

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.11387 of 2012

Date of Decision: March 10th, 2015

Smt.Savitri Devi

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rajesh Sehgal, Advocate,
for the petitioner.

Mr.Gagandeep S.Wasu, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J.

The petitioner has approached this Court by invoking the extraordinary provisions of Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to permit her to join the service back in the School, i.e., Government Senior Secondary School (Boys), Manesar (Gurgaon).

It has been stated in the petition that the petitioner was appointed as S.S.T.Mistress on 18.12.2004 at Government Senior Secondary School, Bajghera (Gurgaon) and worked there from 2004 to 2006 and thereafter she was transferred to Government Middle School, Sunari (Mewat) and lastly at Government Senior Secondary School (Boys), Manesar (Gurgaon) and had worked there with utmost sincerity, dedication,

much less, devotion. The petitioner was working as a Trained Graduate Teacher in the aforementioned School.

The petitioner intended to contest elections for Municipal Corporation of Delhi from Najafgarh Area New Delhi, to be held in April, 2012 as an independent candidate and accordingly submitted her resignation dated 13.3.2012 (Annexure P-1) to the Principal Government Senior Secondary School (Boys), Manesar (Gurgaon) with a view to contest the election. The contents of the application is extracted herein below:-

“To
The Principal
G.S.S.S.(Boys), Manesar
Distt.Gurgaon.

(Through Proper Channel)

SUB: TECHNICAL RESIGNATION

Respected Sir,

With due respect and humble regards, I submit the following for your kind consideration and favourable action:

1. That I am working as Trained Graduate Teacher in Govt.Sr.Sec.School (Boys) (BK), Manesar, Gurgaon under your command.
2. That I intend to contest the election for Municipal Corporation of Delhi from Najafgarh, Area, New Delhi scheduled to be held on 15/04/2012. The date of submission of Nomination Form starts from 19/3/2012 upto 26th March, 2012.
3. I am submitting my Technical Resignation with a view to contest the election. I further submit that if I loose the election, I would be joining the school again.

In view of the above, you are therefore, requested to accept my Technical Resignation at the earliest to enable me to fill up the Nomination Form.

Thanking you in anticipation.

Yours faithfully,
Savitri Khatak
S.S.Mistress
Date:13.03.2012

Original Date 13.03.2012

Forwarded to DEO for necessary action please.

Principal
Govt.Sr.Sec.School (Boys),
B.K.Manesar (Gurgaon)”

The application (Annexure P-1) was supported by affidavit (Annexure P-2).

The elections were held on 15.4.2012 and it has been stated that the petitioner lost the election and thereafter submitted an application dated 19.4.2012 (Annexure P-4) for withdrawal of her resignation. As per the pleadings culled out in the petition, the petitioner did not receive any order/intimation regarding acceptance of her resignation submitted on 13.3.2012, much less, by the time when she submitted an application for withdrawal of the resignation, i.e., on 19.4.2012. Thereafter, a letter had been written to the Director Elementary Education, Panchkula by the District Primary Education Officer, Gurgaon in this regard, but no action was taken. However, vide letter dated 1.5.2012 (Annexure P-7), the petitioner received a communication from the office of the Director Elementary Education, Haryana, Panchkula that the resignation tendered by the petitioner had been accepted from the same date, i.e., 13.3.2012 subject to depositing one month salary by her. It is pertinent to mention here that at the time of submission of resignation, the petitioner had also deposited one month salary, i.e., ₹30,958/-.

The State had filed a reply contesting the claim of the petitioner on the ground that as per circular dated 4.5.1960 issued by the Chief Secretary to Government, Punjab, applicable to State of Haryana, a person who has left the Government service in order to take part in elections cannot be re-appointed. The contents of the circular (Annexure R-2), *ibid*, are extracted herein below:-

“Copy of Circular Letter No.3936-GII-60/15056, Dated 4.5.1960 from Chief Secretary to Government, Punjab to all the Heads of Departments, etc.

Subject: Re-appointment of Government employees, who resign their posts to contest elections.

I am directed to address you on this subject and to inform you that the question whether or not employees who resign their posts to contest elections should be re-appointed to posts from which they resigned, has been considered by Government. It has been decided that, as a matter of policy, employees who leave Government service in order to take part in elections would not be re-appointed to their original service thereafter. As ordinary citizens they will, of course, be eligible for applying for job in the Government, but they will not enjoy continuity of services from their previous employment.

2. I accordingly request you to bring these instructions to the notice of all Government employees under your control for their information.”

Mr.Rajesh Sehgal, learned counsel appearing for the petitioner, in support of his aforementioned facts, contends that it is a settled law that a person can withdraw his/her resignation before acceptance of the same and in support of the aforementioned submissions, has relied upon the following judgments:-

1. **Union of India v. Shri Gopal Chandra Misra and others**, AIR 1978 (SC) 694;
2. **Shambhu Murari Sinha v. Project and Development India**, AIR 2000 (SC) 2473;
3. **Balram Gupta v. Union of India**, AIR 1987 (SC) 2354; and
4. **Punjab National Bank v. P.K.Mittal**, AIR 1989 (SC) 1083.

In all the aforementioned judgments, occasion arose for the Hon'ble Supreme Court to ponder upon the proposition as to whether a Government employee can withdraw his/her resignation before the acceptance of the same and while culling out the ratio decidendi, reference had been made to the applicability of rules. However, in the judgment rendered in **Punjab National Bank's case (supra)**, the Hon'ble Supreme Court had an occasion to deal with a situation where there was no specific

provision in the regulations and while considering the aforementioned situation observed in para 8 of the judgment as under:-

“The result of the above interpretation is that the employee continued to be in service till the 21st April, 1986 or 30th June, 1986, on which date his services would have come normally to an end in terms of his letter dated 21st January, 1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal a letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in *Raj Kumar v. Union of India*, (1968) 3 SCR 857, *Union of India v. Gopal Chandra Misra*, (1978) 3 SCR 12 and *Balram Gupta v. Union of India*, 1987 Suppl.SCC 228.”

Mr.Gagandeep S. Wasu, Addl.A.G.Haryana appearing on behalf of the State submits that the Haryana Govt. Employees Conduct Rules, 1966 are strictly applicable, for, as per said rule, no Government employee can take part in, subscribe in aid or assist in any other manner and political moment or activity nor the aforementioned employee can canvass or interfere or use his influence in connection with or take part in an election to any Legislative or Local authority. He further contends that Government instructions are applicable to the petitioner and, therefore, her application for withdrawal of resignation was not accepted and the resignation submitted vide letter dated 13.3.2012 (Annexure P-1) was accepted vide order dated 1.5.2012 (Annexure P-7).

I have heard the learned counsel for the parties and perused the contents of the petition, written statement and the case law cited and am of the view that the writ petition is liable to be allowed on the ground that there are no instructions to prove that once the Trained Graduate Teacher submits the resignation, he cannot be permitted to withdraw his resignation. The contention of the learned counsel for the petitioner appears to be not only attractive but applicable to the facts and circumstances of the case inasmuch as that the petitioner had, before the acceptance of her resignation, submitted an application dated 19.4.2012, for withdrawal of her resignation and the authorities without considering her application accepted, the resignation submitted on 13.3.2012, vide order dated 1.5.2012 almost 26 days thereafter, and while accepting the resignation of the petitioner, no reference of the withdrawal of the resignation was made in the impugned order. The Hon'ble Supreme Court, as noticed above, has also dealt with a situation where there is no provision in the regulations and held that it is not necessary that there should be any specific rule and it is always open to the employee on "general principles" to withdraw his letter of resignation. There is no rule impeding the petitioner not to withdraw her resignation except the regulations. The regulations would not have force of law in the absence of any rules and regulations and, therefore, the general principles would apply and as per the general principles, the petitioner was well within her right to withdraw the resignation.

In view of my above observations, the writ petition is allowed and the order dated 1.5.2012 (Annexure P-7) accepting the resignation of the petitioner is quashed. The petitioner is permitted to join the service back

as Trained Graduate Teacher in the School, i.e., Government Senior Secondary School (Boys), Manesar (Gurgaon), which was the last place of her posting.

There shall be no order as to costs.

March 10th, 2015
ramesh

(AMIT RAWAL)
JUDGE