

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

**CWP No.22855 of 2017 (O&M)
Date of decision : 13.10.2017**

Chandan Kumar Grewal

....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

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TEJINDER SINGH DHINDSA, J. (ORAL)

CM-14828-CWP-2017

Prayer in the application is for recalling of the order dated 06.10.2017, in terms of which, the main writ petition i.e. CWP No.22855 of 2017 had been dismissed for non-prosecution.

In view of the averments made in the application and supported by an affidavit of the counsel himself, prayer is allowed.

The order dated 06.10.2017 dismissing the writ petition for non-prosecution is recalled. Writ petition is restored to its original number and is taken on board today itself.

Application is disposed of.

Main case

Mr. Prateek Pandit, Advocate for the petitioner makes a statement that he is prepared with the case and is ready to argue the matter today itself.

Pleadings on record indicate that the petitioner was working on the post of Sanitary Supervisor in the Health Branch, Municipal Council, Jalandhar. An application for resignation from service was submitted by the petitioner on 09.11.2016. Vide order dated 12.01.2017 (Annexure P-2), the resignation stands accepted by the Commissioner, Municipal Corporation, Jalandhar.

Instant writ petition has been filed assailing the order dated 12.01.2017 (Annexure P-2). A writ of mandamus is further sought for directing the respondent-corporation to permit the petitioner to withdraw his resignation and allow him to rejoin services.

Counsel for the petitioner has been heard at length.

During the course of arguments, it is admitted that the petitioner has submitted an application dated 09.11.2016 (Annexure P-1) for resignation from the job. Mr. Prateek Pandit, Advocate has very fairly stated that even though in such application, the reason cited was to undertake social service but the actual reason was that the petitioner was wanting to contest the Vidhan Sabha election.

The order dated 12.01.2017 (Annexure P-2) reveals that after receipt of the request for resignation dated 09.11.2016, the petitioner had been called upon to deposit three months salary. In view of notice, the same have been duly deposited by the petitioner. Accordingly, resignation was accepted w.e.f. 09.11.2016 itself.

The contention raised by counsel that the respondent-corporation has not taken any decision with regard to the petitioner to rejoin in service and to withdraw the resignation is ill founded.

Rule 7.5 of the Punjab Civil Services Rules, Volume-1, Part-1

reads in the following terms and is reproduced as under: -

“7.5 (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely: -

(i) That the resignation was tendered by the Government employee for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person

concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the aforementioned period of ninety days shall be observed in the manner that the employee concerned should put in his application for withdrawal of resignation within two months of being relieved and the same should as far as possible be processed within a period of one month; and

(v) that the post, which was vacated by the Government employee on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government employee resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.”

Under the afore extracted statutory provision, the appointing authority may permit a person to withdraw his resignation in public interest

subject to the condition that the resignation was tendered for some compelling reasons and that the request for withdrawal of the resignation has been made on account of the material change in the circumstances, which originally compelled him to tender the resignation.

The desire of the petitioner to contest the Vidhan Sabha election and for which he had concededly submitted the resignation and he subsequently having not won would not be covered as a compelling reason nor a material change in the circumstances for the case to be considered for withdrawal of the resignation under Rule 7.5.

That apart the order dated 12.01.2017 (Annexure P-2) had itself put the petitioner to notice at the very threshold that the resignation was being accepted on the condition that if upon contesting the election process and having remained unsuccessful any subsequent application for withdrawal of resignation would be considered in-appropriate and that the petitioner would be denied an opportunity to come back in the service.

Concededly, such decision contained in the order dated 12.01.2017 (Annexure P-2) was not put to challenge but rather accepted by the petitioner inasmuch as he proceeded further to contest the election. Having remained unsuccessful, it would not lie in the mouth of the petitioner to turn around and now assert a right to rejoin service.

There is no merit in the petition and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

October 13, 2017

sahil soni

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sahil Soni
2017.10.24 16:18
I attest to the accuracy and
integrity of this document