

**BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
PUDUCHERRY.**

NMD No.3/2014

Present: **Dr. A.S. SIVAKUMAR**
Registrar of Co-operative Societies
Puducherry - 605 009.

P.K. Kalaivani
Senior Clerk
Pondicherry Electricity Employees
Co-operative Credit Society Ltd., No. P. 463
Pondicherry

Petitioner

Vs.

The President
Pondicherry Electricity Employees
Co-operative Credit Society Ltd., No. P. 463
Pondicherry

Respondent

ORDER

*(Issued under Section 84 of the Puducherry Co-operative Societies Act, 1972
read with Rule 64 of the Puducherry Co-operative Societies Rules, 1973)*

The short but interesting and intriguing question that came up for determination in this dispute, filed under Section 84 of the Puducherry Co-operative Societies Act, 1972 by the petitioner, an employee of the Pondicherry Electricity Employees Co-operative Credit Society Ltd., No. P. 463 (for brevity the 'society') against the President of the society is whether the respondent is justified in accepting the resignation of the petitioner from the post of senior clerk with effect from a date anterior to the date mentioned in the notice of voluntary retirement.

THE ASSERTION

2. The nitty-gritty, the gist and kernel of the case of the petitioner, as stood exposited from the petition is that the petitioner, working as senior clerk in the society, was keeping indifferent health and hence gave a notice of voluntary retirement from 1st April 2014 by her letter dated 14th December 2013. In view of certain changes in family circumstances she withdrew the notice of



voluntary retirement, vide her letter dated 6th March 2014 and continued to work in the society.

3. The committee of management by a resolution dated 30th January 2014 has taken a decision to accept her notice of voluntary retirement with effect from 31st January 2014 and refused to pay salary from that date.

4. In the above premises it is the contention of the petitioner that when she gave a notice of voluntary retirement with effect from 1st April 2014 it is incompetent for the respondent to accept the notice from an earlier date. She contended further that she has a right to withdraw the notice before that date. The acceptance of notice of voluntary retirement was also not communicated to her.

5. The petitioner sought to set aside the resolution dated 30th January 2014 granting voluntary retirement to her with effect from 31st January 2014 and prayed to direct the respondent to pay her the salary and allowances from 1st February 2014.

THE REFUTATION

6. The dispute was admitted for adjudication and the respondent was directed to file his counter.

7. Gainsaying and challenging the averments contained in the petition, the respondent would submit that as per bye-law No.34 of the bye-laws of the society if an employee intends to resign his/her post, he/she shall give at least one month's notice and the resignation shall come into force from the date of acceptance by the chief executive of the society. The acceptance of resignation of the petitioner was intimated to her on 13th February 2014.

8. The respondent claimed that the petitioner has stolen the letters dated 14th December 2013 and 6th March 2014 from his office and the petitioner owes an explanation how she had access to these letters which bear the respondent's signature. The respondent contended that the petitioner was not loyal to the society.

9. The respondent submitted that the petitioner came to the committee meeting on 30th January 2014 and requested the committee members to relieve her from duty with effect from 31st January 2014. At her request, a resolution was passed to that effect. In fact, she gave a letter, seeking relief from 31st January 2014, but the letter was misplaced and not traceable till date.



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10. On her resignation the post of senior clerk was surrendered and a post of peon was created with the approval of the Registrar, and as such there is no post of senior clerk in the society.

11. On the strength of the counter claims, the respondent sought for dismissal of the dispute.

THE REJOINDER

12. The counter affidavit of the respondent was forwarded to the petitioner to file her rejoinder. In her rejoinder the petitioner stated that even conceding that the notice of voluntary retirement would be treated as resignation as there is no scheme of voluntary retirement, the governing body ought not to have accepted the same from a date anterior to the date indicated in the letter of resignation/voluntary retirement. The notice remains inchoate till the date of effect, viz., 1st April 2014 and the petitioner is entitled to withdraw at any time before that date. Reliance was placed on the following decisions to fortify her claim that resignation in spite of acceptance can be withdrawn before the effective date:

- (i) *Union of India vs. Gopal Chandra Misra, AIR 1978 SC 94;*
- (ii) *J.N. Srivastava vs. Union of India and another, AIR 1999 SC 1571;*
- (iii) *Management of Karnataka Road Transport Corporation vs. M.D. Ramakrishna, 2001 (1) CLR 959.*

13. The petitioner submitted that the respondent cannot cast aspersion on the conduct and integrity of the petitioner and cannot seize the arbitration proceedings to settle score with the petitioner in violation of natural justice.

THE SUBMISSIONS

14. The rejoinder of the petitioner was forwarded to the respondent. The dispute came up for hearing on 27th January 2015. The petitioner and the society, represented by its President and Treasurer were present.

15. The thrust of the contention of the petitioner was that when she gave a notice of retirement to retire/resign with effect from 1st April 2014 the action taken by the respondent to accept it with effect from 31st January 2014 was not tenable. There was no communication from the society on the acceptance of her resignation with effect from 31st January 2014. She was working in the



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society until September 2014 and thereafter she was prevented from attending office.

16. Per contra, the respondent maintained that the petitioner gave a letter stating that she would relinquish her post with effect from 31st January 2014 and only thereafter the issue was taken up for consideration in the committee meeting held on 30th January 2014 and a resolution was passed to that effect. The said letter was taken away by the petitioner. The respondent conceded that there was no communication from the society stating that her resignation was accepted with effect from 31st January 2014 and even the letter dated 13th February 2014 did not indicate the date from which the resignation was accepted. He stated that the letter dated 13th February 2014 might have been sent only by ordinary post to the petitioner.

17. Both the parties stood by their claims and counter claims.

THE MOOT QUESTION

18. A combined and collective consideration would lead to approach the issue involved in this dispute in the following dimension, viz.,

"Whether the respondent was within his right to accept the resignation tendered by the petitioner with effect from an earlier date when the resignation was given to take effect from a subsequent date."

THE DELIBERATION

19. To my query to the respondent that when there was no scheme of voluntary retirement available in the society, how the respondent took her notice on file and acted upon, the respondent was candid in admitting that he was not aware of the procedure. I find lot of missing links in the counter filed by the respondent.

20. The respondent contended that the petitioner came to the committee meeting on 30th January 2014 and conveyed before the committee members that she would resign with effect from 31st January 2014. Immediately the committee passed a resolution to accept her resignation with effect from 31st January 2014. The respondent stated that the petitioner gave a letter to this effect, but the letter was found missing from the records. During the arguments the respondent stated that the letter was taken away by the petitioner herself. It is also seen that the post of senior clerk was surrendered even before 31st January 2014. In committee meeting on 30th January 2014



one Thiru I. Prakash was appointed as peon on regular basis. There is nothing on record to fortify that the petitioner gave a letter advancing the date of effect of her resignation. It is baffling to note how the subject of considering the notice of resignation was included in the committee meeting as the first subject and a resolution was passed to that effect. How the matter was deliberated without a notice to the members of the committee on the subject. It is equally implausible how the post of senior clerk was surrendered even before the senior clerk relinquished her post. No explanation is forthcoming from the respondent on these aspects.

21. The respondent admitted that no communication was sent to the petitioner stating that her resignation, in pursuance of the alleged letter and resolution of the committee, was accepted with effect from 31st January 2014. Even in the communication dated 13th February 2014 there was no mention of the date from which the resignation took effect. The respondent could not say with certainty how the communication was sent to the petitioner. When the petitioner denied receipt of such communication, the onus lies of the respondent to prove that such a communication was sent to her. Except making a vague statement that the letter would have been sent by ordinary post, the respondent has *nothing on record in his favour*. The respondent missed out even to adhere the rudimentary procedure, to say the least, and the approach is totally perfunctory.

22. During the arguments the respondent admitted that he was in receipt of the letter dated 6th March 2014 from the petitioner stating that she withdraws her resignation given earlier. The respondent submitted that as model code of conduct in view of election to Lok Sabha, 2014 was in force then, no action was taken on her letter. The respondent has no answer as to why no communication was sent to the petitioner even after the model code of conduct was lifted. It is quite obvious that the said letter was simply filed by the respondent. In short, nothing works in favour of the respondent.

23. In the backdrop of the factual scenario let me dwell on the issue that crops up for consideration in this dispute. To recapitulate, the petitioner tendered a notice of voluntary retirement on 14th December 2013 expressing her intention to proceed on retirement with effect from 1st April 2014. The committee, at its meeting held on 30th January 2014 accepted her resignation with effect from 31st January 2014. The factum of acceptance of resignation was not communicated to the petitioner. Even the communication dated 13th February 2014 stated to have been sent to the petitioner did not have any mention on the date from which the resignation was given effect. The



petitioner, vide her letter dated 6th March 2014 withdrew the notice of retirement. The letter was received by the society and was not acted upon. Now the petitioner claims that it is within her right to withdraw the resignation before its effective date and she is entitled to all the benefits from 1st February 2014.

24. At this juncture, I think it condign to refer certain solid pronouncements, which lay down the law on this subject. In somewhat similar circumstances the Hon'ble Supreme Court has gone into the etymology of the term of 'resignation' and the effect of withdrawal of resignation before its effective date in *Srikantha S.M. vs. Bharath Earth Movers Ltd.*, 2006(1) ALD 98 (SC) : [2005(107) FLR 1062] : JT 2005 (12)SC 465 : (2005) 8 SCC 31 : 2006(1) SLJ 423 (SC). The Court observed that:

"The term 'resignation' has not been defined in the Service Rules. According to dictionary meaning, however, 'resignation' means spontaneous relinquishment of one's own right. It is conveyed by Latin maxim Resignation est juris propii spontanea refutation, meaning 'resignation is a spontaneous relinquishment of one's own right'. In relation to an office, resignation connotes the act of giving up or relinquishing the office. 'To relinquish an office' means 'to cease to hold the office' or 'to leave the job' or 'to leave the position'. 'To cease to hold office' or 'to lose hold of the office' implies to 'detach', 'unfasten', 'undo' or 'untie' 'the binding knot or link' which holds one to the office and the obligations and privileges that go with it.

In Union of India vs. Gopal Chandra Misra, : (1978) I LLJ 492 SC : (1978) 2 SCC 301 : AIR 1978 SC 694, this Court held that a complete and effective act of resigning an office is one which severs the link of the resignor with his office and terminates its tenure.

In Balram Gupta vs. Union of India, : (1987) II LLJ 541 SC, this Court reiterated the principle in Gopal Chandra Misra and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servants.

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In affidavit in reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on January 04, 1993. It was because of the request of



the appellant that he was continued up to January 15, 1993. In the affidavit in rejoinder, the appellant had stated that he reported for duty on January 15, 1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs. 13,511/- was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to January 15, 1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on January 08, 1993. It was, therefore, incumbent on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside. [Underlined to add emphasis].

25. The reasoning for providing an opportunity to the employee to change his mind and withdraw the resignation before its effective date was enunciated by the Hon'ble Apex Court in *Punjab National Bank vs. P.K. Mittal*, (1989) I LLJ 368 SC : AIR 1989 SC 1083, in the following passage:

"It is common knowledge that a person proposing to resign often wavers in his decision and even in a case where 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 deter 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



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from a date different from the one on which he can make his resignation effective under the terms of the regulation."

26. This principle has been lucidly enunciated in catena of judgments and I quote a few:

(i) In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. [*Balram Gupta vs. Union of India and others, AIR 1987 SC 2354 : JT1987(3)SC480 : 1988 Lab IC 46 : (1987) I LLJ 541 SC : 1987 (2) SCALE 521 : 1987 Supp (1) SCC 228 : [1987] 3 SCR 1173 : 1988 (1) SLJ 79 (SC) : 1987(2)LC 746 (SC)*].

(ii) The law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date. It has also been held by this Court that it is open to the employee concerned to withdraw letter of resignation before the same becomes effective. [*Nand Keshwar Prasad vs. Indian Farmers Fertilizers Cooperative Ltd. and others, AIR 1999 SC 558 : JT 1998 (6) SC 71 : 1999 Lab IC 231 : (1998) II LLJ 1008 SC : (1998) 5 SCC 461 : (1998) 3 UPLBEC 2035*].

(iii) It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poem'tentiae to withdraw the proposal for voluntary retirement. [*J.N. Srivastava vs. Union of India and another, AIR 1999 SC 1571 : (1999) I LLJ 546 SC : (1998) 9 SCC 559*].

27. The effect of non-communication of acceptance of resignation with effect from 31st January 2014 is to be looked into. The Division Bench of the Hon'ble High Court of Karnataka in *Management of Karnataka Road Transport Corporation vs. M.B. Ramakrishna, 2001 1 CLR 959* provides the answer:



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"It is a settled law that an order becomes effective only on communication. It is not enough that an order is made and kept in the file. It would take effect only on communication and from the date the communication is received. Hence, if before the said date, the basis on which the order is made is rescinded, then the acceptance will have no field to operate. Employment is a contract between the employer and the employee. One mode of its termination is by means of resignation. The contract would be brought to an end by tendering resignation by the employee. The resignation becomes effective only when the person to whom it is addressed accepts the same and communicates to the offerer concerned..... Therefore, it is clear that since the resignation becomes effective only on the date on which the worker is relieved in pursuance to this officer of resignation, he has power to withdraw the same any day prior to it becoming effective."

28. As noted supra, there is nothing on record of the respondent to fortify that the petitioner was informed that her resignation was accepted with effect from 31st January 2014. Even the communication dated 13th February 2014 did not indicate the date on which the resignation was given effect, not to speak of the delivery of the said communication to the petitioner. The reliance placed on bye-law No. 34 does not help the respondent in anyway. The stand taken by the respondent does not stand to reason and will not withstand the legal scrutiny.

29. In view of the aforesaid analysis and tested on the touchstone of above judgments, I am of the resolute opinion that the respondent was at fault in accepting the notice of resignation/retirement with effect from a date anterior to the date mentioned by the petitioner.

30. Before parting with this order, I feel obliged to make some observations on the performance of the petitioner as an employee of the society. The petitioner was on service placement for a good length of her service. This has invited adverse comments from the members in the general body meeting and the audit has made a critical observation to this effect. This has resulted in an embarrassing situation to the management. It is sincerely hoped that the petitioner would realize her responsibility and work for the benefit of the society without giving scope for any criticism.

THE OUTCOME

31. Resultantly with the aforesaid observation I make the following order:



- (i) The dispute merits acceptance and stands allowed. The issue is answered in negative and in favour of the petitioner;
- (ii) The resolution of the committee dated 30th January 2014, accepting the resignation of the petitioner with effect from 31st January 2014 is indefensible in the facts and circumstances of the case and hence set aside. As a sequel, the petitioner is directed to report for duty in the society forthwith. The period from 1st February 2014 shall be treated on duty and the petitioner shall be entitled for salary and allowances with other benefits;
- (iii) The back-wages should be disbursed to the petitioner in six monthly instalments, starting from March 2015;
- (iv) There is no order as to costs.

Pronounced in open forum on this 6th day of February, 2015.


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[Dr. A.S. SIVAKUMAR]
REGISTRAR OF CO-OPERATIVE SOCIETIES

The parties

