation of resignation was unequivocal and mention of notice of six months being the requirement under the terms and conditions of the appointment letter was as per the requirement under the said terms and conditions but that the resignation also included the intimation that in case the respondent was forced to stay away from home for longer period during notice period, it would be open to her to leave the company without completing the notice period. Paragraph No.15 of the aforesaid decision is reproduced as under:-

“xxx

15. The first sentence shows that the intimation was unequivocal that the respondent was tendering resignation. The following sentence referred to the notice period of six months, being the requirement under the CAR and the terms and conditions of the appointment. The third sentence clearly suggested that in case the respondent was forced to stay away from home for longer periods during the notice period, it would be open to her to leave the company without completing the notice period. The notice period was thus only in terms of the requirements of the CAR.”

13. Para No.14 of the aforementioned decision on the basis of which the findings have been given in para No.15 is also reproduced as under:-

“14. The underlying principle and the basic idea behind stipulation of the mandatory notice period is public interest. It is not the interest of the employee which is intended to be safeguarded but the public interest which is to be sub-served. It seeks to ensure that there would not be any last minute cancellation of flights causing enormous inconvenience to the travellers. It is for this reason that the concerned pilot is required to serve till the expiry of the notice period. The notice period may stand curtailed if NOC is given to the concerned pilot and the resignation is accepted even before the expiring of the notice period. It may, in a given case, be possible that the trained manpower to replace the pilot, who had tendered resignation, could be made available before the expiry of such notice period, in which case the employer is given a choice under Clause 3.7 of the CAR. Even in such eventuality, the guiding idea or parameter is public interest.

The stipulation of notice period is, therefore, only to sub-serve public interest and is designed to enable the air transport undertaking or employer to find a suitable replacement or a substitute. By very nature of the job profile a replacement for a pilot does not come so easily and therefore, the period of six months. The CAR acknowledges the fact that it would require considerable

expenses and efforts to train the concerned replacement before he could be a worthy substitute. The notice period enables the air transport undertaking or the employer to gear itself up in that direction and obliges it to find a substitute or a replacement. The obligation to find a suitable replacement begins immediately on receipt of letter of resignation. In the present case, steps were taken by the appellant to discharge such obligation and replacement in Captain Jiban Mahapatra was found. The normal principle that an employee can at any time before the resignation becomes effective, withdraw his resignation will therefore be subject to the core principles of the CAR. In our view, the instant matter would, therefore, be within the exception stipulated in paragraphs 41 and 50 of the decision in Gopal Chandra Mishra⁴ and paragraph 12 of the decision in Balram Gupta⁵, and the respondent could not have withdrawn the resignation.”

14. Reference is also made to paragraph Nos. 41 and 50 of the decision of the Constitution Bench of Hon’ble the Supreme Court in *Union of India and others vs. Gopal Chandra Mishra and others* 1978 (2) SCC 301. Issue for consideration was as to whether a High Court Judge, who sent letter in his own handwriting to the President, intimating to resign his office with effect from a future date was competent to withdraw the same before that date had reached. Hon’ble the Supreme Court held that letter of notice was to resign in future date

and it was open to withdraw the resignation before the arrival of the indicated future date. Relevant extract of the decision in Gopal Chandras case (Supra) as reproduced in paragraph No. C, D and F of paragraph Nos.10 and 11 of the decision in Air India Express Ltd.'s case (supra) are reproduced as under:-

C) In ***Union of India and others v. Gopal Chandra Mishra and others, (1978) 2 SCC 301*** the issue for consideration was whether a High Court Judge, who had by letter in his own hand writing sent to the President intimated his intention to resign the office with effect from a future date would be competent to withdraw the resignation before the date had reached? The decisions in ***Jai Ram*** and ***Raj Kumar*** were considered and while dealing with the scope of clause(a) of the proviso to Article 217 of the Constitution, the Constitution Bench of this Court stated:

"20. Here, in this case, we have to focus attention on clause (a) of the proviso. In order to terminate his tenure under this clause, the Judge must do three volitional things: Firstly, he should execute a "writing under his hand". Secondly, the writing should be "addressed to the President". Thirdly, by that writing he should "resign his office". If any of these things is not done, or the performance of any of them is not complete, clause (a)

will not operate to cut short or terminate the tenure of his office.

22. It may be observed that the entire edifice of this reasoning is founded on the supposition that the "Judge" had completely performed everything which he was required to do under proviso (a) to Article 217(1). We have seen that to enable a Judge to terminate his term of office by his own unilateral act, he has to perform three things. In the instant case, there can be no dispute about the performance of the first two, namely: (i) he wrote a letter under his hand, (ii) addressed to the President. Thus, the first two pillars of the ratiocinative edifice raised by the High Court rest on sound foundations. But, is the same true about the third, which indisputably is the chief prop of that edifice? Is it a completed act of resignation within the contemplation of proviso (a)? This is the primary question that calls for an answer. If the answer to this question is found in the affirmative, the appeals must fail. If it be in the negative, the foundation for the reasoning of the High Court will fail and the appeals succeed."

The tenor and the effect of resignation were then considered in paragraph 28 and it was held that the letter in question was merely an intimation or notice to resign the office on a future date and it was open to withdraw the

resignation before the arrival of the indicated future date.

The observations were:-

"28. The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated: "I beg to resign my office as Judge, High Court of Judicature at Allahabad." Had this sentence stood alone, or been the only content of this letter, it would operate as a complete resignation in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read : "I will be on leave till July 31,1977. My resignation shall be effective on August 1, 1977." The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an intimation or notice of the writer's intention to resign his office as Judge, on a future date viz. August 1, 1977. For the sake of convenience, we might call this communication as a prospective or potential resignation, but before the arrival of the indicated future date it was certainly not a complete and operative resignation because, by itself, it did not and could not, sever the

writer from the office of the Judge, or terminate his tenure as such."

The Court went on to state the principles as:-

"41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment.

50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the

competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

As regards the applicability of the rule in Jai Ram, it was stated:-

"49. In our opinion, none of the aforesaid reasons given by the High Court for getting out of the ratio of Jai Ram case is valid. Firstly, it was not a "casual" enunciation. It was necessary to dispose of effectually and completely the second point that had been canvassed on behalf of Jai Ram. Moreover, the same principle was reiterated pointedly in 1968 in Raj Kumar case. Secondly, a proposal to retire from service/office and a tender to

resign office from a future date for the purpose of the point under discussion, stand on the same footing. Thirdly, the distinction between a case where the resignation is required to be accepted and the one where no acceptance is required, makes no difference to the applicability of the rule in *Jai Ram case*."

D) In *Balram Gupta v. Union of India, 1987 (Supp) SCC 228* the concerned officer was an accountant in the Photo Division of the Ministry of Information and Broadcasting. While holding that the matter was covered by the decisions of this Court in *Raj Kumar* and *Gopal Chandra Misra*, this Court considered the relevant guidelines and observed :

"12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we

should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set-up or arrangement was affected. The administration has now taken a longtime by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant."

F) In ***Punjab National Bank v. P.K. Mittal*** a permanent officer in the bank sent a letter of resignation on 21.01.1986 in terms of Regulation 20 of PNB (Officers) Service Regulation, 1979, which was to become effective on 30.06.1986. By communication dated 07.02.1986, he was informed that his resignation was accepted with immediate effect. The resignation was withdrawn by the officer on 15.04.1986. The issue therefore arose in the context of said Regulation 20, whether the officer could withdraw the resignation. Regulation 20 was as under :

"20. (1) Subject to sub-regulation (3) of Regulation 16, the bank may terminate the services of any officer by giving him three months' notice in writing or by paying him three months' emoluments in lieu thereof. (2) No officer shall resign from the service of the bank otherwise

than on the expiry of three months from the service on the bank of a notice in writing of such resignation:

Provided further that the competent authority may reduce the period of three months, or remit the requirement of notice."

The submission that Clause 2 of Regulation 20 and its proviso were intended only to safeguard the bank's interest and as such the bank could accept the resignation before the date when it was to come into effect was rejected by this Court in following terms:

7. Dr. Anand Prakash emphasises that as clause (2) and its proviso are intended only to safeguard the bank's interests they should be interpreted on the lines suggested by him.

We are of the opinion that clause (2) of the regulation and its proviso are intended not only for the protection of the bank but also for the benefit of the employee. It is common knowledge that a person proposing to resign often wavers in this decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the

employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires it. The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation. We, therefore, agree with the High Court that in the present case the resignation of the employee could have become effective only on or about 21-4-1986 or on 30-6-1986 and that the bank could not have "accepted" that resignation on any earlier date. The letter dated 7-2-1986 was, therefore, without jurisdiction.

8. The result of the above interpretation is that the employee continued to be in service till 21-4-1986 or 30-6-1986, on which date his services would have come normally to an end in terms of his letter dated 21-1-1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however,

not necessary that there should be any such specific rule.

Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here.

It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in ***Raj Kumar v. Union of India, Union of India v. Gopal Chandra Misra and Balram Gupta v. Union of India.***”

15. That a perusal of Annexure P/3 dated 21.07.2015, reveals three months notice by petitioner requesting that his full and final dues including salary, gratuity, annual increment, DA arrears and arrears on account of revision of pay scale of Headmaster by the department in 2009, be given to him before acceptance of his resignation. The resignation was accepted by the school management on 02.08.2015 and communicated to the petitioner vide Annexure P/4 dated 10.08.2015, while informing him that full and final salary and balance dues would be paid to him as per the government norms/instructions and he would be relieved after three months against his letter dated 21.07.2015. Thereafter, vide letter dated 18.08.2015, request was made by the Managing Committee of the School to the Director, School Education Haryana, Chandigarh, for approving the acceptance of resignation being the appropriate authority in terms of Rule 104 of the Haryana School Education Rules, 2003 but no approval of the

appropriate authority was received by the school management within 30 days. Consequentially, in terms of Rule 104 there was deemed approval on 18.09.2015 i.e. on expiry of 30 days of seeking approval. However, there was no acceptance of the resignation by the Managing Committee after the deemed approval by the appropriate authority i.e. after 18.09.2015. At best the acceptance of request of resignation can be said to be on 20.10.2015 when the petitioner was relieved. The acceptance of notice of resignation dated 21.07.2015 w.e.f. 21.10.2015 vide decision dated 02.08.2015 is of no consequence in the eyes of law since as per the decision in Modern School's case (supra) the acceptance of the resignation is required to be preceded by the approval of the appropriate authority, in the instant case the Director, School Education Haryana, Chandigarh. Since there was no decision of the Managing Committee of the School after the deemed date of approval by the appropriate authority i.e. 18.09.2015 and in the meantime, the petitioner vide letter Annexure P/5 dated 07.10.2015, had withdrawn his three months notice and also informed of his intention to continue to serve the institution till his retirement, the Management could not have relieved the petitioner on 20.10.2015. Thus, there has been violation of Rule 104 in as much as the resignation could not have been accepted prior to approval/deemed approval of the appropriate authority and there being no decision of acceptance of the resignation after the deemed date of approval of the appropriate authority in terms of the decision in Modern Schools case (supra). Thus, the action of the respondent management in accepting the resignation of the petitioner on 02.08.2015 is de hors Rule 104 as

well as the decision in Modern Schools case (supra) and is of no consequence since on 07.10.2015 the petitioner withdrew the notice of resignation prior to its acceptance in terms of Rule 104 on account of non fulfilment by the management of the conditions precedent for acceptance of the resignation as stipulated by the petitioner in his notice namely non payment of revised pay scale / arrears etc.

16. In the light of the position noted above as also the decision of the Constitution Bench of Hon'ble the Supreme Court in Gopal Chandra Mishra's case (supra), besides in Modern School's case (Supra), the writ petition is allowed. The impugned orders are quashed. Acceptance of resignation of the petitioner by the respondents school on 02.08.2015, is set aside. Resultantly, the petitioner is deemed to be entitled to continue in service till attaining the age of superannuation i.e. 30.09.2017. Petitioner is also entitled to retiral benefits as per rules. Respondents shall release the arrears within three months from the date of receipt of certified copy of this judgment and shall also within the aforementioned period, pass a speaking and reasoned order in accordance with rules indicating the entitlement/disentitlement of the petitioner to the payment as claimed by the petitioner vide notice Annexure P/3. Needless to mention in case the petitioner is held disentitled to any of the payments claimed vide Annexure P/3, it would be open to the petitioner to seek redress in respect thereto in accordance with law.

28.01.2020
rajesh.k.khurana

(B.S. Walia)
Judge

Whether speaking/reasoned? : Yes/No
Whether reportable? : Yes/No