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GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF SOCIAL FORESTRY

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Sub: - Representation of Sh. Tariq Ahmad Shah, Ex. SFW seeking therein to treat his resignation as VRS.

ORDER

Whereas, Shri Tariq Ahmad Shah was working as Social Forestry Worker in this Department (Anantnag Division) and during the year 2020, he had approached the Divisional Forest Officer, Social Forestry Division, Anantnag for his VRS w.e.f. 01.12.2020 but due to urgency to contest the DDC elections, he tendered his resignation w.e.f. 1.12.2020 with the undertaking that he will not claim for any pensionary benefits;

Whereas, the resignation/representation alongwith undertaking was received in this office from DFO SF, Anantnag through Regional Director, DSF, Kashmir alongwith the recommendation of Regional Director, DSF, Kashmir vide his letter No: - RDE-14/573-74 dated: - 10.12.2020 that the resignation of the official be accepted, keeping the urgency expressed by the official in view and also nothing adverse/pending against the said official;

Whereas, keeping in view the urgency expressed by the official and in view of recommendation of the concerned DFO/RD, the resignation tendered by the official was accepted by the competent authority (Director, Department of Social Forestry) in terms of Article 200 JK CSR vide S. F Order No.57 of 2020 dated 10.12.2020 issued under endorsement No:-DIR/DSF/Estt./235-37 dated 10.12.2020 w.e.f 01.12.2020;

Whereas, the incumbent had approached this Department through an application dated: - 02.12.2021 requesting consideration to treat his resignation as Voluntary Retirement from Services (VRS) in terms of Article 230 of J&K CSR and accordingly this Department took up the matter with the Administrative Department vide No:- DIR/DSF/Estt/880 dated: - 17.12.2021 with full details for further guidance;

Whereas, the Administrative Department vide letter No: -FST / SF/28/2021-02 dated: 09-02-2022 conveyed as under: -

"...that in terms of service law (resignation) under chapter 44 sub rule 5, once a resignation has been accepted or it becomes effective it cannot be withdrawn, therefore the voluntary retirement cannot act as a relationship with resignation and service stands terminated from the date on which the letter of resignation is accepted by competent authority". And further conveyed that where an employee voluntarily resigns from services forfeiting his past service and had not completed 20 years of qualifying service, he is not entitled to pension"

Whereas, the incumbent had approached to the Principal Secretary to the Government Forest Ecology & Environment Department through representation dated: - 13-03-2023 for treating his resignation/termination as VRS;

Whereas, the said representation was endorsed to this Department on 14-03-2023 with the remarks of the Principal Secretary to "examine for necessary action" and accordingly this Department again took up the matter with the Administrative Department vide DIR/ DSF/Estt/22-24 dated: - 05-04-2023 with full details;

Whereas, the Administrative Department vide letter No:- FST/SF/28/ 2021-02 dated: - 28-07-2023 conveyed as under: -

"... to say that the matter, after its initial examination in the Department was referred to the Department of Law, Justice & PA for opinion. The Department of Law, Justice & PA vide U.O No. LAW-Opn1/ 79/ 2023-10 dated: -23-06-2023 (C. No.7218137) has conveyed in the matter, as under:-

Returned: *The subject matter of the reference to this department basically pertains to revocation of resignation in the garb of section 21 of the General Clauses Act, 1897, tendered by the employee in the instant case which has already been accepted by the competent authority. Once the resignation tendered by the employee voluntarily is accepted by the competent authority, it becomes effective from the date of its acceptance by the competent authority and thereby irrevocable. The Hon'ble Supreme Court and the Hon'ble High Court of Jammu and Kashmir and Ladakh in the following case has held as under:*

The Hon'ble Court in one of the earliest judgement titled as Raj Kumar Vs Union of India AIR 1969 SC 180, held that when a public servant tendered the letter of resignation and invites determination of his employment, his



services clearly stands terminated from the date the competent authority accepts the resignation and in the absence of any rule to the contrary, it will not be open to the public servant to withdraw his resignation. Therefore, till the resignation is accepted the public servant has locus poenitentiae but not thereafter to withdraw the resignation. The operative part of the judgement is reproduced hereunder for facility of reference:-

Termination of employment by order passed by the government does not become effective until the order is intimated to the employee. But when 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 condition 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 poenitentiae but not thereafter".

The similar condition present to the issue in hand arose for consideration before the HHC, J&K in Anjum Hussain vs State of J&K And Ors. on 26 April, 2019 i.e whether the petitioner having resigned on 24.08.2009 and his resignation having been accepted on 13.09.2010 w.e.f 24.08.2009 can seek the revocation of the same after a period of more than seven years. The HHC in para 9-11 observed and held as under:-

The Hon'ble apex Court in Rai Kumar vs Union of India reported as AIR 1969 SC 180 has categorically held that "the resignation is effective from the date on which it was accepted and subsequently withdrawal is ineffective even if acceptance of resignation has not been intimated to the appellant".

In Jai Ram v Union of India Reported as AIR 1954 SC 584, it has been held as under:-

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so long as he continues in service and not after it has terminated."



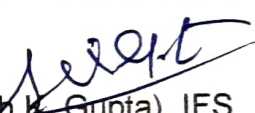
Thus, the petitioner in fact seeks withdrawal of his resignation after a gap of seven years when his name has already been struck off from the rolls of the Unit, therefore, the representation of the petitioner has been rightly decided by the respondents vide order dated 13.12.2013, who after considering all the aspects of the matter has rejected the same being devoid of any merit.


In view of the aforesaid there is no merit in this petition, which is accordingly, dismissed."

In view of the legal position enumerated above, section 21 of the General Clauses Act, 1897 pales insignificant in the facts and circumstances of the instant case. Department is advised accordingly.

The case of the official was re-examined in light of the aforesaid opinion tendered by the Department of Law, Justice and PA and was observed that the representation submitted by Sh. Tariq Ahmad Shah, SFW for treating his termination as Voluntary retirement is devoid of merits and shall be rejected through a speaking order"

Now, in light of the above instructions received from Administrative Department vide communication No:- FST / SF/ 28/ 2021-02 dated: 28-07-2023, the plea of Shri Tariq Ahmad Shah for treating his resignation as VRS has been found devoid of merits and hence rejected.


(Suresh K. Gupta), IFS
PCCF/Director,
Department of Social Forestry,
Jammu & Kashmir.

No: - DIR/DSF/Estt/

 Dated: - 14 -09-2023.

Copy submitted for favour of information & necessary action to: -

1. Principal Secretary to the Government, Forest Ecology and Environment Department, Civil Secretariat Jammu/ Srinagar for favour of information. This takes reference to Administrative Department (Forest)'s letter No. No:- FST/ SF/28/2021-02 dated: 28-07-2023.
2. Regional Director, Department of Social Forestry Kashmir.
3. Divisional Forest, Officer, Social Forestry Division Anantnag, she may serve this order to Shri Tariq Ahmad Shah Ex. SFW.
4. Copy to I/C Website, Direction Office for uploading the instant speaking Order on the official website of the Department.
5. Order File