

Gopal Krishna Sharma Vs. Engineer-in-chief, P.W.D. and ors.

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Court : Madhya Pradesh

Decided On : Nov-24-1998

Reported in : [1999(81)FLR605]; (1999)IIILLJ706MP; 1999(2)MPLJ164

Judge : B.A. Khan and ;Shamboo Singh, JJ.

Appeal No. : W.P. No. 948/1997

Appellant : Gopal Krishna Sharma

Respondent : Engineer-in-chief, P.W.D. and ors.

Advocate for Def. : Ghitale, G.A.

Advocate for Pet/Ap. : S.C. Bagadia and ;Pankaj Bagadia L.C., Advs.

Judgement :

B.A. Khan, J.

1. Petitioner is asking for moon and wants to return to service after having resigned from his post about 12 years back.

2. Petitioner was appointed Overseer (Civil) way back on December 18, 1966 by the Engineer-in-Chief, Public Works Department. He was later sent on deputation to M.P. State Dairy Development Corporation, Ujjain on the post of Assistant Engineer. According to him he felt aggrieved of some promotion order and

submitted his resignation on June 20, 1979. He later withdrew after two years or so on June 18, 1981 and submitted a letter in this regard to respondent No. 2. It is not known if he pursued this matter any more till 1993 when he filed O.A. No. 42/1993 before State Administrative Tribunal complaining about his non-posting and release of salary etc. His application was rejected and dismissed as time barred. He thereafter sought review of this order which was also dismissed. Meanwhile respondent No. 1 passed order dated February 26, 1993 accepting his resignation w.e.f. June 20, 1979. Prompted by this he filed yet another O.A. No.326/ 1993 on the subject matter praying for the same relief which again met the same fate. The Tribunal while rejecting his application observed as under:

'It is plain that the applicant withdrew his resignation two years after its tendering and giving its effect and then bringing the matter in the Court of law after about 12 years. It clearly and legitimately enables us to draw an inference of discontinuation of the service of the applicant. The applicant is, therefore, deemed to have unilaterally terminated his contract of service long back. This third petition is, therefore, hopelessly barred by limitation and also has no force on merits.'

3. Appellant has now filed this writ petition assailing the Tribunal's order in a repeat exercise. His case is that acceptance of his resignation by respondent No. 1 after 14 years was illegal and that he should be deemed continuing on the post of Sub-Engineer and entitled to posting, salary and all other benefits. He also attacks dismissal of his O.A. No. 236/1993 as time barred and submits that Tribunal had fallen in error by not taking in regard that a fresh cause of action had accrued to him after his resignation was accepted on March 22, 1997. As such his application was not liable to be dismissed on that count.

4. Shorn of all technicalities, there is no dispute with the proposition that resignation of an employee becomes operative from the date of its acceptance and that, it can be withdrawn before that at any time in the absence of a legal, contractual or constitutional bar. But this holds good only in a case where such employee resigned from the post and continued to work on the post till his resignation was accepted. He can withdraw or revoke his resignation in such a case before it is accepted.

5. But where the employee by his unilateral action submits his resignation and abandons his post and stays away from duty for as long as 12 years, he should be deemed to have severed his links with the employer and with the post he was holding of his own volition. In such a case resignation of the employee cannot await acceptance by the competent authority. Nor can such employee be allowed to cash on any inaction by such authority in accepting the resignation late. Therefore, it would depend upon the facts and circumstances of the case whether the resignation tendered by the employee would terminate his service on the date of tendering or from the date of acceptance. This position stands settled and supported by a catena of judgments by the Supreme Court and even by a judgment rendered by one of us (KHAN, J.) reported in 1997 (5) SLR 375 holding as under:

'The Government employee can withdraw his resignation before it is accepted by the Competent Authority only where he remains in service functioning on the post held by him awaiting acceptance of his resignation. But where he, acting on his own volition unilaterally abandons the post and service after putting in his resignation and does not subject himself to the disciplinary/administrative control of the appointing authority and stays away from duty and engages himself in any gainful employment or preoccupation, his service would stand terminated and his resignation would become operative from the date he had submitted it irrespective of whether and when it was accepted by the Competent Authority.'

6. Mr. Bagadia has brought to our notice some Supreme Court judgments including *Union of India v. Gopal Chandra* (1978-1-LLJ-492), but we find no reason or scope to take any different view in the matter. Nor do this judgment lay down any contrary proposition.

7. Therefore, even if petitioner's submission about accrual of his cause of action June 20, 1993 was accepted and Tribunal order faulted to that extent, still it would not alter the position in his favour given regard to the ground of reality. It would be wholly inequitable and unjust to allow an employee to cash on any official inaction and to pave way for his returning to service after 14 years of absence more so when there is no clue about his state of affairs during this whole period. It is not

understandable how could he ignoring his own conduct expect to use the Court process to his advantage. After all an employee cannot be allowed the licence to go out and return to the service at his sweet will.

8. This petition accordingly fails and is dismissed.

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