

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

Date of decision: 6th May, 2011

+

W.P.(C) No.6681/2004

% MRS. MANJU CHANDRA

..... Petitioner

Through: Mr. Dinesh Agnani & Ms. Leena
Tuteja, Advocates.

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Anurag Mathur, Adv. for R-1.
Dr. Aurobindo Ghose, Adv. for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner impugns, i) the decisions / orders dated 18th February, 1998 / 21st May, 1998 of the Governing Body of the respondent No.3 Daulat Ram College terminating the services of the petitioner w.e.f. 23rd November, 1997; ii) approval given by the respondent No.1 University of Delhi thereto;

and, iii) the order dated 3rd September, 2003 of the Appeal Committee of the respondent no.1 University dismissing the appeal of the petitioner. The petitioner also seeks a direction for regularizing her Extra Ordinary Leave from 23rd November, 1997 till 9th July, 1998 when she claims to have reported for duty. The petitioner also seeks a mandamus to the respondent No.3 College to grant voluntary retirement to the petitioner in terms of her letter dated 26th February, 1998, together with all the retiral benefits.

2. Notice of the petition was issued and the pleadings have been completed.

3. The counsels for the parties have been heard.

4. The petitioner was employed with the respondent No.3 College as a Reader in the Hindi Department since 20th August, 1967. The petitioner in or about the year 1992 applied to the respondent No.3 College for grant of Study Leave; the respondent No.3 College sought certain particulars / information from the petitioner in this regard; the petitioner claims that before she could submit the said particulars / information, she suffered a

fracture and left for United Kingdom (UK) to be with her husband working there as a Doctor; instead of said leave she then applied for leave on medical grounds, subsequently upon furnishing particulars / information, she was granted Study Leave for one year with effect from 15th September, 1993 to do Ph.D on full pay & allowances and subject to approval of University; the petitioner having failed to fulfill the conditions, the said leave was converted into Extra Ordinary Leave; the petitioner remained on Extra Ordinary Leave till 28th February, 1996; the petitioner asked for further Extra Ordinary Leave but failed to have herself examined by Doctor as required; that the respondent No.3 College in the circumstances, issued notice dated 3rd / 10th November, 1997 to show cause as to why action should not be taken against her for being unauthorizedly absent from duty with effect from 29th February, 1996 and also called upon the petitioner to join duty on or before 23rd November, 1997; that the petitioner applied for further leave but was informed that under the Rules of the University the total period of absence from duty could not exceed five years in all and was given time till 2nd January, 1998 to join duty; the petitioner continued to apply for leave and

ultimately on 26th February, 1998 sought voluntary retirement as per the University Rules.

5. The Governing Body of the respondent No.3 College in its meeting held on 18th February, 1998 resolved to terminate the services of the petitioner with effect from 23rd November, 1997. The petitioner upon learning of the same averred that the decision to terminate without approval of the University and without considering her request for voluntary retirement was illegal. The petitioner claims to have reported for duty on 9th July, 1998 and further claims that she was not allowed.

6. The counsel for the petitioner has confined his argument to the grant of benefits of voluntary retirement to the petitioner. It is contended that the petitioner having applied for voluntary retirement, the letter dated 2nd / 6th April, 1998 of the respondent No.3 College intimating to the petitioner of the decision to terminate her services and without considering the request for voluntary retirement is untenable. It has further been contended that as per the “Form of Agreement of Service for College Teachers” contained in Annexure to Ordinance XII of the University, the termination could only be

by giving three months' notice in writing or payment of three months' salary in lieu of notice and the question of termination could not be decided by the respondent No.3 College without the prior approval of the Vice Chancellor.

7. It is contended that the decision of the Governing Body of the respondent No.3 College in the meeting held on 18th February, 1998 to terminate the services of the petitioner is of no avail in as much as no steps for seeking approval of the Vice Chancellor of the University were initiated; that it is for this reason only that the Governing Body of the respondent No.3 College in the meeting held on 21st May, 1998 reconsidered the matter. With reference to the Prospectus of the respondent No.3 College for the year 1998-99, it is urged that the name of the petitioner finds mention therein indicating that the respondent No.3 College was also treating the petitioner to be in employment. It is thus contended that before receipt of approval of the Vice Chancellor, the application of the petitioner for voluntary retirement had been submitted and should have been allowed. With respect to the order of the Appeal Committee, attention is invited to the dissent expressed by one of the members of the Appeal Committee. It is further contended that as per

the terms of employment of the petitioner, the petitioner during the pendency of appeal is entitled to salary and salary of about six years would be so due to the petitioner while if the petitioner's request for voluntary retirement were to be accepted, the liability of the respondent No.3 College is of only five years' salary.

8. The counsel for the respondent no.1 University has explained that the delay occurred in the disposal of the appeal because the Appeal Committee is to also comprise the nominee of the President of India as the Chancellor of the University and which nomination takes time. With respect to the claim of the petitioner for salary during the period of pendency of appeal, it is contended that though as per the proviso to Clause 9(1) of the Form of Agreement (supra) annexed to Ordinance XII, a teacher, during the pendency of the appeal is entitled to continue to draw such salary or subsistence allowance, as he / she was drawing prior to termination of service but since the petitioner had remained without pay from 23rd November, 1992 till 23rd November, 1997 and was not drawing any salary or subsistence allowance prior to termination of her services, the question of

her being entitled to any amount during the pendency of the appeal does not arise.

9. The counsel for the respondent No.3 College has contended that upon receipt of approval of the University vide letter dated 24th / 27th July, 1998, the services of the petitioner were terminated vide letter dated 26th / 27th August, 1998 and which has not been challenged in this petition. He has also contended that the petitioner as an academician could not remain away from the respondent No.3 College for long and to the detriment of the students; it is contended that the petitioner so long as continued to occupy the post, the College could not have appointed anybody else also and owing to the highly negligent conduct of the petitioner, the respondent No.3 College has suffered and the petitioner is not entitled to any relief on this ground alone. It is also contended that the application for voluntary retirement was made after knowledge of the decision of the Governing Body of the respondent No.3 College to terminate the petitioner. It is further contended that the petitioner having abandoned her employment, no notice of three months was to be delivered to her. With reference to the Rules of

voluntary retirement, it is contended that the same is not a matter of right and requires acceptance by the appointing authority. It is urged that the petitioner cannot be permitted to thwart the action against her of termination for unauthorized absence by applying for voluntary retirement. It is yet further contended that it is apparent from the conduct of the petitioner that she is not interested in joining back the services of the respondent No.3 College and thus even if termination of her employment is held to be illegal, the same would serve no purpose. With respect to the dissent expressed by one of the members of the Appeal Committee, it is contended that the said member also has agreed with the action of termination. It is argued that the approval of the Vice Chancellor relates back to the date of decision of the Governing Body.

10. The counsel for the petitioner has in rejoinder contended that the decision of the Governing Body to terminate the petitioner was communicated to the petitioner after the petitioner had already sought voluntary retirement.

11. The petitioner in the writ petition has shown herself as permanent resident of UK. There is no possibility of the petitioner joining back the respondent No.3 College. The petitioner appears to have since the year 1993 settled down in UK with her husband. The only question in these circumstances, is thus whether the petitioner ought to have been allowed to avail of voluntary retirement.

12. The petitioner in the present case applied for voluntary retirement after her request for continuing to remain on leave had been declined and after she had been issued notice to show cause as to why her services should not be terminated for being unauthorizedly absent. The termination of services of the petitioner is also w.e.f. 23rd November, 1997 i.e. from prior to the date of the application of the petitioner for voluntary retirement. In these circumstances in my opinion, the petitioner cannot be heard to contend that even though she remained unauthorizedly absent from her duty and axiomatically to the detriment the respondent no.3 College and its students, she should nevertheless be given the benefits of voluntary retirement. If the

same were to be permitted it would tantamount to giving premium to the default of the petitioner.

13. The conduct of the petitioner also does not justify considering the case of the petitioner in this equitable jurisdiction. The petitioner initially applied for Study Leave for two years; however it becomes quite apparent that the petitioner never intended the leave for study purposes and in the long time of over five years had not been able to justify her application for Study Leave; even though the petitioner thereafter sought Medical Leave but the record shows that the petitioner did not submit any medical certificates for the period 28th February, 1993 to 14th September, 1993 and again represented that she wanted Study Leave but failed to satisfy the criteria for availing the Study Leave and again sought conversion of the Study Leave into Extra Ordinary Leave. The counsel for the respondent no.3 College has invited attention to the Calendar of the respondent no.1 University of Delhi relating to the Leave Rules applicable to whole-time/permanent teachers. The same unequivocally provides that the total period of continuous absence from duty on leave shall not exceed three years except in cases where leave is taken on

Medical Certificate – even in those cases “the total period of absence from duty shall in no case exceed five years in all during the entire period of service”. The petitioner in the present case inspite of being called upon to have herself examined from a Govt. Hospital or a Medical College in U.K. did not do so. The only conclusion is that the petitioner was not entitled to Extra Ordinary Leave beyond three years also. Be that as it may, the petitioner even after expiry of five years on 22nd November, 1997 did not join duty/employment. The petitioner thus had no right left to join employment after that date and a clear case of abandonment of employment by the petitioner is made out. That being the position, the option given by the petitioner on 26th February, 1998 of voluntary retirement if she should not be sanctioned further leave cannot entitle the petitioner to the benefits of voluntary retirement.

14. I find the facts of the present case to be closely similar to those of ***Shri V. K. Sayal Vs. Bharat Heavy Electricals Limited*** (2001) VII AD (Delhi) 737 where also the application for voluntary retirement was not considered for the reason of a decision having been taken to draw

disciplinary proceedings for unauthorized absence. It was held that the discretion exercised in refusing the benefit of the scheme of voluntary retirement to such an employee who inspite of being required to join his duties did not care to join duty like a sincere and devoted employee, was not required to be interfered with.

15. Reference may also be made to the surprise expressed by the Supreme Court in *Union of India v. A.N. Saxena* (1992) 3 SCC 124 at the employee having been allowed to retire voluntarily when disciplinary inquiry pertaining to serious charges was under contemplation. Again in *Dr. Baljit Singh v. State of Haryana* (1997) 1 SCC 754 where refusal to consider the request for voluntary retirement pending the action against the employee, was approved of and it was also observed that allowing an employee guilty of misconduct to voluntarily retire would lead to serious repercussions and have disastrous consequences to maintenance of discipline in service. Even in *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly* (1986) 3 SCC 156 it was observed in para 111 that an employer can always refuse to accept even a resignation when there is a disciplinary

inquiry pending against the employee and to permit an employee in such cases to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him.

16. Reference may also be made to *Ashok Kumar Sahu v. Union of India (UOI)* (2006) 6 SCC 704 laying down that when an employee offers to retire from service, his offer cannot be said to have been accepted automatically unless the Rules provide therefor. The petitioner in the present case has not referred to any Rules under which her request for voluntary retirement even after she was unauthorizedly absent after maximum time of five years for which she was entitled to leave, was required to be accepted. The said judgment is also an authority on the meaning of the expression “approval”. It was held that approval can be given retrospective effect and is an act of ratification and confirmation. Thus the approval of the University of termination of services w.e.f. 23rd November, 1997 would relate back to 23rd November, 1997 and admittedly the offer of voluntary retirement was made thereafter.

17. I am therefore of the view that the petitioner was not entitled to voluntary retirement or to seek the benefit thereof. Else as aforesaid, no arguments have been addressed on the challenge to the order of dismissal. Even otherwise, the petitioner being not willing to join back the respondent no.3 College, is not entitled to challenge the order of termination of her services.

The writ petition is accordingly dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 06, 2011

‘gsr’/pp..

(corrected and released on 17th June,2011)