



## 277. Can a workman resign while under suspension pending an enquiry?

Based on the legal principles and the Calcutta High Court judgment in *Sisir Kumar Dutta vs Union of India & Ors.* [(2001) 2 CALLT 178 (HC), [2002 (92) FLR 372]], a workman under suspension pending an enquiry can submit a resignation, but the employer has the discretion to accept or reject it. The decision to accept or reject depends on the nature of the alleged misconduct and the ongoing disciplinary process.

### Key Considerations:

#### 1. Resignation and Suspension Are Independent Matters

- Resignation is a voluntary act by the employee, whereas suspension is an administrative action taken by the employer due to pending disciplinary proceedings.
- While under suspension, the workman remains an employee and is entitled to a subsistence allowance.

#### 2. Employer's Right to Accept or Reject Resignation

- **If the misconduct is serious**, the employer has the right to reject the resignation and proceed with the enquiry. This prevents employees from evading disciplinary consequences.
- **If the misconduct is not serious**, the employer may accept the resignation, revoke the suspension, and relieve the employee without conducting an enquiry.

#### 3. Legal Precedents and Judicial Observations

- The Calcutta High Court, in *Sisir Kumar Dutta vs Union of India & Ors.* [(2001) 2 CALLT 178 (HC), [2002 (92) FLR 372]], ruled that resignation in contractual employment is bilateral - meaning employer acceptance is required.
- Disciplinary action need not be formally initiated; even a contemplated enquiry is sufficient reason to reject resignation.
- Supreme Court judgments support the principle that an employee cannot resign to escape disciplinary action, including:
  - *Moti Ram v. Param Dev & Anr.* [(1993) 2 SCC 725]
  - *Manjushree Pathak v. Assam Industrial Development Corporation* [(2000) 6 Supreme 98]
  - *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* [(1986) AIR 1571 SC]

#### 4. Effect of Resignation Acceptance

- If the employer accepts the resignation, the employment relationship ends, and the enquiry becomes irrelevant.
- If the employer rejects the resignation, the enquiry proceeds, and the employee may face disciplinary action.

### Conclusion

A workman under suspension pending an enquiry can submit a resignation, but the employer has full discretion to accept or reject it based on the seriousness of the allegations. If the resignation is accepted, the suspension is revoked, and the enquiry becomes irrelevant. However, if the resignation is rejected due to pending or contemplated disciplinary action, the enquiry will continue, and appropriate penalties may be imposed.

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