

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.12302 of 2018

ORDER:

Heard learned counsel for petitioner and Sri N.Bhoopal Reddy, learned Standing Counsel for respondent Nos.2 and 3.

2. Petitioner was appointed as Health Supervisor on contract basis by 2nd respondent on 02-12-1999 and later he was appointed as Health Supervisor on temporary basis and his services were regularized in the said post w.e.f. 01-10-2007 vide proceedings dt.14-07-2012. He was then placed on probation till 30-09-2009 and his probation was declared with retrospective effect vide proceedings dt.23-01-2013.

3. While so, the petitioner got selected for the post of Medical Officer Ayush on contract basis by the District Medical and Health Officer, Adilabad on 22-07-2016. Petitioner submitted a letter of resignation on 27-07-2016 to the 2nd respondent resigning from the post of Health Supervisor.

4. Later he changed his mind and gave representation on 22-05-2017 to the 2nd respondent to permit him to once again perform his duties as Health Supervisor since his resignation letter was not accepted by the competent authority.

5. On 22-11-2017, the said request was rejected without assigning any reason.

6. Petitioner then filed this Writ Petition challenging the proceedings dt.22-11-2017 and seeking a consequential direction to the respondents to permit him to perform his duties as Health Supervisor in the 3rd respondent School/College with all benefits including seniority, promotion and arrears of salary and other benefits.

7. Counter-affidavit is filed by respondents taking a plea that petitioner's resignation was accepted w.e.f. 27-07-2016 through office proceedings dt.28-02-2018. The proceedings accepting the resignation of the petitioner are not filed along with counter-affidavit.

8. It is also contended that as per Conduct Rules, an employee of the 3rd respondent Society cannot apply for private employment or accept such employment without obtaining permission in writing of the appointing authority and petitioner violated the said condition.

9. Learned counsel for petitioner contended that though petitioner had submitted resignation, he is entitled to withdraw the same before it is accepted by the competent authority; and once representation was submitted withdrawing the resignation letter on 22-05-2017, the respondents cannot refuse permission to the petitioner to perform his duties. It is also contended that since proceedings dt.28-02-2018 are not being furnished to the petitioner and they have not been filed along with counter-affidavit in the Writ Petition, the same have to be ignored and petitioner must be taken back into service.

10. In **J.K.Cotton Spinning and Weaving Mills Company Limited Vs. State of U.P. and others**¹, the Supreme Court held that if an employee makes his intention to resign his job known to the employer and the latter accepts the resignation, the contract of employment comes to an end and with it stands severed the employer-employee relationship. It further held that under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation. This legal principle is not disputed by the learned Standing Counsel for respondent No.3.

11. In this view of the matter, the Writ Petition is allowed; the proceedings dt.22-11-2017 as well as the proceedings dt.28-02-2018 of the 3rd respondent are both set aside; and respondents are directed to reinstate the petitioner as Health Supervisor w.e.f. 27-07-2016. However the petitioner shall not be entitled to any wages for the period 27-07-2016 to 22-05-2017, but he shall be entitled to seniority, promotion and arrears of salary. No costs.

12. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-11-2018
Vsv

¹ (1990) 4 SCC 27