

Dinesh Kumar Vs. Commandent, 15th Battalion, P.A.C., Agra

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Court : Allahabad

Decided On : Sep-16-1999

Reported in : 1999(4)AWC3163; (1999)3UPLBEC2308

Judge : V.M. Sahai, J.

Acts : [Police Act, 1861](#) - Sections 7 and 9

Appeal No. : C.M.W.P. No. 11881 of 1993

Appellant : Dinesh Kumar

Respondent : Commandent, 15th Battalion, P.A.C., Agra

Advocate for Def. : V.J. Sahai, S.C.

Advocate for Pet/Ap. : Dileep Kumar and ;Rajeev Gupta, Advs.

Judgement :

V.M. Sahai, J.

1. The petitioner was appointed on 6.8.84 as Nai (Barber) in the company 15th Battalion of Pradeshik Armed Constabulary (in brief P.A.C.) Agra. He along with his friends on 6.3.93 on the eve of Holi consumed some intoxicant at his residence. His wife looking to his abnormal behaviour panicked and approached the Platoon Commandant Shri Vijendra Singh for help as the head quarters were

only 100 paces away from the residence of the petitioner. The Platoon Commandant came to his house and tried to pacify him. But the petitioner was under Intoxication and not in a fit state of mind and he uttered objectionable words. This it appears to have annoyed the Platoon Commandant who it is undisputed came to the residence of the petitioner again along with three or four constables and forcibly took him to the head quarter. He was served with a show cause notice on same day by Shri Shekhar Pratap Singh, Company Commander. The petitioner was made to reply same day apologising for his mistake and assuring that it would not be repeated in future. This probably did not satisfy the Platoon Commandant. And the petitioner resigned on same day that is 6.3.93, on the ground that he was suffering from itching. The wife of the petitioner on whose complaint Shri Vijendra Singh came to the house of the petitioner made an application on the very next day that is 7.3.93 to the Platoon Commandant that her husband was not mentally fit when he resigned, therefore, his resignation may not be accepted. He was ready to serve and be reinstated in the service so that the children may not suffer. The father of the petitioner also submitted an application on 10.3.93 to the Deputy Inspector General for canceling the resignation given by the petitioner as he was mentally sick and it was not a voluntary resignation. The petitioner himself by letter dated 24.3.93 requested the Platoon Commandant that he being ill was not in his senses when he resigned, therefore, it may not be accepted. The Platoon Commandant did not pay any heed to these requests and accepted the resignation by his order dated 11.3.93. It is this order of acceptance of resignation, which is under challenge in the instant writ petition.

2. I have heard Shri Rajeev Gupta learned counsel for the petitioner and Shri V. J. Sahai learned standing counsel appearing for the respondents.

3. In the counter-affidavit, it is not disputed that the petitioner was under intoxication on 6.3.93 and was not in fit mental state. So much so that when his officer came to his residence on the request of his wife, the petitioner being under Intoxication uttered some objectionable words against him. In paragraph 6 of the counter-affidavit. It is admitted that when Shri Vijendra Singh came to the house of petitioner, he found him mentally unusual. The allegation in paragraph 7 of the petition that Shri Vijendra Singh came again with some constables and took the

petitioner forcibly to headquarter is not denied. It is further not denied that when petitioner was brought to the headquarter, he was first served with a show cause notice, and then he resigned. All this happened on same day that is 6.3.93 when petitioner's mental condition was admittedly unusual.

4. The question that arises on these facts is whether the petitioner rendered resignation voluntarily with an intention to relinquish his service or it was obtained by force. In law if an employee is held not to have resigned voluntarily or the resignation has been obtained by force, then it is invalid. In either case, it does not amount to valid termination of service. The Apex Court in *Moti Ram v. Param Dev*, AIR 1993 SC 1662, has laid down as under :

'As pointed out by this Court. 'resignation' means the spontaneous relinquishment of one's own right 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 concomitant act of its relinquishment. It has 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 conditions governing it.

5. Resignation is one of the methods by which the service of an employee comes to an end. But the basic condition, as explained by the Courts, is that the employee must resign voluntarily. A voluntary act is one which is done by a person of his own accord without any pressure or fear and freely. A person employed as barber in police department is at the lowest and he could not have misbehaved with such a senior officer and used derogatory words except when he was under such effect of Intoxicant that he was not able to distinguish between right and wrong. He was not normal. Resignation is a relinquishment of right intentionally and voluntarily. A person whose mental faculties had been affected due to Intoxication or to borrow the words of the counter-affidavit, he was, mentally unusual, incapable in law of relinquishing his right. The letter dated 6.3,93 of the petitioner, therefore, could not be construed as voluntary relinquishment of his right.

6. The letter further is invalid and ineffective as it was obtained by force. The facts speak for themselves. The effect of intoxicant was so much that his wife panicked and had to seek the help of the officer. It is unfortunate that the petitioner misbehaved with him. It naturally angered the officer. That is clear as he came back with four constables and took him forcibly to headquarter. The step was taken not to ensure that the petitioner becomes normal but to take proceedings against him for, personal misbehaviour. But when he found Company Commander Issuing show cause notice only he got a resignation letter from the petitioner, that since he was suffering from itching he was resigning. The reason mentioned in the letter is an eyewash. Shri Vljendra Singh could not think probably of any better reason for the petitioner to resign. The only reasonable inference that arises from the facts is that it was not a voluntary resignation. It was obtained by force. The resignation in either circumstances was not voluntary relinquishment of the service.

7. The resignation was contrary to, rules as well. Under Section 9 of the [Police Act, 1861](#) and paragraph 505 of the Police Regulation an officer is at liberty to relinquish his office by giving two months' notice. These provisions apply to U. P. Pradeshik Armed Constabulary as well. Section 9 of Police Act and paragraph 505 of the Police Regulation are extracted below :

Section 9. Police officers not to resign without leave or two months notices.--No police officer shall be at liberty to withdraw himself from the duties of his office ; unless expressly allowed to do so by the District Superintendent or by some other officer authorised to grant such premises or without the leave of District Superintendent to resign, his office unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

PARA 505 OF POLICE REGULATION :

A Police Officer of the rank of Inspector or below can resign his office on giving in writing two months notice of his Intention to resign but he shall not withdraw from the duties of his office until such time his resignation has been formally accepted by the appropriate authority and he has fully discharged any debt due by him as

such police officer to Government or to any police fund :

Provided that such a resignation may be accepted by the authority with effect from date prior to the date of expiring of notice :

Provided further that the resignation of police officer whose conduct is under enquiry or who is being proceeded against departmentally under Section 7 of the Police Act. 1861 (Act No. V of 1861) or tried in a Court of law for any offence may, in the discretion of such authority, not be accepted until such time the final orders are passed as a result of such enquiry, proceedings or trial as the case may be.

8. The argument of learned counsel for the petitioner that the petitioner did not give two months' notice of intention to resign, therefore, the resignation letter of the petitioner being contrary to the Act and the Regulation could not have been acted upon, has force. The provisions made under the Act and the Regulation are intended for the benefit of employer and the employer could waive the period of notice and accept the resignation. The language of resignation letter becomes Important and from the construction of the language used in the resignation letter, one has to find out as to whether the employee intended to resign with immediate effect or not. The resignation letter in this case does not state that the petitioner was resigning with immediate effect. It is common knowledge that a person proposing to resign often wavers in his decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. One may resign in a fit of anger or depression. The purpose of giving two months' notice by the employee is two fold. One it gives the employer an opportunity to makesome alternative arrangement before relieving the employee and the other it gives an opportunity to the employee to re-think as to whether he may continue with the resignation. It is true that there is no specific provision either in the Act or in the Regulation permitting the employee to withdraw resignation. However, no such specific rules are needed. Until the employer accepts the resignation the employee could withdraw his resignation. The respondents could waive period of two months' notice mentioned in the Act and the Regulation but there is nothing on the record to show that the notice was waived by the respondents. In absence of any material on record and in absence of any reason, the respondents in law could

have accepted resignation of the petitioner after the expiry of two months. Even if the respondents accepted the resignation dated 6.3.93 on 11.3.93, the acceptance of resignation remained mute and could be operative only on or after 6.5.93. The petitioner withdrew his resignation on 24.3.93, therefore, the resignation letter and its acceptance became a dead letter and ineffective. The result was that the petitioner continued to be in service of the respondents and was illegally deprived by the respondent to discharge his duties.

9. As I have held earlier that the resignation by the petitioner was not intentional or voluntary and was obtained by respondent under force and the petitioner was not in a fit mental state when resignation was obtained from him, therefore, the petitioner is entitled for reinstatement and entire arrears of salary.

10. The writ petition succeeds and is allowed. The order dated 11.3.93 passed by respondent Annexure-1 to the writ petition is quashed and the petitioner shall be entitled to all consequential benefits of service. The respondent is directed to reinstate the petitioner in service and pay his entire arrears of salary within a period of two months from the date a certified copy of this order is produced before the respondent.

11. There shall be no order as to costs.