

## Chote Lal vs State And Ors. on 3 November, 1955

**Equivalent citations: AIR1956ALL153, (1956)ILLJ543ALL, AIR 1956 ALLAHABAD 153, 1956 ALL. L. J. 201 (1956) 1 LABLJ 543, (1956) 1 LABLJ 543**

ORDER

Mehrotra, J.

1. The petitioner was appointed a permanent Patwari in the year 1937. On 6-11-1952 the applicant was suspended by Sri Kanhaiya Lal, Sub-Divisional Magistrate. In the year 1953 there were certain demand's made by Patwaris and as a consequence of non-fulfilment of those demands a large number of Patwaris tendered their resignations.

The petitioner also gave his resignation on 4-2-1953. Before, however, the resignation could be accepted, the disciplinary proceedings which were pending against the applicant and on account of which he had been suspended by the order, dated 6-11-1952 terminated and on 30-5-1953 an order was passed by Sri Kanhaiya Lal, Sub-Divisional Magistrate dismissing the applicant from service. An appeal was filed before the District Magistrate against the aforesaid order of Sri Kanhaiya Lal.

The appeal was heard by the Additional District Magistrate. On 12-9-1953 the Additional District Magistrate allowed the appeal, set aside the order of dismissal and sent back the case .to & Sub-Divisional Magistrate for proper inquiry according to rules.

The matter after remand was pending before Sri Kanhaiya Lal, Sub-Divisional Magistrate, for some time and the petitioner thereafter applied to the Additional District Magistrate, for the transfer of the proceedings to some other Magistrate and the District Magistrate by his order, dated 16-2-1954 directed that the inquiry should be conducted by Sri. R. A. Jaffrey. The file was transferred from the Court of Sri' Kanhaiya Lal to that of Sri R A. Jaffrey.

Sri Jaffrey after making thorough Inquiry into the matter found the applicant not guilty and exonerated him from the charges. He ordered that the applicant's dismissal Was illegal. He continued in service and should be re-instated forthwith. He further directed that the applicant should get his full pay for the period he remained under suspension, that is, from 6-11-1952 up to the date when the order was passed by him on 31-7-1954. Even after this- order was passed by the Magistrate directing his reinstatement Sri Kanhalya Lal on 28-8-1954 passed an order in the following terms :

The departmental inquiry against the conduct of Patwari has been completed and he

has been reinstated with effect from the date of suspension. As the Patwari has resigned his resignation has been pending orders under L. R. C.'s order, D/- 3-2-1954. No departmental inquiry has been concluded. He has appeared before me and again verified his resignation. He has stated in Court of verification that he withdrew his resignation in July 1953. The L. R. C. under his order, dated 8-3-1953 has allowed to withdraw the resignation by 4-3-1954. This withdrawal is time-

barred. The resignation submitted by the Pat-wari on 4-2-1953 is accepted with effect from the date of his reinstatement.

2. The services of the applicant, therefore, were terminated by this order of 28-8-1954. The petitioner has filed the present petition under Article 226 of the Constitution challenging the aforesaid order of the Sub-Divisional Officer.

3. Notices were issued to the opposite-parties, the State of U.P. the District Magistrate of Jhansi and Sri Kanhaiya Lal, Sub-Divisional Magistrate. A counter affidavit has been filed, in which it is stated that the conduct of the applicant was very suspicious and he was liable to be dismissed. It is further stated in the counter affidavit that on 5-2-1953, the Land Reforms Commissioner had issued certain instructions the relevant portion of which is as follows:

"The resignations may be accepted forthwith, except in cases where disciplinary proceedings are pending. It is not necessary to wait until 4-3-1954 which is the date mentioned in the letters of resignation as the last date for the acceptance. In cases where disciplinary proceedings are pending those proceedings should first be completed and resignations should be accepted only if an order for removal or dismissal is not passed."

4. The position taken in the counter affidavit, therefore, is that the resignation of the petitioner dated 4-2-1953 was an unconditional resignation. It became operative from the date when it was given on 4-2-1953. It remained suspended till the inquiry was completed and it was open to the Sub-Divisional Officer after the completion of the inquiry to accept the resignation.

It was not open to the applicant to withdraw the resignation after once he submitted an unconditional resignation. The order passed by the Sub-Divisional Magistrate, however, is based on certain directions issued by the Land Re-forms Commissioner by his letter, dated 8-3-1953 under which the withdrawal of resignations had to be made by 4-3-1954 and as the petitioner himself contends that he had submitted his withdrawal in July, the withdrawal was under the directions issued on 8-3-1953 beyond time.

5. The petitioner has urged three points. Firstly, his contention is that it was open to the applicant to withdraw his resignation before it had been accepted by the Sub-Divisional Officer. Unless the resignation was accepted the petitioner continued to be in service and it was always open to him before the termination of his service to withdraw his resignation.

The reply to this argument by the standing counsel is that if a resignation is unconditional it becomes operative immediately and it does not depend upon the acceptance by the Government and consequently the petitioner had no right to withdraw such an unconditional resignation.

Reliance was placed by the Standing Counsel on the case of 'Jwala Prasad v. State of U.P.', AIR 1954 All 638 (A). That was a case where the resignation was sent by the Patwari on 2-2-1953. In the said resignation it was said that the applicant should be relieved from his duty by 3-3-1953. The resignation was accepted on 10-2-1953.

Thereafter on 24-2-1953 the applicant sent an application for permission to withdraw his resignation. Under these circumstances the application of 24-2-1953 was rejected and the petitioner filed a writ petition in this Court. It was observed at p. 638 of the report that no question of withdrawal could arise, his resignation having already been accepted.

It was further observed that even if his withdrawal of resignation application had been received before the resignation was accepted, he not claim an absolute right to withdraw his resignation. The resignation was unconditional and whether he would be permitted to withdraw that resignation was a matter within the discretion of the appointing authority.

We do not want to express any opinion on the question whether if the resignation had been conditional, the party tendering it could claim a right to withdraw it as the point has not arisen in this case.

6. That was a case, I have already pointed out, where the resignation had been accepted before an application was made for the withdrawal of such a resignation. Apart from this it may be that the applicant may not have an absolute right to withdraw the resignation which was unconditional in terms.

But the Sub-Divisional Officer should at least have applied his mind before accepting his resignation to the question whether in the circumstances of the present case the petitioner could be permitted to withdraw his resignation or not. In the present case the Sub-Divisional Officer has only refused the petitioner's prayer for withdrawal on the ground that it was made after the expiry of the period fixed by the Land Reforms Commissioner.

The Circular issued by the Land Reforms Commissioner, dated 8-3-1953 is not before me and it may be that it only related to the case where there were no disciplinary proceedings pending. It did not fix the period up to 4-3-1954 for the withdrawal of resignations in cases where the disciplinary proceedings were pending at the time when the resignation had been submitted and consequently it cannot be said that the present prayer of the applicant was beyond time.

7. From the other Circular referred to in the counter affidavit it is clear that the authorities had divided the cases of the Patwaris who had tendered resignations into two categories. Cases where no disciplinary proceedings were pending were treated differently from those in which such proceedings were pending and consequently it may be that the authorities had extended the period

for making applications for withdrawal of resignations in those cases alone where no disciplinary proceedings were pending.

Cases where disciplinary proceedings were pending, the question for applying for withdrawal before the termination of such proceedings could not arise at all and in my opinion, therefore, the Sub-Divisional Officer was not right in holding that the prayer of the petitioner for withdrawal of his resignation was beyond time.

8. Apart from this on 4-2-1953 he had submitted his resignation when his service had not been terminated. By the order of Mr. Jaffrey he was re-instated and the resignation tendered on 4-2-1953 could not in terms relate to his service after his reinstatement by the order of the Magistrate.

After the termination of the inquiry in favour of the applicant, the resignation tendered by him automatically . came to an end, and unless fresh resignation was tendered by him, the Sub-Divisional Officer could not treat the resignation tendered on 4-2-1953 as pending and pass order refusing (sic) to accept it. The Circular referred to in the counter affidavit to my mind only says that in cases where disciplinary proceedings are pending, the resignation is to be accepted only if an order for removal or dismissal is not passed.

If any order for removal or dismissal is passed the question to my mind of accepting the resignation could not arise at all and therefore there is no express direction in the Circular of 5-2-1953 with regard to cases where the disciplinary proceedings were pending on the date of the resignation and the proceedings ultimately terminated in favour of the employee that in all such cases the resignation must be accepted.

In this connection reference may be made to the case of -- 'Jai Ram v. Union of India', AIR' 1954 SC 584 (B). Particular reference may be-made to the following observation of their Lordships of the Supreme Court at page 586 of the report.

"It may be conceded that it is open to a servant who has expressed a desire to retire from service and apply to his superior officer to give him the requisite permission to change his mind subsequently and ask for the 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."

9. I, therefore, allow this petition and quash the order of the Sub-Divisional Officer, dated 28-8-1954 with costs.