

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.S. NO. 1708 OF 2016**

Sanjay Kumar Rajput, S/o Kunjbihari Singh, aged about 42 years,
 occupation- Assistant Teacher Panchayat, R/o Kevtara, Post Bartara, Tahsil
 and P.S. Saja, District Bemetara (CG) **... Petitioner**

versus

1. State of Chhattisgarh, through the Secretary, Panchayat Department, Mahanadi Bhawan, Mantralaya, New Raipur (CG)
2. Collector, District Bemetara (CG)
3. Chief Executive Officer, Janpad Panchayat Saja, District Bemetara (CG).
4. Chief Executive Officer, Zila Panchayat, Bemetara, District Bemetara (CG)
5. Principal/Headmaster, Government Primary School Suvartala, Block Saja, District Bemetara (CG)
6. Block Education Officer, Saja, District Bemetara (CG)
7. Chief Executive Officer, Janpad Panchayat, Basna, District Mahasamund (CG) **... Respondents**

For Petitioner	:	Mr. Suresh Kumar Verma, Advocate.
For Respondents 1, 2, 5 & 6	:	Mr. S.P. Kale, Dy. Advocate General.
For Respondent 3	:	Mr. Gary Mukhopadhyay, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/08/2018**

1. The relief sought for in the present writ petition is for directing the respondent no.3 to permit the petitioner to withdraw the resignation that he had tendered the previous date.
2. The petitioner has also prayed for directing the respondents to take him back in service and treat the period as the period spent on duty.
3. Brief facts of the case are that the petitioner was working as Assistant Teacher (Panchayat) at the Government Primary School, Suvertala, Block Saja, District Bemetara. The petitioner vide Annexure P-4, dated 29.12.2015, had tendered his resignation on personal grounds and along with the resignation he had also deposited one month's salary in lieu of notice. However, the resignation letter did not mention the date from which he intends to resign from duty.

4. On the very next dated i.e. on 30.12.2015, vide Annexure P-5, the petitioner had submitted an application seeking withdrawal of his resignation letter on the ground that the resignation was submitted by him on account of certain undue mental pressure which he was undergoing and he did not want to resign from service and wanted to serve the respondents.

5. However, the petitioner had moved an application for withdrawal of his resignation but the same was not permitted by the respondents and he was also not permitted to resume his duties, which led to the petitioner filing the present writ petition seeking for appropriate direction.

6. Learned counsel for the petitioner submits that the respondents have till date not accepted the resignation letter and therefore the moment the petitioner has moved the application for withdrawal of resignation letter, for all practical purposes, the petitioner ought to have been treated to be in service and the resignation letter should not have been acted upon and thus prayed for a suitable direction to the respondents in this regard.

7. Learned counsel appearing for the contesting respondent no.3 however opposing the petition submits that since the petitioner while submitting the resignation letter had also deposited one month's salary in lieu of notice, it has to be presumed that the resignation letter came into effect with immediate force and there was no further requirement of any formal order of acceptance of the same to have been passed. He further submits that even otherwise the petitioner was issued with a show cause notice so far as his having committed a misconduct of suppressing material facts from the respondents and producing fake and fraudulent documents with which he has obtained the employment and as such the petitioner otherwise also is not eligible for the employment.

8. From the aforesaid submissions made by either side and on perusal of record, the appointment of the petitioner as Shiksha Karmi (Grade-III) was

back in the year 2009 and subsequently his promotion to the post of Assistant Teacher (Panchayat) is not in dispute. So far as the petitioner tendering his resignation also is not in dispute. Similarly the fact that on the very next date the petitioner having withdrawn his resignation letter vide Annexure P-5 also is not in dispute.

9. Given the fact what has to be taken into consideration is, whether the petitioner would be treated to remain in employment or not. Undisputedly, the date 29.12.2015, that is the date on which the petitioner had tendered his resignation, did not spell out the date from which his resignation would be effective. Under normal circumstances, the termination would have come into the effect at the end of the month in which he has tendered his resignation, which in the instant case would had been 31.12.2015. Moreover, the resignation which the petitioner had tendered was not accepted by the respondents and therefore if at all if the employee before the acceptance of the same had moved an application for withdrawal of the same, there was no impediment on the part of the respondents for not granting joining to the petitioner and thereafter permitting him to continue in service.

10. So far as the allegation as to the fact that the petitioner had obtained the employment on the basis on false documents is concerned, the said aspect is a matter of enquiry and unless there is an enquiry, only because the petitioner in between had tendered his registration, by itself cannot be accepted as an admission of guilt on the part of the petitioner and that the respondents would be free to take appropriate action after due enquiry in this regard is conducted.

11. The petitioner in the instant case since has been deliberately not permitted to join his duties on 30.12.2015, the action on the part of the respondents is bad in law. On the admitted fact that the petitioner on

29.12.2015 had submitted his resignation and before the same could be accepted by the respondents, the petitioner had withdrawn the resignation, this Court does not find any good reason as to why the petitioner's service has to be treated as resigned from service. The non-granting of joining to the petitioner therefore is arbitrary and illegal and is held to be bad in law.

12. The writ petition accordingly deserves to be and is allowed. Respondent No.3 is directed to ensure granting joining to the petitioner immediately, reserving the right for conducting an enquiry and taking appropriate decision in respect of any misconduct which the petitioner has performed while obtaining the employment.

13. Since the petitioner has not disputed the fact of submitting the resignation letter and the same being acted upon by the respondents without any formal order, the petitioner applying the principles of 'no work nor pay' would not be entitled for any monetary benefits for the intervening period. However, the same would be treated for all other purpose as period spent on duty.

14. In *Union of India v. Wg. Comm. T. Parthasarathy*, 2001 (1) SCC 158, the Apex Court considered the case of a prospective resignation submitted on 31.7.1985 to be become effective on 31.8.1986 and withdrawn on 19.2.1986 but the withdrawal application was rejected on the ground that under the existing policy, there was no scope of withdrawal. The Court reiterated the law that a prospective resignation becomes effective from the date given by the employee and it can be withdrawn prior to the date of its commencement into effect. The Court further held that the right to withdraw cannot be curtailed by Executive Instructions or Policy Decision and unless there are statutory rules prohibiting such withdrawal, the right of an employee to withdraw is not acceptable.

15. In the case of *Srikantha S.M. v. Bharath Earth Movers Ltd*, 2005 (8) SCC 314, the Supreme Court went to the extent of saying that the resignation could be withdrawn, even after acceptance, but before the actual date on which the employees concerned was to be relieved.

16. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

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