Union Of India (Uoi) And Ors. vs Gopal Chandra Misra And Ors. on 15 February, 1978

Equivalent citations: AIR1978SC694, [1978(37)FLR16], (1978)ILLJ492SC, (1978)2SCC301, [1978]3SCR12

Bench: A.C. Gupta, Jaswant Singh, N.L. Untwalia, R.S. Sarkaria, S. Murtaza Fazal Ali

JUDGMENT

1. By a short Order, dated December 8, 1977, we (by majority) accepted these two appeals

2. Whether a High Court Judge, who sends to the President, a letter in his own hand, int

3. Appellant 2 was appointed to the High Court of Allahabad as Additional Judge on Octob

To

The President of India,

New Delhi.

Sir,

I beg to resign my office as Judge High Court of Judicature at Allahabad.

I will be on leave till 31st of July, 1977. My resignation shall be effective on 1st of

With my respects.

Yours faithfully,

Sd/- Satish Chandra.

4. On July 15, 1977, Appellant 2 wrote to the President of India another letter in these

To

The President of India,

New Delhi.

Sir,

I beg to revoke and cancel the intention expressed by me to resign on 1st of August, 197

Thanking you and wishing to remain.

Yours sincerely

Sd/- Satish Chandra.

5. The receipt of this letter of revocation or withdrawal, dated July 15, 1977, was ackn

6. On August 1, 1977, Shri Gopal Chandra Misra, an Advocate of the High Court, filed a p

7. A preliminary objection was raised by Shri Yogeshwar Prasad, learned Counsel for the

(a) That the Union of India was joined merely a pro forma party in the writ petition, in

(b) That the Union of India is not a party aggrieved by the Order of the High Court, bec

(c) That the Union of India is not a person interested; and

(d) That the appeal by the Union of India will not further any public policy; that it ha

We find no merit in this objection.

8. The Union of India was impleaded as a respondent in the case before the High Court by

9. Mr. Soli Sorabji, Additional Solicitor-General, addressed arguments before the High C

10. As rightly pointed out by the learned Attorney General, the Union of India is vitall

11. In order to give a person locus standi to appeal on a certificate granted under any

12. We are not concerned with the matter of incurring expenditure by the Union of India;

13. The contentions advanced by the learned Attorney-General, Mr. Gupte, on behalf of th

(i) 'Resignation' within the contemplation of Proviso (a), to Article 217(1), takes plac

(ii) The letter, dated May 7, 1977, written and sent by Appellant 2 to the President, re

(iii) Since the mere sending of the letter, dated May 7, 1977 to the President, did not

(iv) The withdrawal by Appellant 2 of his proposal to resign, does not offend public int

(v) The general principle is that in the absence of a provision prohibiting withdrawal,

14. This principle, according to Mr. Gupte, was enunciated by the Supreme Court as far b

15. Mr. Gupte further referred to the case, Rev. Oswald Joseph Reichal v. The Right Rev

16. Mr. F. S. Nariman, appearing for Appellant 2, adopted the arguments of Mr. Gupte. He

17 As against the above, Mr. Jagdish Swarup, learned Counsel for the Respondent has subs

18. Article 217(1) fixes the tenure of the office of a High Court Judge It provides that

(i) resigns his office in the manner laid down in its Clause (a);

(ii) is removed from his office in the manner provided in Article 124(4) [vide its Claus

(iii) is appointed a Judge of the Supreme Court [vide its Clause (c)];

(iv) is transferred to any other High Court in India.

19. Here, in this case, we have to focus attention on Clause (a) of the Proviso. In orde

20. The main reasoning adopted by the learned Judges of the High Court, (per R. B. Misra

21. It may be observed that the entire edifice of this reasoning is founded on the suppo

22. Well then, what is the correct connotation of the expression "resign his office" use

23. 'Resignation' in the Dictionary sense, means the spontaneous relinquishment of one's

24. In the general juristic sense, also, the meaning of "resigning office" is not differ

25. From the above dissertation, it emerges that a complete and effective act of resigni

26. Before applying this test to the case in hand, it is necessary to appreciate the tru

27. The substantive body of this letter (which has been extracted in full in a foregoing
I will be on leave till 31.7.1977. My resignation shall be effective on 1.8.1977.", The

Thus tested, sending of the letter dated May 7, 1977 by Appellant 2 to the President, di

The learned Judges of the High Court (in majority) conceded that Appellant 2 "cannot be

28. With respect, we venture to say that this reasoning is convoluted logic spiralled up

29. No. 1 is manifestly incompatible with the letter and intendment of Article 217(1), s

30. Thus considered, it is clear that merely by writing the letter to the President on M

31 We have already seen that there is nothing in the Constitution or any other law which

32 In this connection, Shri Jagdish Swarup contended that, but for the words "President

The contention appears to be misconceived.

33. The argument assumes that a tender of prospective resignation is always motivated by

34. It must be remembered that the doctrine of public policy is only a branch of the com

35. Shri Jagdish Swarup's argument that a right to withdraw such a resignation will have

36. We are also unable to agree with the High Court that the mere sending of the letter,

37. The general principle that emerges from the foregoing conspectus, is that in the abs

38. This principle first received the imprimatur of this Court in the context of a case
Sir, having completed 33 years' service on the 6th instant, I beg permission to retire

39. The Director refused permission on the ground that the plaintiff could not be spared

40. In special appeal before this Court, two points were urged on behalf of the plaintif

41. B. K. Mukherjee, J. (as he then was), speaking for the Court, negatived the first co
It may be conceded that it is open to a servant, who has expressed a desire to retire f

42. The rule enunciated above was reiterated by this Court in Raj Kumar v. Union of Indi
When a public servant has invited by his letter of resignation determination of his emp

It was also observed that, on the plain terms of the resignation letters of the servant

43. The learned Judges of the High Court (in majority), if we may say so with respect, h
Jai Ram's case was a case of retirement, and the request for retirement required accept

Before us, Shri Jagdish Swarup has reiterated the same argument.

44. In our opinion, none of the aforesaid reasons given by the High Court for getting ou

45. It will bear repetition that the general principle is that in the absence of a legal

46. The learned Attorney-General has cited authorities of the Allahabad, Kerala, Delhi a

47. The first of those cases is, M. Kunjukrishnan Nadar v. Hon'ble Speaker, Kerala Legis

Sir,

As I Wish to devote more time for meditation and religious purposes, I shall not be able

48. On November 26, 1963, the Speaker read the letter in the Assembly, announcing thereb

On November 29, 1963, the petitioner wrote to the Speaker :

Sir,

In my letter dated 23-11-1963, I have expressed my intention to resign my membership of

I therefore hereby withdraw my letter of resignation dated 23-11-1963.

This letter was received by the Speaker on November 30, 1963. This letter was not given

49. On these facts, Article 190(3) of the Constitution, as it stood prior to its amendme

(3). If a member of a House of the Legislature of a States-

(a) becomes subject to any of the disqualifications mentioned in Clause (1) of Article 1

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman,

his seat shall thereupon become vacant.

It will be seen that at that time, there was no provision in this Article requiring such

50. Two questions arose for determination : (i) Whether the letter dated 23-11-63, const
...the petitioner's letter of November 23, 1963, has to be held a letter resigning his

51. R. B. Misra, J. felt "difficulty in agreeing with the observation (in the above case

52. In our opinion, what has been extracted above from the decision in the Kerala case,

53. The next decision worthy of notice is Y. K. Mathur v. The Municipal Corporation of D

I resign from my seat. Please accept.

Sd/-

Om Prakash Jain

16. 12.

This letter being in the nature of a post-dated cheque, was construed as a letter of res
It is the free volition of the councillor concerned as to the date from which he wishes

In support of this enunciation, the learned Judge relied on the ratio of the decisions o

54. It was also contended-as has been argued before us-that if a resignation has been se
Under Section 33(1)(b), both the resignation and the vacancy of the seat are effective

55. The approach adopted to the problem by the Delhi High Court appears to be correct in

56. We do not want to add more to the volume of our judgment by noticing the numerous de

57. The facts of that case were as follows :
Scandal having arisen with regard to the conduct of a Vicar, he was informed by the Bis

58. The Vicar brought an action against the Bishop and the patrons of the benefice, clai

59. The House of Lords, affirming the decision of the Court of Appeal (35 Ch. D. 48), he

60. The principal contention canvassed before the House of Lords by the appellant Vicar

61. The Noble Lords rejected this contention. Lord Halsbury L. C. observed :
The arrangements for resignation on the one side and acceptance on the other seem to me

Lord Watson further amplified :
His resignation was delivered in pursuance of a mutual agreement which rendered formal

Lord Herschell opined :
I do not think the word "acceptance" means more than the assent of the Bishop, or that

62. While declining the contention of the appellant, the Noble Lord closed the discussio
It is, however, unnecessary in the present case to go to the length of saying that a re

63. Reichal is no authority for the proposition that an unconditional prospective resign

64. In the light of all that has been said above, we hold that the letter, dated May 7,

65. Accordingly, we allow these appeals, set aside the majority judgment of the High Cou

Fazal Ali, J.

66. These two appeals by certificate are directed against an order of the Allahabad High Court issuing a writ of Quo Warranto against Justice Satish Chandra, a Judge of the Allahabad High Court on the ground that he ceased to be a Judge with effect from 1st August, 1977 as he was not competent to withdraw the resignation submitted by him earlier. Appeal No. 2644/1977 has been filed by the Union of India supporting the case of the second respondent Satish Chandra while appeal No. 2655/1977 has been filed by the second respondent Satish Chandra himself against the order of the High Court as indicated above. As the points involved in the two appeals are identical and arise from the same judgment, I propose to deal with the two appeals by a common judgment.

67. The facts of the case lie within a narrow compass and the whole case turns upon the interpretation of Article 217(1)(a) of the Constitution of India. I would also like to mention that the question of law that has to be determined in this case in one of first impression and no direct authority of any court in India or outside appears to be available in order to decide this case. There are however number of authorities from which certain important principles can be deduced which may assist me in adjudicating the point in issue.

68. Justice Satish Chandra hereinafter referred to as the second respondent was a practising lawyer of the Allahabad High Court. He was appointed as a Judge of the Allahabad High Court on 7th October, 1963 and was later made permanent on 4th September, 1967. Since then he had been continuing as a Judge of the said High Court.

69. On 7th May, 1977 the second respondent wrote a letter to the President of India resigning his

office with effect from 1st August, 1977. The second respondent however indicated to the President that he would proceed on leave from 7th May, 1977 to 31st July, 1977 the period intervening between the application and the date from which the resignation was to be effective.

70. On 15th July, 1977 however the second respondent wrote another letter to the President by which he revoked the resignation which he had sent on the 7th May, 1977 and prayed that the communication containing the resignation may be treated as null and void. In order to understand the exact implication of the intention of the second respondent it may be necessary to extract the two letters in extenso :

> To The President of India, New Delhi.
>
> Sir, I beg to resign my office as Judge, High Court of Judicature at Allahabad.
>
> I will be on leave till 31st of July, 1977. My resignation shall be effective on 1st of August, 1977.
>
> With my respects, Yours faithfully, Sd/- Satish Chandra.
>
> To The President of India, New Delhi.
>
> Sir, I beg to revoke and cancel the intention expressed by me to resign on 1st of August, 1977, the office of Judge, High Court at Allahabad, in my letter dated 7th May, 1977. That communication may very kindly be treated as null and void.
>
> Thanking you and wishing to remain.
>
> Yours sincerely, Sd/- Satish Chandra.

71. A careful perusal of the first letter leaves absolutely no room for doubt that the Judge, had clearly intended to resign his office with effect from 1st August, 1977. Similarly, the second letter shows the unequivocal intention of the second respondent to revoke the resignation sent by him earlier. The reasons for the resignation have been given neither in the first letter nor in the second. The question that has been mooted before the High Court was whether or not having resigned his office the second respondent had any jurisdiction to revoke his first letter sending his resignation. It might also be mentioned that it is common ground that before the second letter was written to the President the first letter had not only been communicated to but was actually received by the President as found by the majority judgment of the High Court. Thus, the sole question to be determined in this case is whether it was within the competence of the second respondent to revoke the resignation sent by him to the President by his letter dated 7th May, 1977 after the same had been communicated to and received by the President. The stand taken by the Attorney General before us was that as the second respondent had categorically expressed his intention in the first letter that he would resign only with effect from 1st August, 1977, it was open to him to withdraw his resignation at any time before the crucial date was reached and there was no provision in the

Constitution which debarred the appellant from doing so.

72. The Attorney General, however, conceded before us that having regard to the provisions of Article 217 there is absolutely no question of the resignation of Judge being effective only on the acceptance of the same by the President. In other words, the Attorney General submitted that the resignation would become effective from the date mentioned therein and the question of the acceptance of resignation by the President would not arise in case of constitutional functionaries like Judges of the High Courts. Thus, in view of the concession of the Attorney General and the provisions of Article 217 any resignation submitted by a Judge was not dependent on its acceptance by the President and would operate ex proprio vigore from the date mentioned in the letter of resignation. It appears that after the second respondent sought to revoke his resignation an application praying for a writ of quo warranto was filed by the respondents Gopal Chandra Misra and Ors. before the Allahabad High Court on the ground that the second respondent had no right to withdraw the resignation. The writ was heard by a Full Bench consisting of R. B. Misra, M. N. Shukla, Hamid Hussain, S. B. Malik and C. S. P. Singh, JJ. and the High Court by a majority judgment accepted the writ petition and issued a writ of quo warranto holding that the second respondent ceased to be a Judge as he was not competent to withdraw his resignation once the same had been communicated to and in fact reached the President. The learned Judges who took the majority view against the second respondent were R. B. Misra, M. N. Shukla and C. P. S. Singh, JJ. whereas Hamid Hussain and S.B. Malik, JJ. were of the view that it was open to the second respondent to withdraw his resignation at any time before the date from which the resignation was to be effective and were, therefore, of the opinion that the writ petition should be dismissed. It seems to me that the High Court has devoted a considerable part of its judgment to the consideration of two questions which were really not germane for the decision of the point in issue. Secondly, the High Court appears to have exhaustively considered the question of the theory of pleasure which obviously did not apply to a Judge of the High Court appointed under the Indian Constitution and after the said Constitution had come into force. In other words a Judge appointed under Article 217 cannot be said to hold this assignment at the pleasure of the President, but under the provisions of Article 217 he was to hold his office until the following contingencies arose :

1. The Judge attained the age of 62 years;

2. The Judge was removed from his office under Article 124 of the Constitution;

3. The Judge was transferred to another High Court under Article 222;

4. The Judge resigned his office by writing a letter under his hand addressed to the President.

73. It is needless to state that a Judge vacates his office the moment he dies, and although this contingency is not mentioned in Article 217 yet it follows from the very nature of things. It would thus be clear that the constitutional provisions embodied in Article 217 have expressly provided for the various contingencies in which a Judge of the High Court may vacate his office or cease to be a Judge. The relevant part of Article 217 may be extracted thus :

217 : Appointment and conditions of the office of a Judge of a High Court :

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years:

Provided that-

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in Clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

74. While analysing the various clauses of Article 217 it is pertinent to observe that while Clause (a) contains an express provision empowering a Judge to resign, there is absolutely no provision which confers upon him any power to withdraw or revoke his resignation once the same has been submitted to the President.

75. This is one of the moot points that has engaged the attention of the High Court as also of this Court in deciding the issue. The majority view was of the opinion that in the absence of any express provision to empower the Judge to revoke his resignation, the Judge was not competent to withdraw his resignation having once submitted the same. The minority view of the High Court which has been relied upon by the Attorney General and the second respondent proceeds on the doctrine of implied powers under which it is said that the power of submitting a resignation carries with it the power of revoking the same before the resignation becomes effective.

76. I shall deal with these points a little later and before that I would like to indicate the position and the status conferred by the Constitution on a High Court Judge. The first thing which is manifestly plain is that there is no relationship of master and servant, employer and employee between the President and the Judge of the High Court, because a Judge is not a Government servant so as to be governed by Article 310 of the Constitution. A Judge of the High Court appointed under Article 217 has a special status and is a constitutional functionary appointed under the provisions of the Constitution by the President. The mere fact that the President appoints him does not make him the employer of the Judge. In appointing a Judge of the High Court, the President is discharging certain constitutional functions as contained in Article 217(1). This aspect of the matter was considered by this Court in the case of Union of India v. Sankalchand Himatlal Sheth and Anr. where Krishna Iyer,

J. dwelling on this aspect observed as follows :

> So it is that we must emphatically state a Judge is not a government servant but a constitutional functionary. He stands in a different category. He cannot be equated with other 'services' although for convenience certain rules applicable to the latter may, within limits, apply to the former. Imagine a Judge's leave and pension being made precariously dependent on the executive's pleasure: To make the government-not the State-the employer of a superior court Judge is to unwrite the Constitution.

77. It is, therefore, indisputable that a Judge of the High Court enjoys a special status under the Constitution, because of the very high position that he holds and the dignity and decorum of the office that he has to maintain.

78. The special guarantees contained in Article 217 are for the purpose of ensuring the independence of the judiciary as observed by Chandrachud, J. in the case of Union of India v. S. H. Sheth and Anr. (supra) :

> Having envisaged that the judiciary, which ought to act as a bastion of the rights and freedom of the people, must be immune from the influence and interference of the executive, the Constituent Assembly gave to that concept a concrete form by making various provisions to secure and safeguard the independence of the judiciary.

79. The High Court Judges are the repository of the confidence of the people and the protectors of the right and liberty of the subjects. Having regard, therefore, to the onerous duties and the sacrosanct functions which a Judge of the High Court has to discharge he has to act or behave in a manner which enhances the confidence of the people in the judiciary. The Constitution itself contains a number of provisions for promoting an independent judiciary and striving for a complete separation of the Judiciary from the Executive.

80. Having regard to these circumstances therefore once a Judge decides to accept the high post of a High Court Judge he has to abide by certain fixed principles and norms as also some self imposed restrictions in order to maintain the dignity of the high office which he holds so as to enhance the image of the court of which he is a member and to see that the great confidence which the people have in the courts is not lost. To resign an office is a decision to be taken once in a life time and that too for very special and cogent reasons because once such a decision is taken it cannot be recalled as a point of no return is reached. Indeed, if Judges are allowed to resign freely and recall the resignation at their will this privilege may be used by them as a weapon for achieving selfish ends or for striking political bargains. Not that the Judges are likely to take resort to these methods but even if one Judge does so at any time the image of the entire court is tarnished. It was, in my opinion, for these reasons that the High Court Judges have been assigned a special place by the Constitution and are not equated with other services, however high or important they may be. Thus, in these circumstances, therefore, it is manifest that any decision that the Judge may take in regard to resigning his office must be taken after due care and caution, full and complete deliberation and

circumspection, so that the high office which he holds is not held to ridicule. The power to resign is not intended to be used freely or casually so as to render the same as a farce because after a Judge resigns important and far-reaching consequences flow. Shukla, J. in the judgment under appeal has very aptly and adroitly observed as follows :

> Therefore, if a Judge is permitted to recant his resignation, born of free volition, it would savour of a precipitance which would not redound to his credit. A voluntary resignation of a High Court Judge deserves to be looked upon with utmost sanctity, and cannot be treated lightly as if it was the outcome of a momentary influence.... In other words, a Judge may resign and then with impunity rescind his resignation and thus go on repeating the process at his sweet will. That would be ridiculous and reduce the declaration of resignation by a Judge to a mere farce.
>
> I find myself in complete agreement with the observations made by the learned Judge and fully endorse the same. What is good of Article 217 equally applies to other similar constitutional functionaries like the President, the Vice-President, the Speaker, the Deputy Speaker, and the Supreme Court Judges. So far as the President is concerned, Article 56(a) contains a provision identical to Article 217(a) and runs thus :
>
> The President may, by writing under his hand addressed to the Vice-President, resign his office.

81. So far as the Vice-President is concerned, the provision is contained in Article 67(a) and runs thus :

> A Vice-President may, by writing under his hand addressed to the President, resign his office.
>
> So far as the Speaker and the Deputy Speaker are concerned, the provision is contained in Article 94 which runs thus :
>
> Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker : A member holding office as Speaker or Deputy Speaker of the House of the people
>
> (a) shall vacate his office if he ceases to be a member of the House of the People;
>
> (b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office, and
>
> (c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House :

> Provided that no resolution for the purpose of Clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :
>
> Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the people after the dissolution.
>
> So far as the Supreme Court Judges are concerned, the provision is contained in Article 124(2)(a) which runs thus :
>
> A Judge may, by writing under his hand addressed to the President, resign his office.

82. For all these constitutional functionaries a special procedure has been prescribed by the Constitution regulating their resignation and in each one of these cases two things are conspicuous. First, that there is absolutely no provision for revocation of a resignation, and, secondly, that there is nothing to show that in the case of these functionaries the resignation would become effective only on being accepted by the authority concerned. It was contended by Mr. Jagdish Swarup, counsel for the respondents that if any of these functionaries are allowed to withdraw the resignation at their will they may use the powers of the Constitution by treating the resignation as a bargaining counter. For instance, it was suggested that where a President is not happy with a particular Bill passed by Parliament, he may submit his resignation and thus pressurise Parliament to withdraw the Bill and after that is done, he could withdraw the resignation also. Such an action will lead to a constitutional crisis of a very extraordinary nature. The argument is based on pure speculation yet it merits some consideration. Thus, on a parity of reasoning the same principles have to be applied to other constitutional functionaries including a High Court Judge and that will create a very anomalous situation. I think, it must have been this important consideration that must have heavily weighed with the founding fathers of the Constitution in not providing for an express power to withdraw the resignation or a provision for the acceptance of the resignation by any particular authority. From this point of view also the irresistible inference that arises is that the absence of power in Article 217(1)(a) or the other Articles in the case of other constitutional functionaries indicated above is deliberate, and therefore, a Judge has no power to revoke his resignation, after having submitted or communicated the same to the President.

83. Another important aspect which may reveal the intention of Parliament is to be found in Article 101(3) Sub-clause (b) of the Constitution which runs thus :

> 101(3) If a member of either House of Parliament-
>
> (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant.

It would be seen that like other constitutional functionaries mentioned above even a member of either House of Parliament could resign his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be and once that is done the seat would become vacant. A

similar provision exists so far as the members of the Legislature of a State are concerned which is contained in Article 190(3)(b) which runs thus :

> 90(3) If a member of a House of Legislature of a State-
>
> (b) resigns his office by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

By virtue however of the Constitution 35th Amendment Bill 1974 Parliament amended both Articles. 101(3)(b) and 190(3)(b) and made the resignation being effective dependent on the acceptance of the same by the Speaker or the Chairman concerned. The amended provisions run thus :

> 101(3) If a member of either House of Parliament-
>
> (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant :
>
> Provided that in the case of any resignation referred to in Sub-clause (b), it from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.
>
> 190(3) If a member of a House of the Legislature of a State-
>
> (b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant :
>
> Provided that in the case of any resignation referred to in Sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.
>
> The Statement of Objects and Reasons of this Bill mentions why this amendment was brought about and the relevant portion may be extracted thus:
>
> In the recent past, there have been instances where coercive measures have been resorted to for compelling members of a Legislative Assembly to resign their membership. If this is not checked, it might become difficult for Legislatures to function in accordance with the provisions of the Constitution. It is therefore proposed to amend the above two articles to impose a requirement as to acceptance of the resignation by the Speaker or the Chairman and to provide that the resignation shall not be accepted by the Speaker or the Chairman, if he is satisfied after making

such inquiry as he thinks fit that the resignation is not voluntary or genuine.

84. This aspect of the matter has been adverted to by Shukla, J. who observed as follows :

> This provision made the resignation of a member of the Legislature self-executing. No acceptance was required. Later, however, political events created a situation in which it became imperative not to let a resignation become effective until it was accepted by the Chairman or the Speaker and he was satisfied on enquiry that it was voluntary or genuine. In some States there was political turmoil leading to 'en masse' resignations of the members of Legislature. Some of these resignations were also faked and engineered by interested factions in order to serve their political ends. So it was felt necessary to provide in the Constitution that the seat of a member of Parliament shall become vacant only after his resignation had been accepted. That is why Articles 101(3)(b) & 190(3)(b) were suitably amended by the Constitution (Thirty-fifth Amendment) Act, 1974.... The notification is indicative of two things firstly, in the absence of any such provision acceptance was not to be read into Article 101 when it talked of the resignation of a member of Parliament. Secondly, as soon as the Parliament intended that a resignation should not take effect until it received assent or acceptance, it introduced a specific provision to that effect.
>
> It would be noticed, therefore, that at the time when Articles 101(3) and 190(3) were being amended by the Constitution (Thirty-fifth) Amendment Act the Constitution makers had also other similar provisions like Articles 217, 94, 67 and 124(2)(a) etc. before them and if they really intended that acceptance was made a condition precedent to the effectiveness of a resignation in case of constitutional functionaries under Article 217 and other Articles then such an amendment could have also been incorporated in the Thirty-fifth Amendment Bill as well either by conferring a power of revocation on the constitutional functionaries or by introducing a provision for acceptance of the resignation. The very fact that no such amendment was suggested or brought about in Article 217 and other Articles clearly reveals that the Constitution makers intended no change so far as the other Articles were concerned. This is a very important circumstance which fortifies my conclusion that the power of revocation or withdrawal of resignation once communicated to the President has been deliberately omitted by the founding fathers from Article 217 and other similar Articles.

85. Coming now to the second point regarding the application of implied powers to the facts of a case, the matter was considered in the case of Union of India v. S. H. Sheth and Anr. (supra) where this Court was construing the provisions of Article 222 of the Constitution of India and the case turned upon the question as to whether or not when a Judge was transferred from one High Court to another it was necessary for the President to take his consent. This Court by majority of 3 : 2 held that consent could not be implied in Article 222 in the absence of an express provision. Krishna Iyer, J. while expounding this aspect of the matter and speaking for himself and Fazal Ali, J. observed as follows :

It would be seen that there is absolutely no provision in this Article requiring the consent of the Judges of the High Court before transferring them from one High Court to another. Indeed, if the intention was that such transfers could be made only with the consent of the Judges then we should have expected a proviso to Article 222(1) in some such terms as :

Provided that no Judge shall be transferred from one High Court to another without his consent.

The absence of such a provision shows that the founding fathers of the Constitution did not intend to restrict the transfer of Judges only with their consent. It is difficult to impose limitations on the constitutional provisions as contained in Article 222 by importing the concept of consent which is conspicuously absent therefrom.

If consent is imported in Article 222 so as to make it a condition precedent to transfer a Judge from one High Court to another then a Judge, by withholding consent, could render the power contained in Article 222 wholly ineffective and nugatory. It would thus be impossible to transfer a Judge if he does not give his consent even though he may have great personal interests or close associations in his own State or by his conduct he brings about a stalemate in the judicial administration where the Chief Justice would become more or less powerless. In our opinion, the founding fathers of the Constitution could not have contemplated such a situation at all. That is why Article 222 was meant to take care of such contingencies.

Similarly, Chandrachud, J. took the same view and observed :

The hardship, embarrassment or inconvenience resulting to a Judge by reason of his being compelled to become a litigant in his own court, cannot justify the addition of words to an article of the Constitution making his consent a precondition of his transfer. In adding such words, we will be confusing our own policy views with the command of the constitution.

86. In view of the decision of this Court which is binding on us, can it be said that if the power of revocation of resignation is not expressly contained in the Constitution the same may be supplied by the application of the doctrine of implied powers. The question as to how far the doctrine of implied powers can be invoked has also been considered by this Court in several cases. To quote one, viz., in the case of Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and Ors. v. The State of Bombay and Ors. where Gajendragadkar, J. speaking for the Constitution Bench of this Court observed as follows :

The definition of the term 'wages' postulates the binding character of the other terms of the contract and brings within the purview of the Act only one term and that relates to wages and no other. That being so, it is difficult to hold that by implication the very basic concept of the term 'wages' can be ignored and the other terms of the

> contract can be dealt with by the notification issued under the relevant provisions of the Act. When the said other terms of the contract are outside the scope of the Act altogether how could they be affected by the notification under the Act under the doctrine of implied powers.
>
> Therefore the Act has made a specific provision for the enforcement and implementation of the minimum rates of wages prescribed by notifications.... That is another reason why the doctrine of implied powers cannot be invoked in support of the validity of the impugned clauses in the notification.
>
> Thus, an analysis of this decision would clearly reveal that where express provisions are made by a statute the doctrine of implied powers cannot be invoked to supply the provisions which had been deliberately omitted. Same view has been taken by the Patna High Court in Sukhdeo Narayan and Ors. v. Municipal Commissioners of Arrah Municipality and Ors. where the Court observed as follows :
>
> I hold, accordingly that the withdrawal of the resignation of the Chairman (Opposite Party No. 2) as expressed in his letters, has no effect in law and the Municipal Commissioners, in their meeting on 19-1-1956 had jurisdiction to proceed on the question whether they should accept it or not.
>
> I fully endorse these observations. For these reasons, I am clearly of the opinion that in the absence of any express provision in Article 217 empowering a Judge to revoke his resignation, it is difficult to accept the view that the power of resigning which has been conferred on the Judge under Article 217(a) carries with it the inherent power to withdraw his resignation. In this view of the matter I am afraid, I am not in a position to accept the submission of the Attorney General on this point.

87. I might mention that the High Court had gone into the question as to whether the act of submitting resignation by the Judge to the President was a juristic act, and, therefore, once the position was altered, it could not be recalled. For the purposes of the present case and having regard to the reasons that I have already given, I would refrain from going into this question as it is hardly necessary to do so. Furthermore, it seems to me that the act of resignation by a Judge is a matter personal to him and however careful or cautious he may be in exercising this power, the concept of juristic act cannot be assigned to a document which is nothing but a letter of resignation, pure and simple. However, I do not want to dilate on this point, because in view of my finding that there is no express provision in Article 217 empowering a Judge to withdraw his resignation after the same is communicated to and submitted to the President, it is not necessary for me to spell out the concept of a juristic act.

88. Another important angle of vision from which the point in issue can be approached is this. Once it is conceded' that the resignation becomes complete without the necessity of the President accepting the same, the very concept of withdrawal of the resignation disappears. In other words, the question of withdrawal of a resignation arises only if the resignation has to be accepted by an

employer, because so long as a resignation is not accepted it remains an incomplete document and totally ineffective. In such circumstances, it is always open to the resignor to withdraw his resignation which has not reached the stage of completion. Such are the cases of resignation given by persons who are governed by usual master and servant relationship. It appears that in America even though a provision for resignation is there, there is an additional provision that the resignation has to be accepted by a particular authority and it is only in the context of this peculiar relationship that the American authorities have taken the view that a resignation can always be withdrawn until it is accepted. This state of affairs is completely foreign to the provisions of our Constitution are concerned which do not at all require the President to accept the resignation of a Judge. If once the concept of acceptance of resignation is totally absent, in my opinion, the question of withdrawal of the resignation does not arise at all, because the resignation having been submitted and communicated to the President becomes complete and irrevocable once it is communicated to and received by the President. In fact, Article 217 does not envisage or enjoin a conditional or prospective resignation. But assuming that the power to resign carries with it the power to resign from a particular date, the conclusion appears to me to be inescapable that once the resignation is communicated to the authority concerned viz., the President in the instant case, the resignation will become irrevocable and will take effect automatically ex proprio vigore from the date mentioned in the letter. The mere fact that the resignor mentions a particular date from which he wants to resign does not at all empower him to withdraw or revoke his resignation at any time before the date is reached. Such a conclusion would have been possible only if the completeness of a resignation depended on the acceptance of the resignation by the authority concerned, because in such a case until the resignation was accepted it was no resignation in the eye of law and could always have been recalled. But where the concept of acceptance of resignation is totally absent, it seems to me to be a contradiction in terms to say that even though the resignation has been submitted to the proper authority and received by him still it can be recalled before the date is reached. I am not in a position to hold that a resignation revealing an intention to resign from a particular date is a conditional resignation. It is only a prospective resignation, but in view of the peculiar provisions of Article 217(1)(a) it becomes irrevocable the moment it is received by the President or is communicated to him though it may take effect from the date mentioned in the letter or if no such date is mentioned from the date of the letter itself.

89. I now turn to the Full Bench decision of the Allahabad High Court in the case of Bahori Lal Paliwal v. District Magistrate, Bulandshahr and Anr. which is being relied on by the appellant. Chaturvedi, J, while drawing a distinction between the Indian law under the U.P. Town Areas Act which was the subject matter of review by the Court and the English Law on the subject observed as follows :

> The Indian Law under the U.P. Town Areas Act, however, has not followed the English statutory law in this respect because the provisions of Section 8-A of the Indian Act provide for acceptance of the resignation by the District Magistrate, which clearly shows that the resignation is not effective till it is accepted.
>
> Furthermore, it would appear that under the provisions of the statute in that case the resignation had to be accepted by the appropriate authority and it was on this basis

> that the Court held that the person had a right to withdraw his resignation before it was accepted or before his office had come to an end. The Court further observed as follows :
>
> A resignation which depends for its effectiveness upon the acceptance by the proper authority is like an offer which may be withdrawn before it is accepted.

90. These observations do not help the case of the appellant but fortify the conclusion that I have reached. It is manifest that where effectiveness of a resignation depends upon acceptance of the same by the proper authority it can always be withdrawn until accepted because the resignation is not complete in the eye of law. This is what has been held by the Full Bench of the Allahabad High Court in the aforesaid case.

91. Another decision to which our attention was drawn by counsel for the appellant is the case of Bhairon Singh Vishwakarma v. The Civil Surgeon, Narsimhapur and Ors. [1971] Lab. I.C. 121 This case also contains the same principle which has been enunciated in the Allahabad case referred to above, viz., that where a resignation is dependent for its effectiveness on the acceptance by the proper authority, it can be withdrawn at any time before the acceptance is given. This case was also dealing with a public servant to which Article 311 applied and the resignation had to be accepted by the Director of Public Health. I do not see how this case helps the appellant in any way.

92. Thus, the position that emerges from the aforesaid decisions is that where a resignation given by a Government servant is dependent for its effectiveness on the acceptance by the appropriate authority, the government servant concerned has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resignor has a right to resign but the resignation can be effective for only after acceptance, it is a bilateral act. That is to say, resignation by one authority and acceptance of the resignation by the other authority. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say a resignation sent by a servant is no resignation in the eye of law until accepted by the employer and so long as it is not an effective resignation, there can be no bar to withdrawing the same. The same however cannot be said of a resignation tendered by a High Court Judge under Article 217(1) or other constitutional functionaries referred to hereinbefore because in cases of such functionaries the act of resignation is a purely an unilateral act and once the resignation is written and communicated to the President it acts ipso facto and becomes fully effective without there being any question of acceptance by the President. I have already held that where a particular date is given in the letter of resignation, the resignation will be effective from that particular date, but it does not mean that the resignor had any right to recall his resignation merely because he has chosen a particular date from which the resignation is to take effect. On the other hand, the resignation becomes complete and irrevocable and cannot be recalled either before or after the date mentioned is reached Haying signed the resignation and put the same in the course of transmission to the President the Judges loses all control over the same and becomes functous officio and the resignation becomes effective as soon as the date arrives without leaving any room or scope to the resignor to change his decision. This appears to be the constitutional scheme prescribed for the resignation of High Court Judges, Supreme Court Judges and other constitutional functionaries. In fact, all the cases cited by the

appellant excepting some are cases where the effectiveness of the resignation depends on the acceptance of the resignation.

93. I am fortified in my view by the observations made in the American Jurisprudence Vol. 53 page 111 Section 34 where the following observations are to be found :

> The contract of employment is terminated where the employee tenders his resignation and the proffer (sic) is accepted by the employer.
>
> These observations clearly illustrate that a contract of employment can only be terminated by a bilateral act, that is to say, resignation by the employee and acceptance by the employer.

94. In short, it seems to me that a resignation contemplated by Article 217(1)(a) is a unilateral act which may be compared to an action of withdrawing a suit by the plaintiff under Order 23 Rule 3, C.P.C. Once a plaintiff files an application withdrawing a suit, the suit stands withdrawn and becomes effective as soon as it is withdrawn. In the case of Smt. Raisa Sultana Begam and Ors. v. Abdul Qadir and Ors. a Division Bench of the Allahabad High Court observed as follows :

> Since withdrawing a suit is a unilateral act to be done by the plaintiff requires no permission or order of the Court and is not subject to any condition, it becomes effective as soon as it is done just as a compromise does.... The act is like a point and not continuous like a line having a beginning and an end. Either it is done or not done; there is nothing like its being done incompletely or ineffectively. The consequence of an act of withdrawal is that the plaintiff ceases to be a plaintiff before the court.
>
> The same principle applies to resignation submitted by a High Court Judge under Article 217(1)(a). The resignation, which is a unilateral act, becomes effective as soon as it is communicated to the President.

95. The appellant however, placed great reliance on a decision of the Kerala High Court in the case of M. Kunjukrishna Nadar v, Hon'ble Speaker Kerala Legislative Assembly, Trivandrum and Ors. . This was a case under Article 190(3) of the Constitution by a member of the Assembly who addressed a communication to the Speaker tendering his resignation. A Single Judge of the Kerala High Court held that the letter of resignation could not be effective until the date prescribed therein had reached and the notification published in the Gazette regarding the vacancy of the seat of the member was not warranted by law. In the first place, the Court was really concerned with the point of time as to when the actual vacancy of the member would arise and the seat would become vacant so as to justify a notification for fresh election. The point which is in issue before us did not arise in this shape in the Kerala case at all. In this connection, the learned Judge observed as follows :

> I hold therefore that it is open to a member of the Legislature to tender his resignation on a prior date to take effect on a subsequent date specified therein. The

letter of resignation has then to be construed as having been deposited with the Speaker on the earlier date, to be given effect to only on the date specified by the Member therein.

The withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker, which must thereafter be found to have become non-est in the eye of law. The absence of a specific provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial as basic principles of law and procedure must be-applied wherever they are relevant.

While I find myself in complete agreement with respect to the first portion of the observation of the learned Judge, viz., that it was open to the Member to submit his resignation to be effective from a subsequent date, I express my respectful dissent from the view taken by the learned Judge that a withdrawal would nullify the resignation completely and even if there was no provision for withdrawal of the resignation the same will become non-est after it is withdrawn. The Judge has not at all discussed the law on the subject nor has he referred to the constitutional provisions relating to resignation In fact, the 35th Amendment Act itself shows that the concept of acceptance of resignation was completely absent before the amendment was brought about and the legal position before the amendment was that the resignation would operate ipso facto and ex proprio vigore and could not be withdrawn. That is why a specific power of acceptance was introduced by virtue of the amendment. As however Parliament did not intend to disturb the position in case of other constitutional functionaries like the High Court Judges, Supreme Court Judges, President, Vice-President, Speaker etc. no such amendment by introducing the concept of acceptance of the resignation was brought about in Article 217 and other similar Articles. Indeed, if Parliament really intended that the resignation given by a High Court Judge or other constitutional functionaries indicated above could withdraw the resignation after communicating the same to the appropriate authority or even before the date from which the resignation was to operate, a suitable amendment could have been made in these Articles so as to confer an express power on the constitutional functionaries to do so. The fact that no such provision was made confirms my view that Parliament clearly intended that the resignation of constitutional functionaries being a sacrosanct act should remain as it was intended by the founding fathers of the Constitution, viz., once a resignation is submitted or communicated to the President, it becomes final and irrevocable and cannot be recalled by the functionary concerned. Thus, Parliament maintained the unilateral nature of the act of resignation. In these circumstances, therefore, I am not able to place any reliance on the judgment of the Kerala High Court cited by counsel for the appellant.

96. The Full Bench decision of the Delhi High Court in the case of Y. K. Mathur & And. v. The Commissioner, Municipal Corporation of Delhi and Ors. appears to have been the sheet-anchor of the arguments of the Attorney General for the proposition that a prospective resignation submitted

to the appropriate authority could be withdrawn by the resignor at any time before the date mentioned in the letter of resignation is reached. I have carefully perused the aforesaid decision and I am unable to agree with the view taken by the Delhi High Court for the reasons that I shall give hereafter.

97. To begin with, the Court was considering the provisions of Section 33(1)(b) of the Delhi Municipal Corporation Act which may be extracted thus :

> 33(1) If a councillor or an alderman :
>
> (a) ....
>
> (b) resigns his seat by writing under his hand addressed to the mayor and delivered to the commissioner his seat shall thereupon become vacant.

It was vehmently contended by the appellant that Section 33(1)(b) (supra) was in absolute pari-materia with Article 217(1)(a), and therefore, the interpretation placed by the Delhi High Court on this section would clearly apply to the facts of the present case which depends on the interpretation of Article 217(1)(a). In the Mist place, I am unable to agree with the At torney General that the provisions of the Municipal Act can be equated with the provisions contained in the Constitution of India. There is a world of difference between a constitutional functionary which has been assigned a special status and given a high place under the constitutional provisions and a municipal councillor elected under the local Municipal Act. It is obvious that in both these cases the self same considerations and identical principles cannot be applied because of the nature of the position held by these two authorities. The High Court held that as the statute did not limit the authority of the councillor to resign from a prospective date, the authority concerned had the undoubted power to withdraw it before the date is reached. In this connection, the Court observed as follows :

> The statute does not in any way limit the authority of the councillor who has sent his resignation from a prospective date to withdraw it before that date is reached. The resignation which is to be effective from a future date necessarily implied that if that date has not reached it would be open to the councillor concerned to withdraw it.

98. These observations suffer from an apparent fallacy. In the first place, the Court seems to assume that there is an implied power to withdraw the resignation where the resignor gives a particular date from which the resignation is effective. In the absence of any express provision conferring such a power, it was not open to the High Court to invoke the doctrine of implied powers as pointed out by me earlier. An implied power cannot be conferred on an authority by a process of legal assumptions in the absence of any express provision.

99. Another argument which weighed heavily with the High Court was that there was no law which compelled a councillor to give his resignation if he did not want it, and, therefore, if a councillor chose to resign, he could not be debarred from withdrawing it at any time before the date from

which the resignation was to be effectively reached. This argument fails to take into consideration the hard realities of the situation contemplated both by Section 33(1)(b) and Article 217(1)(a) of the Constitution. There is no question of there being any compulsion on the resignor to submit his resignation. In fact, both Section 33(1)(b) and Article 217(1)(a) merely conferred a privilege on the resignor to offer his resignation if he so desired. It depends upon the sweet will of the councillor to resign or not to resign. From this however it cannot be inferred that where once a resignation is submitted and results in certain important consequences, namely, that the resignation acts ex proprio vigore, yet the resignor can still withdraw his resignation and thus nullify the effectiveness of the resignation as contemplated, both by Section 33(1)(b) and Article 217(1)(a). Such an interpretation appears to be a contradiction in terms and against a plain interpretation of Section 33(1)(b) of the Municipal Act and Article 217(1)(a) of the Constitution. Furthermore, the provision of Section 33(1)(b) does not appear to be in complete pari-materia with those of Article 217(1)(a) inasmuch as Section 33(1)(b) provides that as soon as the resignation was delivered to the Commissioner the seat of the councillor shall become vacant. On the interpretation of this provision the Delhi High Court held that the vacancy could occur only when the resignation became effective and if the resignation was from a future date both the resignation and the vacation of the seat could be simultaneous. In this connection, the Court observed as follows :

> Under Section 33(1)(b) both the resignation and the vacancy of the seat are effective from the same time.... Vacancy will only occur when resignation is effective, and if it is from future date both resignation and vacation of seat will be effective simultaneously.

100. So far as Article 217(1)(a) is concerned it is differently worded and the consequence of the resignation is not at all indicated in this Article. Thus, the provisions of Article 217(1)(a) cannot be said to be in complete peri materia with Section 33(1)(b) of the Municipal Corporation Act.

101. Thirdly, as I have already pointed out the consideration by which the Court is governed and the principles which it may seek to apply to a municipal councillor cannot by any process of reasoning or principle of logic be applied to a High Court Judge or other Constitutional functionaries governed by constitutional provisions. Fourthly, the Delhi High Court has applied the doctrine of implied powers which as discussed above cannot apply where there is no express provision justifying a particular situation. For these reasons, with due deference to the Judges constituting the Full Bench of the Delhi High Court I find myself unable to agree with the view taken by them. In my opinion, the Delhi case referred to above is either distinguishable or even if it be taken to be directly in point, it is wrongly decided.

102. On the other hand, there are some English cases which throw a flood of light on the view that I propose to take in this case and which have been relied upon by the majority judgment of the Allahabad High Court. In the case of Reichel v. Bishop of Oxford (1887) Ch. D. 48 it was held that a clerk who had tendered his resignation to the Bishop cannot withdraw it, even before acceptance, if, in consequence of the tender, the position of any party has been altered. In that case the Bishop had been thereby induced to abstain from commencing proceedings in the Ecclesiastical Court for the deprivation of the clerk, in view of his resignation. Lord North after considering all the aspects of the

case observed as follows :

> Applying that to the present case, the Plaintiff, by sending in his resignation, procured a postponement of legal proceedings against himself, and thereby, according to ecclesiastical law, incapacitated himself from withdrawing it during the interval before the 1st of October; and this result would follow, even if the true view of the facts be, that the Bishop did not accept the resignation until that date.
>
> Under these circumstances, it appears to me that the plaintiff's attempt to withdraw his resignation fails entirely, and that, having failed on all points, the action must be dismissed with costs.
>
> This decision was affirmed by the Court of Appeal and it was held that the resignation was validly executed and irrevocable. In the Appeal Case Lord Halsbury observed as follows :
>
> But there was no condition here at all. As I have already said, I find as a fact that Mr. Reichel agreed absolutely to resign rather than undergo the inquiry which the Bishop would have felt himself otherwise compelled to institute. Neither in form nor in substance was the resignation conditional.
>
> Lord Herschell observed as follows :
>
> In these circumstances it is idle to consider what the appellant's position might have been, if there had been no such arrangement, and he merely had sent in his resignation without knowing whether it was to be accepted or not. He cannot in my opinion be permitted to upset the agreement into which he voluntarily entered, and which he has done all that he could to complete, upon the allegation that there was no formal acceptance of the resignation until the 1st of October, 1886.
>
> Lord Herschell observed as follows :
>
> It was argued further by the appellant that inasmuch as his resignation was tendered to the Bishop on the understanding that it was not to be accepted until a subsequent date, the resignation was a conditional one, and therefore void. I can see no ground for such a contention. The resignation was absolute. It was intended to take effect in any event.

103. These observations also show that merely because the resignation is to take effect from a particular date, it does not become a conditional resignation and its absolute nature is not changed at all, because the Law Lords as also the Chancery Division proceeded on the footing that even though the resignation of the clerk was to take effect from a certain date it was not conditional but absolute. The learned Counsel for he appellant sought to distinguish this case on the ground that in the Bishop's case (supra) a material change had already taken place, which could not be reversed

and that is why it was held that the resignation could not be withdrawn. It is true that this was one of the grounds taken both by the Chancery Division Court and the Appeal Court, but the same reason will apply to the present case also because once a resignation was submitted by Satish Chandra to take effect from the 1st August, 1977, the President was clearly entitled to fill up the vacancy of the Judge from 1st August, 1977 and may take steps accordingly. Thus, by virtue of his resignation Satish Chandra had invited the President to take steps to fill up the vacancy which will arise on 1st August, 1977. By virtue of this representation, therefore, a material change undoubtedly took place. For these reasons, therefore, I am not in a position to accept the arguments of counsel for the appellant on this score.

104. In the case of Finch v. Oake [1896] 1 Ch. D. 409 a member under Trade Protection Society was entitled to retire at any time without the consent of other members. On the receipt by the society of a letter from a member stating his wish to retire, he at once ceased to be a member without the necessity of the acceptance by the society of his resignation. It was held that the member could not withdraw his resignation even before acceptance and he could only become a member again after re-election. It would be seen that the principles decided in this case apply directly to the facts of the present case where also under the provisions of Article 217 the effectiveness of resignation does not depend upon the acceptance of the same by the appropriate authority. In the aforesaid case Lindley, L.J. observed as follows :

> By paying his subscription he no doubt acquires certain rights and benefits. But what is there to prevent him from retiring from the association at any moment If he wishes to do so ? Absolutely nothing. In my opinion no acceptance of his resignation is required, though of course he cannot get back the 10 Section 6d. which he has paid.... I can see no principle of law which entitles him to withdraw his resignation.
>
> Kay, L. J. observed as follows :
>
> It is said that, before his resignation had been accepted by the association, he withdrew it. But why was any consent to his withdrawal from the society required ? As a voluntary member of a voluntary society he had said, "I do not wish to continue a member any longer.... In my opinion, after his letter of resignation had been received, the plaintiff could not become, a member of the society again without being re-elected.
>
> In my opinion, the principles laid down by this case seem to be in all fours with the facts of the present case.

105. In the case of People of the State of Illinois Ex. Rel. Benjamin S. Adamowski, v. Otto Kerner 82 A.L.R. 2nd Series 740 what happened was that a County Judge submitted his resignation to the Governor which was to become operative on a specified date. But the Judge sought to withdraw the resignation before the date mentioned in the resignation and before the Governor had acted thereon. It was held by the Illinois Supreme Court that the resignation could not be withdrawn. In this connection. Davis, J. while delivering the opinion of the court observed as follows :

> However, public policy requires that there be certainly as to who are and who are not public officers.... Therefore, the resignation of an officer effiective either forthwith or at a future date may not be withdrawn after such resignation is received by or filed with the officer authorized by law to fill such vacancy or to call an election for such purpose.
>
> It is true that Schaefer, J. and Hershey, J. dissented from the view taken by Davis, J., but I would prefer to follow the view taken by Davis, J. which falls in line with the tenor and the spirit of the constitutional provisions which we are called upon to interpret here.

106. Similarly, in the case of Glossop v. Glossop (1907) 2 Ch. D. 370 it was held that the managing director could not withdraw the resignation without the consent of the company, and by his letter of resignation be vacated his office. Neville, J. while adumbrating the aforesaid principles observed as follows :

> I have no doubt that a director is entitled to relinquish his office at any time he pleases by proper notice to the company, and that his resignation depends upon his notice and is not dependent upon any acceptance by the company, because I do not think they are in a position to refuse acceptance. Consequently, it appears to me that a director, once having given in the proper quarter notice of his resignation of his office, is not entitled to withdraw that notice, but, if it is withdrawn, it must be by the consent of the company properly exercised by their managers, who are the directors of the company.
>
> It would appear, from a conspectus of the authorities cited above and on a close and careful analysis of the provisions of Article 217(1) of the Constitution of India having regard to the setting of the spirit in which this provision was engrafted that the more acceptable view seems to be that where the effectiveness of a resignation by a Judge does not depend upon the acceptance by the President and the resignation acts ex proprio vigore on the compliance of the conditions mentioned in Article 217(1)(a) (that is by writing under his hand addressed to the President and being communicated the same to the President) the Judge has no power to revoke or recall the aforesaid resignation even though he may have fixed a particular date from which the resignation is to be effective. In other words, the act of resignation is a purely unilateral act and the concept of withdrawal or recalling or revoking the resignation appears to be totally foreign to the provisions of Article 217(1)(a).

107. Counsel for the appellant relied on Corpus Juris Secundum, American Jurisprudence and other books of eminent authors, which do not appear to me to be very helpful in deciding the point in issue in the present case. In the first place the provision of the American Constitution as regards resignation of Judges is quite different. In fact, there is no provision at all in the American Constitution entitling a Judge to resign. Article 3 Section 1 of the American Constitution as edited by Corwin shows that although Article 3 Section 1 of the American Constitution confers judicial powers

on the United States in one Supreme Court and other inferior Courts as may be established by the Congress it provides that Judges both of the Supreme Court and inferior Courts shall hold their office during good behavior. Apart from this provision there is no provision in the Constitution regarding the mode and manner in which the Judges could resign their office. In the absence of any such provision, the general principles have been applied which includes cases where a Judge tenders his resignation either prospectively or with a condition attached to the same and such a resignation has to be accepted by the President and can be withdrawn at any time before the date fixed is reached. These principles, however, cannot be applied to our Constitution where a definite mode and a prescribed procedure has been formulated for the resignation of a Judge and the consequences flowing thereof. In these circumstances, therefore, we can derive little help from the provisions of the American Constitution on the question at issue. In the absence of any express provision, the courts have applied the common law which is to the effect that in the absence of a statute providing for resignation, the resignation becomes effective on its acceptance by the proper authority. Similarly, it Is laid down that a prospective resignation may be withdrawn at any time before its acceptance vide Corpus Juris Secundum Vol. 48 p. 973 para 25 which runs thus :

> The term or tenure of a judge, with respect to the incumbent, may become terminated by reason of his resignation. In the absence of a statute providing otherwise, a resignation becomes effective on its acceptance by the proper authority, but in order to become effective it must be accepted. A prospective resignation may be withdrawn at any time before it is accepted, and after it is accepted it may be withdrawn by the consent of the accepting authority, at least where no new rights have intervened.
>
> Similarly, in Corpus Juris Secundum Vol. 67 p. 227 para 55 the following observations are to be found :
>
> However, under a statute providing that a resignation shall take effect on due delivery to the officer to whom it is addressed without making provision for a prospective resignation, a resignation to take effect at a future date is not permissible, and such resignation becomes effective oh due delivery and creates a vacancy as of the date of delivery.
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> These observations do not seem to be directly in point but come as close as possible to the view taken by me.

108. The learned Counsel for respondent No. 1 Mr. Jagdish Swarup took us through extracts of a number of books including Paton's Jurisprudence and Salmond's Jurisprudence with a view to explain the incidents and qualities of a legal right. The extracts, however, do not appear to me to be relevant to the facts of the present case where we are dealing with a codified right which has to be performed within the four corners of the constitutional provisions. The general principles contained in the book of the eminent jurists referred to by Mr. Jagdish Swarup cannot be disputed. The main question, however, is as to what is the effect of the provisions of Article 217(1)(a) of the Constitution of India which prescribes a particular mode for the resignation of High Court Judges. I, therefore,

do not think it necessary to advert to the books referred to by the High Court or by counsel for the first respondent.

109. Thus, from the conclusions arrived by me on the questions involved in this appeal the following propositions in my opinion emerge :

1. That the concept of the acceptance of resignation submitted by a High Court Judge is completely absent from Article 217(1)(a) and the effectiveness of the resignation does not at all depend upon the acceptance of the resignation by the President nor does such a question ever arise. This is how the Executive Government has implemented the law for wherever notifications regarding the resignation of High Court Judges or Supreme Court Judges have been made they have merely mentioned the date of the resignation and not the fact of acceptance. The High Court has elaborately dealt with this question.

2. That in view of the provisions of Article 217(1)(a) and similar provisions in respect to high constitutional functionaries like the President, Vice-President, Speaker etc. the resignation once submitted and communicated to the appropriate authority becomes complete and irrevocable and acts ex proprio vigore.

3. That there is nothing to show that the provisions of Article 217(1)(a) exclude a resignation which is prospective. That is to say, a resignation may take effect from a particular date Even so, the resignation may be effective from a particular date but the resignor completely ceases to retain any control over it and becomes functus officio once the resignation is submitted and communicated to the appropriate authority.

4. That the resignation contemplated by Article 217(1)(a) is purely an unilateral act and takes effect ipso facto once intention to resign is communicated to the President in writing and addressed to him.

5. That on a true interpretation of Article 217(1)(a) a resignation having once been submitted and communicated to the President cannot be recalled even though it may be prospective in nature so as to come into effect from a particular date. It is not possible to hold that such a resignation can be withdrawn at any time before the date from which the resignation is to be effective is reached.

6. That as the Constitution contains an express and clear provision for the mode in which a resignation can be made it has deliberately omitted to provide for revocation or withdrawal of a resignation once submitted and communicated to the President. In the absence of such a provision, the doctrine of implied powers cannot be invoked to supply an omission left by the founding fathers of the Constitution deliberately.

110. The principles enunciated above flows as a logical corollary from the nature and character of the privilege, right or power (whatever name we may choose to give to the same) conferred by the Constitution on a Judge of the High Court or other constitutional functionaries mentioned hereinbefore. Salmond on Jurisprudence (12th Ed. by Fitzgerald) describes a species of legal rights thus :

> All these are legal rights-they are legally recognised interests-they are advantages conferred by law.... They resemble liberties, and differ from rights stricto sensu, inasmuch as they have no duties corresponding to them.... A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons.... Power is either ability to determine the-legal relations of other persons, or ability to determine one's own. The first of these-power other persons-is sometimes called authority; the second-power over oneself-is usually termed capacity.
>
> Similarly, Paton on Jurisprudence (3rd Edition by Derham) while illustrating the right of liberty observed as follows :
>
> I have liberty to breathe, to walk in my own fields, to play golf in my private links. Here no precise relationship to others is in question, save that the law will protect my liberty if others interfere with its exercise. But it is more accurate to say that I have a liberty to play than that I have a claim, for I may exercise my liberty without affecting others, whereas my claim can be enforced only by coercing another to act or forbear.

111. It would thus appear that the privilege or power enshrined in Article 217(1)(a) is an absolute one and not relative. In other words, the aforesaid power is an independent one and has no corresponding rights to be performed by any other authority. The only privilege given to a Judge of the High Court is to resign without there being any corresponding right to the President to accept the same, nor is there any power in the resignor to recall or revoke the resignation once it becomes effective. The provisions of Article 217(1)(a) really contemplates that the decision of a Judge to resign his office must be taken with due deliberation after considering all the pros and cons of the matter and not under any emotional instinct or inspired by undue haste or momentous fury. One of the essential qualities of a judicial power is restraint and a Judge before resigning must be prepared to take a decision once for all so that having taken the decision he is not in a position to repent on the same or to brood over it. The decision once taken by the Judge in this regard is irrevocable and immutable and is just like an arrow shot from the bow which cannot be recalled or a bullet having fired and having reached its destination cannot come back to the barrel from which it was Shot.

112. Thus having regard to the letter of resignation in the present case, there can be no doubt that Satish Chandra had in his letter dated 7th May, 1977 indicated his unequivocal intention to resign in the clearest possible terms to the President with effect from 1st August, 1977 and the letter having been communicated to the President and received by him, it was not open to Satish Chandra to withdraw or revoke that letter. Consequently, the letter dated 15th July, 1977 addressed to the President by Satish Chandra revoking his resignation was null and void and must be completely

ignored.

113. The position, therefore, in my opinion, is that Satish Chandra ceased to be a Judge of the High Court with effect from 1st August, 1977. For these reasons, therefore, I fully agree with the majority view of the High Court (Misra, Shukla and Singh, JJ.). I am unable to persuade myself to agree with my Brother Judges who have taken a contrary view. I, therefore, uphold the judgment of the High Court and dismiss the appeals. We have already pronounced the operative portion of the order on 8th December, 1977 and we have now given the reasons for the order pronounced. In the circumstances, there would be no order as to costs.