

---

(7) Another reason for accepting the plea in all cases the examination-in-chief of a witness has to be on affidavit is that because before amendment procedure of recording evidence by affidavit used to be followed in summary cases. It is presumed to be known to the Legislature. However, it has yet prescribed the procedure of recording examination-in-chief by affidavit under rule 4. The expression every case used in sub rule 1 of rule 4 would be rendered illusory and otiose if the recording of examination in chief by affidavit is confined to only those cases which are not appealable because no such intention is discernible from rules 4 and 5. The examination-in-chief may have to be recorded in accordance with the provisions of Rule 5 but examination-in-chief is required to be recorded under the provisions of Rule 4.

(8) For the reasons recorded above, this revision petition fails and is dismissed.

(9) A copy of this order be given dasti on payment of usual charges. It is further directed that copy of this order be circulated to all the District and Sessions Judges for bringing it to the notice of the Subordinate Judges as there appears to be some ambiguity in Rules 4 and 5 of the Code.

---

**R.N.R.**

*Before V.M. Jain, J.*

AVINASH KUMARI,—*Appellant/Plaintiff*

*versus*

PUNJAB STATE & OTHERS,—*Respondents/Defendants*

R.S.A. NO. 2673 OF 1999

22nd November, 2002

*Punjab Civil Services Rules, Vol.I, Part I—Rls. 4.11 & 7.5—Acceptance of resignation of a Govt. Employee—Request for withdrawal—Neither the post which was vacated by the plaintiff nor any other comparable post available with the department—Competent*

---

*authority rejecting the request for withdrawal of resignation—Challenge thereto—Plaintiff failing to prove that she had tendered the resignation for some compelling reasons and the request for withdrawal had been made as a result of material change in the circumstances as provided in Rl. 7.5(4)(i)—Request for withdrawal of the resignation submitted more than 60 days after the plaintiff was relieved of her duties—Plaintiff not entitled to withdraw her resignation under the rules—Appeal liable to be dismissed.*

Held, that the plaintiff failed to produce any evidence on the record to show that she had tendered the resignation “for some compelling reasons” nor the plaintiff produced any other evidence on the record to show that the request for withdrawal of the resignation had been made as a result of material change in the circumstances, which originally compelled her to tender resignation. Mere alleging that she was not enjoying good health due to family circumstances and lateron, alleging that her family circumstances had improved and her health had also improved, by itself, would not be enough to bring the case of the plaintiff within the preview of clause (i) of Sub Rule (4) of Rule 7.5 of the Punjab Civil Services Rules, Vol.I, Part I.

(Para 11)

Further held, that the application for withdrawal of resignation was submitted more than two months after the plaintiff was relieved of her duties. In this view of the matter, the learned Additional District Judge was perfectly justified in holding that the plaintiff was not entitled to the declaration and injunction sought by her.

(Para 12)

G.S. Bal, Advocate, for the appellant.

G.S. Gill, Sr. DAG Punjab, for the respondents.

### JUDGEMENT

*V. M. Jain, J.*

(1) This Regular Second Appeal has been filed by the plaintiff-appellant, against the judgment and decree dated 3rd April, 1999, passed by the learned Additional District Judge, whereby the appeal, filed by the defendants, was accepted, the judgment and decree passed

---

by the trial Court, were set aside and the suit of the plaintiff was dismissed.

(2) The facts, in brief, are that Smt. Avinash Kumari, plaintiff, filed a suit for declaration against the defendant-respondents, with the allegations that she was appointed as Guide-cum-Clerk in Tourism Complex, Ropar, on 25th June, 1976 under the defendants and that later on, the S. S. S. Board had regularised her services on 22nd December, 1977 and as such, on 22nd December, 1977, the plaintiff had become a regular employee of the defendants. It was alleged that on 7th September, 1987, on account of certain circumstances, the plaintiff submitted her resignation and that on 7th December, 1987, she had withdrawn her resignation. It was alleged that the Civil Services Rules were applicable to the plaintiff and that under Rules 7.5 and 4.11 of the Punjab Civil Services Rules, the plaintiff was entitled to withdraw her resignation within a period of 90 days and that the plaintiff had withdrawn her resignation well within the said period of 90 days. It was alleged that after the withdrawal of the resignation, the plaintiff had joined her duty in the Information Centre, Amritsar, where she was posted at the time when she had submitted her resignation. It was alleged that the concerned official had recommended the withdrawal of the resignation,—*vide* letter dated 8th December, 1987. It was alleged that the plaintiff had not been paid the salary and that a letter dated 9th February, 1988 was written in that regard, with subsequent reminders. It was alleged that the Director had recommended the case of the plaintiff to the Government and the Secretary to Government had sought certain information from the Director, but Shri Kuldeep Singh, an employee, working with the Director, had concealed the facts and did not give any information and did not bring the facts to the notice of the Director. It was further alleged that even otherwise, the Director had the authority to permit the withdrawal of the resignation and in any case, the Director had recommended the case to the State Government. It was alleged that finally, a registered letter dated 14th March, 1989 was sent in this regard to the defendant-department, but still of no avail. It was accordingly prayed that a decree for declaration be passed to the effect that the plaintiff was in service of the defendants as Senior Clerk and was entitled to the salary w.e.f. 7th December, 1987 and other benefits.

---

(3) The said suit was contested by the defendants, by filing written statement, taking up various preliminary objections, including the objection regarding the territorial jurisdiction of the Courts at Ropar, to entertain and decide the present suit. On merits, it was admitted that the plaintiff was appointed as Clerk-cum-Store Keeper on *ad hoc* basis,—*vide* office letter w.e.f. 26th August, 1976, which was extended from time to time till 8th September, 1977 when her services were terminated. It was alleged that the name of the plaintiff was recommended for regular appointment by the S.S.S. Board on 22nd November, 1977 and in pursuance thereof, the plaintiff was appointed as Clerk on regular basis,—*vide* office letter dated 10th December, 1977 and the plaintiff joined the duty on 22nd December, 1977. It was admitted that the plaintiff resigned from service on 7th September, 1987. It was alleged that the resignation of the plaintiff was duly accepted by the competent authority,—*vide* letter dated 6th October, 1987 w.e.f. 7th September, 1987. It was alleged that on 7th December, 1987, the plaintiff submitted an application, requesting therein for the withdrawal of her resignation and that on consideration, her request was not accepted and defendant No. 3 was informed accordingly by telegram, who conveyed the same to the plaintiff. It was alleged that the request for withdrawal of resignation, after its acceptance, was meaningless. It was admitted that the plaintiff was governed by the Punjab Civil Services Rules, but it was alleged that her request for withdrawal of resignation, was not within the period prescribed under the Rules. It was alleged that the resignation of the plaintiff was accepted w.e.f. 7th September, 1987 and any request for withdrawal could be considered if made within a period of 60 days, as laid down in Rule 7.5(4) of the aforesaid Rules. It was alleged that the request of the plaintiff for withdrawal of resignation, was rejected by the competent authority and the plaintiff was not allowed to join her duties by the competent authority. It was alleged that the competent authority was not bound to the recommendations of defendant No. 3, who had sent letter dated 8th December, 1987, forwarding the withdrawal of resignation. It was alleged that infact the recommendations, made by defendant No. 3 were duly considered and rejected by the competent authority. It was alleged that since the plaintiff was not allowed to withdraw the resignation by the competent authority, the question of payment of salary did not arise. It was alleged that since the Rules did not permit the defendants to accept

---

the request of the plaintiff for withdrawal of resignation, out of sympathy the then Director Tourism had moved the State Government for the relaxation of Rules, on which various queries were made and ultimately, the Director Tourism withdrew the recommendations from the State Government. It was alleged that the request of the plaintiff was never accepted by the defendants. It was also denied that Shri Kuldeep Singh, Office Superintendent, was inimical towards the plaintiff or that he concealed the facts from the Director.

(4) On the pleadings of the parties, the trial Court framed various issues. After hearing both the sides, the learned trial Court decreed the suit of the plaintiff, holding that the plaintiff was entitled to the relief of injunction. It was also held that the defendants had failed to prove that the Court did not have territorial jurisdiction. Resultantly, the suit of the plaintiff was decreed. However, the appeal, filed by the defendants, was accepted by the learned Additional District Judge, the judgment and decree of the trial Court, were set aside and the suit of the plaintiff was dismissed, holding that the plaintiff was not entitled to the declaration, prayed for, that she continued to be in service or was entitled to the salary w.e.f. 7th December, 1987 onwards. It was also held that the Courts at Ropar had no territorial jurisdiction and the finding of the trial Court to the contrary, was set aside. However, it was held that the Civil Suit, having remained pending since 1991, it would not be in the interest of justice now to order the return of the plaint to the plaintiff, for presentation before the competent Court. Reliance in this regard was placed on the law laid down by a Division Bench judgment of this Court, reported as *M/s Rattan Cloth House* versus *M/s Anoop Udai Works* (1). Resultantly, the appeal was allowed and the judgment and decree, passed by the trial Court, were set aside and the suit of the plaintiff was dismissed. Aggrieved against the same, the plaintiff filed the present Regular Second Appeal in this Court.

(5) I have heard learned counsel for the parties and have gone through the record carefully.

(6) Learned counsel for the plaintiff-appellant submitted before me that by virtue of Rule 7.5(4) of the Punjab Civil Services Rules, Volume-I Part-I, the plaintiff was entitled to withdraw the resignation. Reliance was placed on Rule 8.116 of the aforesaid Rules. It was submitted that relying on the aforesaid Rules, the defendants were

---

bound to allow the plaintiff-appellant to withdraw the resignation, especially when the resignation was withdrawn 90 days of its tender and within 60 days of its acceptance. Reliance was placed on the law laid down in the case reported as *Bawa Singh* versus *State of Punjab and ors* (2). On the other hand, learned counsel for the defendant-respondents submitted before me that the case of the plaintiff-appellant was not covered under Rule 7.5(4) of the aforesaid Rules. It was submitted that infact, the plaintiff-appellant had failed to point out that the resignation was submitted by her "for some compelling reasons" and as such the plaintiff-appellant was not entitled to withdraw the resignation. Reliance was placed on a Division Bench judgment of this Court, in the case reported as *Rajinder Bhushan* versus *State of Punjab* (3).

Rule 7.5 reads as under :—

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service.
- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.
- (3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.
- (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

---

(2) 1989(2) SLR 103

(3) 1995(2) SCT 248

---

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;

- (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 comparable 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."

---

(7) From a perusal of the above, it would be clear that the appointing authority may permit a person to withdraw his resignation in public interest on certain conditions, including the condition 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. Another condition would be 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. The third condition would be 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. Further condition is that the said 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. The final condition is that the post, which was vacated by the government employee on the acceptance of his resignation or any other comparable post, "is available."

(8) In the present case, the original personal file along with noting portion, Exs. DA and DB, respectively, of the plaintiff-appellant, Avinash Kumari, were retained on the trial Court file, at the instance of the plaintiff-appellant herself. These files were brought to the Court by DW1, Kuldeep Singh, Superintendent, and during cross-examination, at the instance of the plaintiff-appellant, these files were placed on the record as Exs. DA and DB. A perusal of the original resignation letter, dated 7th September, 1987, available on the personal file, would show that Ms. Avinash Kumari, plaintiff, had submitted the resignation to the Director concerned, to the effect that she was not enjoying good health because of her family circumstances and that she was unable to perform her duty and that her resignation may be accepted. A copy of this resignation letter is also available on the trial Court record as Ex. D1. The office copy of the office order dated 6th October, 1987 is also available on the personal file of Ms Avinash Kumari,—vide which her resignation was accepted w.e.f. 7th



September, 1987. A copy of the aforesaid letter dated 6th October, 1987 is available on the trial Court record as Ex. D2. The subsequent letter dated 7th December, 1987, sent by Ms Avinash Kumari to the Director, seeking withdrawal of her resignation, is also available on her personal file. In the said letter dated 7th December, 1987, it was stated by her that her family circumstances had improved and her health had also improved and that she wanted to withdraw the resignation, submitted by her, on 7th September, 1987 and that her resignation may be withdrawn. It was also mentioned by her that she was submitting her joining report to the local office. A copy of the said letter dated 7th December, 1987 is also available on the trial Court record as Ex. D3. The noting file, Ex DW, shows that on receipt of the aforesaid letter dated 7th December, 1987 seeking the withdrawal of the resignation, the matter was put up by the office before the competent authority i.e. the Director, Tourism. After considering the entire matter, it was found by the Director that no post was available for the plaintiff-appellant, Avinash Kumari, inasmuch as the orders had already been passed on a separate file that Shri Kamal Kishore Dhawan be appointed as Clerk, in view of the directions given by the Court and similarly the Court had already passed the orders for appointing Neelam Kumari as Clerk and she had also to be accommodated against some post and that no other vacancy was available in the office and as such, Ms Avinash Kumari could not be allowed to withdraw her resignation because no post was available for her. It was further directed that the Tourist Officer, Amritsar, be asked as to under whose orders he had allowed Ms Avinash Kumari to join the duties. This order is available on the noting file and is dated 31st December, 1987. A copy of the telegram dated 1st January, 1988, sent to the Tourist Officer, Amritsar, is available on the personal file of Ms Avinash Kumari, which reads as under :—

“Withdrawal of resignation of Smt. Avinash Kumari not accepted”.

(9) This telegram is addressed to the Tourist Officer, Amritsar, and was sent on behalf of the Director Tourism, Punjab.

(10) From the perusal of the above, it would be clear that at the time when Smt. Avinash Kumari, plaintiff, applied for the withdrawal of her resignation, her prayer was declined by the Director, Tourism, on the ground that the post, which was vacated by her, on

---

the acceptance of her resignation, was not available and in fact, no comparable post was available against which she could be adjusted.

(11) Besides the aforesaid reasons, in my opinion, the plaintiff-appellant failed to produce any evidence on the record to show that she had tendered the resignation "for some compelling reasons" nor the plaintiff-appellant produced any other evidence on the record to show that the request for withdrawal of the resignation had been made, as a result of material change in the circumstances, which originally compelled her to tender resignation. Mere alleging that she was not enjoying good health due to family circumstances and later on, alleging that her family circumstances had improved and her health had also improved, in my opinion, by itself, would not be enough to bring the case of the plaintiff-appellant within the preview of clause (i) of Sub-Rule (4) of Rule 7.5 of the aforesaid Rules.

(12) Furthermore, even otherwise, the plaintiff-appellant was required to submit application for withdrawal of her resignation within two months of her being relieved. In the present case, as referred to above, the plaintiff-appellant submitted her resignation on 7th September, 1987. The resignation was accepted on 6th October, 1987 w.e.f. 7th September, 1987, meaning thereby the plaintiff-appellant stood relieved w.e.f. 7th September, 1987. The plaintiff-appellant was required to withdraw the resignation within two months thereof. However even according to the plaintiff-appellant herself, the application for withdrawal of resignation was submitted on 7th December, 1987. In this view of the matter, in my opinion, it would be clear that the application for withdrawal of resignation was submitted more than two months after the plaintiff was relieved of her duties. In this view of the matter, in my opinion, the learned Additional District Judge was perfectly justified in holding that the plaintiff-appellant was not entitled to the declaration and injunction, prayed for. Rule 8.116, relied upon by learned counsel for the plaintiff-appellant, in my opinion, would have no application to the facts of the present case and would not extend the period for submitting the application for withdrawal of resignation. Rule 8.116 is in respect of the grant of earned leave to a government employee and has nothing to do with the question in hand as to with how much period a government employee would be required to withdraw his resignation.

---

(13) In 1995(2), *Services Cases Today*, 248 (*supra*), it was held by a Division Bench of this Court that a careful reading of Rule 7.5(4) would show that the guiding principle underlying the said rule, was public interest. It was further held that sub-clause (i) of clause (4) further showed that the Rule had been framed in order to deal with the cases of resignation, which a government employee had submitted for some compelling reasons and request for withdrawal of the resignation had been made as a result of a material change in the circumstances, which originally compelled him to tender the resignation. It was further held that sub-clause (ii) further gave an indication that in the interregnum period i.e. from the resignation till the date on which the request for withdrawal was made, the conduct of the person was in no way improper. In the reported case, the government employee had submitted his resignation in order to contest the elections. Having failed in the elections, the government employee wanted to withdraw his resignation. Under those circumstances, it was held by the Division Bench that it was impossible to hold that contesting the State Assembly elections would amount to a compelling reason for submitting the resignation within the meaning of the aforesaid Rule. It was further held that it would be ridiculous that a government servant submits his resignation, contests the State Assembly elections and on losing the same, reports back and insists that he shall be taken into service with continuity.

(14) The authority 1989 (2) *Service Law Reporter*, 103 (*supra*), relied upon by learned counsel for the plaintiff-appellant, in my opinion, would be of no help to the plaintiff-appellant. In the reported case, after going through the pleadings of the parties, the Bench was of the view that the request, made by the petitioner, for withdrawal of the resignation, had not been examined in accordance with the statutory rules and that the same had been rejected arbitrary. It was found that the resignation, submitted by the petitioner on 30th August, 1985, was accepted by the Collector on 2nd September, 1985 and the request for its withdrawal was made by the petitioner within nine days thereafter i.e. on 11th September, 1985. It was further found that the application for withdrawal of the resignation having been made within two months of the petitioner being relieved, the same could not be dismissed without any cogent reason. It was further found that the post for Patwari, which was vacated by the petitioner on the acceptance of his resignation, was still available. Consequently, the writ petition,

---

filed by the petitioner, was allowed and the order,—*vide* which the application for withdrawal of the resignation, was rejected, was quashed and the case was sent back to the Collector, for consideration of the application for withdrawal of the resignation afresh, in accordance with law. In the present case, as referred to above, the plaintiff-appellant having filed application for withdrawal of the resignation beyond 60 days of the date on which she was relieved of her duties, was not entitled under the Rules to withdraw the resignation. Under these circumstances, in my opinion, the learned Additional District Judge was perfectly justified in holding that the plaintiff-appellant would not be entitled to the declaration and injunction, sought by her.

(15) In view of my detailed discussion above, there is no merit in the present second Appeal and the same is hereby dismissed.

---

*J.S.T.*

*Before R.C. Kathuria, J*

TELSTRA VISHESH COMMUNICATION PVT. LTD.—Petitioner

*versus*

THE STATE OF HARYANA & OTHERS—*Respondents*

*Crl.M. No. 26225/M of 2002*

20th December, 2002

*Indian Penal Code, 1860—Ss. 406, 420 & 120-B read with S. 34—Public Ltd. Company filing criminal complaint against Pvt. Ltd. Company on the allegations of cheating & conspiracy—C.J.M. passing the summoning order directing the petitioners to face trial—Quashing of—Jurisdiction of the High Court to quash the proceedings at the initial stage—Exercise of—Only in such cases where allegations made in the complaint/FIR even taken at their face value & accepted in entirety do not prima facie disclose the commission of offence—No violation of terms & conditions of Agreement by the accused—Allegations of misappropriation & cheating neither supported by ~~the~~*