



CWP-10280-2001 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10280-2001 (O&M)
Date of Decision :07.03.2025

B.B. Gupta

...Petitioner

Versus

Presiding Officer, Labour Court, Union Territory,
Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vishav Bharti Gupta, Advocate for the petitioner.

Mr. Anil Chawla, Advocate for respondent No.2

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to the order dated 02.09.1994 (Annexure P/7) by which, the request of the petitioner for withdrawal of resignation and joining back has been rejected as well as to the order dated 06.09.1994 (Annexure P/8) vide which the resignation of the petitioner has been accepted by the competent authority of respondent No.2 with retrospective effect despite the fact that the resignation had already been withdrawn by the petitioner prior to the passing of impugned order dated 06.09.1999 (Annexure P/8) by the respondent No.2. Further challenge is to the award Annexure P/17 passed by the Labour Court, U.T. Chandigarh.

2. Certain facts needs to be mentioned for the correct appreciation

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of the issue in hand.

3. The petitioner joined the services of the respondent No.2 as Apprentice Accountant on 26.04.1973. The said engagement was turned into a regular appointment by respondent No.2 w.e.f. 26.11.1973 and the petitioner continued working as such when he was promoted as Senior Accountant on 05.08.1993. While working on the post of Senior Accountant, the petitioner submitted his resignation on 01.11.1993 by giving one month's notice to respondent No.2 so as to give effect to the said resignation starting from 01.12.1993. The respondent No.2 did not accept the said resignation and requested the petitioner to return back the house building loan first, which was outstanding along with interest against the petitioner. The petitioner's resignation was kept in limbo till the petitioner decided to withdraw the said resignation on 08.08.1994.

4. After withdrawing the resignation, the petitioner submitted that he should be allowed to join back and continue in service but respondents vide order dated 06.09.1994 (Annexure P/8) accepted the resignation of the petitioner with retrospective effect i.e. from 30.11.1993. Against the said order dated 06.09.1994 (Annexure P/8), the petitioner approached the Labour Court with a grievance that the acceptance of resignation of petitioner by the respondent No.2 after the same had already been withdrawn by the petitioner, was not within the jurisdiction of the competent authority and hence, the petitioner should be treated in service for all intent and purposes.

5. The Labour Court ultimately came to the conclusion that the petitioner, who was discharging the duties of the post of Manager Grade-B

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is not covered under the definition of Workman and the said reference qua the acceptance of the resignation of the petitioner by the respondent No.2. vide order dated 06.09.1994 (Annexure P/8) was declined to be accepted.

6. The challenge in the present petition is to the order dated 06.09.1994 (Annexure P/8) whereby, the resignation of the petitioner was accepted by respondent No.2 with retrospective effect as well as to the award (Annexure P/17) passed by the Labour Court, U.T. Chandigarh wherein, it has been held that the petitioner does not come under the definition of workman so as to claim the benefit. Hence, the present petition.

7. Learned counsel for the petitioner argues that though, the petitioner submitted his resignation on 01.11.1993 by giving one month's notice and his resignation was to be made effective from 01.12.1993 but as there was no acceptance of the same by the competent authority, the petitioner remained in service for all intent and purposes. Learned counsel for the petitioner further submits that before the acceptance of the resignation, the same had already been withdrawn by the petitioner on 08.08.1994 and the joining report had also been given by the petitioner hence, there was no other option with the respondents but to allow the petitioner to join back in service as the petitioner was the employee of respondent No.2 even on 08.08.1994 hence, the acceptance of resignation of the petitioner by the respondent No.2 vide order dated 06.09.1994 with retrospective effect is arbitrary and illegal and contrary to the settled principle of law.

8. Learned counsel for the petitioner further argues that the

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petitioner's substantive rank was of Senior Accountant. Learned counsel for the petitioner submits that even if, it is assumed that the petitioner was not entitled to invoke the jurisdiction of the Labour Court but once, even the order of acceptance of resignation with retrospective effect has been challenged, the said dispute may be adjudicated by this Court irrespective of the findings recorded by the Labour Court wherein, the reference made by the petitioner was held to be not maintainable.

9. Learned counsel for the respondent No.2 submits that though, the resignation was submitted by the petitioner by giving one month's prior notice but the petitioner stopped attending the duties starting from 01.12.1993 and hence, it is deemed that the resignation stands accepted and the only formality left was to convey the said acceptance of resignation to the petitioner, which was duly conveyed on 06.09.1994 though, the same was after receiving the letter dated 08.08.1994 by which, the petitioner had requested for withdrawal of the resignation. Learned counsel for the respondent No.2 further submits that the conduct of the petitioner of not performing the duties after 30.11.1993 has to be taken into account to prove as to whether the petitioner remained in service or not till the passing of the order dated 06.09.1994 hence, in the facts and circumstances of the present case, when the resignation tendered by the petitioner has been accepted by the respondent No.2 with retrospective effect, the same will not give undue advantage to the petitioner to take benefit of his own conduct so as to be treated as employee of respondent No.2.

10. Learned counsel for respondent No.2 further submits that resignation submitted by the petitioner was not accepted on the ground that

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there was outstanding amount qua the house building loan taken by the petitioner and in the absence of the return of the said amount, resignation could not have been accepted hence, the acceptance of the resignation of the petitioner on 06.09.1994 by the respondents is to be treated valid though, the same was done retrospectively.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. The first question which arises is as to when the resignation of an employee is deemed to be accepted and whether there is any deeming fiction with regard to the acceptance of the resignation or the same has to be accepted by a specific order so as to terminate the master and servant relationship.

13. As per the settled principle of law, the resignation will only come into effect in case, the same is accepted by the competent authority by passing a specific order. There is no deeming fiction of the acceptance of the resignation once given by an employee.

14. In the present case, the respondent No.2 has passed order dated 06.09.1994 (Annexure P/8) by deeming fiction that the resignation submitted by the petitioner stands accepted w.e.f. 30.11.1993. There is no procedure of the deemed acceptance of resignation and that too with retrospective effect.

15. Learned counsel for the respondent No.2 concedes the factum that the resignation as per the rules governing the service, the resignation demands the acceptance by the competent authority, which was done though, retrospectively.

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16. Once, the rules governing the service do not envisage the retrospective acceptance of the resignation, the acceptance of the same cannot be done retrospectively. Rule 14 of the HAFED Common Cadre Rules, 1988 which deals with the resignation is as under:-

14.Resignation:-

“Any employee may resign from the service of the Federation by giving on month notice or by depositing one month’s pay and allowance in lieu thereof .

Resignation will be deemed to be operative only after it has been accepted by the competent authority.

In case where the appointing authority is other than the Managing Director, the Managing Director, in his discretion owing to special circumstances of each case, may accept the resignation.”

17. A bare perusal of the above rule would show that till the resignation is accepted by the competent authority, the master and servant relationship does not come to an end and in the present case, acceptance of resignation dated 01.11.1993 by the respondent No.2 was only done on 06.09.1994 hence, the position is to be seen as on 06.09.1994 as to whether the competent authority had the jurisdiction to accept the resignation or not.

18. It is a settled principle of law that resignation can be withdrawn by the employee concerned prior to the date the same is accepted. In the present case, though the resignation was given by the petitioner with one month’s notice but it is a conceded factual position that same was not accepted by the competent authority by exercising power under Section 14 of the rules governing the service which has been reproduced hereinbefore. Further, it is also conceded position that before the authority concerned exercised its jurisdiction to accept the resignation of the petitioner on

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06.09.1994, the same had already been withdrawn by the petitioner by giving letter dated 08.08.1994. That being the factual position, the competent authority could not have exercised its jurisdiction under Rule 14 of the rules governing the service so as to accept the resignation of the petitioner with retrospective effect. Once, a resignation which is sought to be accepted had already been withdrawn by the petitioner, there was no jurisdiction with the authority concerned to accept the same with retrospective effect so as to over come the withdrawal of the resignation by the employee concerned.

19. In the present case, acceptance of the resignation with retrospective effect by the respondent No.2 is without jurisdiction and without noticing the correct fact as the withdrawal of the resignation was very much to the knowledge of the respondent No.2 as on 06.09.1994, which fact has not even been noticed by the authority concerned while accepting the resignation of the petitioner with retrospective effect hence, the said exercise of power qua the acceptance of resignation of the petitioner and that too with retrospective effect was beyond the jurisdiction of the authority concerned hence, the same cannot be accepted as valid acceptance of resignation so as to terminate the master and servant relationship between the petitioner and respondent No.2.

20. As detailed hereinbefore, there was no rule which gives the jurisdiction to the competent authority to accept the resignation of the petitioner with retrospective effect hence, it can be said that resignation could have been accepted with prospective effect only.

21. As per the settled principle of law settled by the Hon'ble



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Supreme Court of India in **Civil Appeal No.1480-2012 titled as Dr. Mrs. Suman V. Jain vs. Marwadi Sammelan through its Secretary and others decided on 20.02.2024**, there is no concept of acceptance of resignation with retrospective effect and the same can only be done prospectively. Further, before the date of acceptance of the resignation, in case, the same is withdrawn, the said resignation cannot be accepted by the competent authority. Relevant paragraph of the said judgment is as under:-

“27. In view of the foregoing discussion, we answer question (A) and (B) in favour of appellant and hold that letter dated 25.03.2003 is an intimation of resignation from a prospective date i.e., 24.09.2003, which could have been withdrawn by the appellant prior to the effective date. There is no Rule or Regulation brought to our notice which restrains such withdrawal. There was no prior consent to the letter dated 08.04.2003 for accepting resignation w.e.f. 24.09.2003 as ‘final, binding and irrevocable’ which is on record and therefore, by using such words, the acceptance of resignation was unilateral. As discussed, there was no implied contract and understanding with prior consent. Therefore, the withdrawal of such resignation by appellant prior to the effective date is permissible as per the law **laid down in** the case of **Gopal Chandra Misra** (supra) and **Srikantha S.M.** (supra). Learned counsel for the parties have also relied on some more case law, but there is no need to burden our judgment as the question of law as decided in those cases is one and the same. It is further required to be observed that in view of the findings recorded hereinabove, we are not examining the question about how far the Tribunal was justified in dealing with the issue on merits. In view of the above discussion, both the questions are answered in favour of appellant.”

22. Thereafter, the same principle of law was reiterated by the



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Hon'ble Supreme Court of India while passing order in **SLP-15788-2021** **titled as S.D. Manohara vs. Konkan Railway Corporation Limited and others decided on 13.09.2024** to hold that where prior to the date of acceptance of the resignation, the same was withdrawn, acceptance of resignation is illegal.

23. Learned counsel for the respondent No.2 has not been able to rebut the said proposition of law settled by the Hon'ble Supreme Court of India that the resignation cannot be accepted with retrospective effect.

24. Consequently, impugned order dated 06.09.1994 (Annexure P/8) accepting the resignation of the petitioner with retrospective effect is held to be bad being passed without jurisdiction and contrary to the settled principle of law and is accordingly set aside.

25. Now the question which arises is, as to what benefits can be given to the petitioner.

26. Normally, once, an order is set aside, an employee becomes entitled for all the benefits which he would have enjoyed by treating him in service up to the date of superannuation. In the present case, certain facts have come on record that after the passing of the impugned order, the petitioner was gainfully employed for some duration with certain institution. The said fact has not been denied by the learned counsel for the petitioner.

27. At this stage, learned counsel for the petitioner submits that the petitioner was not gainfully employed for all duration i.e. period starting from 06.09.1993 till the date of superannuation of the petitioner, which was on 31.07.2011 and submits that the petitioner will be satisfied in case 50%

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of the back wages will be given to him.

28. Learned counsel for respondent No.2 submits that the back wages should only be given after ascertaining all the facts.

29. The petitioner is honest to this Court as he has agreed that he had worked in another institution for some duration and he will be satisfied in case 50% back wages are given and nothing has come on record that the said statement of the petitioner is incorrect.

30. Keeping in view the totality of the facts and circumstances of the present case, impugned order dated 06.09.1994 (Annexure P/8) is set aside. The petitioner will be deemed to be in service for all intent and purposes till he attained the age of superannuation. The petitioner will be given all the consequential benefits. The back wages, for which the petitioner became entitled for, upon reinstatement in service with consequential benefits, will be limited to only 50%. Apart from this, the petitioner is held entitled for the retiral benefits for which the petitioner became entitled after his retirement, the same will also be given to the petitioner along with arrears.

31. No other argument has been raised.

32. Let the present order be complied with within a period of 02 months from the date of receipt of copy of this order.

33. Present petition is allowed in above terms.

March 07, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No