

\$~20

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

%

DECIDED ON: 14.07.2015

+

LPA 961/2013

NEELAM KUMARI

..... Appellant

Through: Mr. Rajiv Aggarwal with Mr. Sachin
Kumar, Advocates.

versus

THE PERSONNEL MANAGER, CENTRAL WAREHOUSING
CORPORATION

..... Respondent

Through: Mr. K.K. Tyagi with Mr. I. Ahmad and
Mr. Anoop Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. This Appeal questions a judgement dated 30.01.2013 of the Single Judge in W.P. (C) 2236/88. The appellant seeks restoration of the award, made by the Labour Court, directing her reinstatement into the services of the Central Warehousing Corporation ("CWC").

2. The brief facts are that the Appellant was an employee of the Respondent CWC from 11.06.1979. Upon being promoted, the Appellant availed of earned leave for 60 days from 14.09.1982, but did not return to work on 15.11.1982 after its completion. Instead, on 23.03.1983, she submitted a resignation letter, citing physical illness and compelling

domestic circumstances, and requested that the resignation letter be treated as 3 months' notice on her behalf. No action was ostensibly taken by the CWC on this resignation letter, except for addressing some letters to the Appellant concerning deduction of her wages as compensation to the corporation in lieu of the mandatory notice period of 3 months. To this, the Appellant replied requesting that only one month's pay be deducted in lieu of the notice period. The appellant stopped attending the CWC's office.

3. On 02.04.1985, more than two years after the original resignation letter, the Appellant wrote to the Respondents claiming that she wished to continue in service and that her previous resignation should be treated as cancelled. But the management, on 17.07.1985, 'accepted' the resignation with retrospective effect from 15.11.1982 (the date from which the Respondent considered the Appellant as being unauthorisedly absent from duty). Aggrieved, the Appellant raised an industrial dispute and the dispute was referred to the Industrial Tribunal by order dated 25.08.1989. The question referred to the Tribunal was:

“Whether the action of the management of Central Warehousing Corporation, New Delhi, in terminating the services of Smt. Neelam Kumari, Warehousing Assistant Grade-II w.e.f. 15.11.1982 is justified? If not, what relief is she entitled (sic)?”

4. On 13.01.1988, the Tribunal rendered its award. It held that the Appellant had withdrawn her resignation before its acceptance was communicated to her and that the Respondent was unjustified in terminating her services. The Tribunal directed that the CWC ought to

treat the Appellant as continuing in service with consequential benefits w.e.f. 15.11.1982 and also held that the Appellant was entitled to backwages from 17.07.1985.

5. The CWC preferred a writ petition (W.P. (C) 2236/98) before this court. By judgement dated 30.01.2013, the learned Single Judge allowed the petition and set aside the decision of the Industrial Tribunal but the Respondent corporation was also directed to pay ₹50,000/- to the Appellant.

Findings of the learned Single judge

6. The Single Judge placed reliance on para 5 of the Supreme Court's judgement in *State of U.P. & Ors. v. Ved Prakash Sharma*, 1995 Supp. 2 SCC 582. In this case, under the terms of the contract, the employee was entitled to terminate his contract by one month's notice. He furnished notice and although he continued to work for a few months even after the notice period ended, he stopped reporting to work subsequently. Four years later, he sought to withdraw the letter of resignation. The Court held that the lack of formal communication from the employer accepting the resignation would not entitle him to reclaim his service, and that the conduct of the parties was relevant. The Court found that the employee had a clear animus to terminate the relationship, and his conduct confirmed his intention. The Single Judge found that there was an animus to terminate the relationship which was borne out by both the initial resignation letter (dated 23.03.1983) and the subsequent letter (undated) wherein she requested that only one month notice period be

treated as necessary. The Single Judge therefore held that the Industrial Tribunal could not direct reinstatement with back wages.

7. In the impugned order, the learned Single Judge found that the order could not be sustained in light of a clear case of abandonment. As regards the Appellant's contention that the absence could be treated as abandonment only post enquiry, the court held that the principle of *res ipsa loquitur* applied, and that the facts had been admitted (Para 7). The Court held that the Appellant's services were to be viewed as terminated by the employer on account of abandonment; and although the facts were admitted and the principles of natural justice were met with, the Appellant (instead of the other way around) was entitled to three months' notice from the corporation before the termination. The Single judge therefore awarded ₹50,000/- to the Appellant as compensation in lieu of the notice and the protracted litigation she had to face.

8. The principal argument made in support of the appeal is that until the resignation is accepted, the jural relationship of the employer and employee continues. Appellant contends that as the resignation was in fact accepted only on 17.07.1985, and as she had already withdrawn the resignation some months earlier on 02.04.1985, the Appellant still retained lien over her job. The Appellant relies upon *Srikantha S.M. v. Bharat Earth Movers Ltd.* 2005 (8) SCC 314 and contends that the management's refusal to let her work despite her withdrawal of resignation entitles her to consequential benefits as if the termination of service never occurred.

9. The Appellant also contends that no enquiry was conducted by the Respondent for the misconduct of ‘abandonment of services’ that the Learned Single Judge deemed as evident in the facts of the case.

Conclusions

10. At the time the appellant was in service, the CWC (Staff Regulations), 1966 were in force. Regulation 9 concerns resignation and reads as follows:

“Notice of Termination of Service by an Employee:

- 1. No employee, other than the Managing Director or a person on Deputation from the Central Govt. or any State Government or an Institution, shall leave or discontinue his service in the Corporation except in case of a regular employee, after giving three months’ Notice, and, in the case of a temporary Employee after giving one month’s notice in writing of his intention to do so to the appointing authority.*
- 2. If any employee leaves or discontinues his service in the corporation in contravention of the provision of Sub-regulation (1) the employee shall be liable to pay as compensation to the corporation a sum equal to the his pay for the period by which the notice given falls short of the specified period of notice, at the rate at which it was paid immediately before the date of his leaving the service or discontinuance therefore.*
- 3. ...*

Provided that the appointing authority may, for reasons to be recorded in writing, waive either wholly or in part the requirement as to the payment of such compensation.”

11. It is clear that the regulations enable an employee to tender resignation, and that no mention is made about when the resignation takes

effect, or if the Corporation must accede to the resignation for it to take effect. By contrast, the presently applicable Regulation 19(iv) of the CWC (Staff Regulations), 1986 states that:

“Resignation submitted by an employee will become effective only when it is accepted and the employee is relieved of his duties”.

12. The Appellant’s letter did not specify the date on which her resignation would be effective, but requested that the letter be treated as intimating 3 months’ notice. As there was no rule governing when the resignation takes effect, the resignation must be treated to have taken effect when the notice period ended. The contention that the Corporation must accept the resignation for it to take effect cannot therefore, be countenanced. Upon the expiration of the said notice period, the employer employee relationship between the parties ceased.

13. It is true that a resignation letter can be withdrawn, but it may not be withdrawn after the resignation has already taken effect. This would cause severe uncertainty for the affairs of both the employer and the employee. The conduct of the Appellant in not reporting to work for an extended period of time only confirms this conclusion. As such, the Appellant’s ‘withdrawal’ of the resignation letter two years in effect has no legal consequence, and neither does the corporation’s ‘retrospective acceptance’ for that matter. The legal relationship between the Respondent corporation and the Appellant ended upon the completion of 3 months after the resignation letter of 23.03.1983 was submitted. The decision of the Supreme Court in *State of*

U.P. & Ors. v. Ved Prakash Sharma (supra) is squarely applicable to the facts of this case.

14. This court is of the opinion that in these given circumstances, the conclusion of the learned Single judge about the unfeasibility of the reinstatement order was correct. However, the reasoning for such conclusion, i.e. that the Appellant had abandoned the services, is clearly erroneous. Abandonment was not in question nor could it be said to arise, because the severance in status of the appellant had taken place, before she sought to withdraw her resignation letter (an event which occurred 2 years after expiry of the notice period, and after she had stopped attending her functions). We notice that the appellant had refused to encash the cheque for ₹50,000/- tendered to her by the CWC. In the circumstances, and for the reasons mentioned above, it is held that the CWC is not liable to pay the said amount. The Letters Patent Appeal is therefore dismissed. There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JULY 14, 2015