

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1389 of 2019

In
Civil Writ Jurisdiction Case No.3319 of 2019

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Premchand 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.

... .. Appellant/s

Versus

1. Uttar Bihar Gramin Bank through its Chairman, Head Office at - Kalambagh Chowk, P.S.- Muzaffarpur Muzzafarpur Town, District- Muzzafarpur.
2. The Chairman cum Appellate Authority, Uttar Bihar Gramin Bank through, Head Office at- Kalambagh Chowk, P.S.- Muzzafarpur Town, District- Muzzafarpur.
3. The General Manager, Uttar Bihar Gramin Bank through, Head Office at- Kalambagh Chowk, P.S.- Muzzafarpur Town, District- Muzzafarpur.
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 Appellant/s : Ms. Nivedita Nirvikar, Sr. Advocate.
Mr.Surya Swetabh, Advocate,
For the Respondent/s : Mr.Ajay Kumar Sinha, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 24-03-2022

Re: I.A. No. 1 of 2019

This application has been filed by the appellants,
under Section 5 of the Limitation Act, seeking condonation of



delay of 8 days in preferring the present Appeal i.e. L.P.A. No. 1389 of 2019 against the judgment dated 13.09.2019 passed by a learned Single Judge in CWJC No. 3319 of 2019.

2. Having considered the reasons assigned in the present petition seeking condonation of delay, in preferring the Letters Patent Appeal, and having heard the learned counsel for the parties, we are satisfied that sufficient cause is made out for condonation of delay of 8 days in filing of the appeal. Consequently, the delay in preferring the Letters Patent Appeal is hereby condoned.

3. I.A. No. 1 of 2019 stands disposed of.

Re: L.P.A. No. 1389 of 2019

4. The present intra-Court appeal has been preferred calling in question the legal sustainability of the judgment dated 13.09.2019 passed by the learned Single Judge in CWJC No. 3319 of 2019.

5. The facts lie in a narrow compass. The appellant-writ petitioner had filed a writ petition bearing CWJC No. 3319 of 2019, inter alia, praying therein for quashing the order dated 06.08.2018 issued by the Chairman, Uttar Bihar Gramin Bank, affirming the order of termination of services of the petitioner dated 24.01.2017, for quashing the order dated 24.01.2017



passed by the General Manager, Uttar Bihar Gramin Bank and for directing the respondents to reinstate the petitioner in the services of the Bank on the post of Branch Manager as also to pay him arrears of salary and other consequential benefits.

6. The factual scenario as emerges is that the appellant, while serving with the respondent Bank as an officer, had submitted his resignation on 28.07.2016, however, subsequently he had given an application dated 21.11.2016, withdrawing his resignation, nonetheless, since the respondents did not accept the resignation of the appellant, even after notice period was over, the appellant thought that his resignation has not been accepted, hence, he had gone to the Maura Branch of the respondent Bank for the purposes of joining his duty, but he was estopped from doing so on the ground that he has already tendered his resignation from the service of the Bank. Thereafter, the Respondent Bank had replied to the letter of the Appellant dated 21.11.2016 vide letter dated 28.11.2016 stating therein that the appellant had breached the terms of regulations pertaining to resignation by not complying the same and had not withdrawn his resignation within the period of notice but after serving of the letter by the Bank dated 05.11.2016, hence the issue of re-joining the Bank is no longer feasible. The appellant



has then moved this Court by filing a writ petition bearing CWJC No. 20422 of 2016, inter alia praying therein for restraining the respondent Bank from accepting the resignation and directing them to allow the appellant to joint his duty, however, during the pendency of the said writ petition, the respondent Bank had issued the impugned order dated 24.01.2017, terminating the services of the appellant. In such view of the matter, the said writ petition was disposed of by the learned Single Judge by a judgment dated 01.05.2018 with a direction to the Chairman of the respondent Bank to dispose of the appeal in accordance with law within a period of three months from the date of receipt/ production of a copy of the said judgment. It appears that thereafter, the Chairman of the respondent Bank, by the impugned order dated 06.08.2018 had affirmed the order of termination of the services of the appellant and had rejected the appeal of the appellant herein.

7. The learned Senior counsel for the appellant herein Ms. Nivedita Nirvikar has submitted that the communication of the respondent Bank dated 19.9.2016 and the letter dated 5.11.2016 would show that the respondent Bank had informed the appellant herein that his resignation cannot be accepted in view of certain dues being outstanding as against



him apart from him being absent in an un-authorized manner on various occasions and him having breached the terms of regulations for resignation, however, later on the respondent Bank had taken a somersault and terminated the services of the appellant vide the impugned order dated 24.01.2017. It is submitted that once the respondent Bank had written to the appellant herein stating therein that his resignation cannot be accepted, the respondent Bank was/is estopped from acting on his resignation letter and terminating his services. The learned senior counsel for the appellant has further submitted that locus poenitentiae of an employee to withdraw his resignation subsists till the acceptance of the same by the employer or till that future date from which the employee intends to sever his relationship as an employee which in the present case would have been three months as per Regulation 10(1) of the Uttar Bihar Gramin Bank Officer and Employee Service Regulation, 2010 (hereinafter referred to as 'the Regulations, 2010'). Thus, it is the submission of the learned Senior counsel for the appellant that since the appellant had filed a representation dt. 21.11.2016, specifically expressing his desire to resign/ withdraw his resignation, prior to processing of the same, apart from the fact that the respondent Bank had never accepted the resignation of



the appellant prior to 21.11.2016, the respondent Bank could not have acted on the resignation letter of the appellant dated 28.07.2016 and terminated his services by the impugned order dated 24.01.2017. In this connection, the learned Senior counsel for the petitioner has placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of **Raj Kumar vs. Union of India**, reported in *AIR 1969 SC 180* and the one reported in *1989 Suppl. (2) SCC 175* [**Punjab National Bank vs. P. K. Mittal**].

8. Per contra, the learned counsel for the respondent Bank has submitted that the order of the Chairman affirming the termination of the services of the Appellant clearly records the stand of the Bank which is duly supported by the provisions contained in Regulation 10 of the Regulations, 2010. It is further submitted that the resignation of the petitioner, in view of the provisions contained in Regulation 10 of Regulations, 2010 took effect automatically upon completion of three months, i.e. with effect from 27.10.2016. The master-servant relationship ceased thereafter. It is also the case of the respondent Bank that Regulation 10 of the Regulations, 2010 clearly contemplates that termination, which is akin to voluntary resignation, is to take effect on completion of three months



period from expression of intention to leave or discontinue. Thus it is submitted that there was no occasion for any acceptance of the resignation of the Appellant by the Authority under the scheme of the Regulations, 2010, of such request made by the Appellant. It is stated that the question of acceptance of the resignation of the Appellant could have arisen only if any disciplinary proceeding was contemplated and/or was pending against the petitioner. Placing reliance upon Regulation 10 (2) of the Regulations, 2010, it is submitted that the only exception to “automatic acceptance” is contained in Clause (2) of Regulation 10 of the Regulations, 2010 and that too only in cases where a departmental proceeding is contemplated or has already been initiated. Learned counsel for the Bank has also relied upon the decision rendered by the Hon’ble Apex Court in the case of P. K. Mittal (supra). He has laid emphasis on the observations made in paragraph No. 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.

9. The Ld. Senior counsel Mr. Ajay Kumar Sinha, appearing for the respondent Bank, has further contended that there is neither any contemplated nor any pending proceeding against the petitioner, hence resignation of the petitioner, automatically took effect on 27.10.2016. It is further submitted that since Regulation 10 of the Regulations, 2010 is titled as "Termination of Service by Notice", the Bank has been referring to the term "Termination" in its various correspondences and the same has not been used in the penal sense by the Bank as there was no pending proceeding against the petitioner. It is also submitted that the correspondences laying down conditions was thus merely reiterating the obligations of the petitioner under Clause (c) of Regulation 10 of the Regulations, 2010 and had no other implications.

10. At this juncture, we deem it appropriate to reproduce Regulation 10 of the Regulations, 2010 herein below:-

"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.”

11. The Learned counsel for the respondent Bank has also placed reliance upon the Communication of the Appellant dated 25.09.2018 (Annexure R-11 to the counter affidavit filed by the respondent Bank in the writ proceedings), by which the Appellant had requested for issuance of a detailed Experience Certificate since he required the same for his very near career prospects, by placing reliance upon cessation of his services by virtue of his resignation with effect from 27.10.2016, whereafter, the Bank had also issued an Experience Certificate to the petitioner on 27.09.2018. It is thus apparent from the said Communication of the Appellant dated 25.09.2018 that he was not only knowing that the Regulations, 2010 contemplate automatic acceptance of resignation upon completion of three months notice period, from the day the notice is served but was also well aware of the fact that the resignation tendered by him had taken effect w.e.f 27.10.2016.

12. We have heard the learned counsel for the parties and perused the materials on record. At the outset it would be apt to reproduce the relevant portion of the impugned Judgment dated 13.09.2019 herein below:-

“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.”

13. We find from a bare perusal of Regulation 10 of the Regulations, 2010 that the same postulates termination of service of an employee by giving notice in writing to the appointing authority of his intention to leave or discontinue his service or resign from his services, upon expiry of three months in the case of confirmed officer like the appellant herein. We also find from Regulation 10 (2) of the Regulations, 2010 that only in cases where disciplinary proceeding is contemplated or pending against such officers or employees, who have decided to leave, discontinue or resign from their services in the Bank, any notice of resignation given by such officers or employees would not take effect unless it is accepted by the competent authority. In this connection, we would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of Moti Ram Vs. Param Dev, reported in (1993) 2 SCC 725, paragraphs no. 16 to 19 whereof are reproduced herein below:-



“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. Gopal Chandra Misra [(1978) 2 SCC 301]. 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 praesenti. 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 the conditions governing it.

17. Under the Constitution of India there are various offices which can be relinquished by unilateral act of the holder of the office and acceptance of resignation is not required, e.g., President [Article 56(a)], Vice-President [Article 67(a)], Deputy Chairman of Rajya Sabha [Article 90(b)], Speaker and Deputy Speaker of Lok Sabha [Article 94(b)], Judge of the Supreme Court [Article 124(2)(a)], Judge of a High Court [Article 217(1)(a)]. As regards member of either House of Parliament or a member of a House of Legislature of a State, originally, the position was that he could resign his office by unilateral act and the acceptance of resignation was not required. The requirement of acceptance of such resignation was introduced in Articles 101(3)(b) and 190(3)(b) by the Constitution (Thirty-third Amendment) Act, 1974. Similarly in Company Law, a Director of a company is entitled to relinquish his office at any



time he pleases by proper notice to the company and acceptance of the resignation is not required. [See: Glossop v. Glossop [(1907) 2 Ch 370] and Halsbury's Laws of England, 4th Ed., Vol. 7, p. 316, para 536.]

18. A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as Government employees are concerned, there are specific provisions in the service rules which require acceptance of the resignation before it becomes effective. In Raj Kumar v. Union of India [(1968) 3 SCR 857 : AIR 1969 SC 180 : 1969 Lab IC 310] , it has been held:

“... But when a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not



thereafter.” (p. 860)

19. Similarly, in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103 : (1986) 2 SCR 278] which related to an employee of a Government company jointly and wholly owned by the Central Government and two State Governments, it was observed: (SCC p. 228, para 111: ATC p. 175, para 111)

“... A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be



justified in not accepting the resignation of an employee.” (SCR p. 386)”

14. It would also be apropos to refer to a judgment rendered by the Hon’ble Apex Court in the case of **Punjab National Bank vs. P.K. Mittal**, reported in 1989 (Suppl.) (2) SCC 175, paragraph no. 5 whereof is reproduced herein below:-

“5. We have given careful thought to this contention of the learned counsel and we are of the opinion that the High Court was right in the conclusion it reached. Clause (2) of Regulation 20 makes it incumbent on an officer of the bank, before resigning, to serve a notice in writing of such proposed resignation and the clause also makes it clear that the resignation will not be effective otherwise than on the expiry of three months from the service of such notice. There are two ways of interpreting this clause. One is that the resignation of an employee from service being a voluntary act on the part of an employee, he is entitled to choose the date with effect from which his resignation would be effective and give a notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation. On this interpretation, the letter dated 21-1-1986 sent by the employee fully complied with the terms of this clause. Though the letter was written in



January 1986 the employee gave more than three clear months' notice and stated that he wished to resign with effect from 30-6-1986 and so the resignation would have become effective only on that date. The other interpretation is that, when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation, the respondent's resignation would have taken effect on or about 21-4-1986 even though he had mentioned a later date. In either view of the matter, the respondent's resignation did not become effective till 21-4-1986 or 30-6-1986. It would have normally automatically taken effect on either of those dates as there is no provision for any acceptance or rejection of the resignation by the employer, as is to be found in other rules, such as the Government Services Conduct Rules.”

15. Having given our anxious consideration to the issue in hand, we find that ‘resignation’ means the spontaneous relinquishment of one's own right and in relation to an office and connotes the act of giving up or relinquishing the office which is wholly voluntary in nature. Regulation 10 of the Regulations, 2010 is unambiguous in as much as the same postulates that the discontinuance from service or resignation from service would become effective upon expiry of three months from the date of giving of such notice in writing by the



concerned employee/ officer to the appointing authority. The language of Regulation 10 of the Regulations, 2010 is also unequivocal and provides for an automatic cessation of service of the concerned officer/ employee after completion of three months notice period and does not require any action to be taken, on such communication of the intention to discontinue/resign from service, by the appointing/ competent authority, which is only required in cases of such officer/ employee against whom disciplinary proceeding is contemplated or is pending. We also find that there is no provision in the Regulations, 2010, regarding withdrawal of notice of resignation by the concerned officer or employee. Thus, we are of the considered view that by virtue of operation of the provisions contained in the Regulations, 2010, more particularly Regulation 10 thereof, the Appellant's resignation had taken effect on lapse of three months notice period. Therefore, we do not find any infirmity in the impugned judgment dated 13.09.2019 passed by a learned Single Judge of this Court in CWJC No. 3319 of 2019, hence, the same is affirmed.

16. Consequently, we perceive no merit in this appeal and, accordingly, the same stands dismissed, however,



without any order as to costs.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	22.12.2021
Uploading Date	24-03-2022
Transmission Date	N/A

