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

% *Date of Judgment: 10th August, 2018*

+ LPA 436/2018

N.B TIWARI

..... Appellant

Through Mr. Birendra Kumar Mishra and
Ms.Poonam Atley, Advocates

versus

KALKA PUBLIC SCHOOL & ANR

..... Respondents

Through Mr. Devesh Dubey, Advocate for Mr.
Santosh Kumar Tripathi, ASC for
respondent no.2/DOE.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM.APPL 32016/2018(delay)

1. This is an application filed by the applicant/appellant seeking condonation of 38 days delay in filing the present appeal.
2. Heard.
3. The prayer made in the application is not opposed. Delay of 38 days in filing the present appeal is condoned.
4. The application stands disposed of.

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5. Challenge in this appeal is to the order passed by the learned Single Judge dated 24.05.2018 in a writ petition instituted by respondent no.1 School where challenge was laid to the order passed by the Delhi

School Tribunal by which the appellant herein was directed to be reinstated with consequential benefits.

6. Some necessary facts which are required to be noticed for disposal of this appeal are that the appellant herein was working as a Lab Assistant in the respondent no.1 School initially on *ad hoc* basis and consequently he was confirmed in the year 1997. The controversy revolves around a communication which was issued by the appellant herein on 16.10.2000, which we reproduce below:

“To
The Principal,
Kalka Public School,
Alaknanda, New Delhi-110019.

ANNEXURE P-4
16.10.2000

Sub:- Self Relinquish of My post as Lab Asstt.
On the basis of three months prior notice.

Respected Madam,

I have some genuine problem to your higher authorities, which is not tolerable at this stage. Because there is no any media to support of my genuine problem like that:-

1. No Implementation of my grade as Lab Asstt. From July, 96 to till November, 2000. While I have written prove from your side. That should be attached here with this application.
2. No arrear granted on till date.
3. No Bonus issue from joining to till date.
4. No any leave record.
5. Provide gratuity under the Rule.

On above problem in my sense is genuine as on date. That is why I am producing application in front of you.

Please accept and finalized to all account within this duration.

Thanking you,

N.B. Tiwari
Physics Lab. Asstt.”

7. It is the case of the appellant that post issuance of this communication, he did not receive any response from the School. In effect, his resignation was not accepted. It is also contended that there was no communication on record as to whether the Directorate of Education (DOE) also accepted the resignation of the appellant or not. It is thus, contended that in the absence of a formal communication to the appellant either by the School or by the Directorate of Education duly accepting his resignation, he could not have been relieved of his services. Counsel has relied upon two decisions in the case of ***Modern School v. Shashi Pal Sharma and Others***, reported at (2007) 8 SCC 540 and ***Dr. Prabha Atri v. State of U.P. & Ors.***, reported at AIR 2003 SC 534.
8. Learned counsel for the appellant fairly admits that the judgment in the case of ***Modern School***(supra) would not apply to the facts of the present case as in the aforesaid matter, the resignation was withdrawn although after it had been accepted. However, he submits that the case of ***Dr. Prabha Atri***(supra) would apply as his resignation was conditional in nature. It was issued on account of frustration and on account of the fact that the demands of the appellant, i.e., no arrears were granted to him, no bonus was given to him, no leave record was provided, no gratuity was given and the non-implementation of Grade

as Lab Assistant. Out of exasperation such a communication was issued by the appellant.

9. Learned counsel for the respondent Directorate of Education has entered appearance on an advance copy. He submits that although there is nothing on record to show that the resignation was accepted by the Directorate of Education, however, he submits that the learned Single Judge rightly relied upon Rule 114A of the Delhi School Education Act and Rules wherein it has been stated that in case the resignation is not accepted within 30 days, it would be deemed to have been accepted.
10. We have heard the learned counsels for the parties.
11. The reading of communication dated 16.10.2000 would show that it was not conditional in nature. The issues which led to his resignation have, of course, been detailed. However, the concluding line of this communication, reads as under:

“That is why I am producing application in front of you. Please accept and finalized(sic finalize) all account within this duration.”

12. The communication also shows that three months prior notice was issued to the School. From the letter dated 09.11.2000 written by the School to the Directorate of Education, would make it clear that the School had forwarded the resignation to the Directorate of Education with a proposal to accept the resignation. The following words were used:

“It is proposed to accept his resignation”

13. Rule 114A of the of the Delhi School Education Act and Rules, reads as under:

“[114A. **Resignation.** The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expire of the said period.]

14. On reading of the aforesaid Rule, it is clear that the resignation submitted by an employee is to be accepted within a period of 30 days from the date of receipt of resignation by the Managing Committee with the approval of the Director. As per the proviso, in case no approval is received within 30 days, such approval is deemed to have been received.
15. It is not in dispute that after the three months period expired, the appellant herein was not permitted to enter the School which is evident from the communication addressed by the appellant to the Education Officer on 12.02.2001, which we reproduce below:

“ANNEXURE P-5

To,

The Education Officer,
Zone-S-25, Dist. South
Defence Colony,
New Delhi.

Sub: Non-Allowing to Join Duties/Work from 16th January, 2001 to till date.

Respected Madam/Sir,

I, N.B. Tiwari is working as Confirmed Lab Asstt. In the KALKA PUBLIC SCHOOL, Alaknanda, New Delhi-19 w.e.f. 1.07.1996.

Prior to this I had also worked as Adhoc Lab Attendant from 13.2.95 to 12.5.95 and from 1.7.95 to 30.6.96 as Lab Attendant.

Surprisingly the School Principal Mrs. Asha Mehrotra is not allowing me to put in my attendance in the attendance register and to join my work without any reason.

It is pertinent to note that I have been requesting the school Mgt. to pay me the rightful Vth pay commission like Arrear, bonus, implementation of the Grade etc to me as of Lab Asst. and few month back in emotion I have also given them a letter under protect stating that if the same are not paid I would be forced to leave my job.

You are requested to take up the matter with the school and give appropriate direction to allow me to work and release all my rightful dues as per provision of D.S.E.R.1973.

Thanking you,

Yours faithfully,

Sd/-

(N.B. TIWARI)

R/o P-148, Old Pilanji
Sarojini Nagar
New Delhi-110023.

Date 12.0212Kr

Encls:-

1. Adhok Copy 13.2.1995 to 12.5.1995
2. Probation Period Copy 1.2.95 to 30.6.96.
3. Confirm Copy 1.7.96 to till date.
4. Circular Attached”

16. Reading of this communication would show that the appellant did bring to the notice of the Education Officer that he had issued a communication in an emotional state of mind and under protest stating that if the rightful Vth pay commission like Arrear, bonus, implementation of the Grade etc. are not paid to him, he would be forced to leave his job. We may note that from 16.10.2000 till date, the appellant has not withdrawn the communication which he had addressed. Since the resignation submitted by the appellant was not withdrawn at any point of time, the appellant cannot be given any benefit whether any written communication was sent to him or not accepting his resignation when admittedly his letter was forwarded to the Directorate of Education.

17. We find no merits in the appeal. The same is dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

AUGUST 10, 2018

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