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be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it."

5. Thus, it is plain that the State Legislature is competent to legislate regarding the land, i.e., rights in or over land, land tenures including the relation of landlord and tenant and the collection of rents; transfer and alienation of agricultural land, land improvement and agricultural loans, colonization, etc. This item is wide enough to include any land for the purpose of declaring surplus area or to give exemption to any category of land. Item No. 18 pertaining to land does not exclude the gallantry award lands from the purview of the competency of the State Legislature.

6. For the reasons recorded I am of the view that the Punjab Land Reforms Act is a valid piece of legislation passed by the Punjab State Legislature, which was competent to do so and items (1) and (2) of List I (Union List) of Seventh Schedule to the Constitution had nothing to do with land of any type.

7. Although other points were also taken in these writ petitions but Mr. Wasu says that those are covered by the earlier decisions and, in all fairness, he did not urge those points.

8. In the result, these petitions are dismissed but without any order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before I. S. Tiwana, J.

SUMITRA DEVI,—Petitioner.

versus

THE STATE OF HARYANA,—Respondent.

Civil Writ Petition No. 4035 of 1982.

September 28, 1982.

Resignation—Withdrawal of—Resignation tendered by an employee but sought to be made effective from a future date—Such

employee—Whether could withdraw the resignation before due date is reached—Competent authority—Whether could accept the same by advancing the date on which it was to become effective and after the same had been withdrawn by the employee.

Held, that the general principle is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post an intimation in writing sent to the competent authority by the incumbent of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e., before it effects termination of the tenure of office/post or the employment. The act of resigning being undisputably a unilateral act, the employee resigning can of his free volition fix the date from which he wishes to resign. The acceptance of such a resignation by the competent authority does not mean anything more than the assent of such authority. The authority accepting the resignation cannot either change its date from which it is sought to be effective or in other words, advance the date of its acceptance, unless the rules and conditions of service permit such a course. In a given case it may, however, be open to the competent authority to issue a counter notice for a shorter duration in terms of the rules and conditions of appointment in case such authority wants to get rid of an employee at an earlier date. (Paras 3 and 6).

Delhi Electricity Supply Undertaking vs. Tara Chand, 1978(2)
S.L.R. 425.

DISSENTED FROM.

Petition Under Article 226 of the Constitution of India praying that:

- (i) *the records of the case be summoned;*
- (ii) *a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or order be issued quashing the order at Annexure 'P-4';*
- (iii) *it is further prayed that pending the disposal of the Writ Petition, implementation and operation of the order at Annexure 'P-4' be stayed;*
- (iv) *it be declared that the petitioner continues to be in service and is entitled to all the consequential benefits in the nature of arrears of salary and seniority etc.;*
- (v) *costs of the petition be also awarded;*

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(vi) *the Hon'ble Court may also grant any other relief deemed just and fit in the circumstances of the case;*

(vii) *condition regarding service of advance notice be dispensed with.*

J. L. Gupta, Advocate with R. S. Chahar, Advocate, for the Petitioner.

Harbhagwan Singh, A.G., Haryana with G. L. Batra, Senior D.A.G., Haryana and Arun Walia, Advocate, for the Respondents.

JUDGMENT

I. S. Tiwana, J.—

(1) It appears that at one stage the temptation to be an 'instant celebrity' in the State politics proved too much for the petitioner when she served the respondent State with a three months' notice on June 7, 1982 (Annexure P.2) to resign from the post of a Medical Officer in Haryana Medical Service (Class II). She had been appointed to that service on March 1, 1978,—*vide* Annexure P.1 which contained the following two conditions on which the respondent authorities heavily rely for their impugned action :—

- “3. The post is temporary and your appointment will be terminable on one month's notice on either side, while you are borne on the temporary cadre.
4. You will be on probation for a period of two years from the date of regular appointment which period can be extended if necessary up to 3 years. Thereafter, you may be considered for permanent absorption, in HCMS (II) on the availability of vacancies of the permanent posts in the cadre. The services put in against the temporary post might be counted towards the period of probation but the completion of two years' temporary service will not in itself entitle you to confirmation unless the post is substantively vacant.”

Later she chose to withdraw the letter of resignation, Annexure P.2,—*vide* her communication, dated July 5, 1982 (Annexure P.3).

Since the material question relates to the interpretation of these two documents, I prefer to reproduce their contents *in extenso* :-

Annexure P/2..

"To

The Commissioner & Secretary to Government,
Haryana, Health Department.

(THROUGH PROPER CHANNEL).

Sub:—Resignation on three months notice basis commencing with effect from 7th June, 1982—
Dr. (Mrs.) Sumitra Devi, General Hospital, Hissar

Sir,

With profound reference and sincerity, I hereby resign from the post of Medical Officer, General Hospital, Hissar, giving three months' notice, with effect from 7th June, 1982. I am resigning on my own account and without any compulsion.

Please accept my resignation in due course of time.

Thanking you,

Dated, the 7th June, 1982.

Yours sincerely,
(Dr. Mrs. Sumitra Devi),
Medical Officer,
General Hospital, Hissar."
Annexure P/3.

"To

The Health Minister,
Government of Haryana,
Chandigarh.

Subject:—Withdrawal of resignation.

Madam,

With reference to my resignation letter of 7th June, 1982, it is stated that I revise my decision and want to

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continue in the service in the public interest as I can serve better while in the profession. So I withdraw my resignation. It is requested that I may be allowed to withdraw my resignation and informed accordingly.

Thanking you,

Yours faithfully,
Dr. Sumitra Devi.

Dated 5th July, 1982.

Though there is some controversy about the actual date of receipt of letter, Annexure P.3 by the Minister concerned—according to the petitioner it was handed over on July 5, 1982 and according to the respondent State it was received on August 11, 1982—yet in the light of the considerations and the conclusion stated hereunder, I find that either of these two dates of receipt of this letter does not make any difference to the merits of the case.

The State Government on 4/6th of September, 1982, passed the following order accepting the resignation tendered,—*vide* Annexure P.2, with immediate effect:—

- “Reference your letter No. 78/S(373)-SE-II/1355, dated 13th August, 1982, on the subject noted above.
2. The Governor of Haryana is pleased to accept the resignation of Dr. Mrs. Sumitra Devi, HCMS-II, Medical Officer, General Hospital, Hissar, with immediate effect. Other formalities in this behalf may also be observed.
 3. This will be without prejudice to the claims of the State on account of bond money (Rs. 15,000) and other claims, if any.

(Sd.) . . .

Deputy Secretary Health,
for Commissioner & Secretary to Govt.,
Haryana, Health Department.”

It is this order Annexure P.4 which is now impugned.

(2) The primary challenge on behalf of the petitioner is that,—*vide* Annexure P.2, the petitioner had given a three months' notice

with effect from June 7, 1982 to resign or sever her connection as a public servant and the State Government had to jurisdiction whatsoever to advance the date of this resignation and to accept it with effect from 4/6th September, 1982, particularly when it had been withdrawn,—*vide* Annexure P.3 on 5th July, 1982. According to her learned counsel, this resignation could either become effective with the lapse of three months', i.e., on September, 7, 1982, or could be accepted on any date later than that. During this interregnum, the petitioner had every right to withdraw the same and had actually withdrawn it,—*vide* her letter, dated July 5, 1982 (Annexure P. 3). On behalf of the respondent authorities it is maintained in the light of the above referred to two conditions of the letter of appointment that the petitioner was only a temporary employee and as per condition No. 3, was only required to serve one month's notice (instead of three months') and with the expiry of that period from the date of the issuance of the notice, the said resignation in spite of the impugned order, Annexure P. 4, would be deemed to have been accepted and the petitioner automatically went out of service with effect from July 7, 1982. It may be stated at this stage that though the petitioner has claimed that in accordance with the conditions of her appointment contained in Annexure P.1 and the Haryana Civil Medical Service (Class II) Rules, 1978, more particularly Rule 11, she would be deemed to have become a permanent employee of the respondent State, yet I do not feel the necessity of going into this aspect of the matter at all in view of the two narrow questions that have been debated before me. (i) whether an employee who intimates to resign with effect from a future date can withdraw the same before that date is reached and (ii) whether the respondent authorities had any jurisdiction to accept the resignation of the petitioner with effect from a date prior to the date about which the petitioner had expressed her intention to resign ?

(3) It is the conceded position that the letter or notice of resignation, Annexure P.2, does not amount to a resignation *in presenti* or with immediate effect. Though the learned Advocate General appearing for the respondent at one stage chose to assert, rather half-heartedly, that since this letter contains the words "I hereby resign", it should be taken that the petitioner intended this notice to be a resignation with immediate effect, yet he agrees that in the light of the cardinal rule of interpretation of documents it has to be read as a whole and no part of the same can be ignored as irrelevant or meaningless. A reading of this notice as a whole

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makes it manifestly clear that the petitioner had chosen to resign or go out of service with the expiry of three months from the date of the notice, that is, with effect from 7th of September, 1982. Now if the notice, that is, with effect from a future date—as it is—then it cannot possibly be disputed that the incumbent sending the notice is well entitled to withdraw the same on any date prior to its having become effective or its acceptance. The final Court has settled this principle in *Union of India v. Shri Gopal Chandra Misra and others*, (1), in the following words :—

40. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority, by the incumbent, of his intention or proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective, i.e., before it effects termination of the tenure of the office/post or the employment.”

This general rule is equally applicable to Government servants and constitutional functionaries (Para 47). As per the observations of their Lordships in this judgment, such a prospective or potential resignation till the arrival of the future date (of intended resignation) remains wholly inert, inoperative and ineffective and cannot cause any jural effect. The employee issuing such a notice cannot be taken to have resigned on a date prior to the date specified by him.

(4) As against this, the whole burden of the argument of the learned Advocate General for the respondent authorities is that with the expiry of one month from the date of issuance of the notice, Annexure P.2, in the light of clause 3 of Annexure P.1, the resignation is deemed to have taken effect and the petitioner stood relieved. According to him, the passing of the impugned order Annexure P.4, was only an exercise in futility. This submission obviously—though impliedly—concedes the untenability of the impugned order. In support of this stand of his, the learned Advocate-General has chosen to refer to some judgments where in it has been laid down that in the case of a temporary employee's resigning by way of

issuing one month's notice the relationship of employee and employer comes to an end with the expiry of the notice period, but I feel it totally unnecessary to refer to those judgments in detail as in none of these the question raised here was the subject-matter of consideration. As already indicated, the question is as to whether when an employee chooses to resign with effect from a particular future date, has the employer any jurisdiction to advance that date and to accept the resignation with effect from an earlier date? Answer to this question, to my mind, is completely provided by the ratio and the conclusion of their Lordships of the Supreme Court in *Gopal Chandra Misra's case* (supra) with the observation which have already been reproduced. The argument of the learned Advocate General that the petitioner could not put the date of her intended resignation beyond one month from the date of issuance of the notice in the light of condition No. 3 of Annexure P.1, is obviously of no merit. The only intendment of this condition was that the petitioner could not validly resign or terminate the status as a Government servant on the basis of a notice of less than one month's duration. To my mind, this condition does not in any way debar the petitioner from issuing any longer notice communicating her intention to resign from the Government job. Further I find that the argument of the learned Advocate-General that with the expiry of one month from the issuance of Annexure P.2, the petitioner be deemed to have gone out of service, is not tenable either legally or factually. No principle or precedent has been cited before me in support of the above proposition. It is the admitted position that the petitioner was continued to be paid her salary and emoluments for the month of June, July and August, 1982. The learned Advocate-General, however, explains that this was only a ministerial act and the subordinate officials continued to treat and pay the petitioner emoluments even after the alleged date of acceptance of her resignation (7th July, 1982), and the Government is not responsible for the same. This has only to be stated to be rejected. He also chooses to rely on certain press and C.I.D. reports disclosing as to how the petitioner has been indulging in mud-slinging and scathing criticism of the functioning of the party in power in Haryana and its Chief Minister, Ch. Bhajan Lal with a view to show that even the petitioner herself has been taking to have been relieved from the bonds of service and was openly aligning herself with the Lok Dal Party from public stages and meetings with the press. All this, to my mind, is again unnecessary to judge the merits of the controversy raised in this petition. For all this the petitioner might be liable for any disciplinary action for misconduct as a public servant

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in accordance with the rules governing her but this does not in any way effect her right from withdrawing the notice of resignation Annexure P.2 within the stipulated period.

(5) The learned Advocate-General further seeks to contend in the light of *Delhi Electricity Supply Undertaking v. Tara Chand*, (2) that the notice like the one Annexure P.2, "is only intended for the benefit of the opposite party", that is, the Government in the instant case, and thus it could accelerate the effective date of termination of service. Firstly, I find the observation occurring towards the end of paragraph 20 of the above noted judgment is only *obiter dicta* in the light of the conclusion recorded in paragraph 12 of the report wherein it has been held that in the facts and circumstances of that case the letter, dated March 1, 1962 (alleged to be a letter of resignation) was not a resignation letter. In the face of this conclusion no further question arose as to for whose benefit the said letter had been written. Secondly, if I may say so with respect to the learned Judges deciding that case, I find it difficult to accept that the mentioning of a future date of resignation is only with a view to benefit the opposite party. To my mind, such mentioning of a future date of resignation is normally with a view to settle and straighten out the personal affairs of the incumbent resigning besides satisfying the requirements of any rules or contract of service. To my mind, it is entirely the convenience of the party resigning that makes it choose the date of resignation. Thirdly, this argument is of no avail to the respondent as it failed to accept the resignation of the petitioner before its admitted withdrawal.

(6) The act of resigning being undisputably a unilateral act, the employee resigning can of his free volition fix the date from which he wishes to resign. The acceptance of such a resignation by the competent authority to my mind does not mean anything more than the assent of such authority. Thus I am of the view that the authority accepting the resignation cannot either change its date from which it is sought to be effective or in other words, advance the date of its acceptance, unless the rules and conditions of service permit such a course. In a given case it may, however, be open to the competent authority to issue a counter notice for a shorter duration in terms of the rules or conditions of appointment in case such authority wants to get rid of the employee at an earlier date.

(7) For all the reasons recorded above, I find that the impugned order, Annexure P.4, cannot possibly be sustained and is thus annulled. The net result is that the petitioner continues to be in the service of the respondent State as on July 5, 1982, the date of letter, Annexure P.3, withdrawing the notice, Annexure P.2. Keeping in view the fact that the petitioner too by her letter, dated June, 7, 1982 (Annexure P.2), contributed towards the passing of the impugned order, she is not entitled to any costs.

N.K.S.

Before J. V. Gupta, J.

GURBACHAN SINGH and others,—Appellants.

versus

AMRIK SINGH and others,—Respondents.

Regular Second Appeal No. 1810 of 1973.

October 4, 1982.

Code of Civil Procedure (V of 1908)—Order XXVI Rules 9 and 10—Local Commissioner appointed for demarcating the land in dispute—Report of the Commissioner not accepted and the suit decided on merits—Request made for the appointment of another Commissioner—Court opining that no useful purpose would be served by the appointment of another Commissioner—Appointment of another Commissioner—Whether in the discretion of the Court.

Held, that Order XXVI Rule 9 of the Code of Civil Procedure, 1908 provides for the appointment of Commission for Local investigation. Rule 10 of Order XXVI further provides the procedure of Commissioner. A discretion has been given to the trial Court to direct further inquiry as it may think fit in the circumstances of a given case. It cannot be successfully argued that under clause (3) of Rule 10, the trial Court or the lower appellate Court is under any legal obligation as such to appoint another Commission when it is dissatisfied with the proceedings of the Commission already appointed. Thus, a reading of the provisions of sub-clause (3) of Rule 10 of Order XXVI of the Code makes it evident that it is a discretion of the Court to appoint another Commissioner and it is in no way obligatory to do so particularly when the Court comes to the conclusion that it will serve no purpose.

(Paras 9, 10 & 13)