

## Bhajendra Nath Mathew Vs Bastar Kshetriya And Ors

**Court:** Chhattisgarh High Court

**Date of Decision:** Aug. 22, 2019

**Hon'ble Judges:** Prashant Kumar Mishra, J

**Bench:** Single Bench

**Advocate:** Vinod Deshmukh, P.R. Patankar, Vedant Bhelonde

**Final Decision:** Dismissed

### Judgement

Prashant Kumar Mishra, J

1. Petitioner would challenge the award passed by the Central Government Industrial Tribunal Cum Labour Court (in short "CGIT") on 11.04.2007

vide Annexure P-21 by which the CGIT has adjudicated the industrial dispute raised by the petitioner against him holding that the petitioner is not

entitled to be reinstated in service.

2. At the relevant time petitioner was posted as Clerk-cum- Cashier at Bastar Kshetriya Gramin Bank, Jagdalpur, District Bastar, (henceforth 'Bank').

He submitted a letter of resignation on 29.07.1983 making the same effective w.e.f. 01.09.1983, thus giving one month's notice before the actual date

of resignation. Petitioner thereafter served another notice on 30.09.1983 relinquishing his post pursuant to the earlier letter of resignation. The Branch

Manager forwarded his letter of resignation to the Head Office on 30.09.1983. The petitioner subsequently resumed office on 19.10.1983 after writing

the communication/letter Annexure P-4 that he withdraws the letter of resignation. Petitioner attended the office for two days but was not allowed to

work w.e.f. 21.09.1983, consequent to communication from the Head Office of the Bank vide Annexure P-5 dated 21.10.1983. He then raised the

industrial dispute, which was referred for WPL No. 7478 of 2007 adjudication to the CGIT.

3. The CGIT completed the inquiry and eventually held that petitioner having resigned by giving one month's notice, his service has not been

terminated and the resignation having come into effect after the period of notice was over, he could not be reinstated.

4. Assailing the order passed by the CGIT, Shri Vinod Deshmukh, learned counsel for the petitioner, would submit that no orders were passed by the

Management of the Bank accepting the resignation tendered by the petitioner, therefore, the CGIT should have allowed the prayer made by the

petitioner holding the bank's action of not allowing the petitioner on duty to be illegal. Referring to Annexure P-8, which is a document issued by Head

Office of the Bank and the Branch Manager communication Annexure P-8 dated 01.05.1985, Shri Deshmukh would further argue that the said

communication would demonstrate that no express order was passed accepting the resignation and the petitioner was not allowed to work in an illegal

manner, therefore, he is entitled for reinstatement and back wages.

5. It is also argued that before any letter accepting the resignation could have been issued by the Bank, the petitioner withdrew the letter of resignation

on 19.10.1983, WPL No. 7478 of 2007 therefore, the resignation could not have been given effect to once the same stands withdrawn.

6. Per contra Shri P.R. Patankar and Shri Vedant Bhelonde, learned counsel appearing for the respondent-Bank would refer to Rule 10 of the Bastar

Kshetriya Gramin Bank (Staff) Service Regulation, 1980, to argue that any employee may leave or discontinue the service in the bank after giving one

month's prior notice, which the petitioner has, in fact, served on the Bank, therefore, in the absence of any enabling provision obligating the bank to

pass acceptance order of resignation, the petitioner, ceased to be in service immediately on expiry of one month's notice and the CGIT has rightly

adjudicated the dispute against the petitioner.

7. In the letter of resignation petitioner has clearly mentioned that he is not available for bank's service after 31<sup>st</sup> August, 1983, therefore, he should

be deemed to have tendered resignation w.e.f. 01.09.1983. The letter of resignation later refers to one month's prior notice before leaving the service

as mentioned in Rule 10. Petitioner did not attend the duties from 01 October, 1983 to 18 October, 1983, however, all of a sudden he resurfaced in the

bank's office on 19.10.1983 and served a letter withdrawing the resignation and resumed duties. When this fact came to the notice of the Head

Office, a letter was issued vide Annexure P-5 not allowing WPL No. 7478 of 2007 the petitioner to resume work. By subsequent communication

Annexure P-7 dated 19.04.1985, petitioner served another letter in respect of acceptance of his resignation to which the bank issued a communication

Annexure P-8 informing him that by accepting his resignation he has already been relieved from the bank on 30.09.1983.

8. Perusal of this order would manifest that this communication by itself is not an order of accepting petitioner's resignation. It is only an information to

the petitioner that his resignation has already been accepted by relieving him from duties on 30.09.1983.

9. Rule 10 of the Staff Service Regulations, 1980 relevant for the issue is reproduced hereunder for ready reference :-

10. Termination of Service by Notice :

(1) (a) An officer or employee shall not leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank

of his intention to leave or discontinue the service.

(b) The period of notice required shall be - (i)  $\tilde{A}$ ,  $\tilde{A}$ ,  $\tilde{A}$ ,  $\tilde{A}$ , Three months in the case of officers and (ii)  $\tilde{A}$ ,  $\tilde{A}$ ,  $\tilde{A}$ , One month in the case of other

employees.

(c) In case of breach by an employee of the provisions of this sub-regulation, he shall be liable to pay to the Bank as compensation a sum equal to his

WPL No. 7478 of 2007 emoluments \* for the period of notice required of him.

(d) He shall also be liable to refund the pay or allowances or both, if any, drawn by him while on training and make good the training expenses,

incurred by the Bank or Sponsor bank for deputing him for training.

(e) In exceptional circumstances the payment of such compensation and refund may be waived by the Chairman, at his discretion.

(2) (a) The Bank may terminate the service of an-

(i) Officer after giving him three months, notice or emoluments \* in lieu thereof;

(ii) employee after giving him one month's notice or emoluments \* in lieu thereof.

(b) The power to terminate the service of an officer or employee shall be exercised by the Chairman.

(3) Nothing in sub regulation (2) shall affect the right of the Bank-

(a) to retire or dismiss an officer or employee without notice or pay in lieu thereof in accordance with the provisions of regulations 11 and 30; and

(b) to terminate the service of an officer or employee without notice or pay in lieu thereof on his being certified by a Medical practitioner recognized

by the Bank, to be permanently incapacitated for further continuous service in the Bank.

10. The above Rule clearly provides for service of one month's prior notice, in case of employees, when he intends to leave or discontinue the service

before attaining the age of superannuation. Nowhere in this Rule there is any WPL No. 7478 of 2007 contemplation obligating the Bank to pass an

order accepting the resignation on expiry of the period of notice meaning thereby that on expiry of period of notice the letter of resignation or an

intention to leave or discontinue the service comes into operation without any express order from the bank.

11. Dealing with similar situation, the Supreme Court has held in the matter of State of Haryana & Others Vs. S.K. Singhal (1999) 4 SCC 293 in the

following manner in Paragraph 18 :

18. In the case before us sub-rule (1) of Rule 5.32 (B) contemplates a "notice to retire" and not a request seeking permission to retire. The further

request"" contemplated by the sub-rule is only for seeking exemption from the 3 months' period. The proviso to sub-rule (2) makes a positive provision

that ""where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the

retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra

Sangma case so far as the employee is concerned. As already stated Rule 2.2 of the Punjab Civil Services Rules Vol. II only deals with a situation of

withholding or withdrawing pension to a person who has already retired.

12. Similarly in the matter of Himachal Pradesh Horticultural Produce Marketing & Processing Corporation Ltd. Vs. Suman Behari Sharma (1996) 4

SCC 584 the Supreme WPL No. 7478 of 2007 Court has again held that it is the language of the Rule which would be relevant and that if the Rules

provides for a provision or a clause envisaging that the employee would stand retire only if his application for resignation has been accepted, then the

employee would not be deemed to have retired only on the completion of notice period without there being an order of acceptance of resignation.

13. The same principle has again been reiterated in the matter of Padubidri Damodar Shenoy Vs. Indian Airlines Limited And Another (2009) 10 SCC

514 and C.V. Francis Vs. Union of India And Others (2013) 14 SCC 486.

14. Coordinate Bench of this Court has also taken a similar view in the matter of S.K. Shrivastava Vs. UCO Bank decided on 28.09.2019 in WPS No.

1620 of 2012.

15. As I have already referred to Rule 10 of the of the Staff Service Regulations, 1980, it is quite apparent that the rule does not contemplate any

order accepting the resignation, therefore, once the period of one months' notice is over, his resignation stood accepted and the same could not have

been withdrawn after the said date and more so when the petitioner was relieved on 30.09.1983 and he did not attend the office from 1 October, 1983

to 18 October, 1983.

16. In the above view of the matter, the CGIT has rightly held WPL No. 7478 of 2007 that the petitioner's resignation having been accepted, he is not

to be reinstated in service.

17. In view of the above, there is no substance in the writ petition, it deserves to be and is hereby dismissed.