2024 INSC 693

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. of 2024
Arising out of SLP (C) No. 15788 of 2021

S.D. MANOHARA …APPELLANT(S)

VERSUS

KONKAN RAILWAY CORPORATION LIMITED & ORS. …RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. The adjudication in this case is intended to resolve a long standing service dispute between the parties, rather than to lay down any precedent of law.

3. The short facts necessary for resolution of this dispute revolve around the invariable question that arises in disputes involving *withdrawal of the resignation letter*[1], i.e. whether the employee

[1] Resignation can be withdrawn before its acceptance, is an established principle of law; *Suman* v. *Tej* v. *Marwadi Sammelan*, 2024 SCC OnLine SC 161; *Air India Express Limited* v. *Captain Gurdarshan Kaur Sandhu*, (2019) 17 SCC 129; *Srikantha S.M.* v. *Bharath Earth Movers Limited*, (2005) 8 SCC 314; *Balram Gupta* v. *Union of India*, 1987 Supp SCC 228; *Union of India* v. *Gopal Chandra Misra* (1978) 2 SCC 301.

has withdrawn his resignation before its acceptance by the employer or not. Having examined the matter in detail, we have arrived at the conclusion that resignation was in fact withdrawn before its acceptance. We have thus allowed the appeal and directed reinstatement of the appellant. Further, to balance equities, we ordered the salary payable for the period that the appellant has not worked to be restricted to 50% of the salary payable for the said period.

4. The appellant has been in service of the respondent since 1990. After having put in 13 years of service, he tendered his resignation on 05.12.2013 stating that it may be considered as coming into effect on expiry of one month. On the question whether this resignation letter was withdrawn before its acceptance, there are a number of letters and instances cited by the appellant and the respondent as well, but the crucial letters that would clinch the issue are just four in number.

5. The respondent states that the letter of resignation was accepted on 15.04.2014 w.e.f from 07.04.2014. Respondent further states that the appellant sought to withdraw his resignation dated 05.12.2013 only on 26.05.2014, which could not be accepted and therefore, they have rejected the request on 23.06.2014 and relieved the appellant w.e.f. 01.07.2014.

5.1 On the other hand, the appellant's primary submission was that the letter dated 15.04.2014 was never issued to him. It was only an internal communication of the respondent. He further submits that the said communication dated 15.04.2014 was not even marked to the appellant and it has no reference to appellant's resignation letter dated 05.12.2013. That, it is an internal communication is also evidenced by the fact that it does not fix any date for relieving, instead it directed necessary action like *no dues certificate* etc. to be given to the appellant before relieving him. Importantly, the appellant fortifies his case by stating that he continued in service despite the initial letter dated 05.12.2013 and had in fact reported on 19.05.2014. He relied on letter dated 10.05.2014 issued by the respondent directing him to report to duty pursuant to his application dated 24.04.2014 for casual leave for two days i.e. for 25th and 26th of April 2014. He also relied on letters of his wife dated 17.04.2014 and 20.05.2014 requesting the respondent not to accept her husband's resignation. A *certificate of competency* issued by the respondent stating that the appellant is competent to take the Engineering Block is also relied on by the respondent employer.

6. Questioning the letter dated 23.06.2014, formally rejecting his withdrawal, the appellant filed a Writ Petition No. 50662/2014 (S-RES) before the High Court of Karnataka at Bengaluru. The learned Single Judge by its judgment dated 16.07.2019 allowed the Writ Petition and directed reinstatement of the appellant with all benefits. Challenging the said order of the Single Judge, the respondent filed a Writ Appeal No. 3982 of 2019 (S-RES) before the High Court of Karnataka at Bengaluru which was allowed by the Division Bench by the order impugned before us.

7. The analysis and decision of the Division Bench is confined to just two paragraphs in the otherwise long judgment. Paragraphs 5 and 21 of the judgment are as under:-

> *"5....*
> *Here in the instant case, the resignation was not immediately accepted as sought for by the petitioner on expiry of one month. The resignation which was submitted on 05.12.2013 was accepted with effect from 07.04.2014. This was communicated to the petitioner on 15.04.2014 with a relieving date. The letter to withdraw the resignation was made on 26.05.2014. The petitioner was communicated rejection of his request to withdraw the resignation only on 23.06.2014. The petitioner was relieved on the basis of the said communication on 01.07.2014 and official order was issued on 15.07.2014.... In the present case, the resignation was not accepted as sought for by the petitioner at the expiry of one month from 05.12.2013 and he was allowed to work till he was relieved only on 01.07.2014 with office order issued on 15.07.2014..."*

7.1 Again in the concluding paragraph no. 21, the Division Bench of the High Court held as under:-

> "*21. In the light of the above discussion, this Court is of the opinion that the employer was justified in rejecting the request made by the respondent-employee in respect of withdrawal of resignation as his resignation dated 05.12.2013 was accepted with effect from 07.04.2014 and the application for withdrawal was submitted on 26.05.2014, i.e. after expiry of the period on which the resignation came into force.*"

8. Questioning the correctness of the decision of the High Court the appellant filed the present appeal, and this Court issued notice on 29.10.2021. We heard Mr. Basavaprabhu S. Patil, Senior Advocate assisted by Mr. Anirudh Sanganeria, AOR and Mr. Samarth Kashyap, Advocate on behalf of the appellant. We also heard Mr. Atul Yeshwant Chitale, Senior Advocate assisted by Mr. Madhav Atul Chitale, Mr. Nirbhay Singh, Advocates, Mrs. Suchitra Atul Chitale, AOR and Mr. Sauryapratapsinh Barhat, Advocate on behalf of the respondents.

9. At the outset, we may record that, even assuming that the appellant withdrew resignation letter dated 05.12.2013 on 26.05.2014, it is just about five months in a long service of 24 years in the Indian Railways. Between these two admitted dates, lie the competing and highly contested claims of parties that the resignation is either withdrawn or not withdrawn

before its acceptance. Our enquiry is confined to finding this fact.

10. The respondent-employer strongly relies on the letter of acceptance of resignation dated 15.04.2014 and submits that it has come into effect from 07.04.2014. We are inclined to accept the submission made by the appellant that the letter dated 15.04.2014 is an internal communication. There is no clear evidence about the service of such letter on the appellant. Further, it is also not denied that the appellant has been continuously in touch with the respondent. There is no reason as to why the respondent-Corporation would write a letter on 10.05.2014 requesting the appellant to report to duty for considering his unauthorised absence from 28.04.2014 to 18.05.2014.

11. It is an admitted fact that the appellant has in fact reported to duty on 19.05.2014. There is also the communication of the appellants wife on 17.04.2014 and 20.05.2014 requesting that the resignation dated 05.12.2013 should not be accepted by the respondents. As stated earlier, there is also the letter dated 10.05.2014 of the respondent asking the appellant to report on duty for considering his unauthorised absence from 28.04.2014 to 18.05.2014 which gives an indication that there

was no finality to the letter of resignation dated 05.12.2013. The learned single Judge was correct in his conclusion that the resignation was withdrawn before its acceptance. The relevant portion of the single Judge order is as under:-

> "*13. In the present case, the resignation which was submitted on 05.12.2013 with a request to accept it at the expiry of one month was stated to have been accepted only on 15.04.2014. There is undue delay in accepting the resignation by the respondents. In the above decision, the delay of mere 13 days in communicating acceptance of the resignation, is held to be not an undue delay so as to infer that resignation had not already been accepted. Therefore, the decision in Vedpathi Dinesh Kumar's case is also of no help to the respondents.*
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> *14. In the circumstances, I am of the view that petitioner having submitted his letter dated 26.5.2014 seeking to withdraw the resignation much before the effective date, 01.07.2014 with official order on 15.07.2014 by which the petitioner was relieved of his duties, withdrawal of resignation ought to have been accepted by the respondents and continued the petitioner in service. The contrary decision by the respondents by the communication dated 23.06.2014 that withdrawal of resignation is not accepted and decision accepting the resignation stands good, is not sustainable in law…."*

12. In our opinion, the decision of the Single Judge is correct, and the Division Bench committed an error in not eschewing the communication dated 15.04.2014 from consideration.

13. In view of the above, and in the facts and the circumstances of the case, we allow the appeal and set-aside the judgment of the Division Bench of the High Court of Karnataka in Bengaluru in Writ Appeal No. 3982 of 2019 (S-RES).

13.1 In the facts and circumstances of the case, we direct that the appellant shall be reinstated into service within thirty days from the date of our order. He shall however be entitled to receive 50 percent of salary for the period he is said to have been relieved from service i.e. from 01.07.2014 under letter dated 23.06.2014 to the date of reinstatement, pursuant to our orders. The amount shall be calculated and paid within a period of two months from today. This period shall however be counted for pensionary benefits, if any.

13.2 Parties shall bear their own costs.

.....J.
[**PAMIDIGHANTAM SRI NARASIMHA**]

.....J.
[**PANKAJ MITHAL**]

NEW DELHI;
September 13, 2024.