

Roop K. Shorey  
*v.*  
 The State  
 Kapur, J.

the control with him, a private counsel can act in the case. I am further of the opinion that the word "act" in section 493, Criminal Procedure Code, is not used in its technical sense in contradiction to "appear and plead". In the context this expression must mean and include the power to examine and cross-examine witnesses and address the Courts. The examination of the witnesses started in this case on 2nd March, 1963. The Public Prosecutor was present in Court throughout the period when Mr. Anand was examining the witnesses. When the application was filed on 6th March, 1963, objecting to the appearance of Mr. Anand there was no occasion to come to the conclusion that the Public Prosecutor who had been present throughout had effaced himself. May be an occasion had not arisen when the Public Prosecutor thought that his interference was called for. The petitioner has, in my opinion, failed to show that the Public Prosecutor had effaced himself and completely surrendered his functions to the private counsel. Since Mr. Anand was not conducting the prosecution within the meaning of section 495, Criminal Procedure Code, no permission of the Magistrate was necessary. Regarding the absence of written authority in favour of Mr. Anand till 6th March, 1963, the petitioner cannot make a grievance of the same. That is a matter between the client and the counsel, so far as the complainant's counsel is concerned.

In the circumstances this petition must fail and is dismissed. The parties will appear before the trial Court on the 30th June, 1965. I do hope that the trial Court will bear in mind the principles of sections 493 and 495, Criminal Procedure Code, as discussed herein-above and see that the said provisions are scrupulously observed. Since the matter has been considerably delayed, the learned Magistrate will try to finish the case as early as possible.

B.R.T.

CIVIL MISCELLANEOUS

*Before A. N. Grover and S. K. Kapur, JJ.*

RAJ KUMAR,—*Petitioner.*

*versus*

UNION OF INDIA, AND ANOTHER,—*Respondents.*

Civil Writ 170-D of 1965.

1965

May, 28th

*Constitution of India (1950)—Art. 310—Resignation tendered by civil servant—Whether must be accepted—Acceptance of resignation—Whether must be communicated to the tenderer—Civil servant—Whether can withdraw his resignation.*

*Held*, that the acceptance of resignation is necessary before the service of an employee can come to an end. Such an acceptance is a necessary step in giving effect to the resignation and until that step has been taken the resignation cannot be said to be complete and effective. In the case of a civil servant it is not a matter affecting the two parties, namely, the employee and the Government. The public has also a right to the services of all the citizens and may demand them in all Departments, civil as well as military. Civil servants are appointed for the purposes of exercising the functions and carrying on the operations of the Government. They have to discharge all sorts of duties, judicial as well as administrative and it would result in complete chaos if it were held that the resignation would become effective as soon as a civil servant tendered it. The exigencies of the public office may demand that the civil servant must carry on the operations of the Government and continue to discharge the functions till the Government is able to make alternative arrangements. A political organisation would seem to be imperfect which should allow the depositories of its powers to throw off the responsibility at their own pleasure. Even if the matter be treated as a contract between the parties, the same result would follow. A person who has agreed to serve till his services are terminated must first make an offer communicating his intention to terminate and that offer must be accepted.

*Held*, that the communication of the acceptance of his resignation to a civil servant is necessary before the employment comes to an end. The decision of the Government must be communicated to the person who would be affected by that order before the State or the other person can be bound by the same.

*Held*, that a civil servant has no right to withdraw his resignation before it is accepted and the acceptance communicated to him without the permission of the authority concerned. Under Article 310 of the Constitution civil servants hold their posts at the pleasure of the President or the Governor, as the case may be and the President or the Governor may say to the employee that "you have communicated an intention to terminate the employment and I will not now permit you to withdraw your resignation and would, on the other hand, act on the same."

*Writ Petition under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased :—*

- (a) to issue a Writ of certiorari calling for the record of the case; and
- (b) to quash the decision and/or order passed by Respondent No. 1, accepting the alleged resignation of the petitioner; and

(c) to quash the order, dated 29th March, 1965 issued by the Respondent No. 2; and

(d) to issue a writ of mandamus directing the respondents not to prevent the petitioner from performing his duties as Collector and District Magistrate.

N. C. CHATTERJEE, YOGESHWAR DAYAL AND K. K. MEHRISH,  
ADVOCATES, for the Petitioner.

S. N. SHANKER, CENTRAL GOVT. COUNCIL, MURLI MANOHAR VYAS  
AND DALJEET SINGH, ADVOCATES, for the Respondents.

#### ORDER

Kapur, J.

KAPUR, J.—The facts of this case admit of being stated in a very narrow compass. In May, 1964 the petitioner, who was then working as a Secretary to the Government of Rajasthan in the Agriculture and Animal Husbandry Department as well as in Irrigation and Power Departments, was promoted to the Selection Grade of the Indian Administrative Service and transferred to Kotah as Collector and District Magistrate. On 21st August, 1964, he addressed a letter to the Chief Minister, Rajasthan (annexure 'A' to the petition) pointing out *inter alia* various circumstances because of which he found it extremely difficult to carry on with his work. On 30th August, 1964, he addressed a letter to the Chief Secretary to the Government of Rajasthan which was as under :—

“In continuation of my confidential D.O. letter, dated 21st of August, 1964, addressed to the Chief Minister, Rajasthan, copy endorsed to you I submit that my resignation from the Indian Administrative Service may be accepted as early as possible. This application may be forwarded to the Government of India in the Ministry of Home Affairs with the remarks of the State Government. A copy of my D.O. letter to the Chief Minister referred to above is enclosed for facility of reference.”

On 27th November, 1964, he again addressed a letter to the Chief Secretary to the Government of Rajasthan withdrawing his resignation. It was *inter alia* stated in the said letter “it is requested that the State Government may

kindly recommend to the Government of India the acceptance of the withdrawal of my resignation". A copy of this letter was also sent to Secretary to the Government of India, Ministry of Home Affairs and to Shri P. K. Dave, Joint Secretary to the Government of India, Ministry of Home Affairs. On the same day he addressed two more letters, one to the Secretary, Government of India, withdrawing his resignation and the other to the Chief Minister of Rajasthan *inter alia* offering apologies for what he had written in his letter of 21st August, 1964. From the affidavits filed on behalf of the respondents it appears that the petitioner's letter of 30th August, 1964 was received by the Government of India on 15th September, 1964, through the State Government and the Government of India decided to accept the resignation and their decision was despatched to the State Government on 31st October, 1964, for communication to the petitioner. It further appears from the said affidavits that the petitioner's letter of 27th November, 1964 withdrawing his resignation was received on the 30th November, 1964 but since the resignation had already been accepted on the 31st October, 1964, the respondents ignored the letter of withdrawal.

The only contention raised on behalf of the petitioner is that the resignation having been withdrawn by the petitioner before its acceptance was communicated to him, the acceptance was of no consequence and did not have the effect of putting an end to the petitioner's employment. The petitioner, therefore, asks for the quashing of the order accepting his resignation. He also prays for a writ of mandamus directing the respondents not to prevent him from performing the duties as Collector and District Magistrate. It may be pointed out that it was on 29th March, 1965 that the State of Rajasthan wrote to the petitioner that "the resignation from the Indian Administrative Service tendered by Shri Raj Kumar, Collector and District Magistrate, Kotah, has been accepted by the Government of India. The short question that we have been called upon to decide, therefore, is whether the acceptance of resignation was legal and proper in the circumstances of the case.

Mr. N. C. Chatterjee, the learned counsel for the petitioner, submits that (a) the resignation did not become effective till it was accepted and the acceptance communicated to the petitioner and (b) the resignation having been

Raj Kumar  
v.  
Union of India  
and another

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Kapur, J.

Raj Kumar  
 v.  
 Union of India  
 and others  
 Kapur, J.

withdrawn on 27th November, 1964, that is, before the communication of its acceptance there was no resignation on which the respondents could act. The learned counsel has in support of these propositions relied on *Jai Ram v. Union of India* (1), *Bachhittar Singh v. State of Punjab and another* (2), *Bahori Lal Paliwal v. District Magistrate Bulandshahr and another* (3), and *Sankar Dutt Shukla v. President Municipal Board, Auraiya and another* (4).

Mr. S. N. Shankar, the learned counsel for the respondents, on the other hand, submits that (a) the resignation became effective as soon as it was tendered; (b) even if it be held that the resignation could become effective only on its acceptance the same was accepted by the Government of India on the 30th October, 1964 and intimation sent to the State of Rajasthan for communication to the petitioner before its withdrawal on the 27th November, 1964; and (c) a civil servant who tenders his resignation cannot withdraw the same without the permission of the Government particularly because the civil servants hold their posts at the pleasure of the President or the Governor as the case may be. He relies for this proposition on *Riordan v. War Office* (5), and *Shamsuddin v. The State of Rajasthan and others* (6).

We might now proceed to consider various decisions relied upon at the bar. In *Jai Ram's case* their Lordships of the Supreme Court held 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 cancellation of the permission thus obtained, but he can be allowed to do so as long as he continues in service and not after it had terminated." In this case the plaintiff's service ceased on the 27th November, 1946, and he was granted leave subsequent to that date which was a post-retirement leave under special circumstances mentioned in the Fundamental Rule 86. On these facts their Lordships of the Supreme Court came to the conclusion that the

- (1) A.I.R. 1954 S.C. 584.
- (2) A.I.R. 1963 S.C. 395.
- (3) A.I.R. 1956 All. 511.
- (4) A.I.R. 1956 All. 70.
- (5) 1959 (1) W.L.R. 1046.
- (6) A.I.R. 1952 Raj. 53.

appellant could not be held to continue in service after the 26th of November, 1946, and consequently it was no longer competent to him to apply for joining his duties on the 16th of May, 1947, even though the post-retirement leave had not yet run out. In *Bachhittar Singh's case* (2) their Lordships of the Supreme Court held that to make the opinion amount to a decision of the Government it must be communicated to the person concerned and unless communicated neither the person affected by that order nor the State could be held bound by the order. Relying on this decision Mr. Chatterjee contends that even acceptance of the resignation was not enough and before the acceptance could become effective it was necessary to communicate the same to the employee. In *Bahori Lal Paliwal's case* (3) Agarwala and Chaturvedi JJ., while considering the resignation of the Chairman of a Town Area Committee held that after forwarding his resignation to the District Magistrate he could withdraw the same and after such withdrawal there would be no resignation left which could be accepted by the District Magistrate. Bhargava J., however took a contrary view and held that right of withdrawal of resignation was not an absolute right and it was open to the District Magistrate either to accept the resignation or act on the letter of withdrawal and reject it. In *Sankar Dutt Shukla's case* (4) Mehrotra, J. held that where an application for resignation by a municipal servant sent to the President was to come into existence on a future date, there was no resignation till then and the applicant had the right to intimate to the President before that date that he no longer wished his resignation to be considered as effective. On the other hand, in *Roordan's case* (5) Diplock J. held as under:—

Raj Kumar  
v.  
Union of India  
and another  
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Kapur, J.

“The giving of a notice terminating a contractual employment whether by employee or employer, is the exercise of the right under the contract of employment to bring the contract to an end, either immediately or in the future. It is a unilateral act, “requiring no acceptance by the other party, and like a notice to quit a tenancy, once given it cannot in my view be withdrawn save by mutual consent.”

In *Shamsuddin's case* (6) Wanchoo C.J. (as he then was) took the view that letter of resignation sent by a member

Raj Kumar v. Union of India and another  
 Kapur, J.

who is duly elected to a Municipal Board became effective as soon as it was received by the appropriate authority and unless there was any law or general principle to the contrary, the member could not contend that the authority had no power to act upon the letter of resignation when he had withdrawn it. It was observed :—

“Learned counsel for the applicant has admitted that there is no law in force with respect to the Municipality of Nagpur except Act No. XXI (21) of 1949, which prescribes the manner in which elections to Municipal Boards in District towns in the former State of Jodhpur would be held. This Act, however, makes no provision for any other matter except the election of members to such Boards. The matter of resignation from such membership is thus left entirely unprovided for, and there is no law in support of the applicant’s contention that the Government had no authority to act upon the letter of resignation when he had withdrawn it.”

We might also make reference to two more decisions namely, *P.R.M. Abdul Huq v. Katpadi Industries Ltd. and another* (7), and *Latchford Premier Cinema Limited v. Ennion and another* (8). These two cases deal with resignation by the Directors but have been decided on the principle applicable to master and servant. We are conscious of the line of decisions where the Articles of Association of a company provide that office of a Director shall be vacated as soon as he tenders his resignation. In such cases it has been held that acceptance is not necessary. But the two cases referred to by us above deal with a situation where no such provision is made in the Article of Association. In *Abdul Huq’s case* (7) Ramaswami, J. (as he then was) held that a director who has submitted his resignation will be deemed to have resigned from the date of his resignation, without prejudice of course, to his liabilities and obligations which had occurred up to that date and which he cannot evade by severing his connections

(7) A.I.R. 1960 Mad. 482.

(8) 47 T.L.R. 595.

with the company. Ramaswami, J., approved the following passage in Gore-Browne's Handbook on Joint Stock Companies, 41st Edn., page 358 :—

Raj Kumar  
v.  
Union of India  
and another

“Articles usually permit a director to resign. Even in the absence of such a power, unless the Articles contain conditions, he may resign and his resignation is complete where notice is given to the secretary, and cannot subsequently be withdrawn, and even though no acceptance has taken place. Notwithstanding that the Articles contemplate a written resignation, a verbal notice of resignation given and accepted at a general meeting of the company is binding.”

Kapur, J.

*Latchford Premier Cinema's case* (8) is another instance where Bannett, J., applied to the case of a Director the principle applicable to master and servant and held that the offices of the two Directors were vacated on 10th of February, 1931, when they orally offered their resignation and their offers were accepted notwithstanding the fact that the Articles required a resignation of a Director to be in writing.

As we have already said we have to decide really two questions (1) is acceptance of resignation by a civil servant necessary; and (2) Does it take effect only when it is communicated to the servant and not before, and consequently can he withdraw before the acceptance is communicated? We are of the opinion that acceptance of resignation is necessary before the service of an employee can come to an end. Such an acceptance is a necessary step in giving effect to the resignation and until that step has been taken the resignation cannot be said to be complete and effective. In the case of a civil servant it is not a matter affecting the two parties, namely, the employee and the Government. The public has also a right to the service of all the citizens and may demand them in all Departments, civil as well as in military. We cannot lose sight of the fact that civil servants are appointed for the purposes of exercising the functions and carrying on the operations of the Government. They have to discharge all sorts of duties, judicial as well as administrative and it would result in complete chaos if it were held that the resignation would become effective as soon as a civil servant tendered it. The exigencies of the public office may demand that the civil servant must carry on the operations

Raj Kumar  
 v.  
 Union of India  
 and another

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Kapur, J.

of the Government and continue to discharge the functions till the Government is able to make alternative arrangements. A political organisation would seem to be imperfect which should allow the depositories of its powers to throw off the responsibility at their own pleasure. Even if the matter be treated as a contract between the parties the same result would follow. A person who has agreed to serve till his services are terminated must first make an offer communicating his intention to terminate and that offer must be accepted. We have then to consider whether the communication of the acceptance is necessary before the employment comes to an end. In our opinion, it is so necessary. To hold otherwise may again lead to similar complications. Take the case of a Magistrate who sends his resignation and the same is accepted by the Government. The acceptance may be kept in the office and not communicated to the Magistrate concerned. He may in the meantime be delivering judgments affecting the rights of the parties and even depriving subjects of their liberties held sacred by the Constitution. Could it have ever been the intention of the law that all the powers exercised after the acceptance and before communication should be held to have been exercised by an unauthorised person. As has been held by their Lordships of the Supreme Court in *Bachittar Singh's case* (2), the decision of the Government must be communicated to the person who could be affected by that order before the State or the other person can be bound by the same. The only question that remains, then, is whether a civil servant has the right to withdraw his resignation before it is accepted and the acceptance communicated to him. In our opinion, he has no such right. The withdrawal of the resignation must, in our view, be with the permission of the authority concerned. We are not called upon to deal with a case where the resignation has been tendered but no steps taken by the Government. We would, therefore, like to confine ourselves to the facts of this case and express no opinion as to what would be the position in that eventuality. In this case the resignation had been acted upon by the Government of India and intimation about its acceptance sent to the State of Rajasthan for communication to the petitioner. It is a common ground that the authority competent to accept the resignation was the Government of India. Could it then be suggested, in the circumstances, that after the Government of India had accepted the resignation and conveyed

the information to the State of Rajasthan for communication to the petitioner, there was no resignation before the Government of India upon which it could act? In our opinion, the question must be answered against the petitioner. We, therefore, hold that, at least in the circumstances of this case, it was not open to the petitioner to withdraw the resignation without the permission of the Government of India. We must advert to the decision of their Lordships of the Supreme Court in *Jai Ram's case* (1). That was a case of retirement which would be fundamentally different from that of resignation. The case of retirement would at the most be akin to a case where an employee writes to the Government asking for permission to put in his resignation on some future date. In such a case it may be open to him not to submit his resignation and change his mind. The said decision would, therefore, have no applicability to the facts of this case. It must be remembered that under Article 310 of the Constitution Civil servants hold their posts at the pleasure of the President or the Governor, as the case may be. That being so, the President or the Governor may say to the employee that "you have communicated an intention to terminate the employment and I will not now permit you to withdraw your resignation and would, on the other hand, act on the same."

Raj Kumar  
v.  
Union of India  
and another  

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Kapur, J.

From the above discussion it follows that the Government of India was justified in ignoring the petitioner's letter of withdrawal and acting on his resignation. The petition must, therefore fail and is dismissed. There would, however, be no order as to costs.

A. N. GROVER, J.—I agree.

Grover, J.

B.R.T.

REVISIONAL CRIMINAL

Before R. S. Narula, J.

AMAR SINGH,—Petitioner

versus

THE STATE,—Respondent.

Criminal Revision No. 267 of 1965

*Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956)—S. 15(2)—Provision as to the association of a woman in the search party—Whether mandatory—Non-compliances thereof—Whether fatal to the prosecution—Powers of Police officers under section 15(1)—How to be exercised.*

1965

July, 6th