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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 30th July, 2018*

+ LPA 407/2018

SAUGATA ROY

..... Appellant

Through: Mr Viraj R. Datar and Mr Nitish
Chaudhary, Advs

versus

PEC LTD

..... Respondent

Through: Mr Sageen Narula and Mr Krish
Kalua, Advs

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No. 30044/2018 (exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

LPA 407/2018 and CM No. 30043/2018 (ad-interim relief)

1. The present appeal is directed against the order dated 25.07.2018 passed by a learned Single Judge of this Court vide which the prayer seeking interim relief has been rejected. Mr Narula, learned counsel for the respondent, has entered appearance. With the consent of the parties, the appeal is taken up for hearing and final disposal.

2. The necessary facts to be noticed for the disposal of this appeal are that the appellant has been employed for the last 14 years with the respondent-company which is a public sector undertaking of the Government of India and under the administrative contract of the Ministry of Commerce and Industry. It is the case of the appellant that the respondent company has been suffering loss and currently the net worth of the company is in the negative. Also, the respondent-company has been declared as a Non-Performing Assets (NPA).

3. In the year 2016, a memorandum was issued to the appellant who was charged with professional misconduct under Rule 5 of the PEC Limited Employees' (Conduct, Discipline & Appeal), Rules 1975. Thereafter, an inquiry was initiated which we are informed has been concluded although the disciplinary proceedings are still pending. The appellant had meanwhile tendered his resignation on 05.04.2018 which has not been accepted and is the subject matter of writ petition pending before the learned Single Judge.

4. Mr Datar, learned counsel appearing for the appellant, submits that the appellant has been offered a job and the time has been extended up till 31.07.2018, after which the employer is likely to withdraw their offer made to the appellant. Mr Datar submits that the appellant is conscious of the fact that the disciplinary proceedings have not yet reached its conclusion. Accordingly, on instructions, appellant is willing to make a statement that the appellant will not claim any monetary benefits which may accrue to him on his resignation till the disciplinary proceedings are finally concluded. Mr Datar also submits that the main aim and objective of the appellant is not in any way to escape the consequences of any adverse order which may be

passed against him but to secure a job for himself and his family whom he has to support. Mr Datar also relies strongly on decision rendered by a learned Single Judge of this Court in **W.P.(C) 633/2017** titled as **Tarun Saxena vs PEC Limited & Ors.** Reliance is placed on paragraphs 5 and 6, which we reproduce below:-

“5. Accordingly, this writ petition is disposed of with the observation that petitioner’s resignation dated 25.10.2016 would stand accepted by the respondent No. 1, but respondent No. 1, as agreed to by the petitioner, will not be liable to pay any monetary emoluments or monetary amounts to the petitioner for services rendered by the petitioner with the respondent No. 1 except the petitioner’s contribution to the provident fund, and which amount will be reimbursed by respondent No. 1 to the petitioner within a period of two months from today. If respondent No. 1 feels that besides the amounts already available of the petitioner with the respondent No. 1 and other amounts are due from the petitioner, then, of course, the respondent No. 1 will be at liberty in accordance with law to file appropriate independent proceedings in which the defences of the petitioner also would be considered that petitioner was not liable and petitioner was not guilty of any negligence as is the case of the petitioner.

6. It is also observed that in case in the departmental proceedings against the petitioner which have been initiated, the petitioner is not found guilty or petitioner is found guilty only to the extent of releasing the particular amount which is a lesser amount than the amount payable by the respondent No. 1 to the petitioner on account of services rendered by the petitioner with the respondent No. 1, then such amount which the respondent No. 1 holds the petitioner is entitled to, and there being no recoveries to be made against the petitioner on account of any penalty orders in the disciplinary proceedings, such undisputed amounts will be released by respondent No. 1 to the petitioner within a period of two months of conclusion of the disciplinary proceedings. Petitioner, of course, will be

entitled to participate in the disciplinary proceedings and defend the same in accordance with law.”

5. Mr Datar submits that the aforesaid writ petition was also filed against the respondent company and the order has since attained the finality. Mr Datar submits that in the aforesaid matter directions were issued with regard to release of certain undisputed amounts whereas the appellant in this case has already made a statement before Court that he would not seek release of any amount till the disciplinary proceedings are completed and subject to orders which may be passed in those proceedings.

6. Mr Narula, learned counsel for the respondent-company, has opposed this appeal and contended that an employee cannot seek resignation during the pendency of disciplinary proceedings. It is submitted that the acceptance of the resignation would allow him to leave the services of the respondent-company and he would escape the consequences of adverse findings against him in the inquiry. He relies upon ***Central Inland Water Transport Corporation Limited and Anr vs Brajo Nath Ganguly and Anr. (1986) 3 SCC 156***, more particularly, paragraph 114, which we reproduce below:-

“The Calcutta High Court was, therefore, right in quashing the impugned orders dated February 26, 1983, terminating the services of the contesting Respondents and directing the Corporation to reinstate them and to pay them all arrears of salary. The High Court was, however, not right in declaring clause (i) of Rule 9 in its entirety as ultra vires Article 14 of the Constitution and in striking down as being void the whole of that clause. What the Calcutta High Court overlooked was that Rule 9 also confers upon a permanent employee the right to resign from the service of the Corporation. By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee can not be deprived of his right to resign. A

resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee. The Corporation ought to make suitable provisions in that behalf in the said Rules. Therefore, while the judgment of the High Court requires to be confirmed, the declaration given by it requires to be suitably modified."

7. Additionally, Mr Narula submits that CVC has also written to the respondent to initiate major penalty proceedings against the appellant herein and in view thereof, the respondent cannot accept the resignation of the appellant which would amount to grant of approval for leaving and to escape the punishment which may be awarded to him.

8. We have heard the learned counsel for the parties and considered their rival submissions.

9. We find force in the submissions made by Mr Narula, learned counsel appearing for respondent-company, that accepting the resignation may have the effect which would amount to the appellant escaping the consequences of an adverse finding which may be passed against him. However, Mr Datar has contended that the appellant has diligently participated in the inquiry proceedings. Appellant has not prayed for an NOC from the respondent-

company, however, in case he stops reporting to the respondent it would give an impression as if he has deserted the respondent-company. He further contends that the appellant is confident that the disciplinary proceedings would finally result in his being absolved and thus he is not even pressing for his dues including his share in the provident fund and wishes that his leaving the respondent-company and joining another company be taken on record, failing which the offer received by him is likely to be withdrawn.

10. Accordingly, we dispose of this appeal with the following directions:-

- a) The resignation tendered by the appellant shall be kept on record by the respondent. The respondent will not be obliged to accept the resignation.
- b) The respondent will take note that the appellant would not report for work from 01.08.2018 onwards.
- c) All the dues of the appellant shall be withheld by the respondent till the conclusion of disciplinary proceedings and subject to final order which may be passed.
- d) The appellant will report to the respondent as and when directed for further proceedings, if required.

11. With these above directions, the appeal and the pending application are disposed of.

12. Mr Datar submits that in view of the order so passed in the appeal, nothing further survives in the writ petition filed by the appellant herein in the Court of the learned Single Judge. The file of writ petition be called to

this Court and copy of this order will be placed in the file of the writ petition which would be treated as not pressed and the next date fixed therein stands cancelled.

13. The present appeal and all the applications are disposed of.

14. *Dasti* under the signatures of the Court Master.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 30, 2018

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