

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

Date of Decision: May 24, 2018

+ **W.P.(C) 5940/2017 & CMs 24676-77/2017**
KALKA PUBLIC SCHOOL Petitioner
Through: Ms. Yashmeet Kaur, Advocate
versus

N.B. TIWARI & ORS Respondents
Through: Mr. Birendra Mishra and Ms.
Poonam Atley, Advocates for respondent No.1
Mr. Santosh Kumar Tripathy, ASC with Mr.
Shashank S. Tiwari, Advocate for respondent-
GNCTD

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned order of 24th May, 2017 holds that resignation of first respondent had not been accepted by petitioner-School according to provisions of Rule 114A of *the Delhi School Education Act and Rules, 1973* and thus, Delhi School Tribunal vide impugned order has directed reinstatement of first respondent with consequential benefits.

2. It emerges from impugned order (*Annexure P-1*) that first respondent was working as Lab Assistant/Teacher with petitioner-School and on 16th October, 2000 he had tendered his resignation (*Annexure P-3 colly.*) owing to some genuine problem with higher authorities which became intolerable to first respondent. The resignation letter of first respondent enumerates the problems being faced by him and calls upon petitioner-School to accept the resignation and to finalize his account.

The resignation letter was carrying a stipulation of three months' prior notice.

3. Learned counsel for petitioner submits that while accepting petitioner's resignation, his accounts were settled on 15th January, 2001. Impugned order notes that on 16th January, 2001, first respondent was not allowed to mark his attendance in the Register. First respondent's resignation was duly forwarded to respondent-*Directorate of Education* on 9th November, 2000. However, impugned order quotes paragraph No.3 (K) and (I) of the Reply filed by respondent-*Directorate of Education* wherein it is clearly stated that petitioner-School did not seek mandatory approval of resignation from Director of Education. The aforesaid is the basis of impugned order.

4. Learned counsel for petitioner assails impugned order on the ground that it is factually incorrect that no approval from respondent-*Directorate of Education* was sought. To submit so, attention of this Court is drawn to *Annexure R-8* of *Annexure P-3 (colly.)*. Regarding receiving of Communication of 9th November, 2000, it is pointed out by petitioner's counsel that in paragraph No. 3(p) of Reply (*Annexure P-4*) of the *Directorate of Education*, it is noted that an inquiry was conducted by respondent-*Directorate of Education* and it was found that petitioner had resigned from his job. However, it is maintained by counsel for respondent-*Directorate of Education* that petitioner-School did not obtain approval of acceptance of resignation from respondent-*Director of Education*. According to petitioner's counsel Communication of 9th November, 2000 vide which petitioner's resignation was forwarded to respondent-*Directorate of Education* was a proposal, which was

impliedly accepted by respondent-*Directorate of Education* as there was no negative response from respondent-*Directorate of Education*, therefore, in view of proviso to Rule 114A of the aforesaid Rules, there is a deemed approval. Thus, it is submitted that impugned order deserves to be set aside.

5. On the contrary, learned counsel for first respondent supports impugned order and submits that there was no approval of first respondent's resignation. Attention of this Court is drawn by learned counsel for first respondent to paragraph No. 19 of impugned order to submit that there is no material on record to indicate that resignation of first respondent was accepted by petitioner-School and since there was no acceptance of resignation, therefore, Communication of 9th November, 2000 loses its significance. He further submits that the so-called resignation letter of 16th November, 2000 cannot be termed to be a resignation letter as various demands were raised by way of this letter. Reliance is placed by learned counsel for first respondent upon Supreme Court's decision in *Dr. Prabha Atri v. State of U.P. and Others*, AIR 2003 SC 534 and *Moti Ram v. Param Dev and Another*, (1993) 2 SCC 725 in support of above submissions.

6. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that vide Communication of 9th November, 2000, resignation of first respondent sent to respondent-*Directorate of Education* with proposal to accept the resignation. Meaning thereby, petitioner-School had already accepted resignation and had forwarded it to respondent-*Directorate of Education* for its acceptance, which infact means approval.

7. In the face of *Annexure R-8 of Annexure P-3 (colly.)*, it cannot be said that there was no acceptance of resignation by petitioner-School or that the approval of resignation from first respondent was not sought by petitioner-School. In view of proviso to Rule 114A of *the Delhi School Education Act and Rules, 1973*, there is deemed approval of resignation, if nothing is heard within a period of 30 days from respondent-*Directorate of Education*. The receipt of aforesaid Communication of 9th November, 2000 is not disputed by respondent-*Directorate of Education*. The stand taken by respondent-*Directorate of Education* of no formal approval being sought, is not justified in the face of aforesaid Communication of 9th November, 2000 i.e. Annexure R-8 of Annexure P-3 (colly.).

8. Since approval of respondent-*Directorate of Education* was sought by petitioner-School regarding resignation of first respondent and there was no response thereto, therefore, there was a deemed approval of resignation tendered by first respondent in terms of Rule 114A of aforesaid Rules. The decisions relied upon, do not advance the case of first respondent.

9. In light of aforesaid, impugned order cannot be sustained and is accordingly set aside while declaring that resignation of first respondent is deemed to be approved by respondent-*Directorate of Education*.

10. This petition and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MAY 24, 2018

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