

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 3349 of 2022

Aninda Sundar Banerjee

vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Soumen Kumar Dutta,
Mr. Subham Dutta.

For the State : Mr. Rezaul Hossain.

Heard on : 09.05.2024

Judgment on : 09.05.2024

Rai Chattopadhyay, J.

1. The writ petitioner has challenged an order of the Block Development Officer and Executive Officer, Bankura – 1, Development Block/respondent no. 7 dated April 18, 2018 by dint of which the petitioner has been released from the service of a Nirman Sahayak in Kenjakura Gram Panchayat with effect from the said date i.e., April 18, 2018.
2. Hence, this writ petition.
3. Mr. Soumen Dutta, learned counsel is appearing for the writ petitioner. He has mentioned about some relevant dates and corresponding documents. He submits that the writ petitioner has joined in service on May 31, 2011. He submitted his resignation letter on January 16, 2018. An order of the respondent

authority/District Magistrate, Bankura dated February 7, 2018, has informed about acceptance of his resignation as above, “with effect from the date of release”. Subsequently, on February 9, 2018, the petitioner submitted a letter to withdraw his resignation, as was tendered earlier. Thereafter on April 18, 2018, a further order was issued by the respondent/Block Development Officer, directing writ petitioner’s release with effect from forenoon of April 18, 2018.

4. The petitioner has stated that during this period that is from the date of his submission of resignation letter on January 16, 2018, till the time he has been released by dint of the order dated April 18, 2018, the respondent authorities have allowed him the salary and other applicable dues.
5. Therefore, according to Mr. Dutta, learned counsel for the writ petitioner, the respondent authority should have followed the law settled in this regard and allowed/accepted the letter of the writ petitioner to withdraw his resignation at a point of time when the jural relationship between the writ petitioner and the respondent authority subsisted.
6. In support of his submissions, Mr. Dutta, learned counsel for the writ petitioner has relied on several judgments. The law as settled by those, principally is that before acceptance of resignation by the authority and before the jural relationship of employer and employee ceases between the parties, the employee shall always have a lawful right to withdraw the resignation, tendered by him earlier.
7. Let the relevant portion of the said judicial pronouncements be quoted as hereinbelow for the benefit of discussions in this case:-

a. Punjab National Bank vs. P.K. Mittal reported in **1989 Supp (2) Supreme Court Cases 175:**

*“8. The result of the above interpretation is that the employee continued to be in service till April 21, 1986 or June 30, 1986, on which date his services would have come normally to an end in terms of his letter dated January 21, 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 vs. Union of India*”.*

b. Union of India vs. Gopal Chandra Misra & Others reported in **(1978) 2 Supreme Court Cases 301:-**

“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 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”.

c. Shambhu Murari Sinha vs. Project & Development India Ltd. & Another reported in **(2002) 3 Supreme Court Cases 437:-**

“18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the “release memo along with detailed particulars would follow”. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer

between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end”.

d. Srikantha S.M. vs. Bharath Earth Movers Ltd. Reported in (2005) 8 Supreme Court Cases 314:-

*“26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted causal leave from 5-1-1993 to 13-11-1993. Moreover, he was informed that he would be relieved after office hours on 15-1-1993. The *vinculum juris* therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company up to 15-1-1993.*

27. In the affidavit-in-reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on 4-1-1993. It was because of the request of the appellant that he was continued up to 15-1-1993. In the affidavit-in-rejoinder, the appellant had stated that he reported for duty on 15-1-1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs.13,511 was paid to him at 17.30 hrs. The appellant had asserted that he had

not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to 15-1-1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8-1-1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court, in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside”.

e. J.N. Srivastava vs. Union of India & Another reported in **(1998) 9 Supreme Court Cases 559:-**

“3. The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect from 31-1-1990. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990.”

- 8.** Mr. Rezaul Hossain, learned counsel is appearing for the State respondent. He has defended the order of the respondent, as impugned in this case, that is, dated April 18, 2018. He submits firstly that the resignation of the writ petitioner was accepted by the authorities much earlier than the date when he intended to

withdraw the same. He has pointed out to the letter of the District Magistrate, Bankura dated February 7, 2018 to state that the resignation was accepted on the said date. He has further pointed out from the writ petition and the annexures that is, a letter of the Special Secretary to the Government of West Bengal dated November 13, 2019, to submit that the admissible rules that is the West Bengal (Gram Panchayat Administration) Rules, 2004 would have no provision for cancellation or withdrawal of a resignation, once accepted by the competent authority.

9. On the basis of the entire, as above, he would say that in absence of any provision for cancellation or withdrawal of a resignation which has been accepted by the authority, the prevalent rules of 2004 would not permit or authorize the writ petitioner to withdraw the said resignation, tendered earlier. In that way, according to the State respondent, the impugned action of the writ petitioner withdrawing his resignation would be not in terms of the prevalent rules and, thus, illegal.
10. Mr. Hossain, learned counsel for the State further submitted with reference to an annexed document with the affidavit-in-opposition filed by the State respondent, that, the writ petitioner after submission of the letter intending to resign from the job on January 16, 2018 had not attended the office from January 31, 2018. Accordingly, the respondents have stated that the writ petitioner would not have any further right to withdraw his resignation as tendered vide his said letter dated January 16, 2018. Mr. Hossain, learned counsel for the State has urged that the writ petition may be dismissed.

11. The law is well-settled in this regard as it is noticed from the judgments of the Hon'ble Apex Court referred to in this case on behalf of the writ petitioner and mentioned above. It would be evident that the writ petitioner would be eligible to withdraw his resignation at any point of time till the same is accepted by the authorities.
12. With reference to the law settled as above, the fact situation of the instant case may be considered. The petitioner tender his resignation vide letter dated January 16, 2018. On February 7, 2018, an order of the District Magistrate was issued, which is as follows:-

“The resignation tendered by Sri Aninda Sundar Banerjee, Nirman Sahayak of Kenjakura Gram Panchayat under Bankura-I Block is hereby accepted with effect from the date of release.”

A harmonious reading of the said order dated February 7, 2018, as above would reveal about decision of the respondent authorities to accept resignation with effect from the date of release. Parties have come upfront with two different interpretations of the said order. According to the respondents, resignation of the petitioner was accepted vide the said order, that is, with effect from February 7, 2018 and only his release was deferred. The petitioner has submitted juxtaposed to the said proposition advanced by the respondents. According to him, his resignation was to be accepted from the date of his release and not before.

13. Conduct of the parties subsequent to of the order dated February 7, 2018, by the respondent would be pivotal in assessing whether the said order has the effect of acceptance of resignation of the petitioner, with effect from the said date or with effect from the date

of his release. There would not have been any jurisdiction for the respondent authority to continue with the service of the petitioner, if his resignation would have been accepted instantaneously, with the issuance of order dated February 7, 2018. What we see in this case is continuation of the petitioner's service with the said respondents, even after issuance of order dated February 7, 2018 and that too in lieu of regular salary. The respondent, though have urged about the petitioner not having joined in duties, since after the date, he submitted the resignation letter, that cannot ipso facto be considered as the end of relationship between the parties as the employee and employer. As it is at the time of entry, there has to be an expressed intention of the employer at the time of exit of an employee too. The pertinent question is if the order of the respondent dated February 7, 2018 can be considered to be such an expressed intention by the employer to denote severance of its relationship with the petitioner as an employee. In spite of the petitioner having absented in duty since after submission of resignation letter on January 16, 2018, the respondent continued to pay salary and other emoluments to him till the date it had released him from service on April 18, 2018. No disciplinary action has also been taken for any alleged unauthorized absenteeism. Therefore, indeed, the respondent authority intended to accept the resignation of the petitioner with effect from the date of release of him. The words employed in the order dated February 7, 2018, that is, "is hereby", should be read and understood harmoniously to have supplemented the letter words that is, "accepted with effect from the date of release". Hence, the submissions made on behalf of the respondent authorities that, the resignation of the petitioner was accepted by it much earlier than the letter of withdrawal by the petitioner, does not raise confidence in the mind of the Court.

14. Next comes the question if in terms of the applicable rules, that is, the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, the petitioner could validly withdraw his application for resignation, tendered earlier. The Special Secretary, vide his letter dated November 13, 2019, has informed that there is no provision for cancellation or withdrawal of resignation once accepted by the competent authority. In no uncertain terms, the Court has found in this case that the resignation of the petitioner was accepted only on the date of his release, pursuant to the order of the respondent, dated February 7, 2018. The petitioner's prayer for withdrawal of his resignation, is much prior to that, that is on February 9, 2018. Hence, the said Rules of 2004, as mentioned above, shall have no manner of application, in petitioner's case.

15. Since the withdrawal letter was written before the resignation became effective, the resignation of the petitioner should stand with wrong and he should be considered to have been continued in service with the respondent authorities. In this regard, the ratio decided in the judgment of **P.K. Mittal (supra)**, come to the aid of the petitioner's case. Similarly, in **Gopal Chandra Misra's case (supra)**, the Court has held that a 'prospective' resignation can be withdrawn at any time before it becomes effective and the said principle applies to the case of writ petitioner too. Why it was 'prospective' and was not effective on the date of withdrawal letter by the petitioner, has been dealt with above and needs no reiteration. The principle as enunciated in the case of **Shambhu Murari Sinha (supra)** that a person would have *locus poenitentiae* to withdraw resignation tendered earlier, before the relationship of employer and employee comes to an end, also applies here in this case, as discussed above.

- 16.** In such view of the fact, the law settled as above, would squarely be applicable in case of the writ petitioner and the respondent authority would be duty-bound to accept his letter to withdraw the resignation tendered before the date of his release, which is, as a matter of fact, the date of acceptance of his resignation, by the authorities, too.
- 17.** On the discussion as above, I find this writ petition should succeed.
- 18.** The writ petition being WPA 3349 of 2022 is **allowed**.
- 19.** The impugned order of release of the present writ petitioner dated April 18, 2018 passed by the Block Development Officer and Executive Officer, Bankura – 1 is hereby set aside. The letter dated February 9, 2018, is considered to have been duly submitted by the petitioner and accepted by the respondent authorities.
- 20.** The petitioner shall be allowed to join in duties with immediate effect. The respondent authority shall immediately allow the petitioner, notional benefit, for the period of his absence from office, during pendency of this writ petition, treating the service of the petitioner as interrupted and continuance from the date till when he has been, last paid the salary.
- 21.** The necessary fixation shall be made within a period of two weeks from the date of service of copy of this judgment.
- 22.** Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)