

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) NO. 7356/2008

Judgment reserved on :06 January, 2010
Judgment delivered on :28.01,2010

Mrs. Mala Tandon ThukralPetitioner
Through: Mr. V. Shekhar, Sr. Advocate with
Mr. S. Ganesh , Advocate.

versus
Director of Education & others Respondents

Through: Mr. Puneet Mittal, Advocate
Ms. Ruchi Sindhwani, Advocate
For R-1 and R-2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

1. By this petition filed under Article 226 of the

Constitution of India the petitioner seeks quashing of the communication dated 04.03.2008 whereby the petitioner was relieved from her duties as a primary teacher w.e.f. 03.03.2008. The petitioner also seeks directions for reinstatement to her previous status as a primary teacher with retrospective effect.

2. Brief facts relevant for deciding the present petition are that the petitioner was a primary teacher in the respondent no.4 school. On account of personal reasons the petitioner submitted her resignation on 5.12.2007 and on 6.12.2007 she approached the Principal and expressed her desire to withdraw her resignation. The very next day i.e. on 7.12.2007 she approached the Principal stating that she is withdrawing her resignation and to treat her earlier resignation as null and invalid. On the very same day the Principal informed the petitioner that the resignation tendered by the petitioner has been accepted by the competent authority on 6.12.2007 and it is not possible to entertain the withdrawal of the resignation letter. Thereafter the petitioner repeatedly approached the school authorities but in vain. She then approached the Regional office of the Directorate of Education, who sought

clarification from the Principal of the respondent no.4 school. In the reply the respondent no.4 school stated that the resignation of the petitioner dated 5.12.2007 was forwarded to the Chairman, Managing Committee for approval and the same by a resolution through circulation was accorded approval on 6.12.2007 and hence, the resignation stood accepted on 6.12.2007. After this the petitioner approached the School Tribunal, which passed the order that it does not have jurisdiction to hear the matter and hence the present petition.

3. Mr. V. Shekhar, Senior Advocate, appearing for the petitioner submitted that the petitioner was not in a proper state of mind at the time of submission of her resignation letter dated 5.12.2007. He further submitted that after submitting the resignation the petitioner had discussed the matter with the family members who counseled her to withdraw the resignation letter and accordingly on 6.12.2007 the petitioner took up the matter with the Principal and later on submitted the withdrawal letter dated 07.12.2007. The contention of the counsel for the petitioner was that before

the withdrawal of the said resignation letter by the petitioner, no decision was taken by the Managing Committee of the School nor any approval of the same was sought by the Managing Committee of the School, therefore, the petitioner was well within her rights to withdraw her resignation letter before it was finally accepted by the school in accordance with Rule 114-A of the Delhi School Education Rules, 1973. Inviting the attention of this court to the letter dated 6.12.2007 addressed by the school to the Members of the Managing Committee and copy of the resolution attached with the said letter, the counsel contended that the resolution purported to have been passed by the members of the Managing Committee by circulation does not contain any date and even the same is not signed by six of its members. Counsel for the petitioner further submitted that even as per the resolution, resignation of the petitioner was accepted w.e.f. 3.3.2008 and therefore also the petitioner was well within her rights to have withdrawn her resignation prior to the said date of 3.3.2008. Counsel for the petitioner further submitted that on 11.12.2007 when the Principal had forwarded the resignation letter to the

Education Officer, Zone-XIII, by that time the withdrawal letter of the petitioner was already in possession of the school but still the same was not forwarded by the school to the Education Officer and such an act on the part of the respondent school would clearly show their malafide and ulterior designs. Counsel for the petitioner further contended that the alleged acceptance of the resignation letter of the petitioner on 6.12.2007, just within 24 hours of its submission would demonstrate utter haste on the part of the respondent to the detriment of the valuable rights of the petitioner who was not given enough time by the school to rethink her decision.

4. Counsel further submitted that vide letter dated 29.12.2007, the Education Officer Zone XIII, clearly pointed out certain discrepancies in the resolution alleged to have been passed by the Managing Committee and therefore it would be quite evident that the alleged decision taken by the Managing Committee of the School was never accorded any approval by the Director of Education in terms of Rule 114-A of the Delhi School Education Rules, 1973 and therefore the alleged acceptance of

the Managing Committee has no validity in the eyes of law.

5. Counsel for the petitioner further submitted that the petitioner had also challenged the decision of the School before the Ld. Presiding Officer of the Education Tribunal but vide orders dated 18.9.2008 the Ld. Presiding Officer of the Tribunal dismissed the appeal of the petitioner for want of jurisdiction. Counsel thus submitted that the action taken by the school to accept the resignation is not only illegal and mala fide on the very face of it but the same is in contravention of the provisions of Delhi School Education Rules.

6. In support of his arguments counsel for the petitioner placed reliance on the following judgments:-

- 1. Ms. Urmil Sharma Vs. Director of Education 1996
III AD (DELHI) 48**
- 2. Kathuria Public School Vs. Director of Education &
Anr. 113 (2004) DLT 703**
- 3. Sonica Jaggi Vs. Lt. Governor & Ors.
152(2008)DLT601**
- 4. Modern School Vs. Shashi Pal Sharma & Ors.
(2007) 8 SCC 540**

7. Refuting the said submissions of the counsel for the petitioner, Mr. Puneet Mittal counsel for the respondent submitted that it was a voluntary act of the petitioner to have tendered her resignation from the said post of primary teacher and it was the petitioner herself who wanted her resignation to be accepted at the earliest and once having done so, the petitioner cannot be allowed to resile from her own stand after her resignation was duly accepted by the Managing Committee of the school through a meeting of the Managing Committee held by circulation. The contention of the counsel for the respondent was that the resignation tendered by the petitioner on 5.12.2007 was duly accepted by the Managing Committee of the school on 6.12.2007 and therefore, any withdrawal made by the petitioner on 7.12.2007 became totally inconsequential.

8. Counsel for the respondent further submitted that no fault can be found with the resolution passed by the Managing Committee by circulation as it is a normal practice adopted by the Managing Committee and no illegality or infirmity or any sort of fault can be found with the same. Counsel further submitted that

the resignation was accepted by a majority of the members of the Managing Committee and simply because no date of resolution was mentioned in the copy of the resolution attached to the letter dated 6.12.2007, the same by itself would not invalidate the said resolution. Counsel further submitted that any withdrawal made by the petitioner after the acceptance of the resignation by the Managing Committee of the school was an exercise in futility by the petitioner as by that time there was no scope for reconsideration by the Managing Committee of the request of withdrawal made by the petitioner.

9. Counsel for the respondent further submitted that the approval of the Directorate of Education is not mandatory as the respondent school being an unaided private institution is well within its rights to take its own decision without seeking prior approval of the Director of Education. In support of his arguments counsel for the respondent placed reliance on the judgment of Apex Court in ***Kathuria Public School Vs. Director of Education & Anr. 123 (2005) DLW 89 (DB)***

10. I have heard learned counsel for the parties at

considerable length.

11. It is not in dispute that the act of resignation from the post of primary teacher was a voluntary act of the petitioner as nobody had forced her to resign from the said job. It is further not in dispute that the petitioner had resigned from the said job on 05.12.2007 with the request for its acceptance at the earliest and after giving a second thought to the same, she sought to withdraw her resignation on 7.12.2007. The stand of the school is that the resignation of the petitioner was accepted on 6.12.2007 that too through meeting of the Managing Committee held by circulation. However, it is quite bizarre that the school acted in utter haste and accorded their acceptance just within 24 hours to the said decision of the petitioner resigning from her job. Another amazing factor is that the resignation was given an instant approval by the Chairman of the Managing Committee of the school and thereafter the members of the Managing Committee were called upon to append their signatures on the resolution sent to them. Indisputably, there was no agenda item circulated to the Managing Committee and there is no date of the resolution when the same

can be stated to have been passed by the members of the Managing Committee of the School. But even if these discrepancies are ignored the indisputable feature of the letter dated 6.12.2007 is that the members of the Managing Committee were requested to append their signatures on the resolution and the same was not sent for their independent decision. It would be useful to reproduce the contents of the letter dated 6.12.2007 as below:-

"06 December, 2007
All members of the
Managing Committee
Delhi Public School Rohini,

Dear Sir/Madam

Ms. Mala (Tandon) Thukral, PRT has resigned from our school on personal grounds. Her resignation has been approved by the Chairman, Managing Committee, DPS Rohini. A resolution from the School Managing Committee is required to be forwarded to the Directorate of Education, conveying the acceptance of the resignation.

You are requested to kindly append your signature on the said resolution enclosed herewith.

Thanking you

With Warm regards
Yours sincerely
Sd/-

12. In the present day world of cut throat competition and growing unemployment it is not an easy task to secure a job. The

petitioner no doubt was a regular employee appointed on the post of a primary teacher and it has to be borne in mind that nobody would ordinarily choose to resign from his/her job unless there are compelling circumstances to do so. As per the petitioner she was suffering from depression and when she consulted her family members, she immediately reviewed her decision and sought withdrawal of resignation but shockingly within just 24 hours the school authorities sought the approval of the resignation through circulation by the Managing Committee. This court is not finding any fault if in certain cases there is a requirement of any resolution to be passed by the Managing Committee by circulation but in any case the issue of resignation of the petitioner was not one such matter which required such an urgent attention of the members of the Managing Committee. Moreover, the members of the Managing Committee were required to append their signatures on the resolution already circulated and therefore also it cannot be inferred that the members of the Managing Committee took any independent and conscious decision on the resolution sent by the school authorities. In all such cases, it is the moral duty of the

Members of the Managing Committee, either to call the concerned employee to have his/her views behind tendering the resignation or through some other process so as to feel satisfied that the decision taken by the employee is voluntary and independent and not under any force, duress, coercion or because of some depression or unstable state of mind.

13. The counsel for the petitioner placed reliance on para 21 of ***Modern School Vs. Shashi Pal Sharma (supra)***. This would however be of no help to the petitioner as the conditions therein are only departmental instructions and do not form part of the ratio decidendi of the judgment.

14. It is also not in dispute that by letter dated 20.2.2008 the Deputy Director of Education had directed the school to withdraw the said resignation as the school had failed to adopt the proper procedure as earlier pointed out by the Education Officer vide letter dated 29.12.2007. The school has failed to pay heed to this direction and went further to relieve the petitioner from her duties w.e.f 3.3.2008. The respondent no.4 school is a private unaided school and is bound by the Delhi School Education Act,

1973 and the Rules framed there under. It would be pertinent to reproduce Rule 114-A of the said Act here:

"114-A Resignation

The resignation submitted by an employee of a recognized private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director. Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period."

Hence it is manifest from the above provision that the respondent no.4 school had to get the approval from the Director of Education within 30 days failing which the approval would be deemed to have been received after the expiry of the said period.

15. The counsel for the petitioner placed reliance on the judgment of this court in ***Urmil Sharma vs. Director of Education (supra)*** and it would be pertinent to reproduce the relevant para of the same here:

"8. It is not in dispute that in the matter of acceptance of resignation compliance of Rule 114 A of the Delhi School Education Rules is necessary. Rule 114 A reads:

114-A Resignation

The resignation submitted by an employee of a recognized private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director. Provided that if no

approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period.

9. *A bare reading of the Rule would show that there are two conditions precedent in order to make the resignation effective, namely, it must be accepted within a period of thirty days from the date of the receipt of the resignation by the Managing Committee and such acceptance should be with the approval of the Director of Education. The approval, if not received within thirty days, the Director will be deemed to have recorded the approval after the expiry of thirty days."*

The twin conditions above stated are cumulative and not in the alternative and failing one of these, the resignation cannot be said to be final.

16. According to Wharton's Law Lexicon (15th Edition, page 1502) the word "*resignation*" has been derived from the maxim: *Resignatio est juris proprii spontanea refutatio* which means resignation is a spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. Under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation but once the resignation is accepted the contract comes to an end and the relationship of master and

servant stands snapped. At the same time ,it has been held by the Apex court in **Moti Ram vs. Param Dev (1993)2SCC725** that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It also held that:

"In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and conditions governing it."

17. Hence applying the same to the present case, the bilateral act of resignation required two conditions to be fulfilled:

- (i) tendering of the resignation of the petitioner and acceptance by the respondent no.4 school; and
- (ii) approval by the Directorate of Education within a period of thirty days

The second condition being not fulfilled in the case, the

resignation cannot be said to be operative.

18. Hence it would be manifest from the above discussion that when an employee resigns his office, it implies that he has taken a conscious decision to sever his/her relationship with the employer. However, in the present case the petitioner after contemplating her initial decision, did not want to sever her relation with her employer and reconsidering the same withdrew the resignation letter.

19. Therefore, relieving a teacher from service after resignation is tendered and thereafter withdrawn by her before its acceptance by the appropriate authority will not be justified.

20. In the light of the above discussion, the respondent no.4 school is directed to reinstate the petitioner to her previous post of primary teacher with continuity of service and grant of full salary and allowances etc.

The present petition is accordingly allowed.

January 28, 2010

KAILASH GAMBHIR,J

