

Punjab National Bank vs P.K. Mittal on 13 February, 1989

Equivalent citations: 1989 AIR 1083, 1989 SCR (1) 612, AIR 1989 SUPREME COURT 1083, 1989 LAB. I. C. 1248, 1989 56 FACLR 449, 1989 (1) SERVLR 596, 1989 BANKJ 175, 1989 2 SERVLJ 1, 1989 74 FJR 456, 1989 (2) COM LJ 184, 1989 (1) LABLN 533, 1989 LAB LR 194, 1989 (1) CURLR 364, (1989) 1 JT 264 (SC), 1989 (1) LABLJ 368, 1989 SCC (SUPP) 2 175, AIRONLINE 1989 SC 27, 1989 SCC (SUPP) 175, 1990 SCC (L&S) 143, (1989) 1 LAB LN 533, (1989) 1 CUR LR 364, (1989) 2 SERV LJ 1, (1989) 1 LAB LJ 368, (1989) 56 FAC LR 449, (1989) 1 SERV LR 596, (1989) 74 FJR 456, (1989) 1 JT 264, (1989) 2 COM LJ 184, (1989) BANK J 175

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
PUNJAB NATIONAL BANK

Vs.

RESPONDENT:
P.K. MITTAL

DATE OF JUDGMENT 13/02/1989

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (J)

CITATION:
1989 AIR 1083 1989 SCR (1) 612
1989 SCC Supl. (2) 175 JT 1989 (1) 264
1989 SCALE (1) 353

ACT:

Labour and Services: Punjab National Bank Service Regulation No.. 20(2): Withdrawal of resignation letter--Effect of--Whether bank entitled to accept resignation from an earlier date.

Civil Services: Resignation by employee--Withdrawal Permissibility and effect of.

HEADNOTE:

Clause (2) of Regulation 20 of the Service Regulations of the Punjab National Bank lays down that no officer shall resign from the service of the bank otherwise than on the expiry of three months from the service on the bank of a notice in writing of such resignation. The proviso thereto empowers the competent authority to reduce the period of three months or remit the requirement of notice.

The respondent, a permanent officer of the bank, made an application on 21st January 1986, purporting to resign from the service with effect from 30th June, 1986. He, however, received a letter from the bank on 7th February, 1986 informing him that his resignation letter had been accepted by the competent authority with immediate effect by waiving the condition of notice.

He thereupon filed a writ petition in the High Court challenging the validity of the purported acceptance of his resignation with effect from 7th February, 1986 and for a direction to consider him as in service up to 30th June, 1986. Thereafter, on 15th April, 1986 he wrote another letter to the Bank purporting to withdraw the resignation letter dated 21st January, 1986.

The High Court held that the petitioner's resignation letter would have become effective only on the 30th June, 1986, that under the Regulations there was no jurisdiction whatever in the competent authority to determine his service earlier than that and that until the resignation became effective on 30th June, 1986 he had a right to withdraw the same. Consequently, it quashed the order dated 7th February, 1986 and declared that the petitioner continued to be in service with the bank.

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In this appeal by special leave it was contended for the appellant that Regulation 20(2) provided for a notice to the employer only in order to protect the employer's interests, that its requirements could, therefore, be waived by the employer if it so desired unilaterally, that under the proviso to clause (2) it was competent for the bank to waive any notice at all and to accept the resignation with immediate effect or with effect from such other date as the bank may consider appropriate.

Dismissing the appeal,

HELD: 1. Until the resignation becomes effective on the terms of the letter read with Service Regulation 20 of the Punjab National Bank, it is open to the employee, on general principles, to withdraw his letter of resignation. [619C]

Raj Kumar v. Union of India, [1968] 3 SCR 857; Union of India v. Gopal Chandra Misra, [1978] 3 SCR 12 and Balram Gupta v. Union of India, [1987] Suppl. SCC 228.

2. Clause (2) of Regulation 20 makes it incumbent on an officer of the bank, before resigning, to serve a notice in writing of such proposed resignation. The clause also makes

it clear that the resignation will not be effective other-wise than on the expiry of three months from the service of such notice. [616H; 617A]

3. What the proviso to clause (2) contemplates is that in a case where the employee desires that his resignation should be effective even before the expiry of the period of three months or without notice being given by him, the bank may consider such a request and waive the period or requirement of notice if it considers it fit to do so. It does not empower the bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the resignation. In the instant case, the employee had not requested the bank to reduce the period of notice or to waive the requirement of notice. [617F; 618G]

4. There are two ways of interpreting clause (2). One is that the resignation of an employee from service being a voluntary act on his part he is entitled to choose the date with effect from which his resignation would be effective and give a notice to the bank accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given. In the instant case, the letter dated 21st January 1986, sent by the employee purporting to

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resign with effect from 30th June, 1986 fully complied with the terms of this clause and so the resignation would have become effective only on that date. The other interpretation is that when an employee gives a notice or resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation the respondent's resignation would have taken effect on or about 21st April, 1986 even though he had mentioned a later date. In either view of the matter, the respondent's resignation did not become effective till 21st April, 1986 or 30th June, 1986. The bank could not have accepted that resignation on any earlier date. The letter dated 7th February, 1986 was, therefore, without jurisdiction. [617A-B; 618A-B, G-H]

The respondent had thus continued to be in service till the 21st April, 1986 or 30th June, 1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stood withdrawn with the result that the respondent continued to be in the service of the bank. [619A-B]

Delhi Electric Supply Undertaking v. Tara Chand, [1987] 2 SCR 425, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2014 of 1986.

From the Judgment and Order dated 24.4. 1986 of the Delhi High Court in C.W. No. 477 of 1986.

Dr. Anand Prakash, D. Mehta, Atul Nanda and S.K. Mehta for the Appellant.

S.K. Bisaria for the Respondent.

The Judgment of the Court was delivered by RANGANATHAN, J. A very short question as to the interpretation of the service regulations of the appellant-bank comes up for consideration in this appeal. The relevant service regulation is Regulation No. 20 which reads as under:

"20(1) Subject to sub-regulation (3) of regulation 16, the bank may terminate the services of any officer by giving him three months' notice in writing or by paying him three months' emoluments in lieu thereof.

(2) No officer shall resign from the service of the bank otherwise than on the expiry of three months from the service on the bank of a notice in writing of such resignation. Provid-

ed further that the competent authority may reduce the period of three months, or remit the requirement of notice."

The respondent, a permanent officer in the bank, sent a communication to the bank on 21st January, 1986. By this letter he purported to resign from the service of the bank due to personal reasons. He added that the date of receipt of the letter should be treated as the date of the commencement of the notice period so that, inclusive of the same, his resignation would become effective on 30th June, 1986. According to the respondent, the Deputy General Manager, who was the competent authority under the Service Regulations, had agreed that the resignation may be accepted with effect from 30th June, 1986. However, what actually transpired was that the respondent received a letter from the bank on 7th February, 1986 informing him that his resignation letter dated 21st January, 1986 had been accepted by the competent authority with immediate effect by waiving the condition of notice and that, consequently, he was being relieved from the service of the bank with effect from the afternoon of the same date, namely, 7th February, 1986. The respondent thereupon filed a writ petition in the High Court challenging the validity of the purported acceptance of his resignation with effect from 7th February, 1986 and for a direction to the bank to treat him as in service of the bank up to 30th June, 1986 and as entitled to all benefits while being in such service.

A further development took place after the filing of the writ petition and before it came up for hearing. On 15th April, 1986, the respondent wrote a letter to the bank by which he purported to withdraw the resignation letter dated 21st January, 1986. The High Court, therefore, dealt with the situation resulting from this subsequent development. The High Court held that the petitioner's resignation letter would have become effective only on the 30th June, 1986. Under the regulations there was no jurisdiction whatever in the competent authority to determine his services earlier. Until the resignation became effective on 30th June, 1986, the petitioner had a right to withdraw the

same and in fact had also exercised that right. The High Court concluded:

"We may notice that this writ petition was filed at a stage when the petitioner had not sent his letter dated 15th April, 1986 whereby he withdrew his resignation letter dated 21st January, 1986. This is a subsequent development during the pendency of the writ petition. Therefore, we are not called upon to decide the earlier grievance that the resignation could not have been accepted at an earlier date. Even to that submission we would have said that there is no provision of acceptance but that question does not arise so we will not deal with it further. Result is that the impugned order dated 7th of February, 1986 is hereby quashed and it is declared that the petitioner continues to be in service with the respondent-bank. However, in view of the facts of the present case, parties are directed to bear their own costs of the present proceedings."

The bank has preferred this appeal. Dr. Anand prakash, learned counsel for the appellant-bank, submitted that regulation 20(2) provided for a notice to the employer only in order to protect the employer's interests and to enable the employer, in case it decided to accept the resignation, to make other arrangements in place of the resigning employee. He submitted that, this being a provision for the benefit of the employer, its requirements could be waived by the employer, if it so desired, unilaterally. The proviso to clause (2) of the regulation indeed makes it clear that it is open to the bank to waive the requirement of notice or to reduce the period of the notice to less than three months. He, therefore, submitted that, when the respondent sent in his resignation on 21st January, 1986, it was not incumbent on the bank to wait till 30th June, 1986 when the notice period would expire. It was competent for the bank to waive any notice at all and to accept the resignation with immediate effect or with effect from such other date as the bank may consider appropriate. It was further contended by learned counsel that, once the resignation letter of the respondent had been accepted by the bank and given effect to, there was no further possibility of the respondent seeking to withdraw the resignation letter as he has purported to do in this case. Learned counsel, therefore, submitted that the bank's letter dated 7th February, 1986 was quite valid and effective and that the respondent's writ petition ought to have been dismissed.

We have given careful thought to this contention of the learned counsel and we are of the opinion that the High Court was right in the conclusion it reached. Clause (2) of regulation 20 makes it incumbent on an officer of the bank, before resigning, to serve a notice in writing of such proposed resignation and the clause also makes it clear that the resignation will not be effective otherwise than on the expiry of three months from the service of such notice. There are two ways of interpreting this clause. One is that the resignation of an employee from service being a voluntary act on the part of an employee, he is entitled to choose the date with effect from which his resignation would be effective and give a notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation. On this interpretation, the letter dated 21st January, 1986 sent by the employee fully complied with the terms of this clause. Though the letter was written in January, 1986 the employee gave more than three clear months' notice and stated that he wished to resign with effect from 30th of June, 1986 and so the resignation would have become effective only on

that date. The other interpretation is that, when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation, the respondent's resignation would have taken effect on or about 21.4.1986 even though he had mentioned a later date. In either view of the matter, the respondent's resignation did not become effective till 21.4.1986 or 30.6.1986. It would have normally automatically taken effect on either of those dates as there is no provision for any acceptance or rejection of the resignation by the employer, as is to be found in other rules, such as the Government Services Conduct Rules.

Much reliance was placed on the terms of the proviso to clause (2) of regulation 20 to justify the action of the bank in terminating the respondent's services earlier but we do not think that the proviso can be interpreted in the manner suggested by learned counsel for the bank. The resignation letter of the officer has to give at least three months' advance notice under the main part of the clause. What the proviso contemplates is that in a case where the employee desires that his resignation should be effective even before the expiry, of the period of three months or without notice being given by him, the bank may consider such a request and waive the period or requirement of notice if it considers it fit to do so. That question does not arise in the present case because the employee had not requested the bank to reduce the period of notice or to waive the requirement of notice. Dr. Anand Prakash seeks to interpret the proviso as empowering the bank, even without any request= on the part of the employee, to reduce the period or waive the requirement of notice. In other words, he says the bank has power to accept the resignation with immediate effect even though the notice is only of a proposed future resignation. We do not think this contention can be accepted. As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry, or beyond the period, of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that, even though an employee might express a desire to resign from a future date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under clause (2) becomes effective at the instance of the employee and the services of the employee cannot be terminated by the employer under this clause.

Dr. Anand Prakash emphasises that as clause (2) and its proviso are intended only to safeguard the bank's interests they should be interpreted on the lines suggested by him. We are of the opinion that clause (2) of the regulation and its proviso are intended not only for the protection of the bank but also for the benefit of the employee. It is common knowledge that a person proposing to resign often wavers in his decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee

even without the requisite notice if he so desires it. The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation. We, therefore, agree with the High Court that in the present case the resignation of the employee could have become effective only on or about 21st April, 1986 or on 30th June, 1986 and that the bank could not have "accepted" that resignation on any earlier date. The letter dated 7th February, 1986 was, therefore, without jurisdiction-

The result of the above interpretation is that the employee continued to be in service till the 21st April, 1986 or 30th June, 1986, on which date his services would have come normally to an end in terms of his letter dated 21st January, 1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation become effective on the terms of the letter read with regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in *Raj Kumar v. Union of India*, [1963] 3 SCR 857; *Union of India v. Gopal Chandra Misra*, [1978] 3 SCR 12 and *Balam Gupta v. Union of India*, [1987] Suppl. SCC 228.

Learned counsel for the appellant relied on certain observations in *Delhi Electric Supply Undertaking v. Tara Chand*, [1987] 2 SLR 426. Certain other decisions were also cited by Dr. Anand Prakash but we do not think that they have any bearing on the issue before us. *Tara Chand* was a case under regulation 8 of the regulations made by the Delhi Electric Supply Undertaking under the Electricity (Supply) Act, 1948. The regulation permitted the termination of the services of a servant of the undertaking "on notice of three months from either side without any cause to be assigned in case of permanent servants". The employee in that case sent a letter to the employer stating that "he was compelled to resign for various reasons" and this resignation was accepted by the undertaking. The Delhi High Court in its judgment (to which one of us was a party) observed that notice under the regulation was intended for the benefit of the employer which could, if it considered necessary or proper, waive the period of notice and accept the resignation with immediate effect. But that was a case where the employee, though bound to give three months' notice, expressed his desire to resign with immediate effect and it was also accepted by the employer. It was not the case that he had given notice indicating a desire to be relieved at a future date. The analogy of that case would have applied to the present case as well if the respondent here had expressed his desire to be relieved immediately even before the expiry of the three months' notice period and the bank had accepted it. The employer would then certainly have been entitled to accept the resignation, as requested by the employee, waiving the notice period. The distinction between that case and the present one is that, here, the employee has chosen a future date on which his resignation would be effective but he is being forced to "resign" before such date.

For the reasons discussed above, we affirm the decision of the High Court and dismiss this appeal. As the employee has got a relief much larger than the one for which he initially came to Court and which has been made possible by his subsequent conduct, we make no order as to costs.

P .S.S.
missed.

Appeal dis-