

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

Date of Decision: March 08, 2018

+ **W.P.(C) 6431/2016**

ADITI KUNDU Petitioner

Through: Mr. Manish Kumar Srivastava,
Advocate

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND
ANR Respondents

Through: Mr. Harsh Kishore, Mr. Giriraj
Subramaniam and Mr. Simarpal Singh
Sawhney, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned order of 11th September, 2015 (*Annexure P-11*) accepts petitioner's resignation from the post of Assistant Professor, University School of Architecture and Planning (*hereinafter referred to as USAP*) w.e.f. 31st July, 2015 and impugned order has been passed on petitioner's application of 1st July, 2015 vide which she had sought waiver of the notice period and acceptance of her resignation w.e.f. 31st July, 2015. It is the case of petitioner that on 4th August, 2015, vide application (*Annexure P-6*), she had withdrawn her resignation and that petitioner's application seeking withdrawal of resignation was forwarded by the Joint Registrar (Personnel) to the Dean of USAP vide letter of 4th August, 2015 (*Annexure P-8 colly.*).

2. Learned counsel for petitioner submits that acceptance of petitioner's resignation vide impugned order is *per se* illegal as the resignation was withdrawn by petitioner on 4th August, 2015 i.e. before it was accepted and to submit so, reliance is placed upon Supreme Court's decision in *Balram Gupta v. Union of India and Anr.*, AIR 1987 SC 2354.

3. On the contrary, learned counsel for respondent-University submits that the application seeking withdrawal of resignation was addressed to the Vice-Chancellor and not to the Dean and therefore, withdrawal of resignation is of no consequence as petitioner is well aware that the application for withdrawal of resignation had to be submitted to the Dean of USAP and it has not been done in the instant case. It is submitted that in place of petitioner, somebody else has been already employed and that petitioner was not a confirmed employee and so, it would be inequitable to direct acceptance of withdrawal of resignation as no good reason for withdrawal of resignation is forthcoming. So, it is submitted that this petition deserves to be dismissed.

4. Supreme Court in *Chand Mal Chayal v. State of Rajasthan*, (2006) 10 SCC 258 has reiterated as under:-

"By now it is a well-settled principle of law that an incumbent is entitled to withdraw his resignation before the acceptance. Once his resignation is accepted there is no jural relationship between the employee and the employer and the employee cannot claim for withdrawal of the resignation nor reinstatement in the post."

5. Upon hearing and on perusal of impugned order (*Annexure P-11*) and the material on record, I find that petitioner's resignation has been accepted by respondent-University without any reference to petitioner's

application for withdrawal of resignation, which renders impugned order illegal. No doubt, petitioner had addressed the application for withdrawal of resignation to the Vice-Chancellor instead of submitting it to the Dean of USAP, but that by itself does not justify non-consideration of the application for withdrawal of resignation. It is evident from respondent-University's Communication of 4th August, 2015 (*Annexure P-8 colly.*) that petitioner's application for withdrawal of resignation has been forwarded to the Dean of USAP. There is no application of mind on the said application for withdrawal of resignation.

6. It is true that petitioner had in the resignation letter requested that she be relieved on or before 31st July, 2015, but since the request for withdrawal of resignation had reached the Dean of USAP prior to the acceptance of resignation, therefore, it ought to have been considered by respondent-University. Undue delay in intimating the concerned employee of the action taken on the letter of resignation justifies an inference that resignation has not been accepted. It can be so said because petitioner had been paid salary for the month of August, 2015.

7. Respondent-University has failed to act reasonably and rationally in not taking into consideration the application for withdrawal of resignation while accepting petitioner's resignation vide impugned order. It is the right of petitioner to withdraw resignation during the currency of notice period, but in the instant case, the application for withdrawal of resignation had come after the notice period which ended on 31st July, 2015. In such a case, though no absolute right accrues to petitioner, but since respondent-University has taken its own time to communicate the acceptance of resignation, therefore, impugned order cannot be sustained

and is accordingly quashed. Respondent-University is directed to consider petitioner's application for withdrawal of resignation in light of the fact that if in place of petitioner, some other teacher has been employed, then the employment of said teacher has been on *Ad hoc* basis or on regular basis. Respondent-University shall pass speaking order on petitioner's application for withdrawal of resignation within a period of six weeks from today and in case it chooses not to accept petitioner's application for withdrawal of resignation, then a reasoned decision be taken and it be conveyed to petitioner within a week thereafter, so that petitioner may avail of the remedies as available in law, if need be.

8. Since the pleadings are silent regarding petitioner's employment elsewhere during the pendency of this petition, therefore, no case for grant of any monetary benefits to petitioner is made out, in case respondent-University chooses to accept petitioner's application for withdrawal of resignation.

9. With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

MARCH 08, 2018

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