

because it is inspired by anger. However wrong headed a prosecutor may be, if he honestly thinks that accused has been guilty of a criminal offence he cannot be the initiator of a malicious prosecution.”.

(21) Absence of reasonable and probable cause may sometimes entitle the Court to draw an inference of malice, but where the prosecution is found to be based on a reasonable belief no inference whatsoever of malice can be drawn against the prosecutor. In short, the circumstances of this case show that the respondent was not actuated by any malice when he filed the complaint against the appellant.

(22) As a result of the foregoing discussion, we are of the view that the appellant has failed to establish that the respondent had no reasonable and probable cause for prosecuting the appellant, nor has he been able to establish that the respondent in so doing was actuated by malice. This appeal, therefore, fails and is dismissed with no order as to costs.

SANDHAWALIA, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

ANAND PARKASH,—*Petitioner.*

versus

STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 2860 of 1969.

May 26, 1972

Punjab Civil Services Rules, Volume II—Rules 4.19 and 4.23, before amendment in the year 1967—Government accepting resignation of a Government servant—Whether competent to allow the withdrawal of such resignation, condoning the interruption and reviving the service forfeited under rule 4.19.

Anand Parkash v. State of Punjab, etc. (Tuli, J.)

Held, that under rule 4.23 of the Punjab Civil Services Rules, Volume II, the competent authority has the right to condone all interruptions in the service of a Government servant and can revive service rendered prior to interruption but forfeited under rule 4.19. It has also the power to condone the interruption under this rule if it can be shown that the Government servant had good reasons for resigning his appointment in the first instance as has been stated in note 2 to this rule. Where the resignation of a Government servant has been accepted by the Government under rule 4.23 read with note 2 of the Rules, as it stood before amendment in the year 1967, the State Government, being the appropriate authority, is competent to allow the Government servant to withdraw his resignation if it can be shown that he had good reasons for resigning his appointment in the first instance. The Government can also revive his service rendered before resignation but forfeited under rule 4.19 and condone the interruption in his service by converting that period into the leave of the kind due to him.

(Para 5)

Petitioner under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ order or direction be issued quashing the impugned order dated 10th September, 1969 and directing respondent No. 2 to promote the petitioner as Executive Engineer with effect from 10th September, 1969.

D. S. Chahal, Advocate, for the petitioner.

J. S. Wasu, Advocate-General, Punjab, for respondents 1 and 2 (Inderjit Malhotra, Advocate, with him).

M. R. Agnihotri, Advocate, for respondent 3.

JUDGMENT

Tuli, J.—The petitioner and respondent 3 were selected by the Punjab Public Service Commission in 1957 as Temporary Engineers in P.W.D., Irrigation Branch, Punjab, which service they joined the same year. At the time of the re-organisation of that erstwhile State of Punjab, with effect from November, 1, 1966, they were allocated to the State of Punjab. On October 31, 1966, respondent 3 put in his resignation saying that he would like to be relieved after three months. According to the Service Rules, he was required to give three months notice if he wanted to resign his post or pay all the salary for three months. He preferred to give three months' notice. His resignation was accepted by the State Government on December 31, 1966, and he was relieved of his post on January 31, 1967.

He had resigned his post in order to go to England for acquiring higher qualification. Respondent 3 went to England on February 15, 1967, but on arrival there fell ill. The climate did not suit him and he returned to India on May 23, 1967. On May 25, 1967, he sent an application to the State Government to permit him to withdraw his resignation and to condone the short period of his absence so as to convert it into the leave of the kind due to him. In that letter he mentioned that he had rendered more than nine years' meritorious service in the Department as Mechanical Engineer on the construction of Bhakra Dam and Beas Dam Projects. The Government of Punjab passed the following order on July 26, 1967, on that letter:—

Sanction of the Governor of Punjab is accorded to the withdrawal of resignation of Shri B. R. Chadha, Ex. Temporary Engineer, Irrigation Branch, Punjab, and to allow him to join duty in the Irrigation Department immediately. The Governor of Punjab is further pleased to condone the break in service and to treat the intervening period from 1st February, 1967 forenoon till the date he resumes duty as leave of the kind due.

2. This sanction issues with the concurrence of Finance Department,—vide their U.O. No. 4766 (7)-FR-67, dated 21st July, 1967.”

By another order dated February 22, 1963, respondent 3 was granted earned leave for 110 days from February 1, 1967 to May 21, 1967, and half pay leave for 68 days from May 22, 1967 to July 28, 1967, under rules 8.116 and 8.119 of the Punjab Civil Services Rules, Volume I, Part I. It was also certified that respondent 3 would have continued in the post of Temporary Engineer but for his proceeding on leave, that the period of leave would count for increment in the scale of his temporary appointment and that after expiry of his leave he was likely to return to the post carrying the same rate of pay and allowance. Respondent 3 actually rejoined service on July 29, 1967, after the order of the Governor dated July 26, 1967, was conveyed to him.

(2) Before respondent 3 submitted his resignation, he was senior to the petitioner in service and when he was allowed to rejoin service after withdrawing his resignation, he was reinstated and allowed the same seniority as before, that is, above the petitioner in

Anand Parkash v. State of Punjab, etc. (Tuli, J.)

the rank of Sub-Divisional Officer. The petitioner filed a representation against that order which was rejected and the rejection was conveyed by the Chief Engineer (D), Irrigation Works, Punjab, to the Superintending Engineer, Nangal Mechanical Circle, Nangal, by letter dated December 16, 1967, reading as under:—

“Since the Punjab Government have accorded sanction to the withdrawal of resignation by Shri B. R. Chadha, Temporary Engineer, and the period of break in service to be treated as leave of the kind due, the service of Shri Chadha remains continuous. As such there is no question of claiming seniority etc. over this officer by Shri Anand Parkash, A.D.E. Hence, his representation has been considered and rejected.

The officer may be informed accordingly.”

The petitioner then filed the present petition on October 22, 1969, challenging the order allotting seniority to respondent 3 above the petitioner after his re-instatement.

(3) The case of the petitioner in a nut-shell is that after respondent 3 was allowed to withdraw his resignation, he should have been regarded as an officer entering service on July 29, 1967, and his previous service should have been forfeited and he should not have been allowed any benefit thereof nor could his service be considered to be continuous. During the pendency of the writ petition respondent 3 was promoted as officiating Executive Engineer by an order dated December 24, 1969, while the petitioner was allowed similar promotion by letter dated May 18, 1970.

(4) The learned counsel for the petitioner has submitted that according to rule 4.19 (a) of the Punjab Civil Services Rules, Volume II, as was in force in 1967, the resignation of respondent 3 entailed forfeiture of past service. This rule was deleted with effect from November 1, 1968, but was in force when the order accepting the resignation of respondent 3 was passed. Therefore, under this rule, respondent 3 forfeited his previous service. Rule 4.23, as was in force in 1967, relates to the condonation of interruptions and deficiencies in service and, so far as relevant to this case, reads as under :—

“4.23. Subject to any rules which a competent authority may prescribe and upon such conditions as it may think fit in

each case to impose, the authority competent to fill the post held by a Government servant at the time condonation is applied for or is considered necessary, were he to vacate that post, may condone all interruptions in his service.

Note 1. The powers of condonation specified in this rule carry with them the power of reviving service rendered prior to interruptions, but forfeited under rule 4.19.

Note 2. Usually, condonations of interruptions are not allowed under this rule unless there are some reasons for doing so that is, if it can be shown that the Government servant had good reasons for resigning his appointment, in the first instance, or if he was compelled by reasons beyond his control (e.g., through illness, etc.) to quit service before due time and it is considered fit to permit him to count certain past qualifying service for pension.

* * * * *

Note 7. Interruptions in service (either between two spells of permanent or temporary service or between a spell of temporary service and permanent service or *vice versa*), in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely :—

- (1) The interruption should have been caused by reasons beyond the control of Government employee concerned.
- (2) Service preceding the interruption should not be less than five years' duration. In cases where there are two or more interruptions, the total service, pensionary benefits in respect of which shall be lost if the interruptions are not condoned should not be less than five years.

Anand Parkash v. State of Punjab, etc. (Tuli, J.)

- (3) The interruption should not be of more than one year's duration. In cases where there are two or more interruptions, the total period of all interruptions to be condoned should not exceed one year."

This rule was amended by notification dated November 10, 1967, by retaining Note 7 only as rule 4.23 and deleting the rule along with Notes 1 to 6 but at the time action was taken on the letter of respondent 3 dated May 25, 1967, rule 4.23 with all its seven notes was in force. This case has to be decided on the basis of that rule.

(5) Under rule 4.23, the competent authority had the right to condone all interruptions in the service of a Government servant and could revive service rendered prior to interruption but forfeited under rule 4.19. It had also the power to condone the interruption under this rule if it could be shown that the Government servant had good reasons for resigning his appointment in the first instance as has been stated in note 2 to this rule. Note 7 did not apply as respondent 3 had not retired from service but resigned his post for going to England to acquire higher qualifications which was considered to be a good reason. I am, therefore, of the opinion that under rule 4.23 read with note 2, the State Government was competent to allow respondent 3 to withdraw his resignation, revive his service rendered before resignation and condone the interruption in his service by converting that period into the leave of the kind due to him. Under rule 1.8 of the Punjab Civil Services Rules, Volume I, Part I, the State Government, with the concurrence of the Finance Department, has the authority to relax any of the rules contained in the Punjab Civil Services Rules. The order dated July 26, 1967, was issued by the Governor with the concurrence of the Finance Department and was, therefore, in accordance with that rule.

(6) The learned counsel for the petitioner has relied on the judgment of a Division Bench of the Mysore High Court in *R. S. Maniyar, Sub-Registrar v. The State of Mysore* (1) and the judgment of their Lordships of the Supreme Court in *Raj Kumar v. Union of India* (2) but both these judgments are distinguishable on facts and are not helpful to the petitioner. In *R. S. Maniyar's case* (supra)

(1) 1967 S.L.R. 823.

(2) A.I.R. 1969 S.C. 180.

the admitted facts, as stated in the judgment, were that "both the petitioner and respondent No. 3 were holding the post of Second Grade Sub-Registrar at the material date and that the petitioner was junior to respondent No. 3. It is undisputed that the third respondent voluntarily tendered his resignation, on January 26, 1960, and that he was relieved of his duties on February 13, 1960. He once applied in 1962 for permission to withdraw his resignation, but the same was refused. Therefore he submitted a petition to the State Government on April 9, 1963, praying for withdrawal of his resignation and for his reinstatement in service on the ground that he had tendered his resignation, after putting in 13 years of service, when he was in a desperate and agitated mood due to domestic worries." The material portion of the impugned order of the State Government dated September 11, 1963, read as under:—

"After full examination of the case in all aspects, Government direct that Shri T. L. Dhekane may be permitted to withdraw his resignation and that he may be reinstated into service as Sub-Registrar in the Department of Registration subject to the following conditions—

- (i) the period intervening between the termination of his service and his reinstatement shall be treated as leave without pay and allowances;
- (ii) the enquiries that were pending against him when he was in service shall be revived and disposed of on merits, and
- (iii) his seniority and pay after his reinstatement shall be governed by the standing orders."

It was admitted that the vacancy caused by the resignation of respondent 3 in that case was filled up immediately by the appointment of another candidate who had been recruited by the District Level Recruitment Committee. There could, therefore, be no reinstatement as such unless suitable orders of adjustment consequent on the restoration of respondent No. 3 to his original post were passed. No such order had been produced to show that respondent 3 restored to his original rank as a consequence of the order of reinstatement. The learned Judges then noticed rule 252 of the Mysore

Anand Parkash v. State of Punjab, etc. (Tuli, J.)

Civil Services Rules which authorised the State Government to permit a Government servant to withdraw his resignation. The relevant portion of this rule, as set out in the report of the judgment, reads as under :—

“252 (a) Resignation of the Public service, or dismissal or removal from it for misconduct, x x x x entails forfeiture of past service.

Note:—The appointing authority in respect of a service or post shall be the competent authority to accept the resignation. When the resignation of a Government servant is accepted, the competent authority shall decide the date from which the resignation shall become effective. Where, however, a Government servant is on leave, the competent authority shall decide whether the resignation is accepted with immediate effect or with effect from the date following the termination of leave. * * * A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. Where a resignation has not become effective and the Government servant wishes to withdraw it, the authority which accepted the resignation may either permit the officer to withdraw his resignation or refuse such request. Where, however, a resignation has become effective, sanction of Government with the concurrence of the Finance Department should be obtained before permitting the withdrawal of resignation. In such cases, the Government servant is entitled to count his past services and the period of break between the date from which the resignation has become effective and the date of resuming duty after withdrawal of resignation shall not count unless regularised as leave by a specific order of Government.”

The learned Judges pointed out that the order of reinstatement was not in accordance with rule 252 and, therefore, he could not be reinstated in his original post. The learned Judges did not hold that the State Government could not permit respondent 3 to withdraw his resignation. To repeat, all that was held was that the order of reinstatement was not in accordance with that rule. In the case before me, rule 4.23 authorises the State Government to allow respondent 3 to withdraw his resignation and to pass the consequential

order condoning the interruption in service and treat that period as leave of the kind due to him. It will also be noticed that respondent 3 was allowed 110 days' leave with full pay and 68 days' leave with half pay. The leave granted to him was, therefore, not without pay and allowances but with pay and allowances. The order of reinstatement, as pointed out above, was in accordance with the said rule and, therefore, the present case is distinguishable from the Mysore case.

(7) In *Raj Kumar's case* (Supra), the facts were that the petitioner, a member of the Indian Administrative Service, serving in the State of Rajasthan, asked the Government to relieve him from service, by letter dated August 30, 1964. His resignation was forwarded to the Government of India which was accepted on October 31, 1964. The order of the Government of India accepting the resignation was, however, not communicated to Raj Kumar till November 27, 1964, when he addressed a letter to the Chief Secretary to the Government of Rajasthan saying that he had changed his mind and recommendation should be made to the Government of India to accept the withdrawal of his resignation from the Indian Administrative Service. The Government of India refused to allow him to withdraw his resignation and hold that the resignation having been tendered voluntarily became effective on the date it was accepted by the Government of India and the failure to communicate to the petitioner did not affect his legal status. It was pointed out that—

,"Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action

Anand Parkash v. State of Punjab, etc. (Tuli, J.)

taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State of Rajasthan did not immediately implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties."

In another part of the judgment, their Lordships pointed out that —

"no rule has been framed under Article 309 of the Constitution which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation."

No rule was also brought to the notice of their Lordships permitting a member of the Indian Administrative Service to withdraw his resignation after it has been accepted or to condone the interruption in service like rule 4.23 in our case. Administrative instructions bearing on the subject issued by the Home Ministry of the Government of India were brought to their Lordships' notice but it was held that those instructions did not have any statutory force. Clause (d) of those instructions provided that—

"a resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation had become effective, the officer is no longer in Government service and acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break. * *
* * * *"

The first part of the instruction stated that the resignation would become effective when it is accepted and the acceptance is communicated to the Government servant concerned. To this part of the

instruction, their Lordships did not agree and with regard to the other part of the instruction, viz., that after the resignation becomes effective, the Government servant is no longer in service and the acceptance of the withdrawal of his resignation would amount to re-employing him after condoning the period of break, it was held that it did not confer any statutory right on the petitioner to claim that he should have been permitted to withdraw his resignation and the break in service should have been condoned. It was open to the Government of India to accept his request but if it did not, the petitioner had no legal right to ask for a writ of mandamus under Article 226 of the Constitution directing the Government of India to accept his request for withdrawal of his resignation. In the present case, rule 4.23 *ibid*, which was a statutory rule of service, conferred an authority on the State Government to permit the petitioner to withdraw his resignation and to condone the interruption in his service. That power was exercised by the State Government for good reasons and, therefore, that action cannot be said to be without authority or arbitrary and is not covered by the judgment of their Lordships of the Supreme Court.

(8) It has been pointed out by the learned counsel for respondent 3 that the next promotion from the post of Executive Engineer is to the rank of Superintending Engineer and the requirement for that promotion is that the Executive Engineer must have at least eight years' service and the promotion is by selection so that when the appropriate authority makes a selection out of the petitioner and respondent 3 for promotion as Superintending Engineer, it will be open to that authority to consider their relative merit and appoint the better of the two. The petitioner, therefore, has not suffered any injustice if his promotion has been made about five months later than that of respondent 3. Both the petitioner and respondent 3 are at present working as officiating Executive Engineers. This plea is also not without substance. No gross injustice has been done to the petitioner by reinstating respondent 3 in his original position.

(9) No other point has been argued.

(10) For the reasons given above, I find no merit in this petition which is dismissed but without any order as to costs.

B. S. G.