

Court No. - 20

Case :- WRIT - A No. - 5862 of 2023

Petitioner :- Smt. Nirmala Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Bal Vikas Evam Pushtahar
And 4 Others

Counsel for Petitioner :- Ajay Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. On 10.08.2023, the following order had been passed:-

"Heard learned counsel for petitioner and learned State Counsel for opposite parties.

It has been submitted that initially petitioner was appointed as Anganwadi Karyakatri on 04.06.2016 whereafter due to certain circumstances, she submitted her resignation on 18.04.2023 which has been accepted by opposite party no.5, Child Development Project Officer on the same day.

It is submitted that aforesaid acceptance is immaterial and petitioner is liable to continue on her post in view of Government Order dated 21.03.2023 whereby her appointing authority is in fact opposite party no.4, i.e. District Programme Officer, Ambedkar Nagar who has till date not accepted petitioner's resignation and therefore petitioner is entitled to withdraw the same which she has done vide letter dated 17.05.2023 and as such withdrawal of resignation has been effected prior to its acceptance by competent authority.

With regard to aforesaid submissions, learned State Counsel prays for and is granted ten days' time to seek instructions in the matter.

List on 21.08.2023, as fresh."

3. Petition has been filed seeking a direction to opposite parties to permit petitioner's joining on the post of Anganwadi Karyakatri at Anganwadi Centre Nariyawan, Block Jahangirganj, District Ambedkar Nagar. Also under challenge is the order dated 18.04.2023 whereby petitioner's resignation letter has been accepted.

4. It has been submitted that earlier petitioner while working on the post of Anganwadi Karyakatri had submitted her resignation vide letter dated 18.04.2023. It is submitted that the aforesaid resignation letter was supported by an affidavit and was thereafter accepted vide letter dated 18.04.2023 by the Child Development Programme Officer of the concerned District.

5. Learned counsel has drawn attention to the Government order dated 21.03.2023 to submit that as per same, the appointing authority of petitioner is the District Programme Officer and not the Child Development Programme Officer and since petitioner's resignation has not been accepted by the appointing authority, such acceptance by means of impugned order dated 18.04.2023 is in fact without jurisdiction and in effectual.

6. Learned counsel has also adverted to contents of paragraph no. 8 of the writ petition to submit that it has been specifically stated in the aforesaid paragraph that it is only the District Programme Officer who is the competent authority to accept petitioner's resignation, which has in fact been accepted by an incompetent authority. He has also drawn attention to paragraph no. 14 of the counter affidavit to submit such contents as indicated in the writ petition have not been denied by the opposite parties.

7. It is therefore submitted that since the resignation letter of petitioner was accepted by an incompetent authority, it does not indicate any acceptance of the same and therefore subsequently petitioner vide letter dated 17.05.2023 withdrew her resignation as she was very well entitled to do since there was no acceptance by the competent authority till withdrawal of the resignation.

8. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with the submission that in paragraph no. 7 of the counter affidavit, it has been clearly stated that although petitioner's resignation was accepted by the Child Development Programme Officer vide letter dated 18.04.2023 but it was only after obtaining due approval from the District Programme Officer Ambedkar Nagar on 18.04.2023 itself and therefore it cannot be said that acceptance of petitioner's resignation was by an incompetent authority.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, there is no dispute with regard to the fact that petitioner submitted her resignation from service on 18.04.2023. It is also admitted that the said resignation was accepted on the very same day by the Child Development Programme Officer. It is also not denied by the opposite parties that in pursuance of the Government order dated 21.03.2023, the appointing authority of petitioner is the District Programme Officer and not the Child Development Programme Officer, a fact which has been admitted by them in paragraph no. 14 of the counter affidavit.

10. The only defence indicated by learned State Counsel is that petitioner's resignation was accepted after due approval from the District Programme Officer accorded on 18.04.2023 itself. However, it is a material fact that no such approval order has been brought on record by the opposite parties. Even otherwise in the considered opinion of this Court, once an authority has been designated as the appointing or the competent authority to accept resignation of an employee, it is only such an authority which can accept the resignation unless there is specific delegation of power upon any authority, if permissible.

11. In the present facts and circumstances of the case, opposite parties have not indicated any such delegation of power upon the Child Development Project Officer. Even otherwise the opposite parties on a conjoint reading of paragraph nos. 7 and 17 of the counter affidavit admit the fact that it is only the District Programme Officer who is the competent authority to accept resignation preferred by petitioner.

12. The aspect as to when a resignation tendered by an employee can be withdrawn has been dealt with by Hon'ble Supreme Court in the case of **Union of India and Others versus Gopal Chandra Mishra reported in (1978) 2 SCC 301** in the following manner:-

"95. Thus, the position that emerges from the aforesaid decisions is that where a resignation given by a government servant is dependent for its effectiveness on the acceptance by the appropriate authority, the government servant concerned has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resignor has a right to resign but the resignation can be effective only after acceptance, it is a bilateral act. That is to say, resignation by one authority and acceptance of the resignation by the other authority. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say a resignation sent by a servant is no resignation in the eye of law until accepted by the employer and so long as it is not an effective resignation, there can be no bar to withdrawing the same. The same however cannot be said of a resignation tendered by a High Court Judge under Article 217(1) or other constitutional functionaries referred to hereinbefore because in cases of such functionaries the act of resignation is purely an unilateral act and once the resignation is written and communicated to the President it acts ipso facto and becomes fully effective without there being any question of acceptance by the President. I have already held that where a particular date is given in the letter of resignation, the resignation will be effective from that particular date but it does not mean that the resignor had any right to recall his resignation merely because he has chosen a particular date from which the resignation is to take effect. On the other hand, the resignation becomes complete and irrevocable and cannot be recalled either before or after the date mentioned is reached. Having signed the resignation and put the same in the course of transmission to the President the Judge loses all control over the same and becomes functus officio and the resignation becomes effective as soon as the date arrives without

leaving any room on scope to the resignor to change his decision. This appears to be the constitutional scheme prescribed for the resignation of High Court Judges, Supreme Court Judges and other constitutional functionaries. In fact, all the cases cited by the appellant excepting some are cases where the effectiveness of the resignation depends on the acceptance of the resignation."

13. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is quite evident that petitioner's resignation has not been accepted by the competent authority and therefore it cannot be said that there was any effective acceptance of petitioner's resignation which continued to be pending till it was withdrawn by the petitioner vide letter dated 17.05.2023. In such circumstances petitioner was very well within her rights to withdraw the resignation tendered earlier.

14. Considering the aforesaid facts, the order dated 18.04.2023 passed by opposite party no. 5 i.e. Child Development Project Officer, Block Jahangirganj, District Ambedkar Nagar is hereby quashed by issuance of writ in the nature of certiorari. A further writ in the nature of mandamus is issued commanding the opposite parties to permit petitioner to join on the post of Aganwadi Karyakatri at the relevant Aganwadi Centre Nariyawan, Block Jahangirganj, District Ambedkar Nagar within a period of 15 days from the date a certified copy of this order is produced before the concerned authority. Petitioner shall be entitled to her regular honorarium/salary in pursuance of such joining.

15. Resultantly, the writ petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 3.11.2023

Satish