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SUPREME COURT ON EMPLOYEE'S WITHDRAWAL OF RESIGNATION

A. Introduction

Supreme Court (SC), in the case of *New Victoria Mills*,¹ held recently that an employee cannot withdraw his resignation letter on the mere grounds that there was a delay in relieving the employee from his duties.

B. Brief Facts:

1. Respondent Shrikant Arya (“**Respondent**”) was working as supervisor in National Textile Corporation Limited (NTC) since 1991 and was thereafter transferred to another industrial unit of NTC *i.e.*, New Victoria Mills, Kanpur (NVM) (“**Appellants**”).
2. NVM was declared a sick undertaking under the Sick Industrial Companies (Special Provisions) Act, 1985 due to losses suffered. Modified Voluntary Retirement Scheme (MVRS) was propounded to safeguard the interest of the employees facilitating voluntary retirement of employees.
3. To avail the benefit under MVRS, resignation by an employee had to immediately be brought into force and resignation must be submitted with the only request of disbursing payments for all the benefits of service (*i.e.*, Provident Fund (PF), encashment of earned leave, gratuity, *etc.*).
4. Respondent submitted application for MVRS but due to a pre-existing dispute regarding PF, he requested suspending his application until his PF was paid. However, his resignation under MVRS was listed as accepted on May 28, 2003, and this entailed that the retirement of the Respondent would be effective from June 1, 2003. NVM extended this cut-off date for retirement and requested Respondent to attend to his duties until a new date came into effect. Further, Respondent communicated on June 1, 2003, seeking withdrawal of his resignation.

¹ *New Victoria Mills and Ors. vs. Shrikant Arya* (27.09.2021 - SC) : MANU/SC/0709/2021

5. On July 14, 2003, the application of the Respondent for MVRS was accepted and he was asked to retire with effect from July 16, 2003. Aggrieved, the Respondent approached the Allahabad High Court (HC).
6. The Single Judge Bench and Division Bench of the HC upheld the contentions of the Respondent, observing that the Respondent's resignation was conditional on the payment of all dues including PF. Appellants approached the Supreme Court.

C. Order and Reasoning:

1. SC relied on its judgement in *Air India Express Limited & Ors.*,² where it held that mere delay in relieving someone from their duties does not impact their resignation. In *Raj Kumar* case³ the SC observed that the resignation became effective as soon as it was accepted by the concerned authority.
2. However, the SC also took note of the judgement in the case of *Gopal Chandra Misra* case⁴ where it held that a judge had validly withdrawn his resignation, since it was followed by other sentences intimating a subsequent date from which the resignation would be effective. The resignation was withdrawn before such date and therefore, it was held to be a valid withdrawal.
3. Appellants had argued that the VRS was in the nature of an "invitation to offer" and would, thus, be governed by the principles of contract law. It was contended that the offer was conditional and that an offer cannot be accepted only partly. Thus, it was submitted that the resignation stood revoked until the employer deposited the PF dues.
4. With respect to this contention, the SC held that mere assertion that all benefits arising out of the service period of the applicant would be paid to him was a natural corollary of their resignation and that such a resignation could hardly be called conditional.
5. SC held: *"In contractual terms, appellant No. 1's acceptance of the respondent's offer of resignation as available under the MVRS was completed on 28.05.2003. The respondent cannot be permitted to take advantage of the postponement of the cut-off date by a few days, during which time the respondent was asked to attend to office, albeit against no sanctioned post."*
6. SC concluded: *"It has, thus, rightly been contended by the appellants that the mere delay in relieving the respondent from duties would not impact the acceptance of his resignation, as observed in Air India Express Limited & Ors. A different scenario would have arisen, if the resignation letter was not in praesenti and had fixed a future date for its operation, and before that date the resignation letter was withdrawn."*

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² *Air India Express Limited & Ors. v. Captain Gurdarshan Kaur Sandhu* (2019) 17 SCC 129.

³ *Raj Kumar v. Union of India* (1968) 3 SCR 857.

⁴ *Union of India v. Gopal Chandra Misra* (1978) 2 SCC 301.