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Court : Rajasthan

Decided On : Oct-26-1976

Reported in : 1976WLN(UC)535

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil Writ Petition No. 33 of 1976

Appellant : Devi Singh

Respondent : Authority Under Section 28a(2) of Rajasthan Shop and Commercial Establishment Act and ors.

Disposition : Petition dismissed

Judgement :

D.P. Gupta, J.

1. The facts of this case are a few and simple. The petitioner was appointed by M/s Compton Greaves Limited (hereinafter referred to as the Company') by a letter of appointment dated November 29, 1968, a copy of which has been placed on record as Ex 1 After serving the respondent No. 2 for some time, the petitioner cent his letter of resignation (Ex. 2) on March 17, 1975 stating therein that as per

terms of his appointment, the said letter may be treated as one month's notice before the petitioner is released, from the service of the Company. The case of the petitioner is that before the expiry of the notice period of one month, he withdraw his resignation telegraphically on April 16, 1976, but the company thereafter intimated to the petitioner that his resignation was accepted by it. According to the petitioner he continued to remain in the service of the company and taking the view that his services were unlawfully terminated by the Company, the petitioner filed an application under Section 28A of the Rajasthan Shops and Commercial Establishments Act, 1958 (hereinafter called 'the Act') before the Regional Deputy Labour Commissioner, Jaipur, which is the Competent Authority appointed under the aforesaid provision. The case of the company before the aforesaid authority was that the petitioner had tendered his resignation by giving one month's notice and the same had been accepted by the company by its letter dated April 14, 1975 and thus the employment of the petitioner came to an end by his resignation used that there was no question of termination of the petitioner's services in the present case. The competent Authority came to the conclusion that the petitioner had tendered an unconditional and unqualified resignation which was accepted by the company by its letter dated April 14, 1975 and as the services of the petitioner came to an end on account of his resignation, the provisions of Section 28A of the Act had no application. The Authority also held that the alleged withdrawal of the resignation by the petitioner on April 16, 1975 was of no effect. It is against this order that the present writ petition has been filed in this Court.

2. I have heard learned Counsel for the parties at considerable length. The first contention of the learned Counsel for the petitioner is that the petitioner was entitled to withdraw his resignation at any time before the communication of its acceptance by the company to him. In support of this contention, learned Counsel relied upon the decisions of their Lordships of the Supreme Court in *Bachhittar Singh v. State of Punjab and Anr.* : AIR 1963 SC395 and *In State of Punjab v. Amarsingh Harika* : (1966) 11 LLJ 188 SC. It may be pointed out that both these cases related to termination of public employment and it was held by their Lordships in the aforesaid cases that an order of termination became effective only after the communication thereof to the person concerned. There can thus be no doubt that before the order of termination of public employment is communicated to the

person concerned, the Government or the competent authority has a right to reconsider the matter and come to a different conclusion. However, the decisions given in the aforesaid cases are not applicable in the facts of the present case, inasmuch as there is no question of termination of employment, much less of public employment, involved in the present case. Amar Singh's case : (1966)ILLJ188SC was considered by their Lordships of the Supreme Court in the case of Rajkumar v. Union of India : (1970)ILLJ13SC wherein the question of resignation of a public servant came up for consideration before their Lordships. In Raj Rajkumar's case : (1970)ILLJ13SC , the petitioner resigned his office as a member of the Indian Administrative Service by a letter dated August 21, 1964 addressed to the Chief Minister of Rajasthan. On October 31, 1964 the Government of India accepted his resignation and requested the Chief Secretary to the Government of Rajasthan to intimate the date on which the concerned officer was relieved of his duties, so that a formal notification could be issued. However, before the acceptance of his resignation could be communicated to Shri Raj Kumar, he changed his mind and by his letter dated November 27, 1964, he requested for the withdrawal of his resignation. The acceptance of resignation was ultimately conveyed to him on March 20, 1965. On these facts, it was urged that as the petitioner had withdrawn his letter of resignation prior to the communication of acceptance of resignation to him, the resignation was ineffective. The aforesaid contention was, however, repelled by their Lordships and it was held that communication of acceptance of resignation was not material, as the resignation of the petitioner came into effect from the acceptance thereof by the competent authority. It was further observed by their Lordships that the principle that an order terminating employment is not effective until it is intimated to the employee concerned, as laid down in Amar Singh's case : (1966)ILLJ188SC was not applicable to the case of resignation by an employee. The following passage from their Lordships' decision in Rajkumar's case : (1970)ILLJ13SC , may be usefully quoted in this context:

Termination of employment by order passed by the government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which 'he letter of resignation

is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus penitential but not thereafter.

(emphasis added)

3. In view of the aforesaid decision of their Lordships of the Supreme Court, the first contention of the learned Counsel is untenable and deserves to be repelled.

4. Then, learned Counsel argued that the contract of employment of the petitioner continued upto the time of expiry of one month's notice period & the petitioner was within his rights to withdraw his resignation at any time before the termination of his contract of employment. Learned Counsel appearing for the company gave a two fold answer to this contention. In the first place, his submission is that the petitioner had sent an unqualified and unconditional letter of resignation which did not require any acceptance and his service of the petitioner came to an end automatically on the expiry of one month's notice period and after such a letter of resignation was sent by him, the petitioner was not competent to withdraw the same. In the second place, it was submitted that even if the petitioner sent his letter of withdrawal of resignation prior to the expiry of the notice period, yet after the resignation had reached the employer, it was in the discretion of the employer to allow or not to allow the petitioner to withdraw his resignation and as the company had already accepted the petitioner's resignation by its letter dated April 14, 1975 (Exhibit 5), the petitioner could not insist on the continuance of his employment. I am inclined to agree with the aforesaid submission of the learned Counsel for the company. It may be pointed out in this connection that the case of public employment is distinguishable from that of private employment, because in the case of public employment, a resignation is normally required to be accepted, as the public has a right to the service of all citizens and a person cannot unilaterally put an end to a contract of service. Their Lordships of the Gujarat High Court observed in *Savabhai Nanjibhai v. Vin (D.M.) Presiding Officer, First Labour*

Court and Ors. 1966 (12) I.F.L.R. 338:

When a person holding a statutory office resigns, sometimes the statute itself provides for acceptance of resignation. Where there is such a specific provision, resignation is not effective until it is accepted. But the question often arises as to what the statutes or parties intended to do in cases where they have not specifically provided for on the subject.... When a person holds a public office, the law may presume that he cannot abandon or withdraw from that office at his sweet-will and that his obligation as a public servant will not end by his resignation unless it is accepted. The law may so presume on the ground that otherwise, the public interest will suffer if the public servant is allowed to leave his office before arrangement is made for discharging the functions attached to his office.

5. However, in the case of an engagement between a master and a servant, the obligations of a servant arise out of a contract and he has the right to resign from service, subject to the normal rule of complying with the requirement of a notice of the requisite duration. Whenever an unconditional and unqualified letter of resignation is sent by an employee, who is not a public servant, then there is no necessity of its acceptance, unless otherwise agreed upon by the parties, as by the terms of the letter of resignation itself the contract of employment comes to an end on the expiry of the specified notice period. In *M. Thiruvengadam v. The Indian Institute of Science Bangalore* and Ors. A.I.R. 1954 Mys. 158 it was observed:

In the present case from the terms of the letter of 11-5-1953 it is clear that no acceptance of the term was ever contemplated or required and that it was in the nature of a notice by which the petitioner said he had resigned or renounced his job and would cease to work from a date six months later. Nothing more was therefore necessary to be done either by him or by the employers in pursuance of the notice which had put an end to the contract of service in a manner stipulated between the parties themselves.

6. Looking to the terms of the letter Exhibit-2, it appears that the petitioner had himself tendered an unconditional or unqualified resignation and it must be clearly understood by both the parties therefrom that the employment of the petitioner

would come to an end on the expiry of the notice period of one month. In these circumstances, there was no question of the petitioner's withdrawing his resignation. Moreover, in the present case, the company had accepted the resignation of the petitioner by its letter dated April 14, 1975 (Exhibit-5), and although the same was to be effective from the closing hours of April 16, 1975, yet after the acceptance of the resignation by the company, the petitioner had no right to withdraw his resignation.

7. The last contention of the learned Counsel for the petitioner is that the letter of the company dated April 14, 1975 accepting the petitioner's resignation was not communicated to him until after he had sent his telegram withdrawing his resignation and that the covering letter (Exhibit-4) showed that the letter of acceptance of resignation by the company was sent after 4.45 P.M. on April 16, 1975. However, as I have already pointed out above, the communication of the acceptance of resignation is immaterial and the acceptance of the petitioner's resignation became final as soon as the same was made by the company on April 14, 1975 and the petitioner cannot get any benefit from the fact that the communication of the acceptance of his resignation was delayed by two days.

8. It may also be observed here that even if the petitioner sent his telegram desiring to withdraw his letter of resignation, after he had earlier sent his unconditional and unqualified letter of resignation on March 17, 1975, it was within the discretion of the employer to allow the withdrawal of the resignation or not to allow him to do so. As the employer had a discretion in the matter, in case the employer accepted the resignation of the petitioner, he could not insist that he should be retained in service. Moreover, in the present case there was no question of unlawful termination of the services of the petitioner by the Company and as such the Competent Authority was right in holding that it had no jurisdiction in the matter under Section 28A of the Act.

9. No other point was argued before me by the learned counsel. In view of the aforesaid discussion, the writ petition has no merit and the same is hereby dismissed.

