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

+ W.P/ (C) 6847/2009

Judgment reserved on 3<sup>rd</sup> October, 2013

Judgment delivered on 19<sup>th</sup> December, 2013

UMED SINGH

..... Petitioner

Through: Petitioner in person.

versus

PRESIDING OFFICER & ANR.

..... Respondents

Through: Mr.Sharat Kapoor and  
Mr.Noor Alam, Advs. For R-2  
Mr.K.K.Rai, Sr.Advocate with  
Ms.Manika Tripath Pandey  
and Mr.Ashotosh Kaushik,  
Advs. For R-3.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

1. By this writ petition under Article 226 of the Constitution of India, petitioner has assailed the Award dated 15<sup>th</sup> September, 2008 passed by the Labour Court, Delhi whereby reference has been answered against the petitioner.

2. The Secretary (Labour), Government of National Capital Territory referred the industrial dispute to the Labour Court for adjudication in the following terms:-

“Whether the action of the management in accepting the resignation of Sh.Umed Singh vide their Order dated 09.01.92 is illegal and/or

unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. Factual matrix, relevant for the purpose of disposal of this writ petition, is that petitioner was appointed as an Assistant Hindi Officer by the respondent no.2 vide letter of appointment dated 13<sup>th</sup> June, 1990. He was put on probation for a period of one year. Probation was to be confirmed in writing. Relevant it would be to refer to Clause 1.10 of the appointment letter, which reads as under:-

1.10. You will be on probation for a period of one year which may be extended if found necessary. During the probation period your services are liable to be terminated at any time without assigning any reason thereof. On satisfactory completion of probation period, which shall not be deemed to have been so completed unless you are informed of it in writing. Your services will be liable to termination by either side on giving one month's notice or payment of salary in lieu thereof, provided further that the corporation reserves the right to withhold acceptance of your resignation, if tendered by you in case disciplinary proceedings are pending against you or a decision has been taken by the Competent Authority to issue a Charge-Sheet to you.

4. Petitioner was not confirmed on completion of one year probation period. Instead his probation was extended for a period of six months due to his unsatisfactory performance and acts of insubordination. Immediately after joining, petitioner started

making complaints directly to various authorities including Prime Minister of India, without following the procedure of sending such letters/complaints 'through proper channel'. One of his grievance was that respondent no.2 ought to have created a post of Hindi Officer at its project and not the post of Assistant Hindi Officer. It was also alleged that he was threatened by the Senior Officers' of the corporation. He claimed that he was not given adequate staff. Furthermore, a letter dated 26<sup>th</sup> November, 1991 was written by him to the Prime Minister. Petitioner's services were transferred from respondent no.2 to respondent no.3 with effect from 19<sup>th</sup> December, 1991, subject to his furnishing unconditional option. Petitioner did not submit any option. He again wrote a letter dated 31<sup>st</sup> December, 1991 to the Prime Minister alleging therein, inter alia, that behavior of his officers was hostile against him. At the end, in the said letter, he opted to resign from the post. Petitioner also sent a resignation letter dated 31<sup>st</sup> December, 1991 to the Manager (P&A) of respondent no.2.

5. Senior Manager personnel sent a telegram dated 8<sup>th</sup> January, 1992 to the Chief Engineer to the effect that resignation of petitioner may be accepted and he be relieved immediately. Pursuant thereof, Office Order dated 9<sup>th</sup> January, 1992 was issued

stating therein that resignation tendered by the petitioner had been accepted with effect from 9<sup>th</sup> January, 1992 (AN) and he stands relieved from duty with effect from 9<sup>th</sup> January, 1992 (AN). It was further written therein that the recovery in respect of shortfall of 20 days in the one month's notice period, will be effected from him, inasmuch as his final dues will be cleared by the Finance and Accounts Wing, on receipt of no demand certificate from all concerned. This Office Order was served on the petitioner on 9<sup>th</sup> January, 1992 itself. On the same day petitioner sent a letter withdrawing his resignation. In the withdrawal letter he alleged that since his services were transferred to National Power Transmission Corporation with effect from 19<sup>th</sup> December, 1991 in terms of office order dated 20<sup>th</sup> December, 1991, therefore, he withdraws his resignation unconditionally.

6. Industrial Adjudicator upon appreciation of ocular as well as documentary evidence has held that petitioner had withdrawn the resignation after the same was already accepted. It was observed that petitioner had himself admitted, in his cross-examination dated 27<sup>th</sup> May, 2002, that his main grievance was against respondent no.2 only since respondent no.3 had terminated his services vide order dated 9<sup>th</sup> January, 1992 and further that he did not join

respondent no.3, thus, Tribunal had no jurisdiction to deal with any claim of petitioner qua the respondent no.3; since reference was only with regard to the acceptance of resignation letter by the respondent no.2 being illegal and unjustified, inasmuch as claims qua the respondent no.3 were beyond the reference. It was further held that burden to prove the facts alleged by the petitioner was on him. Petitioner had submitted his resignation letter dated 31<sup>st</sup> December, 1991 (Ex.WW1/M1) to Manager (P&A) of the respondent no.2. which indicated his unconditional and voluntary intention to resign, as petitioner had categorically stated therein 'that he tenders his resignation from services of the corporation'. Resignation was not coercive or conditional. Petitioner admitted in his cross-examination that on 9<sup>th</sup> January, 1992 he had received the order from the respondent no.2 that his resignation had been accepted by the Competent Authority. Petitioner had written the letter dated 9<sup>th</sup> January, 1992 to the Chief Engineer stating therein that he withdraws his resignation unconditionally, however, prior thereto resignation had already been accepted by the concerned Authority, thus, withdrawal of resignation was not permissible.

7. There is no gainsaying that the scope of interference in an award by the High Court in exercise of its power of judicial review

under Article 226 of the Constitution of India is limited. High Court cannot sift and weigh the evidence adduced before the Labour Court or Industrial Tribunal to take an independent view than what has already been taken by the Industrial Adjudicator upon appreciation of evidence. High Court will step in only if it is shown that Award is based on no evidence or is perverse. In case award suffers from any manifest error of law or jurisdiction then also High Court will interfere with the award. However, if award is based on some evidence then High Court will not interfere with the same. Question of adequacy or sufficiency of evidence has not to be gone into. A Division Bench of Calcutta High Court in *New India Flour Mills and another vs. Sixth Industrial Tribunal, West Bengal, and others* 1963 (1) LLJ 745 has observed, thus, “it is difficult for me, sitting in constitutional writ jurisdiction, to interfere with a finding of fact, even though the finding may have been arrived at on a wrong evaluation of evidence”.

8. A Single Judge of this Court in *NDMC vs. Secy.(Labour) NCT of Delhi & Ors.* 2008 (9) AD (Delhi) 382 has held thus “High Court in exercise of jurisdiction under Article 226 of the Constitution of India interferes with the order of the inferior Tribunal in a writ of certiorari, only if the order assailed suffers

from an error of jurisdiction or from breach of principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling this Court to reappraise evidence as in an appeal and draw conclusions on questions of fact while exercising writ jurisdiction. The findings of fact recorded by the Authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed, so long as they are based upon some material relevant for the purpose. The High Court ought not to re-adjudicate upon questions of fact decided by the Industrial Adjudicator unless the circumstances indicate that the Tribunal has snatched jurisdiction. It has been further held that the exercise of powers of judicial review should as far as possible sustain the award made by the Industrial Adjudicator instead of picking holes here and there on trivial points and ultimately frustrating the entire adjudication process by striking down the award on hyper technical grounds”. In S.Chandraiah vs. Presiding Officer, Additional Industrial Tribunal, Hyderabad and another 2005 LLR 1172 it has been held that “while exercising its certiorari jurisdiction under Article 226 of the Constitution of India and exercising its powers of judicial review against orders/awards of statutory Tribunals, the High Court neither acts as a court of

appeal nor does it re-appreciates the evidence on record. It is only in cases where there is no evidence, the findings of statutory Tribunals are perverse or there is manifest error on the face of the record that the High Court exercises its certiorari jurisdiction”.

9. In the backdrop of above settled position of law, if facts of this case are examined, Industrial Adjudicator has concluded that petitioner was appointed as an Assistant Hindi Officer by the respondent no.2 and was on probation since his probation was not confirmed in writing. On 31<sup>st</sup> December, 1991, petitioner tendered his resignation which was unconditional and voluntary. Resignation of the petitioner was accepted and communicated to him on 9<sup>th</sup> January, 1992. Petitioner withdrew his resignation on the same day but only after his resignation was duly accepted. The findings of fact have been returned by the Industrial Adjudicator upon appreciation of evidence and cannot be interfered with by this court in exercise of its jurisdiction of judicial review under Article 226 of the Constitution of India on re-appreciation of evidence. The moot question which arises for consideration is, as to whether petitioner could have withdrawn his resignation after the same had been duly accepted. In North Zone Cultural Centre and another vs. Vedpathi Dinesh Kumar AIR 2003 Supreme Court 2719, Apex

Court has held thus: “non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal”. Meaning thereby that resignation can be withdrawn before it is accepted. However, resignation cannot be withdrawn by an employee after it has been accepted, even though not communicated to the employee. In S.Chandraiah (supra) it has been held thus:-

“Once the letter of resignation is accepted, subsequent revocation thereof is of no consequence and refusal by the 2<sup>nd</sup> respondent to accept the said revocation cannot be said to be illegal or unjust. An employee is entitled to withdraw his resignation prior to its acceptance or prior to the date on which the resignation comes into force. He is however not entitled to contend, as a matter of right, that his revocation of resignation is required to be accepted or that he should be taken back into service despite his resignation having been accepted by the employer”.

10. In Mani vs. State Bank of Travancore 200 LLR 429 Kerala

High Court has held thus:-

There can be no dispute as a proposition in law that a request for acceptance of resignation can be withdrawn before it is actually accepted. General principle is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor (see Union of India v. Gopal Chandra Misra and Ors. AIR 1978 SC 694.

It is open to a servant who has expressed his desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained. He can be allowed to do so as long as he continues in service and not after it is terminated by acceptance of the request for requisite permission.....”

11. In this case petitioner’s resignation was accepted by the respondent no.2 and as per the Office Order he stood relieved from his duties with effect from afternoon of 9<sup>th</sup> January, 1992. Upon appreciation of evidence, Industrial Adjudicator has held that withdrawal letter was sent thereafter. Withdrawal of resignation after its acceptance is not permissible.

12. As regards plea of the petitioner, that resignation could not have been accepted in view of his transfer to respondent no.3, same has no force. Petitioner did not exercise the option given to him. He did not submit any consent letter to the respondent no.3, inasmuch as has himself admitted, in his cross-examination, that he did not join the respondent no.3 nor he had any grievance against the respondent no.3. It is thus evident that petitioner remained in the employment of respondent no.2, accordingly, respondent no.2 was competent to accept the resignation of petitioner. Next contention of the petitioner is that his resignation was not accepted

by the 'Competent Authority'. However, his this plea had remained unproved before the Industrial Adjudicator. No evidence was led by him on this point. In his deposition, he has not stated as to who was the Competent Authority. No evidence was led by him in this regard. His whole deposition is silent on this point. Since petitioner had pleaded this fact, onus was on him to prove this fact, which he had miserably failed to discharge. It is a cardinal principle of law that onus to prove a fact is on the person who asserts the same. Since no evidence has been led by the petitioner on this point before the Industrial Adjudicator, he cannot be permitted to rake up this plea in this writ petition.

13. For the foregoing reasons, writ petition is dismissed. No order as to costs.

**A.K. PATHAK, J.**

**DECEMBER 19, 2013**

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