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SUPREME COURT RULES ON WITHDRAWAL OF RESIGNATION BY AN EMPLOYEE DURING NOTICE PERIOD

30 August 2019

The bench of Hon'ble Justices Uday Umesh Lalit and Vineet Saran of the Hon'ble Supreme Court of India (Supreme Court), *vide* judgement dated 22 August 2019 in Air India Express Limited and others v Captain Gurdarshan Kaur Sandhu [Civil Appeal Number 6567 of 2019], examined whether an employee can withdraw his / her resignation during the term of notice period.

Background

In the present case, the respondent, who was employed as a captain with the appellant, tendered her resignation *vide* an e-mail dated 3 July 2017. On 2 September 2017, she received a response from the appellant wherein her resignation was accepted and her last date of expected release, which was 6 months from the date of her resignation, was also notified to her. On 18 December 2017, the employee sought to withdraw her resignation, but her request for withdrawal was rejected by the appellant *vide* e-mail dated 4 January 2018.

The respondent challenged such rejection by way of a writ petition before the Hon'ble High Court of Kerala (High Court). The High Court, while examining the petition, affirmed that the respondent had a right to withdraw her resignation, at any time prior to expiration of the notice period. The said order was confirmed by a division bench of the High Court, which was then challenged by the appellant before the Supreme Court.

Supreme Court's View

The Supreme Court referred to its earlier decisions in Union of India and others v Gopal Chandra Mishra and others [(1978) 2 SCC 301] and Balram Gupta v Union of India [1987 (supp) SCC 228], and held that while the general rule is that an employee may withdraw his / her prospective resignation any time before it becomes effective, such rule is subject to 2 exceptions:

- presence of a provision to the contrary in the contract of employment / service rules applicable to the employee or a legal bar on withdrawal; and
- arrangements already made by an employer to find a job replacement, acting on the concerned employee's resignation.

Applying the aforesaid rule / principle to the facts of the case, the Supreme Court also examined the Civil Aviation Requirement (CAR) issued by the Director General of Civil Aviation in 2009. CAR mandates a pilot to serve minimum 6 months' notice period,

however, an employer may reduce / waive off such period by accepting the resignation and providing a no-objection certificate to the concerned pilot before the expiry of the notice period.

The Supreme Court, while examining the provision stipulated under the CAR, stated that the same was to serve public interest, as it allowed an employer sufficient time to find a replacement, thereby avoiding inconvenience to passengers. In the present case, since the employer had already found a suitable replacement and incurred considerable costs towards his training, the Supreme Court took the view that the case fell within the ambit of the aforesaid exceptions. In view thereof, the Supreme Court set aside the order of the High Court which had allowed the withdrawal of resignation by the respondent.

Comment

The present judgement by the Supreme Court has culled out clear exceptions from its previous decisions, with a view to bring much needed clarity on the issue of withdrawal of resignation during notice period. The decision is likely to be welcomed by employers, as courts typically interpret employment and labour laws in a pro-employee manner. In taking such a view, the Supreme Court has sought to balance the interests of both the parties (employee and employer). While it recognises the right of an employee to withdraw his / her resignation, the Supreme Court simultaneously introduces reasonable exceptions on exercise of such a right. The exceptions surely safeguard an employer's interest and protect the time, money and efforts expended by an employer towards finding a replacement.

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