

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7053 OF 2005

Ujjwal w/o Chandulal Agrawal, Aged 48 years, Occupation Legal Practitioner, R/o. B/3, Saraswati, Zambad Estate, New Shereya Nagar, Aurangabad **Petitioner**

V E R S U S

- 1 The State of Maharashtra [Through Secretary, Labour Deptt. Mantralaya, Mumbai] **Respondents**
- 2 The Registrar [General], High Court of Judicature Bombay, Fort, Mumbai
- 3 The President, Industrial Court, Maharashtra, New Admn. Bldg., Bandra [East], Mumbai
- 4 The Judge, Labour Court, Old High Court Bldg., Adalat Road, Aurangabad

Petitioner in person

Mr. S.D. Kaldate, AGP for respondent no.1/State
Mr. N.B. Suryawanshi, Advocate for respondent nos.2 to 4

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.
DATE : 21st October, 2015**

ORAL JUDGMENT [Per A.V. Nirgude, J.] :

1. Facts leading to the litigation are as under:-

The petitioner was appointed as a Stenographer [Lower Grade] in 1973 in Labour Court,

Solapur. In 1976, she transferred to the Labour Court, Aurangabad. In 1986, she submitted letter of resignation mentioning that an Advocate insulted her, and therefore, she does not want to continue her work. She sent this resignation letter to her superior officer and also to the Judge of the Labour Court on 2nd April, 1986. As per rules, she was also under obligation to deposit one month salary alongwith resignation. It seems, the petitioner then thought that she should not have submitted her resignation, and therefore, she submitted application for leave. On 28th April, 1986, she sent a letter stating that the Judge of the Labour Court should not take decision on her resignation letter until he initiated inquiry in the incident involving alleged misbehaviour of Advocate. The Judge of the Labour Court, on 7th May, 1986, made an order accepting petitioner's resignation and made it effective from 7th May, 1986. He thereby allowed the petitioner to continue on duty from the date of resignation till 7th May, 1986. The petitioner then realized that she has lost her valuable job and she started her efforts to get her job back. She made representation to the Government, but the same was rejected. Nonetheless the Government offered her fresh appointment w.e.f. 24th March, 1999. The petitioner did not accept this offer and continued her representations. The last representation was made to the administrative side of the High Court, but the same also failed.

2. In 2005, this petition was filed. In reply to this petition, the administrative side of the High Court submitted reply stating that the petitioner did not submit any letter withdrawing her resignation. Her letter dated 28th April, 1986 did not amount to withdrawal of resignation.

3. We heard the submissions at bar.

4. Following questions arise for our consideration:-

i] Whether the letter dated 28th April, 1986 amounted to withdrawal of resignation ?

ii] Whether the learned Judge of the Labour Court erred in accepting the resignation ?

iii] Whether while utilizing the powers under Articles 226 and 227 of the Constitution of India, this Court can substitute its view on facts to the case ?

5. We perused the letter dated 28th April, 1986. We realized that, on the face of it, this letter did not communicate intention of the petitioner to withdraw her resignation unconditionally or otherwise. She said in the said letter that decision on her resignation should not be taken until certain event

had taken place. The question that could have arisen in the mind of appointing authority was, whether he could initiate any inquiry in the incident that allegedly taken place between the Advocate and the petitioner on one hand or whether he should simply ignore the request and act according to the rules and regulations laid down by the State of Maharashtra regarding submission of resignation. At this stage, we should make reference to rules regarding submission and acceptance of resignation by the Government Officer.

6. We have to refer Government Resolution dated 2nd December, 1997. This Government Resolution lays down detail procedure as to how resignation is submitted, how it is accepted and what care is required to be taken at the time of accepting resignation. This Government Resolution *inter alia* suggested very clearly that the Government employee must take into account all the circumstances before submitting his resignation. This lays down that once a resignation is submitted, the same cannot be allowed to be withdrawn, unless a strong reason is put forth and same is accepted by the appointing authority. The Government Resolution also took into account tendency of an employee to submit resignation and to withdraw it. The Government Resolution clearly laid down a Rule that such facility should be discouraged. The Government Resolution also suggested that in very

exceptional circumstance, the appointing officer shall use his discretion to allow an employee to receive his resignation. In the light of these rules, we must examine the order dated 7th May, 1986 accepting resignation of the petitioner. We found that the order is sound. It indicated clearly that the petitioner's application seeking withdrawal of resignation was rejected and that her resignation was accepted w.e.f. 7th May, 1986. The appointing authority even took care of granting leave sought by the petitioner for the intervening period till 7th May, 1986.

7. The moot question that cropped up before us is, whether we can substitute our personal view on the matter. The answer unfortunately is in negative. Even if we could think that the appointing officer should not have accepted resignation for certain reasons that have cropped up in our mind. What happened then is now irrevertible. We do not wish to use our powers under Articles 226 and 227 of the Constitution of India to reverse the order dated 7th May, 1986. There are two reasons why we do this. First the learned Judge of the Labour Court had used his discretion which was available to him as per the rules, and once he used it, it would not be proper for us to substitute our view for such decision. Secondly, the decision of 1986 is now irreversible due to passage of time and even that took place

subsequently. It is unfortunate that the Government accepted the petitioner's resignation rather belatedly in 1999. This decision could have been taken earlier also. Had this been taken within couple of years, the petitioner could have been benefited. Yet, even the decision in 1999 on facts was not quite harmful to the petitioner. She could have joined service as per the offer of 1999. This could have been a fresh appointment. Yet the petitioner would have got service of about 12 years till she reached her age of superannuation. During such tenure, the petitioner could have made representation for seeking continuity of service and condonation of break in service etc. In any case, the petitioner would have been entitled to pension. By that time she could have completed 12 years of service which was sufficient as per rules to get her pension. The petitioner however chose not to accept the offer. We afraid, that this decision on the part of the petitioner again was quite unfortunate. In view of this, we find ourselves unable to help the petitioner. The petition stands dismissed. Rule discharged.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)