

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

Date of Decision: March 09, 2018

+ **W.P.(C) 5014/2011**

SH. N.NAGARJUNA RAO Petitioner
Through: Mr. Padma Kumar S. and Mr. R.A.
Sharma, Advocates

versus

GOVT. OF NCT DELHI AND ORS.Respondents
Through: Ms.Jyoti Taneja, Advocate for
respondent-GNCTD
Mr. Sethu Ramalingam, Advocate for
respondents No.4 & 5
Mr.Raj Kumar, DEO Zone-27 and Mr. Pradeep,
L.A., Zone-27

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner is ex-Upper Divisional Clerk (UDC), who had represented to respondent-School to issue *ex post facto* approval regularizing his lien period to enable him to get proportionate pension. The said Representation was forwarded to respondent-*Directorate of Education*, which stands declined vide impugned order of 23rd November, 2006 and it was so conveyed by respondent-*Directorate of Education* to respondent-School vide Communication of 5th April, 2011 when another Representation was received.

2. Impugned order of 23rd November, 2006 discloses that rejection of *ex post facto* approval to petitioner's technical resignation was because no approval was granted to the extension of lien beyond 15th July, 1992. It is

matter of record that vide letter/application of 13th February, 1996 (*Annexure-PR/1 to rejoinder*), petitioner had sought acceptance of technical resignation w.e.f. 30th June, 1995 from respondent-School. The said application tendering technical resignation was accepted and acceptance was conveyed by respondent-School to respondent-*Directorate of Education* vide letter of 16th March, 1996 and it is so evident from *Annexure P-3 (colly.)*.

3. Learned counsel for respondent-School submits that acceptance of the technical resignation is a mere formality and to submit so, attention of this court is drawn to *Swamy's-CCS (Pension) Rules (Annexure P-5)*. Learned counsel for respondent-*Directorate of Education* asserts that though it may be a technical formality, but it has to be complied with. It is matter of record that counter affidavit filed by respondent-School is silent about mode of sending petitioner's technical resignation to respondent-*Directorate of Education*. The stand taken by respondent-School in its counter affidavit is that they are handicapped due to the delay and laches as the respondent-School does not have the record for the relevant period i.e. the years 1995-96.

4. Upon hearing and on perusal of impugned orders of 23rd November, 2006 and 5th April, 2011, I find that the counter of respondent-*Directorate of Education* is silent as to the receipt of petitioner's technical resignation purportedly forwarded by respondent-School to the respondent-*Directorate of Education*. In any case, respondent-*Directorate of Education* is under legal obligation to pass a speaking order as to why *ex post facto* approval to petitioner's technical resignation is declined.

5. In view of aforesaid, impugned orders/communications of 23rd November, 2006 and 5th April, 2011 are hereby quashed with direction to respondent-*Directorate of Education* to consider the grant of *ex post facto* approval to petitioner's technical resignation in light of *Swamy's Compilation on CCS (Pension) Rules (Annexure P-5)* within a period of twelve weeks and petitioner be intimated about it within two weeks thereafter, so that petitioner may avail of the remedies as available in law, if need be. Needless to say that if respondent-*Directorate of Education* comes to conclusion that submission of technical resignation is a mere formality, then it shall expeditiously process petitioner's case for grant of pension as claimed.

6. With directions as aforesaid, this petition is disposed of.

Dasti to counsel for the parties.

MARCH 09, 2018

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**(SUNIL GAUR)
JUDGE**