

(2013) 02 JH CK 0027

Jharkhand High Court

Case No: Writ Petition (S) No. 5388 of 2006

Braja Gopal Ghosh

APPELLANT

Vs

Central Coalfields Limited and
Others

RESPONDENT

Date of Decision: Feb. 8, 2013

Acts Referred:

- Constitution of India, 1950 - Article 217(1)
- Contract Act, 1872 - Section 12

Citation: (2013) 2 AJR 17 : (2013) 137 FLR 21

Hon'ble Judges: Shree Chandrashekhar, J

Bench: Single Bench

Advocate: P.K. Sinha and Mr. Pandey Niraj Rai, for the Appellant; Ananda Sen, for the Respondent

Final Decision: Allowed

Judgement

Shree Chandrashekhar, J.

The petitioner has moved this court because his request recalling his letter of resignation has not been accepted by respondent authorities. The petitioner was appointed on 13.11.1993 and he was posted as Trainee Category-I. It is the case of the petitioner that he suffered from depression, nervousness, physiological problem etc and therefore, he was undergoing treatment under Dr. Ashok Kumar Nag. On 17.07.2003 the petitioner was examined by Dr. Ashok Kumar Nag and he diagnosed that the petitioner was suffering from Severe Depression Psychosis. When the petitioner was suffering from such mental illness, he tendered his resignation by writing letter dated 16.07.2003. The said request of the petitioner was accepted by the authorities on 14.10.2003.

2. In the meantime, the wife of the petitioner wrote letter dated 11.08.2003 intimating the Director (Personnel), Central Coalfields Ltd that her husband is

suffering from mental disturbance and therefore, his letter of resignation may not be accepted. Such letter was posted under certificate of posting and the postal receipt has also been filed along with the writ petition. Again on 03.10.2003 the wife of the petitioner made similar request to the Director (Personnel) and again intimated the authority that her husband was undergoing treatment at Kanke, Mental Hospital, Ranchi. Thereafter, the wife of the petitioner and the petitioner as well made representation dated 15.01.2004, 28.01.2004 and 15.03.2004.

3. By letter dated 15.04.2004 the matter regarding reconsideration of resignation of the petitioner was put up before competent authority and the said application was rejected being devoid of any substance. The petitioner again made representation on 02.01.2006 which was examined at company level and in view of rejection dated 15.04.2004 representation of the petitioner was again rejected and communicated to the petitioner by letter dated 26.06.2006.

4. Challenging those decisions of the respondents the present writ petition has been filed. A counter affidavit has been filed in which it has been admitted that the petitioner was sick from 25.06.2003 to 04.07.2003 and thereafter he joined duty on 05.07.2003. He was of sound mind and fully fit when he joined duty on 05.07.2003. His resignation letter dated 16.07.2003 was voluntary and it has been accepted w.e.f. 16.10.2003 and therefore, the subsequent letter for withdrawal of his resignation was not accepted by the authority.

5. Learned counsel for the petitioner has contended that in view of Section 12 of the Contract Act, the letter of resignation dated 16.07.2003 written by the petitioner is not a valid communication and, therefore, it cannot lead to a binding contract between the parties. He further submitted that an employee is entitled to withdraw the letter of resignation before it has been accepted by the authorities. He relies on the judgments reported in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, Balram Gupta Vs. Union of India (UOI) and Anr, Punjab National Bank Vs. P.K. Mittal, and Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another. He further contends that since the illness of the petitioner was within the knowledge of the respondents, it was the duty of the respondents to get the petitioner medically examined before accepting his letter of resignation.

6. The counsel for the respondents contends that since there are serious dispute of fact between the parties, the present writ petition cannot be entertained. Repelling the argument of the counsel for the petitioner, he submits that in the letter of resignation dated 16.07.2003 there is not even a whisper about the mental illness of the petitioner and therefore, if he was of sound mind at the time he tendered his resignation, no relief can be granted to the petitioner. Countering the submission of the petitioner, learned counsel for the respondents further submits that even Section 12 of the Contract Act envisages that a person can be of sound mind in between the period when he suffers from unsoundness of mind. Relying on the statement made in the counter affidavit he submits that the petitioner was under

treatment between 25.06.2003 to 04.07.2003 and he joined on 05.07.2003 and there is nothing to substantiate the claim of the petitioner that on 16.07.2003 when he tendered his letter of resignation he was suffering from mental illness.

7. I find that the fact in so far as the illness of the petitioner prior to tendering the letter of resignation is concerned that has been admitted by the respondents. The resignation of the petitioner was accepted w.e.f. 16.10.2003, however, before that the wife of the petitioner has written letter dated 11.08.2003 and 03.10.2003 requesting the Director (Personnel), Central Coalfields Limited not to accept the letter of resignation of the petitioner. Those letters have been written under certificate of posting and the learned counsel for the respondents has admitted that the address given on the postal receipt which bears the postal seal also is correct. In such view of the matter those letters are deemed to have been served upon the respondents.

8. In the case of "Jai Ram Vs. Union of India (UOI) , the Hon"ble Supreme Court has observed in these words:

It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained, but, he can be allowed to do so as long as he continues in service and not after it has terminated.

9. The Hon"ble Supreme Court in the case of Raj Kumar Vs. Union of India (UOI), has again reiterated the rule enunciated above, in these words:

When a public servant has invited by his letter of resignation determination of his employment, his service normally stand terminated from the date on which the 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. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter.

It was also observed that, on the plain terms of the resignation letters of the servant (who was a member of the I.A.S.), the resignation became effective as soon as it was accepted by the appropriate authority.

10. A five Judge Bench of the Hon"ble Supreme Court in the case of "Union of India etc versus Gopal Chandra Misra and others" reported in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, has conclusively held as under:

It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at

any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/ or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, choose to quite office. If in terms of the writing under his hand addressed to the President, he resigns *in praesenti* the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.

11. In the cases relating to voluntary retirement, the Hon"ble Supreme Court has applied the same rule. Balram Gupta Vs. Union of India (UOI) and Anr, , Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, .

12. The learned counsel for the respondents has relied on judgments of the Hon"ble Supreme Court reported in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, , State of Maharashtra Vs. Rashid Babubhai Mulani, , M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, to contend that letters dated 11.08.2003, 03.10.2003 cannot be deemed to have been served in the office of the respondents.

13. After going through the judgments cited by the learned counsel for the respondents, I find that those decisions are not applicable in the facts of the present case. The learned counsel for the respondents has admitted that address written on postal receipt is correct. Those postal receipts bear postal seal with imprint of dates. Therefore, those letters which were duly stamped and correctly addressed are deemed to have been served upon the respondents. The letter of resignation dated 16.07.2003 of the petitioner has been accepted w.e.f. 16.10.2003, however, prior to that letters dated 11.08.2003 & 03.10.2003 have been written withdrawing the letter of resignation dated 16.07.2003. It is also an admitted fact that the petitioner had been suffering from mental illness prior to tendering the letter of resignation and there is a medical prescription dated 17.07.2003 on record which also indicates that the petitioner was suffering from Severe Depression Psychosis. I am also of the opinion that the letters dated 11.08.2003 & 03.10.2003 written by the wife of the petitioner corroborate the stand of the petitioner that he was suffering from mental

illness. Had it not been so the letter of withdrawal would have been written by the petitioner himself.

14. In view of the aforesaid facts and the law declared by the Hon"ble Supreme Court, the impugned orders are set aside. The writ petition is allowed. There shall however, be no order as to costs.