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Court : Delhi

Decided On : Apr-06-1994

Reported in : 1994(30)DRJ62

Judge : P.N. Nag and; R.L. Gupta, JJ.

Appeal No. : Civil Writ Appeal No. 4406 of 1993

Appellant : Y.P.S. Mathur

Respondent : Fruit and Vegetable Project and ors.

Advocate for Pet/Ap. : Kirti Uppal,; Karambir Dahiya,; Raj Birbal and;

Judgement :

P.N. Nag, J.

(1) RULE. D.B.

(2) By this writ petition the petitioner has sought for quashing of the impugned order dated 6.8.1992 whereby on acceptance of resignation, the petitioner has been relieved of his duties with effect from 6.8.1992 (afternoon). The petitioner, who was working as Joint Coordinator Grade Iii in the Procurement Department, has challenged this order on the ground that the respondents -have accepted his resignation mala fide as he has resigned from the Vice Presidentship of Union only and not from the post which he was holding with the Fruit & Vegetable Project.

According to the petitioner, he has not tendered his resignation from the respondent-project and the phonogram/telegram sent by him has been miscounted by the respondents. Therefore, the acceptance of the petitioner's resignation by the respondents is void ab initio.

(3) Such a position has been seriously controverted by the respondents and according to them, the resignation was sent by the petitioner by phonogram/telegram through Department of Telecommunication on 4.8.1992 (Annexure A) which was accepted by the Appointing Authority on 6.8.1992, i.e., two days thereafter. After the resignation was accepted, the petitioner had ceased to be an employee of the respondent-project and, therefore, he has rightly been relieved from service in accordance with law. Petitioner has resigned from his service and not from the Union.

(4) Although it is seriously disputed by both the parties whether or not the resignation from the service was submitted by the petitioner but we are assuming and taking the case of the respondents at the highest that the resignation in fact was submitted. We are accepting the position that on 4.8.1992 (Annexure A) the resignation from the post was submitted through phonograph and that such a resignation has been duly 'accepted on 6.8.1992 by the respondent-project.

(5) In order to determine the controversy between the parties, the contents of the resignation are reproduced below.

'SEEING No Involvement Of Head Of The Institute In Resolving The Labour Problems I Tender My RESIGNA- corporation From The Services Of Project ./ Letter Follows Yashpal Singh Mathur Vice President Employees UNION'

This resignation does not show that the resignation will take effect immediate or with effect from prospective date and further whether it is subject to certain terms and conditions. That is why the petitioner has very carefully stated in the phonograph that the letter follows'. Letter would have clarified the correct position - whether the resignation was being submitted with immediate effect or from prospective date or subject to certain conditions. Without waiting for the letter, the respondents have hurriedly accepted the petitioner's resignation on 6.8.1992

and did not allow the reasonable period to elapse. It shows, although it cannot be said with certainty, that the respondents were not happy with the union activities of the petitioner and they wanted to get rid of him and they accepted the resignation without allowing reasonable period to elapse. They have not even waited for the letter which was to follow as per the phonogram/telegram which could have thrown light on the contents of his resignation., as stated above.

(6) According to the petitioner, a letter dated 'nil' was sent by him on 11.8.1992. However, according to the version of the respondents, it was received by them on 14.9.1992. What ever the position may be, the letter reveals that the petitioner in fact has resigned from the post of Vice President of the Employees Union. Normally, therefore, in such a situation when the resignation is given by phonogram/telegram with the stipulation that the letter would follow, such resignation should not have been accepted so hurriedly by the respondents and they should have waited for the letter to come. Incase resignation is accepted on the basis of phonogram/telegram, it can at certain times lead to serious consequences as persons out of enmity or other reasons can manoeuvre and manage the resignation through phonogram/telegram with a view to harming an employee.

(7) Having regard to the totality of circumstances, in our opinion, the acceptance of the resignation by the respondents, in our opinion, is wholly arbitrary and such an action cannot be legally sustained.

(8) In the aforementioned circumstances, we allow the petition and set aside the impugned order of termination dated 6.8.1992. The petitioner will be taken back in service forthwith and in the facts and circumstances of the case, the period of his absence shall be treated as Extraordinary Leave Without Pay. Counsel for the petitioner has fairly stated, under instructions from his client, that the petitioner will not claim any wages for his period of absence in any forum.

(9) Writ petition stands disposed of. In the circumstances of the case, we make no order as to costs.

