

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 2125/2010**

% **Date of Decision: 26.03.2010**

MUNICIPAL CORPORATION OF DELHI PETITIONER
Through Ms.Shobha Gupta, Advocate

VERSUS

DINESH KUMAR SANGAL RESPONDENT
Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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CM No. 4245/2010 (Exemption)

Allowed subject to just exceptions.

Application stands disposed of.

WP(C)No.2125/2010

1. This petition has been filed by the petitioner being aggrieved of the order dated 13.11.2009 passed by the Central Administrative Tribunal (for short "the Tribunal") in TA No. 297/2009, whereby the Tribunal has been pleased to quash the order of the petitioner in having

accepted the resignation of the respondent, which according to the respondent was withdrawn before its acceptance.

2. The relevant portion of the aforesaid order passed by the Tribunal is reproduced hereunder:-

19. Taking into account the total facts and circumstances of the case, it is crystal clear that the Applicant has not tendered a clean and unconditional resignation. It is also admitted that there were grievances of the Applicant which remained to be redressed by the MCD. Even the acceptance of resignation is also a conditional acceptance which is not legally tenable. We are of the considered opinion that the Applicant has made out a case in his support that withdrawal of resignation tendered by him on 31.01.2008 needs to be accepted and he should be taken back in the service of MCD. We order, accordingly. In the result, the Respondents are directed to take following action :-

(i) to issue an order accepting the withdrawal of resignation by the Applicant with effect from 31.1.2008,

(ii) to post him to the position as per his rank and entitlement,

(iii) From 31.01.2008 till the date Applicant rejoins his service in MCD, Respondents are directed to treat that period as spent on duty for all intents and purposes,

(iv) since the Applicant has not worked in this period the period may be regularized as leave admissible to the Applicant and the period should be treated as continuous service for him,

Respondent-1 is directed to grant opportunity to the Applicant to present his grievances which shall be examined and orders passed as per law within a period of 3 months under intimation to the Applicant and

(vi) We are not passing any order with regard to the disciplinary case that was pending against the

Applicant. In case the same is still pending, the Respondents are directed to finalise the same within 3 months period.

3. Briefly stating, the facts giving rise to this case are that the respondent Dinesh Kumar Sangal who was working as Assistant Engineer (Civil) with MCD was overburdened in his work. Accordingly, he gave various representations to the petitioners on 7.4.2003 and on various other dates ventilating his grievance that he has been looking after additional charges for certain posts which were vacant. He also apprised that in the absence of adequate staff, he had been overburdened and he might commit mistakes due to heavy work load that he was discharging.. He also submitted a representation dated 13.08.2003 requesting for his transfer to a different post. The Deputy Commissioner, MCD, admitted in his communication dated 01.01.2001 written to the Additional Commissioner that there was acute shortage of staff in the Building Department of MCD and that the respondent looking after the work of Executive Engineer as well as seven other Assistant Engineers in the City Zone which happens to be a sensitive Zone, the Additional Commissioner, MCD, suggested that at least one post of Executive Engineer and three posts of Assistant Engineers should be filled up immediately, which would reduce the burden of the respondent.

4. Despite taking note of his grievances, the petitioner rather put respondent under suspension by alleging that he had committed

misconduct and also initiated disciplinary proceedings against him but later on he was reinstated. He was also transferred many a times for which he felt harassed and frustrated and for which he submitted his conditional resignation vide letter dated 26.07.2007. The said letter, for the sake of reference, is reproduced hereunder:-

“To

The Commissioner
Municipal Corporation of Delhi
Town Hall, Chandni Chowk,
Delhi 110 006.

Subject : Representation and resignation from Mpl
Services.

Respected Sir,

Your kind attention is invited towards the letter from the undersigned dated 06-06-2007 addressed to the Additional Commissioner (Engg.), (Copy as “Annexure A” for you kind consideration), regarding resignation from the Look After Charge of the Assistant Engineer (Civil) copy of which was endorsed with enclosures to Director (Personnel), the Engineer-in-Chief, the Director of Vigilance, The Director of Inquiries, the AO (Estt.)-III, the Addl. Dy.Commissioner (Engg.) & S.E.(Pr.)-III-South & Central Zone, EE-V/Central Zone under reference to the CED office order no.F.5(27)/CED(II)/Pt.IV/2001/30/6418-89 dated 05-03-2001, vide which the look after charge work of Assistant Engineer (Civil) was assigned to the undersigned wherein you were requested to consider & issue necessary orders on priority so that the undersigned may continue his service as Junior Engineer (Civil) with the department in the public interest & to survive family life and social life w.r.t. the approval of the Superintending Engineer (Project) dated 23-05-2007 on the following but sorry to say nothing has been heard till date.

It is also submitted that the Addl. Commissioner (Engg.) and ACA-GPF aren't replying the letters under RTI Act 2005 even after enclosing the cheque for the required fee (Copies as Annexure B).

The undersigned is attending his office, fulfilling the required norms of the service to get his salaries and being paid for regularly without any work, sitting ideal, occupied office space and not satisfied for salaries received from the department in proportionate to the work done in the interest of the Government and the public for which the salaries are being paid to the undersigned. The Executive Engineer-V isn't ready to offer the response regarding the ACR 2006-07, submitted to him vide his receipt/diary no.:132 dated 23-04-2007 (Copy as "Annexure C") and the request for issue, "no objection for transfer to other division" submitted on 08-06-2007 (Copy as "Annexure D") and another request dated 29-06-2007 vide his diary no.:626 dated 29-06-2007 regarding "No dak") being put up to the undersigned (Copy as "Annexure E").

The ACA/Central Zone has refused to deduct the advance income Tax at source for the year 2007-08 and referred back the arrear against revised DA for the period w.e.f. 01-01-2007 to 31-03-2007 for which the modified bill was put up but no payment of the said bill is made through ECS to my Bank A/C till date, 2ndly, he was issued a certificate u/s 203 of the Income Tax Act 1961 for tax deduction at source from income chargeable under head "Salaries" for the year 2006-07 (the period 01-04-2006 to 31-03-2007) showing the deduction of Rs.8,181/- as tax paid by the employer on behalf of the employee u/s 192(Ia) on pre-requisites u/s 17(2) with outstanding tax payable as Rs.10,573/- even when net income tax payable to Rs.18,754/- which has already been deducted at source from the salaries paid from 01-04-2006 to 31-03-2007 by the employer, MCD (Copy of the said certificate and declaration of Income for 2006-07 submitted to Accounts under EE-V as "Annexure F and G").

The above submissions are the sufficient causes to satisfy the harassments and mental torturing to the undersigned by the department (MCD) at every level and the undersigned is not in a position to serve the department without the healthy environment, to tolerate such type of hardship, harassments and mental torture and to bear the administrative complications/consequences being faced based on undue responsibilities of the Executive Engineer (Bldg.), assigned to him under City Zone/MCD during March 2003 to October 2003 even when he isn't promoted to the post of the Assistant Engineer (Civil), till date.

In light of the above, you Highness is prayed to look into the matter and help the undersigned so that he may serve the department free from all such type of mental torture and the said harassments, survive family life, social life and satisfy himself for salaries received from the department in proportionate to the work done in the interest of the Government and the public for which the salaries are being paid to the undersigned. The undersigned isn't ready to enjoy the public money beyond the rule and regulations in the interest of the Government and the public works.

The undersigned is to tender his resignation from the Municipal services for the required period of one Month under the rules applicable at the time of his appointment-1979. Kindly consider, accept under intimation to the undersigned for further necessary action.

Thanking you in anticipation of the blessings in the request made.

Yours Faithfully,
Sd/-

Dated: 26-07-2007 (DINESH KUMAR SANGAL)
Junior Engineer (Civil)
Working as AE (Civil) on Look After Charge
Division-V/Central Zone, Lajpat Nagar-I
(Shiv Mandir Marg) New Delhi-110024
Phone (Mobile) 0-9910388492

5. Neither the said resignation letter was accepted nor any communication was sent regarding the request made by the respondent to the petitioner even though he had been making representations time and again and had been reiterating his request for accepting his resignation. However, the petitioners accepted his resignation vide order dated 31.1.2008, which is reproduced hereunder:-

“No.HC-II/Engg/HQ/08/1255 Dated 31.1.08

OFFICE ORDER

With reference to the request dated 26.07.2007, 23.10.2007, 29.10.2007, 31.10.2007, 29.11.2007, 30.11.2007, 17.01.2008 and 20.01.08 addressed to the Commissioner, Addl. Commissioner (Engg.) Director (P), Director of Vigilance, Director of Inquiry, Engineer-in-Chief and Director-in-Chief/DEMS in which you have requested for resignation from Municipal Services and whereas you have also requested in your letter dated 19.10.2007 that you are interested to resign from Municipal Services due to survival of you family life & social life.

Whereas you have again requested in you representation dated 17.01.2008 addressed to the Commissioner, Addl. Commissioner (Engg), and Engineer-in-chief through fax that the department should advised me whether I have to suicide within 24 hours if no reply is received to me from the department about my resignation.

Whereas you have again sent a letter dated 20.01.2008 addressed to the Commissioner of Police, Delhi in reference to letter dated 17.01.2008 and help was sought from the police.

Whereas the department registered two regular departmental enquiries Nos. 3137/DEC/DOI & 3145/DEC/DOI and are still to be decided by the department.

In view of the above, the Commissioner, MCD vide his orders dated 23.01.2008 has acceded to you requests for resigning from Municipal Services with immediate effect on the conditions that final payments such as GPF, GIS & others financial benefits will be released after outcome of the departmental enquiries pending against you.

Sd/
(Raj Pal Singh)
Addl. Dy. Commissioner
Engg. Department (HQ)

6. It is an admitted fact that on 31.01.2008 itself the respondent had withdrew his resignation.
7. Aggrieved of the order passed by the petitioners, the respondent filed a writ petition before this Court which was transferred to the Tribunal and was registered as TA No.297/2009.
8. The learned counsel appearing for the petitioners fairly conceded that in their reply to the writ petition the petitioners accepted the sending of the letter withdrawing the resignation letter though it has been argued that no such letter was available.
9. The Tribunal taking note of all the facts of this case and the nature of resignation letter given by the respondent and also taking note of all the difficulties which have been expressed by him from time to time, including various steps taken by the petitioner to harass the respondent, including stopping of salary, suspending him, etc. accepted the plea of the respondent and allowed the Transfer Application. Some observation made by the Tribunal which throws light on the mental

state of the respondent while sending the resignation letter and withdrawing the same, are reproduced hereunder:-

14. From the point of view of the time taken by the Respondents to consider the resignation, it is found that Respondents have taken quite considerable period of time and could only pass order on 23.01.2008 and communicated on 31.01.2008 though the Applicant's letter is dated 26.07.2007. Within the period of about 5 months, the MCD could have redressed his grievance by giving him appropriate opportunities. MCD did not do so. Therefore, the period taken even to consider his resignation is so long and beyond one month period, it clearly indicates non-application of mind, non redressal of his grievances and thus such acceptance letter cannot be sustained in the eyes of law.

15. From another angle, the Rules of Government of India are very clear i.e. after the orders of acceptance on the resignation is accorded, before such employee is relieved, if the concerned government servant withdraws his resignation in the interregnum period the same will be valid in law. The Respondent-MCD in its order dated 31.1.2008 has indicated that the Commissioner of MCD has passed order dated 23.01.2008 to come into force with immediate effect on the condition that final payments such as GPF, GIS and other financial benefits would be released after outcome of the departmental enquiries pending against the Applicant. There is no order to show when the Applicant was relieved of his duties. If so on what date he was relieved? The order was communicated to the Applicant on 31.1.2008 on which date he had withdrawn his resignation. As per the Government of India guidelines the withdrawal of resignation need to be accepted while waiting for the Applicant to be relieved. The MCD could not produce any document to show the date on which the Applicant was relieved nor it was brought to our notice about the reasons for rejecting the resignation withdrawal letter. It is trite that only acceptance of resignation with immediate effect does not snap the jural relationship between the employee and employer. Relinquishment of charges

held by the employee is the culmination of the said act. In the absence of such relinquishment/relief by the Applicant, his jural relationship in MCD did not snap. The validity of the order dated 31.1.2008, since challenged by the Applicant in the TA and pressed his withdrawal of resignation on the same date (31.1.2008) leads us to infer that the relinquishment of charge/post has not become effective on 31.1.2008 or thereafter. Thus, his jural relationship with MCD continues. In this regard, we place our reliance on the judgment of Hon'ble Supreme Court in the case of State Bank of Patiala Versus Phoolpati [2005 STPL (LE) 33939 SC].

16. The Applicant's conditional resignation highlighting his grievances, was not verified by the MCD to know about the same. That would have given the Applicant an opportunity to explain the facts and would have conveyed his views on the resignation. By not according such an opportunity, the principle of audi alteram partem has been violated. Thus, in our views, the process of acceptance of the conditional resignation of the Applicant by Respondent was vitiated. Thus, MCD committed a legal error in this regard.

17. Another issue that crops up for our consideration is whether resignation in the present case was voluntary. We will first look into the definition and go into the nature. In the case of J. K. Cotton Spg. And Wvg. Mills Company Ltd. Vs. State of Uttar Pradesh [1990 STPL (LE) 15962 SC], Hon ble Supreme Court has observed that "there can be no doubt that a resignation must be voluntarily rendered for if it is tendered on account of duress or coercion, it ceases to be a voluntary act of the employee expressing a desire to quit service." The meaning of the terms "resign" in different dictionaries is as under:-

Name of the Dictionary	Meaning of 'Resign'
Black's Law Dictionary	Formal renouncement or relinquishment of an office.
Shorter	To relinquish, surrender,

Oxford English Dictionary (Revised Edn. Of 1973)	give up or hand over (something); esp., an office, position right, claim, etc. To give up an office or position; to retire.
The Random House Dictionary (College Edn.)	To give up an office, position etc.; to relinquish (right, claim, agreement etc.)

Since the Applicant did not resign in a tension free condition and since the resignation was not a simple and unconditional letter, we cannot consider the same as voluntary. The official/working environment coupled with the tension, he was forced to tender his resignation.

18. Between the employee and the employer there exists jural relationship and the employee can withdraw his resignation before the employer accepts the same and employee gets relieved. This is trite that resignation can be withdrawn before the same becomes effective as held by Hon'ble Apex Court in the case Union of India versus Gopal Chanda Mishra [1987 (2) SCC 301]; Punjab National Bank Versus P. K. Mittal [AIR 1989 SC 1083]; Balram Gupta Versus Union of India [AIR 1987 SC 2354]; Shambhu Murari Sinha Versus Project and Development India Ltd. & Another [JT 2002 (3) SC 37]; and North Zone Cultural Centre & Another Versus Ved Pathi Dinesh Kumar [JT 2003 (4) SC 155].

10. Taking all these facts into consideration and going through the letters written by the respondent to the petitioners, which reflects his state of mind and reveals that at the time when he submitted his resignation he was not a person who was acting with free mind and also keeping in view that the resignation stood withdrawn before the acceptance was communicated to the respondent, which fact can be inferred from the fact that as per the office order the resignation was

accepted on 31.1.2008. On the same day the resignation letter was withdrawn. Even if it is presumed that the resignation was duly accepted, the question of its communication to the respondent would not arise inasmuch as there is nothing on record that the said letter was accepted by the petitioners or that a communication with respect to the acceptance of resignation was made to the respondent before he wrote a letter withdrawing his resignation. The submission made by learned counsel for the petitioner that the resignation was not withdrawn is not sustainable in view of the averments made by the respondent in paragraph 30 of his writ petition, which was transferred to the Tribunal, wherein he has stated as under:-

30 That when all the requests and prayers fell flat, the Petitioner made up his mind to stand for his legal rights and withdrew his resignations dt 21.05.07 and 26.07.07 vide his letter dated 31.01.08 before acceptance of his resignation. The petitioner further informed the Respondents that he was going to initiate legal proceedings against the Respondents as he had no other option left. **(The withdrawal letter dt. 31.01.08 and due receiving along with Postal receipts have been annexed herewith as Annex-S (Colly))**

11. It may be observed here that no specific reply was given by the petitioners to the aforesaid paragraph of the writ petition. However, vide reply affidavit filed by the petitioners they have admitted the sending of withdrawal letter though by stating that the so called withdrawal of resignation is inconsequential and irrelevant. As stated above, the learned counsel appearing for the petitioners fairly conceded

this fact that such a withdrawal letter was received from the respondent and has not been denied by the petitioners before the Tribunal.

12. In view of the aforesaid, we find no infirmity in the order passed by the Tribunal which calls for our interference while exercising our jurisdiction under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

CM No.4244/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is accordingly disposed of.

MOOL CHAND GARG, J.

MARCH 26, 2010

'DC'

ANIL KUMAR, J.