not act in time or were indifferent to mob violence, they should also be required to make reparations to the victims and face disciplinary proceedings."

(7) Keeping in view the facts of this case and in particular that petitioner, a helpless widow with three minor children has really to feed herself and her three female children and that her deceased husband was Havaldar in Army having a reasonably good pay and facilities like free accommodation and free ration an amount of Rs. 3,50,000 would not in any case be excessive. In fact it may be somewhat on lower side. We, thus, direct the Government of Haryana to make over the petitioner an amount of Rs. 3.50 Lakhs minus Rs. 20,000 already paid. It will also be open to Government of Haryana to consider the grant of compensation over and above the one we have ordered that the government should pay and in so far as an amount of Rs. 3.30 Lakhs is concerned, the same be made over to the petitioner within one month from the date the copy of this order is received by the Government.

(8) The petition stands allowed in the terms as indicated above.

S.C.K.

Before Jawahar Lal Gupta & N.C. Khichi, JJ.

HARYANA STATE CO-OPERATIVE DEVELOPMENT FEDERATION LTD.,—*Appellant*

versus

RAJBIR SINGH,—*Respondent*

LPA 770 of 1992

18th April, 1998

Constitution of India, 1950—Art. 226—Withdrawal of resignation—Employee submitted resignation to be made effective from a future date—Resignation accepted prior to date mentioned in resignation letter—Employee sought to withdraw resignation letter—Such plea rejected—Challenge thereto—Held that request for acceptance of resignation remains inchoate till date fixed by the employee—Right of employee to withdraw resignation upheld.

Held, that the issue is covered by the decision of their Lordships of the Supreme Court in Union of India etc. v. Gopal Chandra Misra and others, AIR 1978 SC 694 and Balram Gupta v. Union of India and another, AIR 1987 SC 2354. In view of these decisions, whenever an employee tenders a resignation with a request that he be relieved from a future date, the request remains inchoate till the date fixed by the employee.The employer is not entitled to relieve the employee before the date fixed by him. In this view of the matter, the view taken by the learned Single Judge that notwithstanding the acceptance of the resignation the respondent had the right to withdraw his request, has to be sustained.

(Para 5)

Constitution of India, 1950—Art. 226—Arrears of salary—Employee submits resignation—Relieved of duties and gainfully employed—Thereafter seeks arrears of salary after getting the acceptance of resignation letter quashed—Such employee will not be entitled to arrears of salary of the period he was gainfully employed.

Held, that the respondent had submitted the resignation with the purpose of starting legal practice. When his resignation was accepted before the due date he had not protested but had actually availed of the opportunity to obtain a licence. Yet the fact remains that the respondent was gainfully employed. He had not started legal practice on account of the termination of his services. In fact, he had resigned to start legal practice. In this situation, we do not consider it appropriate that the employer should bear the burden of the salary for the period during which the employee was practicing as an Advocate.

(Para 8)

Further held, that the respondent shall not be entitled to arrears of salary from the date he was relieved of his duties to the date he got the licence suspended/cancelled.

(Para 10)

A.S. Gulia, Advocate, *for the Appellant.*

R.K. Malik, Advocate, *for the Respondent.*

JUDGMENT

Jawahar Lal Gupta, J (Oral)

(1) The two questions which arise in this appeal are:—

1. Is an employee who has tendered his resignation to be effective from a future date not entitled to withdraw his request only because the employer chooses to accept the resignation prior to the date from which it was intended to be effective?

2. Is the employee who was relieved of his duties and was gainfully employed entitled to claim the arrears of salary consequent upon quashing of the order of the employer by which the resignation was accepted?

(2) A few facts which are relevant for the decision of these two questions may be briefly noticed.

(3) The respondent was working with the Haryana State Cooperative Development Federation Limited. On May 9, 1990 he informed the Managing Director that he wanted to start "practice as a Lawyer". For this purpose, he submitted "3 months notice for resignation which may kindly be accepted on August 9, 1990". A copy of this communication is at Annexure P-4 with the writ petition. This request was accepted by the employer on June 15/29, 1990 and the respondent was relieved of his duties. On August 3, 1990 the respondent addressed another communication to the Managing Director and requested that he may be allowed to withdraw the resignation which had to be accepted on August 9, 1990. *Vide* letter dated August 10, 1990, the respondent was informed that the Board of Administrators had accepted his resignation in the meeting held on June 29, 1990. It had been further resolved to recover an amount of Rs. 19,401 which was outstanding against him. Thus, the respondent's request for withdrawal of resignation was rejected. Aggrieved by this action, the respondent approached this Court through a petition under Article 226 of the Constitution of India. He prayed that the order by which his resignation was accepted and the request for withdrawal was rejected be quashed. He also prayed for the grant of consequential benefits. The learned Single Judge having accepted this prayer, the Federation has filed the present Letters Patent Appeal.

(4) Learned counsel for the parties have been heard.

Regarding 1.

(5) So far as the Ist question is concerned, the matter is not *res-integra*. The issue is covered by the decision of their Lordships of the Supreme Court in *Union of India etc.* v. *Gopal Chandra Misra and others* (1) and *Balram Gupta* v. *Union of India and another*(2). In view of these decisions, whenever an employee tenders a resignation with a request that he be relieved from a future date, the request remains inchoate till the date fixed by the employee. The employer is not entitled to relieve the employee before the date fixed by him. In this view of the matter, the view taken by the learned Single Judge that notwithstanding the acceptance of the resignation the respondent had the right to withdraw his request, has to be sustained.

Regarding 2 :

(6) As far as the 2nd question is concerned, a few facts deserve notice. The respondent had submitted his request for resignation on the specific ground that he wanted to start practice as a Lawyer. This request was made by him,— *vide* letter dated May 9, 1990. By this letter the petitioner had submitted "3 months notice for resignation" with the request that it may "kindly be accepted on August 9, 1990". In spite of the specific request, it is the admitted position that the Managing Director of the appellant-Federation had accepted the request of the respondent and relieved him of his duties on June 15, 1990. This action of the authority was duly approved by the Board of Administrators on June 29, 1990. It deserves notice that the respondent did not protest against the acceptance of his resignation. He did not object to his being relieved of his duties. On the contrary, he appears to have accepted this action of the authority and he proceeded to obtaining a licence from the Bar Council. According to the affidavit filed by the respondent with the miscellaneous application on August 19, 1992, he had got the licence from the Bar Council on July 3, 1990. It is also the admitted position that soon thereafter he had commenced his legal practice. According to the averments in the affidavit, the respondent had conducted 27 cases during the period from July 3, 1990 to August 3, 1992 when he was reinstated in service in pursuance to the judgment of the learned Single Judge. In the background of

(1) AIR 1978 S.C. 694
(2) AIR 1987 S.C. 2354

this factual position, it appears that the respondent's request for withdrawal of his resignation was only a device to derive advantage in the form of arrears of salary etc. at a subsequent stage. It was in pursuance to this objective that he had actually approached this Court through a petition under Article 226 of the Constitution towards the end of October 1990.

(7) Mr. Malik, learned counsel for the respondent, has vehemently contended that the employer had illegally relieved the respondent and deprived him of an opportunity to perform his duties. Thus, the employee is entitled to arrears of salary except the amount which he had actually earned. Learned Counsel has placed reliance on the decision of different Courts in *Krishan Kumar* v. *The Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited (CONFED) and another*(3) *Kolar District Cooperative Central Bank Limited and Rama Roa and another*(4) *and Ranjit Singh* v. *Deputy Registrar Cooperative Societies, Faridkot and another*(5). On the basis of these decisions, it has been contended that whenever an order of termination is found to be illegal, the employee is entitled to the consequential benefits of full arrears of salary.

(8) This, undoubtedly, is the general view. However, in the present case it appears that the respondent had submitted the resignation with the purpose of starting legal practice. When his resignation was accepted before the due date he had not protested but had actually availed of the opportunity to obtain a licence. The licence having been obtained on July 3, 1990, it can be safely assumed that he had started legal practice. Thereafter, the submission of the letter dated August 3, 1990 for permission to withdraw the resignation was a device for use at a later stage. The respondent conducted cases. He claims to have earned only an amount of Rs. 13,000. It may be so. Yet the fact remains that the respondent was gainfully employed. He had not started legal practice on account of the termination of his services. In fact, he had resigned to start legal practice. In this situation, we do not consider it appropriate that the employer should bear the burden of the salary for the period during which the employee was practicing as an Advocate.

(3) 1998 (1) ALJ 325
(4) 1998 (1) LLJ 383
(5) 1991 (3) RSJ 429

(9) Mr. Malik submits that the amount which had been actually earned by the respondent can be deducted from the wages due to him. However the remaining amount should be paid. If such a contention is accepted, the employer would face the impossible task of determining as to what had been actually earned by the employee. It would be impossible for the employer to determine the actual amount. Still further, it would give the employees, especially those who have professional degrees an opportunity to tender resignation, start private practice and then withdraw the resignation. They would earn money in private practice and then raise a claim for arrears of salary. Such disputes cannot in any event be resolved in proceedings under Article 226 of the Constitution of India. It is the admitted position that the respondent had joined duty on August 3, 1992. He continues to hold his post with the Federation.

(10) Taking the totality of circumstances into consideration, the appeal is partly accepted. While the action of the appellant—Federation in rejecting the respondent's request for withdrawal of resignation is quashed and it is held that he is entitled to be taken back in service, the claim for consequential benefits of arrears of salary is declined. It is held that the respondent shall not be entitled to arrears of salary from the date he was relieved of his duties to the date he got the licence suspended/cancelled. Otherwise, the respondent shall be entitled to the benefit of continuity in service. The judgment of the learned Single Judge is modified to that extent. In the circumstances, there will be no order as to costs.

J.S.T.

Before Sat Pal, J.

RAMESH CHAWLA,—*Petitioner*

versus

RANJIT SINGH,—*Respondent*

CR No. 4802 of 1997

28th April, 1998

Code of Civil Procedure, 1908—S. 115, Order 37 & Rule 4—Ex parte *decree passed under Order 37—Application moved to have* ex parte *decree set aside under order 9 rule 13—Order 37 rule 4*