

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

Date of Decision: October 27, 2017

+ **W.P.(C) 3058/2017 & CM 13373/2017**

N.S. PADMANABHAN Petitioner
Through: Ms. Shobha, Ms. Joyshree Berman
and Mr. B. Kranthi Kumar, Advocates

versus

NATIONAL INSTITUTE OF IMMUNOLOGY & ORS.
.....Respondents
Through: Mr. Harish Kumar Gupta,
Advocate for respondents No.1 & 3
Mr. Ashish Wad, Advocate for respondent No.4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner, who was the Controller of Administration in respondent No.1-Institute, had tendered his resignation of 31st March, 2017 due to personal reasons. Since petitioner had requested in the resignation letter of 31st March, 2017 (*Annexure P-11 colly.*) that he be relieved on 31st March, 2017 itself while seeking waiver of the notice period and if it is not possible, then the same be adjusted against his earned leave standing to his credit.

2. First respondent claims that petitioner's resignation letter was accepted on 1st April, 2017 and a direction was issued to furnish "No

Dues Certificate” to petitioner and to other departments. “*No Dues Certificate*” was sent to petitioner vide Email on 1st April, 2017 itself.

3. On 4th April, 2017 at 4 P.M., petitioner had sent an Email to Director of respondent No.1-Institute stating that the resignation letter was tendered under extreme pressure from the Secretary of Department of Bio-Technology i.e. respondent No.2, as petitioner was not agreeing to settle undue payments to respondent No.4 without recovering payment of Non-Practicing Allowance (*hereinafter referred to as NPA*). It is stated in this Email (*Annexure P-4*) seeking withdrawal of resignation, that petitioner had decided not to succumb to such pressure and to face the consequences and had therefore sought withdrawal of resignation. Petitioner had made it clear in this Email (*Annexure P-4*) that he has not been relieved by respondent No.1-Institute.

4. To assert undue pressure from respondent No.2, petitioner relies upon a complaint of 2nd April, 2017, which he had sent to the Prime Minister’s Office through an Email. Copy of the said complaint of 2nd April, 2017 is appended as Annexure-J with the counter affidavit filed by first respondent and it reads as under: -

“Respected Sir, I wish inform that I was working as Controller of Administration in National Institute of Immunology (PB 4 GP 8700) under Deptt of Bio Technology. I was dealing with two important vigilance case of NII. Medical Doctors in non medical post in Govt of India are not entitled to NPA. This is as per Ministry of Finance Order. On 31.3.2017 the Secretary of DBT issued letter to NII and directed to pay all dues. The said decision has costed Govt of India well over Rs. 22 Lacs. The CVO of DBT

objected to this CVO DBT was Overruled in Vigilance matter and non due payment has been made one Dr. S. Rath. on 31.3.2017 itself. I was advised to resign or face suspension. To save my honour I thought it is better to resign and fight for justice. My resignation was accepted not by the appointing authority, but by Secretary DBT which is very unusual. Sir pls call for the file from NII and DBT along with CVO of DBT the truth will be before you. Kindly do justice to an honest officer of the Government. With kind regards, Navaneetham Seshadri Padmanabhan.”

5. It is also relevant to note that in his Email of 2nd April, 2017, petitioner had apprised the Director of respondent No.1-Institute about his resignation and in the said communication, there is no whisper of any coercion or undue pressure to which petitioner was subjected.

6. In this writ petition, petitioner has sought quashing of relieving order of 3rd April, 2017 (*Annexure P-5*) and a direction to respondent No.1-Institute to permit him to resume his duties and also to direct the Chief Vigilance Commissioner to conduct an independent inquiry regarding the conduct of respondents No.1, 2 & 4. It is also the case of petitioner that on 14th August, 2017, his complaint against respondent No.4 was forwarded by Central Vigilance Commission to Chief Vigilance officer, Department of Science and Technology and that the fate of the complaint is not known to petitioner till date.

7. The precise submission of petitioner's counsel is that the bone of contention between petitioner and the Director of respondent No.1-Institute as well as the Secretary, Department of Bio-Technology was the release of NPA to Doctors and in the office note (*Annexure-G*), petitioner

had made it clear that the over payment of NPA from June, 2009 till March, 2017 amounting to ₹21 lacs odd cannot be released without approval of the Ministry of Finance, Department of Expenditure for waiver in terms of departmental Circular of 2nd March, 2016 because as per the said Circular, recovery of excess payment can be waived off only after obtaining approval from the Ministry of Finance, Department of Expenditure.

8. Learned counsel for petitioner points out that the grievance of petitioner was that without obtaining the requisite approval, the Director of respondent No.1-Institute as well as the Secretary, Department of Bio-Technology had pressurized petitioner to sign the office notings to facilitate the payment and on 31st March, 2017 itself, the payments were released to fourth respondent and in this background, petitioner was told either to resign or to face suspension and that under such pressure, petitioner had tendered his resignation. It is submitted that, however, on second thoughts, petitioner has made up his mind to face the situation and so, petitioner has withdrawn the resignation. Thus, it is submitted that acceptance of the resignation would be of no consequence as the same was obtained under duress.

9. Learned counsel for petitioner further contends that in the absence of relieving order, the relationship of employer and employee continues and since the relieving order was received on 5th April, 2017 and application for withdrawal of resignation was made on 4th April, 2017, therefore, petitioner's application for withdrawal of resignation ought to have been accepted. Petitioner's counsel points out that till date,

petitioner's application for withdrawal of resignation has not been dealt with by respondent No.1-Institute. Thus, it is submitted that petitioner's application for withdrawal of resignation ought to be allowed and petitioner be permitted to resume his duties. To submit that a resignation must be voluntary and if it is not so, then it is not a valid resignation, reliance is placed by petitioner's counsel upon decisions in *J. K. Cotton Spinning and Weaving Mills Company Limited v. State of UP & Others.*, (1990) 4 SCC 27; *Municipal Corporation of Delhi v. Dinesh Kumar Sangal*, (2010) 171 DLT 611 (DB); *Lady Cadet Shivanjali Sharma v. Union of India & Ors.*, in W.P.(C) 1143/2011 rendered on 26th March, 2012; *Atlas Cycle (Haryana) Ltd. v. Kitab Singh*, 2013 (12) SCC 573. To assert that jural relationship of employee and employer does not come to an end till the employee is relieved of the duty, reliance is placed upon Supreme Court's decisions in *Power Finance Corporation Limited v. Pramod Kumar Bhatia*, 1997 (4) SCC 280, *Shambhu Murari Sinha v. Project & Development India Ltd. & Another*, 2002 (3) SCC 437 and *Srikantha S.M. v. Bharath Earth Movers Ltd.*, 2005 (8) SCC 314.

10. On the other hand, learned counsel for respondents submit that petitioner's resignation was duly accepted before it was withdrawn and that no undue pressure was put upon petitioner to resign. To submit so, attention of this Court is drawn to petitioner's communication of 2nd April, 2017 to respondent No.1-Institute (*Annexure –D to the counter affidavit of first respondent*) to submit that in the said communication of 2nd April, 2017, petitioner has not uttered that his resignation was under duress.

11. It is also pointed out by respondents that in the complaint (*Annexure- J to the counter filed by first respondent*) made to the Prime Minister's Office, petitioner on 2nd April, 2017 had not stated that he was pressurized to resign. Thus, it is submitted that the decisions relied upon by petitioner are of no avail as the resignation is not vitiated by any undue pressure or duress and that it is evident from the '*No Dues Certificate*' of 1st April, 2017 (*Annexure P-3*) sent to petitioner, that petitioner's resignation has been accepted on 31st March, 2017 itself and that petitioner stood relieved from that very date i.e. 31st March, 2017 and so, petitioner is not well within his rights to assert that the jural relationship between petitioner and first respondent did not come to an end and thus, reliance placed upon decisions in *Power Finance Corporation Limited (supra)*, *Shambhu Murari Sinha (supra)* and *Srikantha S.M. (supra)* is of no avail.

12. Finally, it is submitted by respondents that if petitioner has any grievance against respondent No.4, then it cannot be urged in these proceedings and for that, petitioner ought to have recourse to remedies available in law, and hence, dismissal of this petition is sought.

13. Upon hearing and on perusal of material on record and the decisions cited, I find that acceptance of petitioner's resignation was prior to withdrawal of his resignation. The legal position spelt out in the decisions cited is beyond dispute. But what is to be seen is whether petitioner's resignation is vitiated by any undue pressure or was it under any kind of duress. If petitioner was pressurized by respondents to resign, then nothing stopped him from stating so in his communication of 2nd

April, 2017 (*Annexure-D*) to the President of respondent No.1-Institute. Pertinently, the said communication of 2nd April, 2017 is silent on the undue pressure/duress aspect.

14. What clinches the issue is petitioner's complaint to Prime Minister's Office (*Annexure-J*), of 2nd April, 2017 and its bare perusal reveals that petitioner has not stated therein that he was pressurized to resign. All that has been said therein was that he was told to either resign or face suspension and that to save his honour, petitioner had chosen to resign and so, it cannot be stated that petitioner was under undue pressure/duress or was pressurized to resign. What made petitioner withdraw his resignation, is not clearly spelt out in the Email (*Annexure P-4*) seeking withdrawal of resignation. All that is said therein is that petitioner was under extreme pressure from the Secretary, Department of Bio-Technology as he was not agreeing to settle the undue payments without recovering NPA. If it is so, then, there was no reason that he should have signed the office noting permitting the release of NPA to respondent No.4. In the face of '*No Dues Certificate*' of 1st April, 2017 (*Annexure P-3*) indicating acceptance of resignation, which was indisputably conveyed to petitioner prior to his withdrawal of resignation, technicality of relieving order being conveyed to petitioner prior to his withdrawal of resignation pales into insignificance. It is evident from Office Order of 3rd April, 2017 (*Annexure P-5*) of respondent-Institute that petitioner's resignation was accepted on 31st March, 2017, as insisted upon by petitioner and his name was taken off the roll of respondent-Institute w.e.f. 31st March, 2017. Pertinently, acceptance of petitioner's

Representation was by the competent authority i.e. National Institute of Immunology and not by Department of Bio-Technology.

15. The issue regarding release of NPA to respondent No.4 cannot be a subject matter of this petition. However, if the assertion of petitioner that his complaint against respondent No.4 has been referred by Central Vigilance Commission to Chief Vigilance Officer, Department of Science and Technology is correct, then in such a case, the Chief Vigilance Officer, Department of Science & Technology shall scrutinize petitioner's complaint expeditiously within six weeks and to intimate its fate to Central Vigilance Commission as well as to petitioner and Central Vigilance Commissioner shall take a call on it within four weeks thereafter, so that petitioner may have recourse to law, as available to him.

16. In the light of the aforesaid, this Court has no hesitation in holding that petitioner's resignation is not under duress. As such, this petition is dismissed with aforesaid clarification.

(SUNIL GAUR)
JUDGE

OCTOBER 27, 2017

s