

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1901 of 2007

Surjeet Sen S/o Late Shri Paritosh Sen, aged about 43 years, R/o C/o
15 A/ Gurukul Parisar, Kalibadi Road, Raipur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary-cum-Commissioner, Department of Higher Education, D.K.S. Bhawan, Mantralaya, Raipur, C.G. (The Sanctioning & Appellate Authority).
2. Governing Body of Kamla Devi Sangeet Mahavidyalaya, Gandhi Chowk, Raipur, CG, Through its Secretary-cum-Principal of Kamala Devi Sangeet Mahavidyalaya, Raipur (C.G.).

---Respondents

For petitioner	:	Shri Yogesh Pandey, Advocate.
For resp.No.2	:	Shri Sourabh Sharma, Advocate.
For State	:	Shri Dheeraj Wankhede, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/11/2018

1. The present Writ Petition has been filed assailing the action on part of the respondent No.2 whereby the alleged resignation letter of the petitioner has been ordered to be accepted vide Annexure-P/2 dated 23/09/2004.
2. The order was further put to challenge before the Commissioner, Higher Education Department who also has rejected the same vide Annexure-P/1 dated 28/04/2006.
3. The contention of the counsel for the petitioner is that, the petitioner was initially appointed as Book-Lifter vide order dated 30/10/1987 (Annexure-P/3). Thereafter, he continued to serve the department till

23/09/2004 when abruptly his services was discontinued vide Annexure-P/2 holding that the resignation letter that the petitioner had submitted has been accepted with immediate effect which is under challenge in the present Writ Petition.

4. The contention of the counsel for the petitioner is that, the petitioner had not submitted any such resignation letter at any point of time which has been allegedly accepted by the department vide Annexure-P/2. The petitioner on the same day i.e. on 23/09/2004 itself had brought to the notice of the respondent No.2 that he has been illegally discontinued from the services of the respondents as he had never made any resignation and if at all if there is any resignation, the same is a concocted or fake document which has been used and acted upon by the respondents.

5. The said representation submitted by the petitioner on the same day was also not reconsidered by the authorities concerned.

6. The petitioner thereafter preferred an appeal before the Commissioner, School Education Department which vide Annexure-P/1 the Commissioner has rejected the same which again is under challenge in the present Writ Petition.

7. The core issue which needs consideration by this Court while considering the grievance of the petitioner is that, whether Annexure-P/2 which is the alleged acceptance of resignation by the respondent No.2 has been passed after due application of mind or whether it has been passed with malafied intention.

8. The specific stand of the petitioner all along right from the date on which Annexure-P/2 was passed was that, he had never tendered any resignation letter to the department in the year 2004 on which the department could have acted upon. It is further the contention of the counsel for the petitioner that, the alleged resignation letter itself would show that it is an concocted document which has never been pressed upon by the petitioner at any point of time and the same does not even have a date mentioned in it, neither does it have a date on which the respondent No.2 having received the same in the absence of which the respondents could not have acted upon it more particularly with immediate effect.

9. It was also the contention of the counsel for the petitioner that, the petitioner was not in the good-books of the Principal and that the Principal had been trying to implicate the petitioner on the one pretext or the other for a long time and the petitioner was also falsely charged that of having harassed to some students in the college.

10. It was contended by the petitioner that somewhere in the past he had given an undated blank resignation letter to the then Principal Dr. Arun Kumar Sen with a challenge that in case if at any point of time the allegation or the charges which were being periodically levelled against him are found to be true, the resignation letter could be used by the Principal for removing the petitioner from employment. This conditional letter seems to have been acted upon by the department authorities malafidely vide the impugned order.

11. The contention of the counsel for the petitioner is that, Annexure-P/5 dated 20/11/2002 is a document which would reveal that, the respondents had in their possession an undated blank resignation letter. He further contended that, since, there was a dispute between the petitioner and the then Principal, the authorities have been trying hard for removing the petitioner from the service under the respondent No.2. He further contended that, the respondent authorities also had initiated a Civil Suit against the petitioner for eviction from the quarter which was given to the petitioner while he was in service and for getting him evicted the said acceptance of his resignation letter has been used by the college authorities wherein it has been pleaded by the authorities that the petitioner since he stands resigned from the service of the respondent No.2, he is no longer an employee, therefore he should be evicted from the said premises. Thus the counsel for the petitioner prayed for setting aside of the order Annexure-P/2 as well as Annexure-P/1 and further prayed for the petitioner to be treated as an employee under the respondents as Book-Lifter and he be granted all consequential benefits.

12. The counsel appearing for the respondent No.2 however opposing the petition submits that it is a case where the petitioner had infact submitted his resignation on 19/06/2004 and thereafter it was only accepted on 23/09/2004 and as such there was sufficient time for the petitioner to have withdrawn his resignation letter before its acceptance. He further submits that, the management having once accepted the resignation, it cannot be withdrawn by the petitioner at a later stage more particularly when the acceptance of

the resignation has come into play and the petitioner has also handed-over the charge that he was holding to the institution.

13. It was the further contention of the counsel for the respondent No.2 that the case of the petitioner has been scrutinized also by the appellate body in the department i.e. by the Commissioner, Higher Education Department and he too found that the claim of the petitioner does not have any merits and as such it becomes finding of facts which may not be interfered by this Court in exercise of its writ jurisdiction.

14. According to the counsel for the respondent, since, the petitioner on an earlier occasion had tendered his resignation for personal family reasons and the same having also been accepted by the respondents, the same cannot be reconsidered by the authorities concerned after it has been acted upon it and thus prayed for dismissal of the Writ Petition.

15. Having heard the contention put forth on either side and on perusal of record, the only admitted fact in the present case is the employment of the petitioner with the respondent No.2 as Book-Lifter since 03/10/1987. The fact which needs consideration is as to whether the petitioner had tendered his resignation letter with the department or not.

16. On a specific query being put by the Court to the counsel for the respondent No.2 in respect of producing any document or record to show that the petitioner had infact tendered his resignation on 19/06/2004 either by way any proof showing receipt of the resignation letter or showing any sort of entries made in the dispatch register of the department in respect of

having received the resignation letter, the counsel for the respondent No.2 conceded the fact that there is no such correspondence or document or evidence available in respect of entries that are made on the resignation letter showing receipt at the first instance and the acceptance of the same on 23/09/2004 and the subsequent development.

17. So far as Annexure-P/5 is concerned - a document dated 20/11/2002, the department having received the same on the same day as there is a specific entry of receipt of the same by the respondent No.2. It is also noteworthy to take note of the fact that in the correspondence made to the Commissioner, Higher Education Department in the form of an appeal. Also the petitioner had clearly mentioned of having earlier given an conditional undated resignation letter to the department.

18. These two submissions and documents would further strengthen the stand of the petitioner of having not tendered any resignation letter in the year 2004 and also to the fact that the said resignation letter which has been used by the respondent No.2 appears to be a letter which was at some earlier point of time given by the petitioner as a conditional letter to the Principal which infact he had never intended to be used for relinquishing his services.

19. Given the aforesaid facts and circumstances of the case, it appears that the order Annexure-P/1 has been passed by the respondent No.2 with malafide intention of removing the petitioner from service under the respondent No.2 and that there is no strong cogent evidence available with

the respondent No.2 to disprove the contention which the petitioner has raised in the Writ Petition or in the appeal that he had made before the Commissioner, Higher Education Department.

20. Another aspect which cannot be brushed aside is the document dated 23/09/2004 written by the petitioner himself and which was received by the department on the same day wherein he had specifically denied having tendered any resignation letter which means the petitioner had specifically brought to the notice of the authorities that he had never tendered any resignation, yet the authorities did not consider his representation in this regard.

21. In the given facts, acceptance of the resignation by the respondent No.2 on 23/09/2004 is not-sustainable and the same deserve to be and is accordingly set-aside so also the order passed by the Commissioner, Higher Education Department on 28/04/2006 – Annexure-P/1 which too stands set-aside/quashed. It is directed that the petitioner has to be treated as in service as Book-Lifter under the respondent No.2 right from 23/09/2004 onwards till date.

22. So far as grant of backwages is concerned, considering the amount of period that has been lapsed in the course of litigation and also applying the principles of No Work No Pay also considering the fact that the petitioner infact has not discharged his duties during the said period, this Court is of the opinion that ends of justice would meet if the petitioner is awarded 50% of his backwages for the intervening period with all other consequential

benefits to be given notionally to the petitioner including the continuity of service and other promotional benefit if any.

23. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit