

(1983) 07 CAL CK 0023**Calcutta High Court****Case No:** A.O.D. No. 48 of 1981

Burjor Madan

APPELLANT

Vs

United India Insurance Co. and
Another

RESPONDENT

Date of Decision: July 18, 1983**Acts Referred:**

- Contract Act, 1872 - Section 7

Citation: 88 CWN 424**Hon'ble Judges:** R.K. Sharma, J; P K. Banerjee, J**Bench:** Division Bench**Advocate:** S.P. Roychowdhury and D.P. Mukherjee 2, for the Appellant; Monotosh Mukherjee, Hari Narayan Mukherjee, G.C. Chatierjee and Gouri Dhar, for the Respondent**Final Decision:** Dismissed**Judgement**

Banerjee, J

1. This appeal at the instance of the plaintiff arises out of a suit for declaration that the plaintiff is an employee of the defendant no. 1 and he is entitled to rejoin the services as Divisional Manager on and from 9th of June, 1977 on the same terms and conditions as are applicable to the plaintiff prior to September 27, 1976. The plaintiff further prayed for declaration that the impugned order of transfer dated 18th of September, 1976 is-illegal, void and/or ineffective and other consequential reliefs. In so far- as the transfer order is concerned, it may be stated that Mr. Roychowdhury appearing for the appellant did not press this prayer at the hearing. The case made out by the plaintiff is that the defendant no. 1 is a company within the meaning of General Insurance Business Nationalization Act, 1972. The defendant no. 1 is managed by the Board of Directors constituted by and under the provision of the said Act. Prior to January 1973 the plaintiff was a whole time Officer of the Concord of India Insurance Company Ltd. and on and from 2nd of January,

1973 the plaintiff became the officer of the defendant no. 1 and is alleged, to continue to be so when the suit was filed, on the terms and conditions of service, *inter alia*, of General Insurance (Nationalisation of Pay Scales and other Conditions of Service of Officers & Development Staff) Scheme 1976. The plaintiff who was employed as a Divisional Manager at 38, Chowringhee Road, Park Street, was transferred by an order dated 18th of September, 1976 as Assistant General Manager to the Regional Office of the defendant on and from 27th of September, 1976. It is alleged that the order of transfer was *mala fide* inasmuch as by the said order of transfer the plaintiff would be loosing about Rs. 700/- per month. Be that as it may, the plaintiff appellant submitted his resignation to the Regional Manager of the defendant no. 1 which was to take effect from 11th of January, 1977. It appears that subsequent to the filing of resignation letter the plaintiff applied for encashment of his earned leave or to be granted earned leave for 128 days from 1st of February, 1977. It appears that correspondence followed between the plaintiff appellant and the defendant No. 1. The defendant no. 1 stated to him that it was not possible for them to grant him encashment of the earned leave but allowed the plaintiff to enjoy the earned leave and his resignation, according to the plaintiff himself, would have been effective from the date he exhausted his leave. Thereupon by a letter dated 28th of January, 1977 in reply to appellant's letter dated 19th of January, 1977 the defendant no. 1 allowed the plaintiff to go on leave for 128 days. On 9th of May, 1977 the plaintiff wrote a letter to the defendant that he would rejoin his office on 9th of June, 1977 after he enjoyed the leave of 128 days which was to his credit on 31st of January, 1977. Immediately thereafter the company wrote back to say that he cannot be allowed to rejoin on 9th of June, 1977 as he was trying to take advantage of the generous gesture extended by the company to the plaintiff to have the benefit of the leave that stood to his credit as on 31st of January, 1977. It was Communicated to him by the letter dated 23rd of May, 1977 that his resignation was accepted.

2. The defendant filed a written statement stating *inter alia* that the plaintiff cannot rejoin the service on 9th of June, 1977 as his resignation has already been accepted from 9th of June, 1977. It was further stated that the plaintiff tendered his resignation with effect from 9th of June, 1977 and the defendant duly accepted the said resignation. It is denied that the resignation was not duly accepted by the defendant no. 1. On these pleadings the parties came to trial and the suit having been dismissed the present appeal has been preferred by the plaintiff appellant.

3. Mr. Roychowdhury appearing for the plaintiff appellant contended that before the effective date of resignation the plaintiff may withdraw the resignation and there is no legal bar and secondly, it is argued that if there is a conditional offer, the offer must be accepted absolutely or not at all and thirdly, it is argued that the letter of resignation was not accepted by the competent authority. Before we deal with the question raised by Mr. Roy Chowdhury it will be relevant for us to refer to some of the exhibits filed in this case. The first exhibit is the letter of resignation being dated

11th of October, 1976, saying that he will be grateful if the company will relieve the plaintiff from his present assignment and permit him to go on leave preparatory to retirement. Ext. 6 is a reply to the plaintiff's letter which stated that Shri Madan, plaintiff, can submit his resignation in accordance with Clause 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme 1976. Ext. 7 is a letter given by the plaintiff to the defendant which inter alia states as follows :-

I acknowledge receipt of your letter Re : ER/SECT/127/76 dated the 3rd December, 1976, quoting an extract from letter received by you from Head Office and note that there is no provision under the Rules of the Company for voluntary-retirement. In the circumstances, you may treat my letter of the 11th October, 1976 as notice of resignation.

In terms of Clause 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme of 21st September, 1976, the period of notice required to be given is three months and in case the notice period would terminate on 11th of January, 1977. Immediately thereafter, I shall be availing of my earned leave and my resignation will be effective from the date I have exhausted all my leave.

Yours faithfully,

B. Madan,

(B. Madan)

Asstt. Manager

4. Ext. 8 is a letter dated 17th of December, 1976 by which the plaintiff was intimated that there is no question of plaintiff's being allowed to avail himself of the leave after the expiry of the three months" notice period, and that his resignation is accepted on 31st of January, 1977. The plaintiff, however, went on representing that he should not be deprived of his earned leave (Ext. 9). Again by Ext. 11, a letter dated 19th of January, 1976, the plaintiff wrote back to say that his resignation will be effective on expiry of his earned leave, i.e. 5th June, 1977, unless, of course, the management is prepared to encash his earned leave of 125 days, in which the effective date of his resignation will be 31st January, 1977. By Ext. 12 it appears that the defendant no. 1 granted earned leave from 1st February, 1977 for 128 days. Therefore, soon after the letter was received on 9th of May, 1977 the plaintiff appellant wrote back to say that he would rejoin the office on 9th of June, 1977 and Ext. 14 is a letter by which it was stated to the plaintiff by the company that his resignation having been accepted and he having availed of the generous gesture of the defendant no. 1 regarding leave of 128 days, he cannot be allowed to rejoin the service. Being aggrieved by this order a suit was filed and thereafter the plaintiff came to this Court on appeal. We have already stated the case of the parties and the

arguments advanced by Mr. Roy Chowdhury.

5. Mr. Roychowdhury heavily relied upon the case reported in [Union of India \(UOI\) and Others Vs. Gopal Chandra Misra and Others](#) . In considering the resignation of a High Court Judge and withdrawal of the said resignation thereafter before the resignation could be effective, the Hon"ble Supreme Court held inter alia as follows :-

The general principle regarding resignation 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 function arises

The case was one of resignation given by a Judge of the High Court and subsequent withdrawal of the said resignation before the effective date, that is, 1st of August, 1978. The Supreme Court was of opinion in so far as the High Court Judges are concerned that the question of acceptance of resignation is of no consequence and the High Court Judge resigns from the date as he states in his resignation letter. He has every right to withdraw the said resignation before the date mentioned in the resignation letter expires. In the present case, however, Mr. Roychowdhury relied heavily on the general principle enunciated by the Supreme Court. In paragraph 66 of the said judgment reported above the Supreme Court, however, considered the effect of the case reported in 1889 -14 Appeal Cases 159 (Reichal vs. Bishop of Oxford). What happened in that case is that Bishop of Oxford agreed with Reichal that the Bishop would postpone formal acceptance till 1st of October if Vicar ceases to hold office. Vicar gave his resignation letter which was accepted by the Bishop. Whereupon Vicar brought an action against the Bishop for a declaration that he was Vicar, the resignation was void and injunction. The House of Lords held inter alia that :

The arrangements for resignation on the one side and acceptance on the other seem to me to have been consummated before the supposed withdrawal of the resignation of Mr. Reichal. It is true that the Bishop agreed to execute the formal document to declare the benefice vacant till the following 1st of October; but I decline to decide that when a perfectly voluntary and proper resignation has once been made and by arrangement a formal declaration of it is to be postponed, that is not a perfectly binding transaction upon both the parties to it; and I doubt whether in any view of the law such an arrangement could have been put an end to at the option of only one of the parties.

It is further held by the House of Lords that the resignation was delivered in pursuance of a mutual agreement which rendered formal or other acceptance altogether unnecessary. The Supreme Court in considering the case held that their Lordship held that Reichal's resignation had become absolute and irrevocable. In

the present case, in our opinion, Reichal's case in the facts and circumstances applies in all force. The plaintiff first of all resigned from a particular date, went on asking for encashment of his earned leave and as it was not possible under the rules the company agreed to allow him leave for 123 days which stood to his credit on 31st of January, 1977 and allowed him to enjoy that leave and thereafter accepted his resignation. In the facts and circumstances of the case it cannot now be said that the plaintiff has right before 9th of June, 1977 to withdraw the resignation already tendered and also availed of all advantages given to him by the company allowing him to enjoy the earned leave in view of the fact that he was leaving service of his own accord.

6. The next point argued by Mr. Ray Chowdhury is that the offer was conditional and the offer must be absolutely or not at all. We have already stated that the offer was conditional and it was made by the plaintiff himself by which though, technically speaking, he was not entitled to the leave period pay, he was allowed to continue till 8th of June for enjoying the leave of 128 days. He having applied for it took benefit of the same but he is now estopped from arguing that the offer was conditional and it must be accepted as a whole or not at all. It appears to us that it was not proper for the plaintiff appellant to accept the money for 128 days after he resigned but technically speaking he is not entitled to the said money in accordance with the Rules but it is good. of the Company that they have accepted his resignation after they have allowed him the leave he prayed for and he earned during the period of his service with the Company. In that view of the matter there is no substance in the contention that Section 7 of the Contract Act applies -in the facts and circumstances of this case. In our opinion, the conditional offer was accepted conditionally inasmuch as his resignation was accepted after he has been enjoying the benefit which he would not have otherwise got had the Company taken the stand that he is not entitled at all to the leave period after his resignation. The last point argued by Mr. Roy Chowdhury is that the Competent Authority has not accepted his resignation. On the face of it, it appears to us that by the letter dated 23rd May, 1977, it was stated on behalf of the Company that by communication dated 17-12-76 the plaintiff's resignation was accepted by the Company but he was allowed to take the leave and resignation was accepted after the earned leave of 128 days expired from 1st of February, 1977. In that view of the matter, in our opinion, none of the points urged by Mr. Ray Chowdhury have any merits and therefore, the appeal stands dismissed but there will be no order as to costs. In view of our finding hereinbefore made, we reject the application filed by the appellant for acceptance of additional evidence at this stage.

R.K. Sharma, J

I agree.