IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. RSA-2908-2016 (O&M)
Reserved on: 31.10.2023
Date of decision: 08.01.2024

M/S SUN PHARMACEUTICAL INDUSTRIES LTD. ..Appellant

Versus

ASHISH VIJ AND ORS. ..Respondents

2. RSA-2909-2016 (O&M)

M/S SUN PHARMACEUTICAL INDUSTRIES LTD. ..Appellant

Versus

ASHISH VIJ AND ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.P.S. Mann, Advocate
for the appellant.

Mr. Gurnoor P.S. Sarna, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. With the consent of the learned counsel representing the parties two connected regular second appeals arising from the same suit shall stand disposed of by a common judgment.

2. The defendant has filed the present appeal to challenge the correctness of two separate judgments filed by the First Appellate Court in two cross-appeals filed by the plaintiff and the defendant.

3. After having carefully examined the judgments of the Courts below and the requisitioned trial Court record, this Court is of the opinion that the following two issues need adjudication:-

i. Whether an employee whose resignation is submitted, on acceptance or conveyance of his resignation, in absence of service rules or statutory provisions governing the service conditions of employee in the non-government organization/business house, enforce its subsequent withdrawal through Court?

ii. Whether a civil suit for declaration filed by an employee who is not covered under the definition of a workman under the Industrial Disputes Act, 1947, regarding his continuation in service in a non-government organization/company, maintainable?

4. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

5. The plaintiff was appointed as a field coordinator in Ranbaxy Laboratories Limited. On 09.04.1998, he was promoted as area Sales Manager and thereafter, promoted as a Zonal Manager on 04.05.2001. The respondent (plaintiff before the trial Court) submitted his resignation on 05.09.2003, which was accepted on 01.10.2003. He was asked to hand over the company's properties, which were in his possession and also to obtain the 'No Dues Certificate' from all the stockists. The resignation as well as its acceptance, which was conveyed to the respondent reads as under:-

> *"**Resignation:***
> *Due to unavoidable personal reasons it is not possible for me to continue my service with the company. I, therefore, tender my resignation from the company's services w.e.f. 05th Sept. 2003. Treat the same as three month notice period"*

> *"**Acceptance of Resignation:***
> *With reference to your resignation, we wish to inform you that your resignation has been accepted and you will be relieved from your duties with effect from the closing hours of 04.12.2003 to your handing over the company's properties in your possession to your superior/branch.*
> *You are advised to return all company's properties in your possession to your superior and also obtain 'No Duess Certificate' from all the stockists to enable us to settle your full and final account.*
> *Your are advised to contact your branch office to enable them to settle your account in accordance with the terms and conditions of your employment. Please also complete the enclosed feedback from & send back to us at the earliest."*

6. The respondent on 07.11.2003, requested the company to give him 45 days time for obtaining the 'No Dues Certificate' as he requires such time to cover whole of India for collecting the certificates. On 14.11.2003, the plaintiff again requested for the same. He also requested the company to pay him arrears of salary and tour expenses. He also demanded advances so that he could visit and collect the 'No Dues Certificate' from the stockists, who are spread over in 2/3rd of the country. In the letter dated 07.11.2003, as well as 14.11.2003, the plaintiff stated that he would remain on the company's payroll till collection of 'No Dues Certificate's. On 25.11.2003, the respondent requested the office to permit him to withdraw resignation, and his withdrawal was not accepted or replied to by the company. The plaintiff claims that he kept attending the work of the company, however, he was not paid. On 21.01.2005, the appellant sent a cheque of Rs.2,00,000/- towards the full and final settlement of the accounts.

7. Though, the plaintiff has claimed that he wrote a letter on 02.11.2003, however, the same has not been produced. The first letter, which has been produced by the plaintiff is a letter dated 07.11.2003, which is

Ex.P-4. In this letter, the plaintiff acknowledged the receipt of letter dated 01.10.2003 accepting his resignation. He requests for release of his salary and tour expenses. He also requests for tour advance to enable him to get the 'No Objection Certificate' from the parties, who are residing in 2/3rd of the country. He further states that without the tour advances and extended period, it will not be possible for him to collect the No Objection Certificate. In the end he has stated that his notice period of resignation may be considered from the date of supply of requisite certificates. This request is reiterated in the communication dated 14.11.2003. The receipts of letter having been sent through registered post produced by the plaintiff are perused carefully by the Court. It appears that these letters were posted on 25.11.2003. In the letter, the plaintiff has made reference to a telephonic conversation with the general manager regarding his pending salary and tour advances, which took placed on 08.03.2004. He also refers to the discussion that took placed with another officer Mr. Mukherjee. Thereafter, on 06.05.2004, Ex.P-10, he requests for release of his salary etc. Ex.P-11, dated 06.05.2004, is again a letter written by the respondent (plaintiff) to the same effect. He also refers to some bio-fuel project carried on in the State of Madhya Pradesh with some parties. The next communication dated is 07.08.2008 (Ex.P-3), wherein he claims that he still on company's payroll. On 21.01.2005, the appellant-company sent a cheque of Rs.2,00,000/- against full and final settlement. On a perusal of the receipt, it is evident that the plaintiff received the cheque, wherein, it was recorded that he has received the payment in full and final settlement of the company.

8. The plaintiff (respondent herein) filed the suit on 07.10.2005, for grant of decree of declaration to the effect that the resignation of the plaintiff has not been effective, having been withdrawn during the notice period and before the effective date and hence, the plaintiff is entitled to all the consequential benefits etc. including arrears of salary etc. The suit was contested by the defendant (appellant).

9. Both the Courts decreed the suit on the ground that the resignation was withdrawn before it was to come into effect and in view of the judgment passed by the Supreme Court in ***Shambhu Murari Sinha Vs. Project and Development India Ltd., AIR 2002 (SC) 1341***, the plaintiff is entitled to grant of decree of declaration that he continues in service. Against the judgment and decree passed by the trial Court, two appeals were filed, one filed by the plaintiff claiming interest on the arrears of pay and other allowances, whereas, the second filed by the appellant (defendant) challenging the correctness of the judgment and decree passed by the trial Court. The First Appellate Court has passed two separate judgments. The appeal filed by the respondent has been accepted and the Court has directed the company to pay arrear, salary and consequential benefits along with interest at the rate of 12% from the date it becomes due till its payment, whereas, the appeal filed by the appellant has been dismissed.

10. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook and the written submissions filed by them along with the requisitioned record.

11. On the one hand, the learned counsel representing the appellant contends that on acceptance of resignation, the jural relationship between the

respondent and company came to an end and therefore, letters sent by him on 25.11.2003, are of no substance. He submits that the suit filed by the plaintiff for grant of decree of declaration was also not maintainable in view of Section 14 of the Specific Relief Act, 1963.

12. On the other hand, the learned counsel representing the respondent has submitted that the resignation of the respondent was accepted subject to the condition that he will be relieved from his duties with effect from closing hours of 04.12.2003, subject to his handing over company's properties in his possession and 'No Objection Certificate' obtained from all the stockists. He submits that in these circumstances, there was no acceptance of his resignation and therefore, the resignation stood withdrawn vide communication dated 25.11.2003. He also relies upon the judgment passed in ***Rajasthan State Road Transport Corporation Vs. Krishan Kant and others, AIR 1995 (SC) 1715 and Ashok Kumar Srivastav Vs. National Insurance Company Ltd., AIR 1998 (SC) 2046***, to contend that the suit for grant of decree of declaration is maintainable.

Discussion and Conclusion:-

13. A perusal of the entire record shows that while coming to conclusion both the Courts have over emphasized on the oral evidence of DW-1 Sh. Varinder Singh, Senior Executive, HR of the appellant-company on the basis of his deposition, the Courts have held that the respondent continued to work for the company after his resignation was accepted. It may be noted here that overemphasis on the oral evidence in preference to the documentary evidence is not appropriate. It has been noticed that the deposition of Sh. Varinder Singh runs from pages 215 to 259, whereas, the

cross-examination itself is covered in around 30 pages. As per the provisions of the Indian Evidence Act, 1872, the Courts have a bounden duty to regulate the relevant evidence even during the stage of cross-examination of the witness. Irrelevant and totally unrelated questions should not be permitted as it results in wastage of precious time and energy of the Court. Moreover, while relying upon the oral evidence, the Court is expected to read the statement/deposition in entirety in order to understand it. Reading of isolated sentences in the deposition, divorced from the entire context should be avoided. It is also well settled that the oral evidence is not required to be given precedence over the documentary evidence, available on record.

14. In this case, it is evident that the respondent resigned without any pre-condition. He submitted his resignation from 05.09.2003, which shall be treated as three months' notice period. On 01.10.2003, his resignation was accepted. The communication dated 01.10.2003, is required to be read carefully. The first part of the first sentence of letter dated 01.10.2003, proves that respondent's resignation was accepted forthwith, however, the date of relieving him from his duties was postponed till the closing hours of 04.12.2003, with a caveat to return company's properties in his possession. However, the acceptance of resignation was complete and it was not subject to the respondent's handing over the company's property. In the second paragraph, the respondent has been advised to obtain 'No Dues Certificate' from all the stockists. The requirement of the certificates was to enable the appellant to settle his full and final accounts. Therefore, both the Courts have erred in assuming that the resignation shall be deemed to have

been accepted only with effect from 04.12.2003. In fact, the first part of the first sentence is categoric that the respondent's resignation stands accepted.

15. Thereafter, it is the prerogative of the appellant-company to permit him to withdraw the resignation or not. The appellant is a limited company but it is not an instrumentality of the State as provided under Article 12 of the Constitution of India. It is not the case of the plaintiff that there is any rule or resignation which enables the employee to withdraw the resignation. In these circumstances, the unilateral withdrawal of the resignation is not binding on the appellant-company.

16. On a comprehensive reading of the deposition of Sh. Varinder Singh, the only witness who was examined by the appellant-company, it becomes evident that the resignation was accepted forthwith i.e. on 01.10.2003. In one of the isolated sentence, he has stated that he was not aware of the fact that after withdrawal of his notice of resignation, the plaintiff continued to attend the office. That statement has been interpreted to hold that the respondent continued in service. This sentence as already noticed cannot be read in isolation. The defendant has only stated that he was not aware of the fact.

17. Both the Courts have also assumed that because Sh. Varinder Singh has admitted that full and final payment has not been made to the respondent, therefore, he continued in service. The full and final payment is not one of the pre-condition for acceptance of resignation. As already explained, the resignation was accepted forthwith. Only relieving of the employee was postponed in order to fulfill the formalities, however, the plaintiff cannot claim that he continues in service. It is also evident from the

various communications that the plaintiff was requesting for meeting with the officials and was writing letters by registered post. If he had been continuing in service, there was no necessity of sending the communications by the registered post.

18. This Bench now proceeds to discuss the law laid down by the Supreme Court on the subject.

19. This Court has carefully read the judgment passed in ***Shambhu Murari Sinha's case (supra)***. This case was related to the instrumentality of the State because a writ petition under Article 226 of the Constitution of India was filed. Moreover, the issue in this case is not related to resignation. Rather, a voluntary retirement scheme was floated by the employer and the employee submitted his request. The terms and conditions of the voluntary retirement were governed by the Voluntary Retirement Scheme (VRS), hence, the aforesaid judgment is not applicable to the peculiar facts of the present case. The First Appellate Court has also relied upon the judgment passed in ***Raj Kumar Vs. Union of India, AIR 1969 (SC) 180***. On a careful reading of the aforesaid judgment, it becomes evident that the Supreme Court held that the resignation could only be withdrawn before it was accepted by the appropriate authority. This case was also with regard to a government employee or in other words a civil servant, whose service conditions are succinctly elucidated in the service rules and Article 311 of the Constitution of India.

20. The learned counsel representing the respondents has also relied upon the judgment passed by the Supreme Court in ***Krishan Kant's case (supra)***. After reading the aforesaid judgment, it is evident that the judgment

nowhere discusses the context of Section 14 of the Specific Relief Act, 1963. The employer in this case was instrumentality of the State Government and the case pertains to a suit filed for declaration assailing the correctness of the order passed terminating the services of the employees. Hence, the aforesaid judgment is also not applicable to the facts of the case at hand.

21. The next judgment relied upon by the learned counsel is passed in ***Ashok Kumar Srivastav's case (supra)***. This judgment is also with respect to instrumentality of the Central Government and therefore, the services were governed by the service rules. Moreover, the suit filed by the plaintiff was dismissed ultimately.

22. It may be noted here that a Five Judge Bench of the Supreme Court in ***Sirsi Municipality Vs. Cecelia Kom Francis Tellis, (1973) 1 SCC 409***, held that except under the Industrial Disputes Act, 1947, or public servants under employment of the State or other public or local authorities or bodies created under the State can be reinstated, even if the dismissal is contrary to the rules of natural justice or in violation of statute. It is evident from the reading of the aforesaid judgment that only three following exceptions were carved out by the Supreme Court while ordering reinstatement:-

i. If the dispute is covered by the Industrial Disputes Act, 1947.

ii. If it pertains to a public servant, who is sought to be removed from service in contravention of Article 311 of the Constitution of India.

iii. Where a statutory body acts in breach of the violation of the mandatory provisions of the statute.

23. This judgment has been consistently followed in ***Executive Committee of Vaish Degree College Vs. Lakshmi Narain (1976) 2 SCC 58 and Hindu College Vs. Sadhu Ram Saini, (1997) 11 SCC 471***. In ***Kailash Singh Vs. Mayo College, (2018) 18 SCC 216***. In these cases, the Court held that in an ordinary relation of master and servant governed purely by contract, a grant of decree of declaration of unlawful termination would indirectly amount to specific performance of contract of personal service, which is not permissible under Section 14 of the Specific Relief Act, 1963. Similarly, in ***M/s Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, (2004) 3 SCC 172***, the Court once again held that unless the case falls in any of the three exceptions carved out in ***Sirsi Municipality's case (supra)***, the suit for grant of decree of declaration that the employee continues in service of the defendant company would amount to enforcing a contract of personal service, which is barred under law.

24. With reference to question No.1, it may be noted that the respondent's resignation was accepted on 01.10.2003, in absolute terms and only his relieving was postponed for a period of two months to enable the respondent to complete the formalities. In these circumstances, both the Courts have erred in observing that acceptance of resignation was subject to the fulfillment of the formalities.

25. In view of the aforesaid conclusive interpretation of law on the subject, it is evident that the suit filed by the plaintiff for grant of decree of

declaration was not maintainable. Consequently, question No.2 is answered in favour of the appellant i.e. it is answered in affirmative.

26. Though, it has not been prayed for by the plaintiff, however, in order to avoid multiplicity of the litigation, it is ordered that the appellant shall release all the dues payable to the employee as admitted by Sh. Varinder Singh within a period of two months. Sh. Varinder Singh has admitted that the appellant-company has to pay a sum of Rs.3,48,000/- to the respondent. Hence, the aforesaid amount shall be paid along with interest at the rate of 9% from 04.12.2003 till its payment.

27. With these observations, both the appeals are allowed.

28. All the pending miscellaneous applications, if any, are also disposed of.

January 08th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No