

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

**I.C.A. No.519 of 2015**

**Asjad Asad Wasi**

**Versus.**

**Federation of Pakistan through its Secretary, M/o Railway & another**

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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26.04.2016

Mr. Shoaib Shaheen, learned ASC for the appellant,  
Mr. Tajjammal Hussain, Advocate for the respondents.

Through the instant Intra Court Appeal, the appellant, Asjad Asad Wasi, impugns the Order dated 11.11.2015, passed by the learned Single Judge-in-Chambers, whereby the appellant's Writ Petition No.1403/2015, was dismissed.

2. The appellant's case is that he was appointed as Programmer (BPS-17) on contract basis, and posted at Pakistan Railways, Lahore. The duration of the appellant's contract period was extended from time to time. As the services of the appellant were not regularized, he filed the Writ Petition No.2082/2006, which was allowed, vide Order dated 31.12.2012. A Petition before the Hon'ble Supreme Court of Pakistan was filed against the said order dated 31.12.2012, but the same was subsequently withdrawn. As the services of the appellant were not regularized, he filed Contempt Petition No.376/2013 before this Court. While Writ Petition No.2082/2006 was pending adjudication, the appellant tendered his resignation on 25.01.2008. The appellant claims to have tendered this resignation in protest. The

appellant's letter of resignation is reproduced herein below:

**"Subject: RESIGNATION FROM THE PROGRAMMER (BPS-17) POST UNDER PROTEST"**

*Sir,*

*After so many reminders, I was not given any response from your side. Now I am giving my resignation from the Programmer (BPS-17) post. I am therefore tendering my resignation from Information Technology Directorate, Pakistan Railways and Headquarter Officer for which I have worked since 13 October, 2003 as Programmer (BPS-17).*

*My experience with Information Technology Directorate, Pakistan Railways and Headquarter Officer has been very rewarding. I appreciate having had the opportunity provide by Ministry of Railways. I also want to thank to my department for providing me guidance and support.*

*I am submit my resignation to be effective from 8th February, 2008 (15 days w.e.f. 25.01.2008). There is no liability against me till date. I wish you and the organization continued success.*

*Yours Obediently,  
Asjad Asad Wasi,  
Programmer IT/MIS"*

3. Soon thereafter, the appellant claims to have approached the departmental authorities in order to withdraw his resignation. The position taken by the respondents is that the appellant's resignation was accepted on 30.06.2008, prior to the withdrawal of his resignation. The appellant asserted that the acceptance of his resignation during the pendency of Writ Petition No.2082/2006 was unlawful and arbitrary. Aggrieved by the acceptance of his resignation, the appellant approached this Court by filing Writ Petition No.290/2015. This Court, vide Order dated 30.01.2015, directed the respondents to decide the matter after affording of an opportunity of hearing to the appellant. On 26.03.2015, the

respondents rejected the appellant's request to allow withdrawal of his resignation. Consequently the appellant, once again approached this Court by filing Writ Petition No.1403/2015, which was dismissed, vide Judgment dated 11.11.2015. In the said judgment it was, inter-alia, held as follows:-

*"...the petitioner could not make any convincing argument when he was shown his own resignation request. The content of resignation clearly depicts that the petitioner submitted resignation on 25.01.2008 at his own will which was consequently accepted by the competent authority viz Secretary/Chairman Railways on 30.06.2008 and was intimated to all concerned. Even the contents of the writ petition filed in the Court were also not based on the facts. Since the resignation has attained finality and all the pre-requisite in this regard has been fulfilled, hence the request of the officer is not maintainable at this stage as not covered under the rules."*

4. The said judgment dated 11.11.2015 has been impugned by the appellant in the instant Intra Court Appeal.

5. We have heard the arguments of the learned counsel for the appellant and perused the record with his able assistance.

6. The facts of this case have been set out in sufficient detail in paragraphs 2 to 3 above and need not be recapitulated. In Corpus Juris Secundum, Volume LXXVII at Page 77

"Resignation" has been defined as follows:-

*"Resignation.-- It has been said that "resignation" is a term of legal art, having legal connotations which describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the word is defined generally."*

7. It is seen that the appellant had voluntarily resigned from service and his resignation was accepted by the competent authority on

30.06.2008. On and from that date, the relationship of employer and the employee between the appellant and the respondents ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on 30.06.2008.

8. It is well settled that when a public servant submits a letter of resignation, his service/employment stands terminated from the date on which the letter of resignation is accepted by the competent authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the competent authority. In taking this view, we have been guided by the law laid down in the following judgments:-

- (i) In the case of Hafiz Hamdullah Vs. Saifullah Khan and others (PLD 2007 SC 852), the Hon'ble Supreme Court of Pakistan after making reference to the instructions contained in Esta Code at Serial No.13 of the Chapter under the Heading, *"Termination of Services, Reversion to lower Scale/Post, resignation and Desertion from Duty"* held as follows:-

*".....on mere tendering/submitting of resignation the services of Government /Civil Servant would not come to an end and the same has to be accepted for its effectiveness by the competent authority. It also reveals that till such time as the resignation is accepted by the competent authority, the Civil/Government servant would continue to be in government service and would be under an obligation to perform his duties. In case he fails or omits to perform his duties without prior*

*authorization or leave, he would be deemed to be an absentee rendering himself liable for disciplinary proceedings under the appropriate law and rules. In view of the clear, express and unambiguous language used in instructions at serial No.13 of the Esta Code there can be no doubt that the resignation tendered/submitted by a civil servant does not become effective /operative unless it is accepted by the competent authority and till such time the resignation is accepted the government/civil servant shall be deemed to be in the service."*

The same view, as above, was taken by the Hon'ble Supreme Court of Pakistan in the case of Anwar-ul-Haq Vs. Secretary, Ministry of Industries and Production, Government of Pakistan Islamabad and others (2010 SCMR 1386).

(ii) In the case of Registrar, Lahore High Court, Lahore Vs. Syed Javed Akbar and another (2007 SCMR 792), it has been held, at paragraph 4 of the report as follows:-

*"4. It is settled law that a resignation can be withdrawn or recalled before its acceptance by the competent authority. This view is indirectly supported by the observations of their Lordships of the Indian Supreme Court in a decision reported in Jai Ram's case AIR 1954 SC 584. The relevant observation is as follows:--*

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

(iii) In the case of Chaudhry Khush Akhtar Subhani Vs. Returning Officer and another (2008 YLR 2132), it has been held by the Hon'ble High Court of Sindh at paragraph 5 of the report as follows:-

*"..... If for the sake of argument we accept that respondent No.2 had resigned, the fact remains that mere tending or submitting of resignation is not tantamount to termination of service of a Government servant. In order for the same to become effective, its acceptance by the competent authority is an essential requirement. Till such time the resignation is accepted by the competent authority, the Civil / Government servant would continue in service and would be under an obligation to perform his duties and if he omits to perform his duties without prior authorization, he would be deemed to be an absentee and would be liable for disciplinary action....."*

The same view, as above, has been taken in the cases of Mrs. Neelam Yasmin Abbasi Vs. Returning Officer and two others (2010 MLD 527), Saifullah Khan Vs. Hafiz Hamdullah and 4 others (PLD 2005 Quetta 145), Tahsin Ahmad Mehmoodi Vs. Pakistan Steel Mills Company Ltd (1990 MLD 1132), Muhammad Mansha Vs. Government of Punjab (1984 CLC 2231) and Mohammad Khan Vs. Pakistan through Secretary, Ministry of Interior, Karachi (PLD 1958 Karachi 75).

(iv) In the case of Dr. Muhammad Munir-ul-Haq and others Vs. Dr. Muhammad Latif Chaudhry (1992 SCMR 2135), it has been held at paragraph 30 of the said Report as follows:-

*"30. There is no dispute about the proposition advanced by the respondent No.1 that a resignation has to be intentional and voluntary and as defined in Black's Law Dictionary it means "formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment". It is also correct that the totality of the circumstances have to be taken into consideration for drawing a conclusion whether the resignation tendered was voluntary or not."*

(v) In the case of Muhammad Zahoor Vs. Registrar, Lahore High Court (2005 SCMR

1174), it was held that in the case of a Naib Qasid serving in the court of District & Sessions Judge, Gujranwala, had tendered his resignation, which had been accepted. The matter then went before the Punjab Service Tribunal which dismissed the Naib Qasid's appeal. The Naib Qasid then filed a petition before the Hon'ble Supreme Court of Pakistan. He took the position that he was forced and coerced by the learned District and Sessions Judge to submit his resignation; and that the submission of the resignation was not voluntary. From the attending circumstances, the Hon'ble Supreme Court drew an inference that the Naib Qasid had not submitted his resignation voluntarily. Consequently, the impugned order of the Punjab Service Tribunal was set aside, and it was ordered that the Naib Qasid bearing status in service. In paragraph 9 of the said judgment, it was held as follows:-

*"...In Abraham Reuben V. Karachi Municipality AIR 1929 Sindh 69 a test to detect voluntariness or otherwise of a resignation has been laid down. Similarly, this Court in the case of Dr. Muhammad Munirul Haq (ibid) has laid down following test:-*

*(30) There is no dispute about the proposition advanced by respondent No.1 that a resignation has to be intentional and voluntary and as defined in Black's Law Dictionary it means "formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment". It is also correct that the totality of the circumstances have to be taken into consideration for drawing a conclusion whether the resignation tendered was voluntary or not.."*

(vi) In the case of M/s. J.K. Cotton Spg. & Wvg. Mills Co. Ltd., Kanpur V. State Of U.P. (AIR 1990 Supreme Court 1808), it was held as follows:-

*"4...one of the ways of terminating the contract of employment is resignation. If an employee makes his intention to resign his job known to the employer and the latter accepts the resignation, the contract of employment comes to an end and with it stands severed the employer-employee relationship. Under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation but once the resignation is accepted that contract comes to an end and the relationship of master and servant stands snapped."*

(vii) In the case of P. Kasilingam V. P.S.G. College of Technology (AIR 1981 Supreme Court 789), it was held as follows:-

*"13...It may be concerned that it is open to a servant to make his resignation operative from a future date and to withdraw such resignation before its acceptance. The question as to when a Government servant's resignation becomes effective came up for consideration by this Court in Raj Kumar V. Union of India, (1968) 3 SCR 857: (AIR 1969 SC 180). It was held that the services of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority. Unless there is any law or statutory rule governing the conditions of service to the contrary."*

(viii) In the case of Union Of India Vs. Shri Gopal Chandra Misra (AIR 1978 Supreme Court 694), it has been held as follows:-

*"51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the*



*competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right, or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office- tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing chooses to resign from a future date, the act resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."*

(ix) In the case of Biddle Vs Willard, Governor (10 Ind. 62, 1857 WL 5759 (Ind.)), it has been held by the Supreme Court of Indiana, as follows:-

*"...To constitute a complete and operative resignation, there must be an intention to relinquish a portion of the term of the office, accompanied by the act of relinquishment, Webster and Richardson define the words resign and resignation, substantially thus: to resign, is to give back, to give up, in a formal manner, an office; and resignation is the act of giving it up. Bouvier says, resignation is the act of an officer by which he declines his office, and renounces the further right to use it.*

*Hence, a prospective resignation may, in point of law, amount but to a notice of intention to resign at a future day, or a proposition to so resign; and for the reason that it is not accompanied by giving up of the office-- possession is till retained, and may not necessarily be surrendered till the expiration of the legal term of the office, because the officer may recall his resignation--may withdraw his proposition to resign. He certainly can do this at any time before it is accepted: and after it is accepted, he may make the withdrawal by the consent of the authority accepting, where no new rights have intervened."*

(x) In the case of Hoke Vs. Henderson (4 Dev. (N. C.) 29), Chief Justice Ruffin, speaking for the

Supreme Court of North Carolina, held as follow:-

*"...An officer may certainly resign; but without acceptance his resignation is nothing, and he remains in office. It is not true that an office is held at the will of either party. It is held at the will of both. Generally resignations are accepted; and that has been so much a matter of course with respect to lucrative offices, as to have grown into a common notion that to resign is a matter of right. But it is otherwise. The public has a right to the services of all the citizens, and may demand them in all civil departments as well as in the military. Hence, there are on our statute book several acts to compel men to serve in offices. Every man is obliged, upon a general principle, after entering upon his office, to discharge the duties of it while he continues in office, and he cannot lay it down until the public, or those to whom the authority is confided, are satisfied that the office is in a proper state to be left, and the officer discharged."*

(Emphasis added)

(xi) In the case of Jai Ram Vs. Union of India (AIR 1954 S.C. 584 (Vol. 41, C.N.135) it was held as follows:-

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

9. In addition to the above, Serial No.11 at page-450 of the Esta Code, 2007-08 Edition reads as follows:-

*"...Withdrawal of resignation by Government servants.- The question whether resignation once tendered by a Government servant before completion of 25 years qualifying service may be allowed to be withdrawn before or after its acceptance by the competent authority has been under consideration in the Establishment Division.*

*2. The following decisions have been taken in consultation with the Ministry of Finance:-*

- (i) *Withdrawal of resignation before acceptance.*-In case Government servant withdraws resignation before it is accepted by the competent authority, the resignation should be deemed to have been withdrawn.
- (ii) *Withdrawal of resignation after its acceptance but before it becomes effective (i.e. before the Government servant concerned is relieved). It should be opened to the authority accepting the resignation to allow the Government servant concerned to withdraw the resignation on the merits of the case."*

10. There can be no doubt that resignation must be voluntarily tendered for if it is tendered on account of duress or coercion, it would not be voluntary act of the employee expressing a desire to quit service. In the record of this case, there is absolutely nothing to indicate that the appellant did not tender his resignation voluntarily or that he was coerced into tendering his resignation.

11. We asked the learned counsel for the appellant to show us the letter by which the appellant withdrew his resignation. Learned counsel, in response, submitted that the appellant had verbally withdrawn his resignation. The record shows that this stance of the appellant has been emphatically denied by the respondents. Therefore, we are of the view that the learned Single Judge-in-Chambers was correct in holding that the writ petition instituted by the appellant, involved disputed questions of fact, which could not be resolved while exercising jurisdiction under Article 199 of the Constitution.

12. The appellant submitted his resignation on 25.01.2008. This resignation was accepted by the respondents on 30.06.2008. The appellant had over five months to change his mind and

withdraw his resignation. Since the appellant did not withdraw his resignation prior to its acceptance, he has only himself to thank for the unsavory consequences that he finds himself in.

13. After considering the factual circumstances of the case in the light of the judicial precedents referred to hereinabove, we are convinced that the instant appeal should be dismissed. Since we are not inclined to interfere in the judgment dated 11.11.2015, passed by learned Single Judge-in-Chambers, this appeal is dismissed with no order as to costs.

14. Before parting with this judgment, it is observed that should the appellant agitate his grievance before the competent forum, it shall be decided without, in any manner, being influenced by observations made herein. Furthermore, this judgment shall also not come in the way of the respondents to grant to the appellant any benefit granted by the Court in Writ Petition No.2082/2006.

**(AAMER FAROOQ)  
JUDGE**

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**APPROVED FOR REPORTING**

**Qamar Khan\***

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