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Court : Chennai

Decided On : Jan-29-2002

Reported in : (2002)IIILLJ160Mad

Judge : A.K. Rajan, J.

Acts : Indian Contract Act - Sections 4 and 5

Appeal No. : W.P. No. 9441 of 1994

Appellant : T. Ravindran

Respondent : The Presiding Officer, Labour Court, Coimbatore and the Management of Pollachi Co-operative House Co

Advocate for Def. : M.R. Raghavan, Adv.

Advocate for Pet/Ap. : S. Jayaraman, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

A.K. Rajan, J.

1. This writ petition is filed against the award passed by the Labour Court in I.D. No.213/90. The petitioner before this court was the workman in the second respondent society, namely, Pollachi Co-operative House Construction Society. The workman joined the service on 25.10.76. On 19.5.89 he submitted his resignation. It was handed over to the Secretary in person. Subsequently on 29.5.89 he sent a letter withdrawing the resignation letter. After this withdrawal letter was given, a communication was received from the second respondent dated 11.10.89, which was received on 13.10.89 by the petitioner herein stating that his resignation letter was accepted already. Therefore, the petitioner herein raised an industrial dispute before the Labour Court. Before the Labour Court he submitted that on 11.10.89 he submitted another application requesting the management to permit him to join duty. On the same day the management wrote a letter informing him that his resignation has been accepted and he has been relieved with effect from 19.5.89 itself. Then he stated that the management has failed to understand the involuntary nature of resignation. It was made under coercion and due to compulsion. Further he has stated that he sent a lawyer's notice on 5.3.90. He also stated that at the time of joining duty the management took resignation letter from him without date and now the facts are twisted. After recording the evidence of workman and the management witness the Labour Court dismissed the industrial dispute holding that the petitioner even earlier, twice, gave resignation letters and they were withdrawn subsequently and the management gave him employment on humanitarian grounds. The workman cannot expect the management to act in the same manner for the third time. It was also held that the resignation letter was accepted on the very same day in his presence and he was immediately relieved from duties. Therefore, the Labour Court has come to the conclusion that the petitioner is not entitled for employment. Aggrieved against this order the present writ petition has been filed.

2. Learned counsel for the petitioner argued that this is a contract of employment and according to the contract of employment, resignation brings the employment to an end and therefore, such a termination of employment can be done only in accordance with the rules and as per the rules applicable to him, 15 days notice is necessary for either party to bring the contract to an end. Therefore, the letter of resignation will come into effect only on the completion of 15 days. Therefore, the

counsel submitted that when the letter of resignation was given on 19.5.89, it can come into effect after the completion of 14 days and that even before the completion of 14 days. On 29.5.89 itself the petitioner sent a letter withdrawing his letter of resignation. Therefore, there cannot be a termination of service before the expiry of 14 days. Therefore, the petitioner is deemed not to have resigned and he is deemed to be continuing in service. Therefore, the order of the Labour Court is illegal and it is liable to be set aside. In support of his argument the learned counsel relied upon the decision of the Andhra Pradesh High Court in *Sudha Nagaraj, K. v. Chief Manager, Andhra Bank* 1997 III LLJ 301 and *G.M., B.H.E.L. Ltd. v. Rajita Suryakanta* where the Andhra Pradesh High Court has held that when the resignation letter was tendered in writing, it has to be accepted only in writing and the acceptance of resignation cannot be communicated orally. In the present case there was no letter of acceptance of resignation and therefore, the learned counsel submitted that the resignation of the workman has not become effective and he is deemed to be continuing the service. He further relied upon the decision of the Supreme Court in *Punjab National Bank v. Shri P.K. Mittal* wherein the Supreme Court held that acceptance of resignation before the expiry of the notice period will not be effective and the resignation alleged to have been accepted immediately is not valid. The judgment of the Supreme Court is based on the facts of the particular case. In that case the resignation letter itself contained a condition. In that letter of resignation the employee had added that the date of receipt of letter should be treated as the date of commencement of notice period so that inclusive of the same his resignation will be effective from 30.6.86. In that case since the resignation was accepted on 7.2.86, the Supreme Court held that it was without jurisdiction. Therefore, it is the case where acceptance was against the terms contained in the very letter of resignation. In the same case, the Supreme Court in paragraph 6 holds that the employee may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. Therefore, the proposition that was laid down in that case by the Supreme Court is that when the letter of resignation fixes the date from which it has to come into force, any acceptance prior to that date is not valid. At the same time the notice period can be waived by either of the parties if both of them agree for the same. Therefore, this decision of the Supreme Court is not of any help to the petitioner.

3. Learned counsel for the petitioner relied upon another decision of the Patna High Court in *Managing Committee, S.G.A.S. High School v. State* where the Patna High Court held that under section 5 of the Indian Contract Act which provides that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, and as provided under section 4, the communication of acceptance of the proposal is complete as against the proposer when it is put in course of transmission to him so as to be out of the power of the acceptor. Therefore, relying upon this decision, the learned counsel contended that the acceptance shall be in writing. The counsel also relied upon the decision in *Janardan Misra v. State* for the same proposition in paragraph 9 of that judgment. This only holds that resignation can be withdrawn before it was accepted. The word 'communicate' does not mean communication in writing. This judgment cannot be understood merely because a letter of acceptance is transmitted before acceptance, to mean that acceptance shall only be in writing and that acceptance should be communicated in writing. The learned counsel also relied upon the judgment of the Supreme Court in *Power Finance Corpn. Ltd. v. P. K. Bhatia* 1997 (2) LLN 5 wherein the Supreme Court has held that the conditional letter of resignation will not be effective unless the condition is fulfilled. In that case in the letter of resignation itself there was a condition that the relieving order should be handed over to him immediately and the ex gratia payable be informed to him and his dues be paid immediately. Since the order accepting the voluntary retirement was a conditional one, the conditions sought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Therefore, this decision also cannot apply to the facts of the present case. Learned counsel also relied upon the judgment of the Supreme Court in *Central Bank of India v. J.N. Nagpal* 2001 (6) Sca 381. In that case the employee tendered his resignation on 2.4.88 but it was dated 1.7.88, to be effective from 1.10.88. The employee withdrew his resignation on 2.7.88, but the employer accepted the resignation on 6.9.88 itself. On the facts of the case the Supreme Court held that acceptance of resignation is not valid because the resignation was to take effect only from 1.10.88. Since the resignation was withdrawn on 2.7.88 itself, the acceptance of resignation on 6.9.88 was held invalid. Though the counsel

for the petitioner strenuously argued relying upon these judgments, these decisions do not come to the help of the petitioner in any manner since the facts of the case are different.

4. Learned counsel for the respondent referred to the evidence adduced before the lower court both by the petitioner as well as the management. The petitioner himself has admitted that on 19.5.89 he gave the resignation letter. He has not stated under what circumstances the resignation letter was given. That letter was given voluntarily without coercion by any person. It was given to the Secretary of the society. The Secretary of the society accepted it relieving him from the duties. He does not know when the endorsement was made in that letter. He did not come to work after the resignation letter was handed over. Further he states that once the employee was relieved it means that resignation letter has been accepted. But he says that it cannot be said that it is an official acceptance. The management witness also says that immediately on receipt of the letter of resignation he made an endorsement on the letter itself accepting the resignation and he was relieved and in his place another person was put in charge. Since that person also did not attend he performed that work. He also says that there is no rule in the bye-laws of the society prescribing the number of days required for accepting any resignation letter. From his evidence it is seen that the employee gave the letter of resignation voluntarily and it was accepted immediately and the acceptance was communicated to him orally on the same day and the employee also understood it that his resignation has been accepted and therefore, he did not turn to duty from that date onwards. Only after ten days he sent a letter withdrawing the resignation. Though the letter of accepting resignation was not communicated to him earlier, the employee was made to understand immediately that his resignation has been accepted and he was relieved. Therefore, the communication that is required is the communication to the person concerned in the manner in which the employee understands that communication. The communication need not be in writing.

5. Counsel for the petitioner strenuously contended that in the case of employer and employee relationship, the master and servant relationship exists and in such a situation acceptance can only be in writing to bring the termination of contract valid.

In other words, the argument of the learned counsel for the petitioner is the contract cannot be brought into existence or terminated except in writing. This argument is not accepted because the contract under the Indian Contract Act can be brought into existence orally. Offer can be made orally and acceptance also can be made orally. Once the offer is accepted, there is a contract. Similarly, once the offer of resignation has been accepted, then also the termination of service is complete. Therefore, the Labour Court has rightly concluded that the resignation was accepted and that was valid and therefore, dismissed the industrial dispute. The award of Labour Court is perfectly valid and I find no reason to interfere with that order. The writ petition is dismissed. No costs.

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