

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 654 of 2021**

Smt. Vidya Anant W/o Shri Devendra Lahre, Aged About 36 Years (Middle Management Grade Scale - II Under SBI), R/o Quarter No. B-1279, Krishna Vihar, N.T.P.C. Colony, Jamnipali, Korba, District Korba Chhattisgarh

---- Petitioner

Versus

1. The Assistant General Manager (P P G), Local Head Office, Bhopal, (Madhya Pradesh), District : Bhopal, Madhya Pradesh
2. The Deputy General Manager (B And O) State Bank Of India, Human Recourses Section, Administrative Office, Bilaspur, District Bilaspur Chhattisgarh
3. The Branch Manager, State Bank Of India, S.K. Verma Marg Branch, Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Roop Naik, Advocate
For Res.-Bank	:	Mr. P. R. Patankar, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/03/2021**

1. The present writ petition has been filed challenging the acceptance of resignation dated 30.09.2019 issued by the respondent no.2.
2. The brief facts of the case relevant for disposal of the writ petition is that the petitioner herein was appointed as Clerk under the respondents in March, 2008. Down the line petitioner got promoted to the post of Junior Management Grade Scale-I w.e.f. 20.12.2010 and thereafter was again promoted to the post of Middle Management Grade Scale -II w.e.f. 08.06.2015. The petitioner was posted as Branch Manager at City Branch, District Korba from where she was transferred to Bilaspur. Since the petitioner could not cope with the work pressure and faced some personal difficulties at home the petitioner tendered her application for voluntary retirement on 03.06.2019. In the said letter she had stated that on account

of personal difficulties the petitioner was not interested to continue with her employment and therefore she had applied for the voluntary retirement from service giving four months period of notice, coming to an end on 03.10.2019.

3. The petitioner continued to discharge her duties at Bilaspur when the department considered the application tendered by the petitioner and accepted the same on 30.09.2019 Annexure P-1 whereby the application of the petitioner for voluntary retirement/resignation was accepted w.e.f. 3-10-19. The letter of acceptance of resignation was sent by Email to the concerned Branch from where the Branch Manager had tendered the same to the petitioner vide correspondence dated 09.10.2019 whereby it was intimated to her that her resignation has been accepted w.e.f. 03.10.2019. The said application was duly received by the petitioner also and the petitioner stood discontinued from the service of the respondent Bank.
4. Subsequently on 11.10.2019 for the first time the petitioner submitted an application before the respondent bank stating that she is interested to continue with her employment.
5. The grounds raised by the petitioner in the said application was that since the resignation which she had tendered was not officially accepted and communicated to the petitioner by 03.10.2019, she does not intend to further press upon that application for resignation and prayed for continuity in employment. Thereafter a few more correspondences were made by the petitioner with the respondent bank on the same grounds and authorities concerned having rejected the same has led to the filing of the present writ petition.
6. Counsel for the petitioner submits that plain reading of the Annexure P-5 dated 03.10.2019 submitted by the petitioner would clearly indicate that

her application was seeking for voluntary retirement and she never intended to resign from service neither is the term resignation mentioned in the application, therefore the acceptance of the resignation is perse illegal and bad in law. The second ground raised by the petitioner is that under the service rules governing the respondent Bank minimum period of notice for resignation is three months and since the petitioner had given four months notice technically the application was not maintainable and the same should not had been acted upon by the respondent Bank. It was also the contention of the petitioner that since her request was for voluntary retirement, the bank had an option of either accepting the voluntary retirement under the scheme if any or should have rejected the same on the ground of there being no scheme for voluntary retirement in force.

7. Learned counsel for the petitioner tried to canvass the case on the context that there is a substantial difference between resignation and voluntary retirement and respondent bank had not have power to presume that the application for voluntary retirement was resignation and therefore the presumption of the respondent Bank and treating the application as resignation the acceptance of resignation is therefore improper and illegal. Learned counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Assistant General Manager & Others Vs. Radhey Shyam Pandey, 2020 6 SCC 438** in support of his contentions. Counsel for the petitioner further referred to a decision of this Court in the case of **Asha Ram Suryavanshi Vs. Chhattisgarh Gramin Bank & Another** in **WPS 1692/2011** decided on 26.06.2020.
8. Per contra, learned counsel for the respondent Bank opposing the petition submits that, true it is, an application had been tendered by the petitioner giving four months notice terming it as application for voluntary retirement. However it was the intention and the contents of the said letter which has

to be considered to reach to a conclusion whether the claim was for voluntary retirement or for resignation. Learned counsel for the respondent submits that in her application itself the petitioner has in very specific term mentioned that since she had to take care of her daughter and mother living in Korba and her husband also who has a non transferable service at Korba, she had moved an application for voluntary retirement/resignation which by itself means that she intended to resign from the service. Learned counsel for the respondent further referred to the application in the specific format which the petitioner had submitted on 03.06.2019 where the petitioner had forwarded the application mentioning voluntary retirement/ resignation from bank service which too was clearly reflects that she very much intended to resign from service.

9. Counsel for the respondent bank submits that enclosure enclosed with the application in the format also had a resignation letter written by the petitioner on plain papers giving reasons for moving the said application.
10. It was further contention of the counsel for the respondent bank that petitioner was specifically in accordance with the rules and regulations governing the field called upon for personal counseling on 13.09.2019 and during the course of counseling the petitioner stuck to her claim intending resigning from service of the respondent Bank. Therefore considering the contents of the application which the petitioner had submitted from time to time it was evidently clear that after acceptance of the resignation, the petitioner could not have turned around and cried foul, alleging that she has never intended to resign and her application was only for voluntary retirement.
11. At this juncture it is necessary to take note of the contents of the various correspondences that have been made by the petitioner with respondents. Foremost is Annexure P-5 dated 03.06.2019 that is the application for voluntary retirement and also supported with the proforma required for

tendering the said application. For ready reference the context of which is reproduced hereinunder :-

“Subject : Application for Voluntary Retirement from Bank's Service

I am presently posted at Korba City Branch, R-2, Korba as Branch Manager since 23.07.2018. My Family settled at Jailgaon Korba(CG). Due to not being able to look after my daughter and mother due to transfer from Korba and my husband is working in BALCO Plant situated at Korba which is not transferable I want to submit herewith application for Voluntary Retirement from Bank's service w.e.f. 03rd October 2019.

Kindly accept my request.”

Proforma-III

To	From
The Regional Manager,	Vidya Anant
State Bank of India,	MMGS-II
Regional Business Office,	State Bank of India
Region-2, Korba(CG)-495677	Korba City Branch Korba(CG)

Through: Proper Channel

Application for Voluntary Retirement/Resignation from Bank's Service

I wish to tender my voluntary retirement/resignation from the bank's service as from the close of business on 3rd October 2019.”

12. The fact which requires consideration at this juncture is that right from the date of application made by the petitioner on 03.06.2019 till the acceptance of the same on 30.09.2019 and service of the said acceptance upon the petitioner on 09.10.2019 the petitioner at no point of time during the entire four months period had ever shown her intentions of withdrawing her application for resignation/voluntary retirement. On the contrary, the counseling which was conducted on 13.09.2019 also shows that the petitioner was firm on her decision for resigning from the service of the respondent bank.

13. Another fact which needs consideration is the applications which the petitioner had made immediately after the acceptance letter being served upon the petitioner on 09.10.2019 i.e. Annexure P-9, & P-11 the relevant portion of which for ready reference is being reproduced hereinunder :-

Annexure P-9 :-

With reference to your letter no. nil dated 09.10.2019 and enclosed RBO letter no BSP/RBO-1/HR/1210 dated 7.10.2019 I draw your kind attention as under :

- (I) I had applied my resignation from bank service wef 4.10.2019.
- (II) I was not intimated regarding neither acceptance nor rejection of my resignation till 3.10.2019.
- (III) Due to non acceptance nor rejection of my application I had further performed my duties on 04.10.2019 to 07.10.2019.
- (IV) In the above circumstances as the bank has not intimated acceptance of my resignation now I am withdrawing my resignation letter dated 4.6.2016 from bank service.
- (V) As per telephonic discussion held with you regarding my leave I will join my duty on 11.10.2019.

Yours Faithfully
(Vidya Anant)"

Annexure P-11 :-

“Regarding VR Application :-

With reference to your letter no. nil dated 09.10.2019 and enclosed RBO letter no. BSP/RBO-1/HR/1210 dated 7.10.2019 I draw your attention as under :-

- (I) I had applied my resignation from bank service wef 4.10.2019.
- (II) I was not intimated regarding neither acceptance nor rejection of my resignation till 3.10.2019.

(III) Due to non acceptance nor rejection of my application I had further performed my duties on 04.10.2019 to 07.10.2019.

(IV) In the above circumstances as the bank has not intimated acceptance of my resignation now I am withdrawing my resignation letter dated 4.6.2016 from bank service.

Vidya Anant
Dy. Manager “

14. The aforementioned three correspondences made by the petitioner clearly reflects that she had resigned from the service of the respondent and only ground on which she had moved her application for withdrawing of the resignation was the same not been accepted by the authorities concerned within the notice period uptill i.e 03.10.2019. There was no other ground raised or challenged by the petitioner in so far as application Annexure P-5 not being the resignation but was only intending for voluntary retirement.

15. The aforesaid notice stated in the preceding paragraphs is not disputed by the counsel for the petitioner so far as its contents are concerned. As regards, the judgments which have been cited by the learned counsel for the petitioner, in the case of **Assistant General Manager & Others Vs. Radhey Shyam Pande, 2020 (6) SCC 438**, the facts of the case and issue involved in the case were under entirely different contextual background where the dispute was primarily in respect of the benefits that the employees who had opted for voluntary retirement would be entitled for. The question of resignation viz viz voluntary retirement was not the bone of contention before the Supreme Court in the said judgment therefore, the principles of law or the ratio laid down by the Supreme Court in the said judgment can not be applied so far as the facts of the present case is concerned.

16. Again as regards the judgment in the case of the **Asha Ram Suryavanshi Vs. Chhattisgarh Gramin Bank & Another**, decided by this Court on

26.06.2020 is concerned that was the case where the issue was that a person with more than 23 years of service and who was on the verge of retirement had moved an application for voluntary retirement which was construed as an application for resignation and accepted and which was challenged by the employee before the High Court and where this Court had in very specific terms held that considering the factual backdrop the letter of acceptance of the resignation on the part of the respondent bank to be bad unlike the facts of the present case, where the petitioner had repeatedly expressed that she had tendered resignation.

17. Plain reading of the said judgment rendered in the case of **Asha Ram Suryavanshi** (Supra) would clearly reflect that request made by the employee in the said case was to take appropriate decision in accordance with the rules so far as voluntary retirement is concerned. Unlike the contents of the application which has been moved by the petitioner herein where repeatedly she has reflected it to be resignation and there was no withdrawal of the same at any point of time till the date of acceptance of the same or even till the notice period was over. Thus, the judgment in the case of Asha Ram Suryavanshi also would not be applicable in the facts of the present case.

18. The supreme Court in the case of **Moti Ram Vs. Param Dev and Another, (1993) 2 SCC 725** referring to term resignation in paragraph 16 have held as under :-

16. As pointed out by this court, '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. It has been held that in the 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. It has also been observed that the 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. (See : Union of India v. Shri Gopal Chandra Misra & Ors., [1978] 3 SCR 12 at p. 21). 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 præsenti. 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 an office is unilateral or bilateral in character would depend upon the nature of the office and conditions governing it.

19. Supreme Court in the case of **Prabha Atri Vs. State of U.P. & Others, (2003) 1 SCC 701** in paragraph 7 referring to the term of resignation relied upon the aforesaid judgment in the case of Moti Ram (Supra) has held as under :-

7. *The only question that mainly requires to be considered is as to whether the letter dated 9.1.1999 could be construed to mean or amounted to a letter of resignation or merely an expression of her intention to resign, if her claims in respect of the alleged lapse are not viewed favourably. Rule 9 of the Hospital Service Rules provided for resignation or abandonment of service by an employee. It is stated therein that a permanent employee is required to give three months notice of resignation in writing to the appointing authority or three months salary in lieu of notice and that he/she may be required to serve the period for such notice. In case of non-compliance with the above, the employee concerned is not only liable to pay an amount equal to three months salary but such amount shall be realizable from the dues, if any, of the employee lying with the Hospital. In Words and Phrases (Permanent Edition) Vol. 37 at page 476, it is found stated that,*

"To constitute a "resignation", it must be unconditional and with intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office."

At page 474 of the very same book, it is found stated: "Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignations." It is also stated therein that "A 'resignation' of a public office to be effective must be made with intention of relinquishing the office accompanied by act of relinquishment". In the ordinary dictionary sense, the word 'Resignation' was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim: Resignation est juris proprii spontanea refutatio [Black's Law Dictionary 6th Edition]. In Corpus Juris Secundum. Vol. 77, page 311, it is found stated

"It has been said that 'Resignation' is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position."

20. Recently again, this court in the case of **S.K. Shrivastava Vs. UCO Bank** decided on 28.09.2019 in **WPS No. 1620 of 2012** dealing with the issue of

voluntary retirement/resignation in very categorical terms held that application for retirement would come into play immediately on its acceptance or from the date it has been accepted by the concerned authorities, unless the same was withdrawn or recalled by the employee or rejected by the authorities on any earlier date, till the same became final.

21. In the case of **Padubidri Damodar Shenoy Vs. Indian Airlines Limited and Another, (2009) 10 SCC 514** in paragraph 33 it has been held as under :-

“33. There is nothing to indicate in Regulation 12 that if employer decides to withhold approval of voluntary retirement, such refusal of approval must be communicated to the petitioner during the period of notice. True it is that notice of three months for voluntary retirement given by an employee covered by clause (b) remains valid even if no communication is received within notice period but it becomes effective only on its approval by the competent authority. As a matter of fact, this seems to have been understood by both the parties.”

22. Likewise the Supreme Court in the case of **State of Haryana & Others Vs. S.K.Singhal (1999) 4 SCC 293** in Paragraph 18 has held as under :-

“18. In the case before us sub-rule (1) of Rule 5.32 (B) contemplates a "notice to retire" and not a request seeking permission to retire. The further "request" contemplated by the sub-rule is only for seeking exemption from the 3 months' period. The proviso to sub-rule (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma case so far as the employee is concerned. As already stated Rule 2.2 of the Punjab Civil Services Rules Vol. II only deals with a situation of withholding or withdrawing pension to a person who has already retired.”

23. The same view has further been accepted by this High Court in another recent decision in WPL 7478/2007 decided on 22.08.2019 wherein referring to the aforesaid judgments, the writ petition tendered by the petitioner had been dismissed wherein in paragraph 15 it has taking note of the aforesaid decision referred to in the preceding paragraphs it was held as under :-

15. As I have already referred to Rule 10 of the Staff Service Regulations, 1980, it is quite apparent that the rule does not contemplate any order accepting the resignation, therefore, once the period of one months' notice is over, his resignation stood accepted and the same could not have been withdrawn after the said date and more so when the petitioner was relieved on 30.09.1983 and he did not attend the office from 1 October, 1983 to 18 October, 1983.

24. Coming to the facts of the present case as has been stated in the preceding paragraphs, the petitioner for the personal difficulties that she was facing, tendered her resignation/ voluntary retirement on 03.06.2019. Before accepting the same in accordance with the regulations governing the field the respondent bank had called upon the petitioner for personal counseling on 13.09.2019 wherein also petitioner stuck to her stand that she does not intend to work under the respondents. Thereafter the application of the petitioner was duly considered by the authorities concerned on 30.09.2019 that is much before the effective date of 03.10.2019. Acceptance of the resignation of the petitioner dt. 30-09-19 w.e.f. 03.10.2019, was served upon the petitioner on 09.10.2019 which she duly accepted. It is therefore after lapse of couple of days i.e. 11.10.2019 for the first time petitioner requested for withdrawal of her resignation which by that time already had been accepted and was given effect to. Once when the resignation was accepted and was given effect to. Thus the petitioner thereafter would not be in a position to seek for recall of the resignation as has been held by the Supreme Court as also by this Court time and again on repeated occasions.

25. For the said reasons, this Court finds that no strong case has been made out by the petitioner calling for an interference with the impugned order of acceptance of resignation Annexure P-1 and writ petition therefore deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit