

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 2123/2001

Dharmendra Kumar Jain S/o Shri S.p. Jain, 7-Chh-8, Jawahar Nagar, Jaipur.

-----Petitioner

Versus

1. M/s Saka Electronics Pvt. Ltd. Through Its Managing Director, Ga-1, B-1, Extension, Mohan Cooperat, Shershah Suri Marg, Mathura Road, Badarpur, New Delhi.
2. Branch Manager, M/s Saka Electronics Pvt. Ltd., A-126, Subhash Nagar, Shopping Centre, Shastri Nagar, Jaipur.
3. The Judge Labour Court, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Amit Ojha
For Respondent(s)	:	Mr. Nikhil Simlote

HON'BLE MR. JUSTICE ANAND SHARMA

Order

09/04/2025

1. Award dated 28.06.2000 passed by the Labour Court-I Jaipur in LCR No. 128/1993, whereby reference has been answered against the petitioner, has been put to challenge by the petitioner by way of filing the instant writ petition under Articles 226 and 227 of the Constitution of India. He has further prayed that respondents may be directed to reinstate the petitioner in service with effect from 30.03.1989 with all consequential benefits.
2. The petitioner has come out with a case that vide order dated 22.05.1986, he was appointed as Service Technician on Probation basis w.e.f. 05.05.1986 in respondent-company where his services were confirmed on completion of Probation period. Thereafter, he

was promoted on the post of Senior External Engineer in May 1988. The petitioner further stated that all of a sudden, on account of being scammed to the pressure of higher authority he tendered his resignation on 29.03.1989. In the resignation letter dated 29.03.1989, the Assistant Manager was refused to accept the petitioner's resignation for the service of the organisation w.e.f. 29.03.1989 due to his personal reasons and the Branch Manager there also to settle his account at the earliest. On the same day, the Branch Manager sent the resignation letter forwarded to the Competent Authority for formal acceptance and relieving with a further request to serve the notice period. The petitioner has contended in the writ petition that immediately on the next date, he sent one letter dated 30.03.1989 requesting therein that the Branch Manager recalling to treat his resignation as cancelled as he was compelled to submit his resignation under pressure. The aforesaid letter dated 30.03.1989 is stated to have been sent through UPC (Under Postal Certificate), the petitioner further submits that ignoring his letter dated 30.03.1989, vide letter dated 09.04.1989 the authorised signatory of respondent-company accepted his resignation w.e.f. 29.03.1989 by waiving the notice period on request made by the petitioner himself. Petitioner has also submitted that thereafter being of the petitioner-Shri Dharmendra Kumar Jain also requested the AGM (C&D) to respondent No. 2 that resignation dated 29.03.1989 was given in hottest by the petitioner whereas he was not willing to resign and want to serve the respondent-company, therefore, he may be

reinstated in case and thereafter his son would work with devotion with the company.

Without nothing was done, the petitioner raised an industrial dispute under the Provisions of Industrial Disputes Act, 1947 (for short, 'the ID Act of 1947') and vide notification dated 19.04.1993 the appropriate government sent the reference to the Labour Court Jaipur, for adjudication. As per the terms of the reference as to whether termination of the services of petitioner by the respondents w.e.f. 30.03.1989 was valid or not and, if not, the workman was entitled to what relief and monetary benefits.

It is stated by the petitioner in the memo of writ petition that he filed but in pursuance to the aforesaid, he submitted his claim for declaring his termination order dated 30.03.1990 as invalid and illegal with a further direction to the respondents-company to reinstate the petitioner to back in service including monetary benefits. By filing reply to the statement of claim, the respondent-company opposed the relief. Thereafter, impugned award dated 28.06.2000 was passed by the Labour Court-I Jaipur, answering the reference against the petitioner, hence, the instant writ petition has been filed by the petitioner.

On receiving notices of the instant writ petition, reply to the writ petition was filed by the respondent No. 1 and 2 stating therein that initially M/s. Saka Electronic Private Limited (Respondent No.1) was a company engaged in service in servicing and repairing of Onida T.V. which has been later on converted as M/s. Onida Saka Ltd. and is no more engaged in servicing of television therefore, it is out of question to employee of the petitioner in changed

circumstances. It was also submitted in reply to the writ petition that petitioner himself voluntarily submitted his resignation dated 29.03.1989 with immediate effect and in fact the resignation was accepted on the same day i.e. 29.03.1989, however, the acceptance was later on communicated to the petitioner vide letter dated 09.04.1989 that his resignation was accepted w.e.f. 29.03.1989 by waving of notice period.

It was also stated that at any point of time, the respondent-company had received letter dated 30.03.1989 allegedly issued for the petitioner for withdrawing his resignation. It was further submitted that had it been the petitioner, the reference of withdrawing the resignation would have come in the subsequent letter dated 26.06.1989 sent by the father of the petitioner, but there was no such reference of withdrawing the resignation of the petitioner and as such concocted story has been framed by the petitioner and at point of time, the resignation letter was withdrawn by the petitioner. Under these circumstances, after meticulous examination of complete record and the material available on record and law prevailing at the relevant time, learned Labour Court has rightly answered the reference against the petitioner by award dated 28.06.2000 and petitioner has utterly failed to point out any manifest illegality, infirmity or perversity in the award dated 28.06.2000 therefore, the writ petition filed by the petitioner is liable to be rejected.

The petitioner in support of his submission has submitted the judgment of Madras High Court in the case of **R. Jesudasan Vs. K. Selvaraj and Ors.** as well as the judgment of the Hon'ble Supreme

Court in the case of **Shambhu Murari Sinha Vs. Project and Development India Ltd. & Anr.** reported in AIR 2002 SC 1341.

I have examined the record of the writ petition and also heard the counsel for both the sides.

The factual disputed is admitted to be raised by the petitioner by stating that he himself withdrawn his resignation dated 29.09.1989 by sending one withdrawal letter through UPC dated 30.03.1989. The contention of the petitioner that sending the letter through UPC creates the presumption in his favour that the letter dated 30.03.1989 was sent by the petitioner to the respondents. However, such presumption cannot be said to be illegal/irregular. In reply to the statement of claim as well as before this Court on the respondent-company has emphatically denied this fact and has never accepted that such withdrawal letter dated 30.03.1989 was issued by the petitioner nor was it ever received by the respondent-company. The Labour Court, being competent, examined the aforesaid factual dispute on the basis of evidence led by both the parties and in view of the evidence placed before the Labour Court as well as on the basis of fact that the subsequent letter written by father of the petitioner has got no reference with regard to the withdrawal of the resignation, a factual finding has been given by the Labour Court that withdrawal letter dated 30.03.1989 was not issued by the petitioner. Such finding of fact neither be assailed by the petitioner under Article 226 and 227 of the Constitution nor, if, can be raised by this Court.

Since there is finding of fact that the resignation letter was never withdrawn, therefore, the respondent-company was well

within its right to accept the same by waving the notice period, which has been done in this case by the respondent-company by issuing letter dated 09.04.1989.

The judgment of **R. Jesudasan** (supra) has relied upon by the petitioner is on the question that condition of service alone would hold the field and the general concept of master and servant has no place, therefore, statutory rules, if, cannot be ignored. The petitioner while citing the aforesaid judgment has also stated that as per the contract prevailing between the parties, services could have been terminated only after making notice of one month which has not been given in the instant case.

Such judgment in the contest cited by the petitioner is of no help/applicability. It is not a case of termination at the instance of employer and is rather a case of resignation by the petitioner himself, hence, the aforesaid judgment is not attracted on account of altogether different facts and circumstances. So far as the judgment delivered by the Hon'ble Supreme Court in the case of **Shambhu Murari Sinha** (supra) the point decided that the resignation can be withdrawn by the employee before the effective date of resigning mentioned in the resignation letter. Aforesaid position of law has not been stated by either of the parties. However, in the instant case, the facts are altogether different. The petitioner has utterly failed to establish the fact at any point of time he had withdrawn his resignation, therefore, the aforesaid judgment is also of no applicability on account of is altogether different in the facts and circumstances.

In view of the above, I find no merit and substance in the writ petition filed by the petitioner and the same is hereby rejected.

Accordingly the present writ petition is dismissed.

Stay application, all pending application(s) also stand disposed of.

(ANAND SHARMA),J