
(8) Subject to the observations made above, we find no merit in this writ petition, which is hereby dismissed.

R.N.R.

Before R.S. Mongia, K.K. Srivastava & S.S. Sudhalkar, JJ

KARTAR SINGH, – Petitioner

versus

STATE OF HARYANA & OTHERS, – Respondents

CWP No. 6580 of 1994

24th February, 1998

Constitution of India, 1950 – Arts. 14, 16 & 226 – Punjab Civil Service Rules, Vol. I, part I – Rl. 7.5 – Haryana Government Instructions dated 21st October, 1980 – Resignation – Withdrawal of – Not permissible where employee resigns to contest election – Merely because Government has permitted some employees to withdraw resignation would not confer enforceable right to withdrawal – Such action does not amount to discrimination and is violative of articles 14 & 16 of the Constitution – Fact the petitioner belongs to a poor Dalit family and is solely dependent on his service cannot form basis for permission to withdraw resignation since it cannot be said to be covered by the expression “over – whelming/compelling reasons” used in Government instructions dated 21st October, 1980 – Such person has only right to apply for fresh service under the State in competition with all eligible persons.

Held that (1) in view of the judgment of the Apex Court in ‘State of Haryana & another v. Ram Kumar Mann, 1997 (2) R.S.J. 520, no legal and enforceable right is conferred on such persons, who have submitted their resignation from service in order to contest an election and the same having been accepted by the State, the State is not bound to permit the withdrawal of resignation; (2) The second question is answered in the negative. The State’s refusal to exercise the discretion does not amount to discrimination and is, therefore, not violative of articles 14 & 16 of the Constitution of India; (3) the third question is answered in the affirmative.

(Para 12)

Further held, that the only reason which has been given by the petitioner for submitting resignation was that he wanted to contest the election to the Haryana Legislative Assembly. This cannot be said to be a compelling or over-whelming reason to submit the resignation. After the same is accepted, the incumbent has to show that the resignation may be allowed to be withdrawn as he had submitted his resignation under some compelling circumstances. According to our considered view, the petitioner, who alleges himself to be belonging to a poor family i.e. being a member of Scheduled Caste and is wholly and solely dependant on his service, would not have, as a reasonable and prudent person, thought of resigning his service only for the purpose of contesting the election. At least this ground could not be

accepted to be covered under the expression "over-whelming/compelling reasons". The compelling/over-whelming reasons are to be seen at the time the incumbent puts in his resignation.

Nirmaljit Kaur, Advocate, *for the Petitioner.*

Harish Rathee, DAG, Haryana, *for the Respondents.*

JUDGMENT

R.S. Mongia, J.

(1) The petitioner, who was working as a Clerk since 18th November, 1983 in the office of District Food and Supplies Controller, Kaithal (Haryana), tendered his resignation, through proper channel, from the Government service, *vide* application dated 24th April, 1991 (Annexure P.1). The said application was addressed to the Director, Food and Supplies, Haryana, who was the Appointing Authority of the petitioner. The petitioner had mentioned in the said application that he wished to contest the election to the Haryana Legislative Assembly and, therefore, he was submitting his resignation from the post of Clerk. It was requested that the resignation be accepted with immediate effect i.e. 24th April, 1991, so that no hinderance is caused to the petitioner in contesting the election. The District Food and Supplies Controller, Kaithal, who was the immediate boss of the petitioner, addressed a letter to the Director, Food and Supplies Department on the same day i.e. 24th April, 1991, that the petitioner had deposited one month's salary and there was nothing due from him towards the Government. It was recommended that resignation of the petitioner be accepted with effect from 24th April, 1991 (afternoon). On 26th April, 1991, the Director, Food and Supplies passed an order that the petitioner's resignation was being accepted with effect from 24th April, 1991.

(2) Thereafter the petitioner contested the election to the Haryana Legislative Assembly, which was held on 20th May, 1991, but was unsuccessful therein. On 21st June, 1991, the petitioner moved an application for withdrawal of his resignation, a copy whereof is at Annexure P.3. Paragraphs 2 to 5 of the application read as under:—

"2. That unfortunately I have been unsuccessful in the election.

3. That I belong to a poor family i.e. Scheduled Caste and I was wholly and solely dependent upon my service.
4. That during my absence from Government service i.e. from 24th April, 1991 to date there had neither been any such case against me which could debar me from retaining in Governmet service nor I joined any private, commercial company, Corporation or Company wholly or substantially owned by or controlled by the Government etc.
5. It is, therefore, requested that I may kindly be allowed to join service and resignation tendered on 24th April, 1991

be considered as withdrawn as per provision of Rule 7.5 of the Punjab Civil Service Rule, Vol. I."

(3) The prayer of the petitioner for withdrawal of his resignation was declined, *vide* order dated 6th/7th September, 1991 (a copy whereof is at Annexure P.4), which has been made the subject-matter of challenge in this writ petition.

(4) Before the Motion Bench, reliance was placed by the learned counsel for the petitioner on a Division Bench Judgment of this Court in *Ram Kumar Mann versus The State of Haryana etc.* (CWP No. 1154 of 1984, decided on 10th August, 1984), wherein on the basis of some earlier precedents where the Government had allowed the withdrawal of the resignation, after its acceptance, on the application moved after the official was unsuccessful in the election, the writ petition had been allowed. On the other hand, the respondent-State placed reliance on another Division Bench Judgment of this Court in *Rajinder Bhushan v. State of Punjab etc.* (1), wherein a view was taken that once the resignation had been accepted, which was tendered on the ground that the incumbent wished to contest the election, the same could not be allowed to be withdrawn after the incumbent had been unsuccessful in the election. In view of the aforesaid two Division bench judgments, taking contrary view, the case was admitted to Full Bench on 4th May, 1995, by passing the following order:—

"Learned counsel for the petitioner has cited Civil Writ Petition No. 1154 of 1984, *Ram Kumar Mann versus The State of Haryana and others*, wherein contrary view has been taken to the one taken in *Rajinder Bhushan, Assistant Press Operator versus The State of Punjab and others*, 1995(2) SLR 287 viz a resignation submitted to contest and election can be permitted to be withdrawn after the resignation has been accepted and the person has lost the election and applies for withdrawal of his resignation. No Parameter has been laid down under what circumstances a person can be permitted to withdraw the resignation. In C.W.P. No. 1154 of 1984 (*supra*) it was observed that since similar situated persons were allowed to withdraw the resignation it would amount to discrimination not to allow the petitioner to withdraw the resignation.

Resultantly, three questions arise (1) whether permitting one set-up of persons to withdraw the resignation submitted by them after losing the election confers a right on the others to withdraw the resignation and State is bound to permit the withdrawal;

(2) if not whether State's refusal to exercise the discretion amounts to discrimination and would be hit by Articles 14 and 16 of Constitution of India;

(3) whether under Rule 7.5 of the Punjab Civil Service Rules a person who has resigned to contest an election and his resignation having been accepted, he cannot be permitted at all to withdraw the resignation."

(5) It is in the above circumstances that we are seized of the matter.

(6) Before adverting to the arguments of the learned counsel for the parties, it may be observed at the outset that the State of Haryana had filed an appeal before the Apex Court against the judgment of this Court in *Ram Kumar Mann's case* (supra). The Apex Court allowed the appeal of the State Government on 20th February, 1997 and the judgment is reported as *State of Haryana and Anr. v. Ram Kumar Mann* (2). The facts of *Ram Kumar Mann's case* (supra) were that while working as a Small-pox Supervisor in the Health Department, Ram Kumar Mann had tendered his resignation on 23rd April, 1982 to contest the election as a Member of the State Legislative Assembly. His resignation was accepted on May 18, 1982. He contested the election, but was defeated. Thereafter he filed an application on May 21, 1982 with drawing his resignation but that was dismissed. Ram Kumar Mann filed a writ petition in this Court alleging that three other employees of the Haryana Government, namely Gurbhajan Singh, Daryao Singh and Smt. Sumitra Devi, who had also tendered their resignations to contest Assembly Elections, which were accepted, but they were permitted to withdraw their resignations after they were defeated in the elections. It was submitted that he was being discriminated against and the action of the State Government was violative of Article 14 of the Constitution of India. The State had tried to distinguish the case of Ram Kumar Mann from the others that he was only a temporary employee, whereas the other three were permanent Government employees. This distinction was held to be untenable by the Division Bench. *Ram Kumar Mann's case* was held to be similar to the one of Smt. Sumitra Devi and, therefore, it was directed that the resignation should be allowed to be withdrawn as the action of the respondents was discriminatory and violative of Article 14 of the Constitution of India. The Apex Court while deciding the State' Appeal in *Ram Kumar Mann's case* observed as under:—

"3. The question, therefore, is:—

whether the view taken by the High Court is correct in law? It is seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on 18th May, 1982. On and from that date, the relationship of employer and the employee between the respondent and the State 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 18th May, 1982. It may be that the Government for their own reasons, given permission in

similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similar circumstanced person claim equality under Section 14 for reinstatement. Answer is obviously 'No.' In a converse case, in the first instance, one may be wrong but the wrong order cannot be foundation for claiming equality for enforcement of the same order...."

(7) From the perusal of the aforesaid observations of the Apex Court, it is apparent that the Apex Court held that if an incumbent voluntarily resigns from service and the resignation is accepted, then from the date the resignation becomes effective, there is no relationship of master and servant between the incumbent and the State and thereafter such an incumbent has no right whatsoever either to claim the post or a right to withdraw his resignation, which has already become effective by acceptance of the same. It was further observed that the doctrine of discrimination is founded upon existence of an enforceable right. The question of discrimination that some similarly situated persons had been given the same relief would apply only when invidious discrimination is meted out to equals and similarly circumstanced persons without any rational basis. It was observed further that Ram Kumar Mann had no right whatsoever and could not be given the relief wrongly given to others i.e. the benefit of withdrawal of resignation. The Apex Court went to the extent that the Courts would not allow wrong to be perpetrated. According to us, Question Nos. 1 and 2, as framed by the Admitting Bench (which have already been quoted above) stand fully answered by the observations of the Apex Court, which have been reproduced above. Incidentally, we may observe here that the petitioner in his application for withdrawal of resignation had relief on a judgment of a learned Single Judge in C.W.P. No. 856 of 1986, decided on 14th May, 1986 (*Sukhdev Singh Chauhan versus State of Punjab*). It may be observed here that the learned Single Judge in that judgment had simply relied on the judgment of the Division Bench in Ram Kumar Mann's case (*supra*). Since Ram Kumar Mann's case has been over-ruled by the Apex Court, necessarily the judgment in *Sukhdev Singh Chauhan's case* (*supra*) will also be deemed to have been over-ruled.

(8) So far as Question No. 3, framed by the Admitting bench, already quoted above, is concerned, it may be observed here that Rule 7.5 of the Punjab Civil Service Rules, Vol. I Part I exists only in State of Punjab and there is no similar rule in the State of Haryana. This case relates to the State of Haryana. Learned counsel for the petitioner submitted that since there is no rule parallel to Rule 7.5 of the Punjab Civil Service Rules, Volume I, Part I, she is not claiming relief on the basis of the said rule. However, since this point is likely to arise in the State of Punjab also and the point has been posed by the Admitting Bench, we may opine on the same.

(9) Rule 7.5 (relevant portion) of the Punjab Civil Service Rules, Vol. I, Part I is in the following terms:—

- “(4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely:—
- (i) that the resignation was tendered by the Government employee for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation; has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;
 - (ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;
 - (iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;
 - (iv) that the aforementioned period of ninety days shall be observed in the manner that the employee concerned should put in his application for withdrawal of resignation within two months of being relieved and the same should as far as possible be processed within a period of one month; and
 - (v) that the post, which was vacated by the Government employee on the acceptance of his resignation or any other comparably post, is available.
- (5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government employee resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a Corporation or Company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the

Government.

- (6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

(10) A reading of the aforesaid rule would indicate that in a given case if the resignation is tendered by the Government employee for some compelling reasons, which do not involve any reflection on his integrity, efficiency or conduct and request for withdrawal of resignation is made as a result of material change in the circumstances which originally compelled him to tender the resignation, the Government may in a given case on being satisfied that the aforesaid grounds had existed, may allow the withdrawal of resignation after the same has been accepted. The question is – Whether submitting of resignation for the purpose of contesting an election is a compelling reason? According to us, the answer has to be in the negative. After a person has decided that he wishes to leave the Government service to join politics and for that purpose decides to contest the election would to our mind amount to that the person is no more interest in the Government service and is rather interested in politics. Even the Conduct Rules provide that a Government servant would not indulge in politics while in Government service. The point as framed by the Admitting Bench came up for consideration before a Division Bench of this Court in *Rajinder Bhushan v. State of Punjab* (3). The counsel for the petitioner, Rajinder Bhushan, in the aforesaid case, had contended that his client fulfilled all the requirements of Rule 7.5(4) (supra) and, therefore, there was no reasons as to why the request of his client for withdrawing the resignation after the same had been accepted should not have been allowed. Incidentally, it may be observed that the facts of *Rajinder Bhushan's case* (supra) were para-materia to the facts of the present case. A contention was also raised that in some other similar cases the Government had granted permission to withdraw the resignation after the same had been accepted. It was observed by the Division Bench as under: –

"9. We do not accept the contention of Mr. Malik. A careful reading of the above rule shows that the guiding principle underlying the above rule is public interest. Sub-clause (i) of clause (4) further shows that the rule has been framed in order to deal with cases of resignation which a Government employee has submitted "for some compelling reasons" and "request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation." Sub-clause. (ii) further gives an indication that in the interregnum period i.e. from the resignation till the date on which request for withdrawal is made, the conduct of the person was in no way improper. We find it almost impossible to hold that contesting the State Assembly elections would amount to a compelling reason for submitting the resignation within the meaning of

the above rule. In our view, it would be ridiculous that a Government servant submits resignation, contests the State Assembly elections and on losing the same reports back and insists that he shall be taken back into service with continuity as referred to in sub-rule (6) reproduced above. Nor can the conduct of an officer to contest elections while being in Government service be considered to be not improper.....”

(11) The argument of discrimination was also negated by observing that “two wrongs do not make a right.” We are in respectful agreement with the observations of the Division Bench in *Rajinder Bhushan’s* (supra) and according to us, these observations answer question No. 3, posed by the Admitting Bench.

(12) Our answer to the three questions referred to Full Bench by the Motion Bench are as under:—

- (1) In view of the judgment of the Apex Court in *Ram Kumar Mann’s* case (supra), no legal and enforceable right is conferred on such persons, who have submitted their resignation from service in order to contest an election and the same having been accepted by the State, the State is not bound to permit the withdrawal of resignation.
- (2) The second question is answered in the negative. The State’s refusal to exercise the discretion does not amount to discrimination and is, therefore, not violative of Articles 14 and 16 of the Constitution of India.
- (3) The third question is answered in the affirmative.

(13) Faced with this situation, learned counsel for the petitioner submitted that the petitioner should have been allowed to withdraw his resignation in accordance with the Haryana Government instructions dated 21st October, 1980 (copy at Annexure P.5). The subject of the instructions is “withdrawal of resignation/condonation of break in service of Government employees.” Reference was made in these instructions to earlier instructions of the Joint State of Punjab dated 8th October, 1963 which had provided that when it becomes expedient to reappoint an incumbent who has resigned his job against the same post, it may be done by treating him as a fresh entrant because the previous service stands forfeited under rule 4.19(b) of Punjab Civil Service Rules Vol. II and in case there are over-whelming reasons for condonation of resignation as well as break in service, the proposal should be referred to the Finance Department. On reconsideration it was provided in the aforesaid instructions as follows:—

- “(i) Re-appointment of an incumbent against the same post without condoning the break in service should be made only when it becomes expedient to do so and a reference by the appointing authority either to the Chief Secretary (General Services Branch) or to the Finance Department is not necessary. However, in such cases approval of the Haryana Public Service Commission/S.S.S.

Board, as the case may be, should be obtained. The instructions/ rules with regard to age, medical fitness, verification of antecedent etc. issued by the Government from time to time, should also be meticulously followed in such cases.

- (ii) In cases where fresh appointment is not to be made and break in service is proposed to be condoned for over-whelming reasons the above action would not be necessary and the cases should be submitted to this department in accordance with the instructions contained in the Haryana Government letter No. 468-2G.S-1/15/1858, dated 28th January, 1975."

(14) Learned counsel for the petitioner submitted that her client's case fell under clause (ii) of the instructions (supra) as there were over-whelming reasons for the petitioner to withdraw the resignation. On the other hand, learned counsel for the respondents submitted that apart from the fact that putting in resignation for contesting an election cannot be said to be an over-whelming reasons, it was further submitted that the instructions on the subject were issued on 4th May, 1960 by the Joint Punjab. A copy of the instructions has been placed on record. These instructions are on the subject "Re-appointment of Government employees, who resign their posts to contest elections." These instructions provide that as a matter of policy, an employee, who leaves Government service in order to take part in election, should not be re-appointed to his original post thereafter and as an ordinary citizen he would, of course, be eligible for applying for a job in the Government, but he would not enjoy continuity of service from his previous employment. A letter was issued by the Haryana Government on 21st November, 1996 to all concerned to meticulously follow the aforesaid instructions.

(15) After hearing the learned counsel for the parties, we are of the view that the contention of the learned counsel for the petitioner is devoid of any merit. The only reason which has been given by the petitioner for submitting resignation was that he wanted to contest the election to the Haryana Legislative Assembly. This cannot be said to be a compelling or over-whelming reason to submit the resignation. After the same is accepted, the incumbent has to show that the resignation may be allowed to be withdrawn as he had submitted his resignation under some compelling circumstances. According to the learned counsel for the petitioner, the compelling circumstances have to be for withdrawing the resignation after the same has been accepted. We do not agree with the learned counsel. According to our considered view, the petitioner, who alleges himself to be belonging to a poor family i.e. being a member of Scheduled Caste and is wholly and solely dependant on his service, would not have, as reasonable and prudent person, thought of resigning his service only for the purpose of contesting the election. At least this ground could not be accepted to be covered under the expression "over-whelming/compelling reasons." As observed above, the compelling/over-whelming reasons are to be seen at the time the incumbent puts in his resignation.