

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 71 of 2019**

{Arising out of order dated 26.11.2018 passed by learned Single Judge in Writ Petition (S) No. 1901 of 2007}

- Governing Body of Kamla Devi Sangeet Mahavidyalaya, through: It's Secretary-cum-Principal, Kamla Devi Sangeet Mahavidyalaya, Kalibadi Gandhi Chowk Raipur, Tahsil & District Raipur (Chhattisgarh)

---- Appellant**Versus**

1. Surjeet Sen, S/o Late Shri Paritosh Sen, aged about 54 years, R/o C/o 15-A/Gurukul Parisar, Kalibadi Raipur, Tahsil & District Raipur (Chhattisgarh)
2. State of Chhattisgarh, Through: The Secretary, Department of Higher Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District Raipur (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Sourabh Sharma, Advocate.
For Respondent No.1	:	Shri Yogesh Pandey, Advocate.
For Respondent No.2/State:	:	Shri R.S. Baghel, Deputy Advocate General.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****08.02.2019**

1. Heard learned counsel for the Appellant, learned counsel for the Respondent No.1 and learned Deputy Advocate General for the State.
2. The governing body, which is known as Kamla Devi Sangeet Mahavidyalaya, is in appeal since the learned Single Judge allowed the writ application of the

private Respondent No.1 by setting aside the order dated 23.09.2004 (Annexure P/2) to the writ application whose quashing was sought alongwith order dated 28.04.2006 which was passed by the Commissioner, Higher Education, in appeal i.e. Annexure P/1 to the writ application.

3. The occasion for the private Respondent who was the Petitioner before the writ Court to approach the High Court arose when his services was abruptly discontinued vide order dated 23.09.2004 on the basis of a so-called undated, unconditional resignation letter tendered by him to the Appellants.
4. The private Respondent seriously contested the ground that any resignation letter was tendered by him on the basis of which the impugned order Annexure P/2 to the writ application was issued discontinuing him to work on the ground that his resignation has been accepted. The stand of the private Respondent was that it is fake and a concocted document created with the object of getting rid of the service of the private Respondent. In fact, it was the apprehension of the private Respondent that way back somewhere in the year 1997, an undated blank resignation letter was handed over to the then Principal, Dr. Arun Kumar Sen under certain circumstances existing then and after many many years, the said letter seems to have been pulled out by the Management and used as a letter of resignation tendered by him in the year 2004.
5. The learned Single Judge went through the pleadings as well as the evidence brought on record including the surrounding circumstances that way back in the year 2002, a document annexed as Annexure P/5, reveals that an undated blank resignation letter was in possession of the Appellant and that effort was made to get rid of the private Respondent even then without success. Even, a civil suit was also filed for eviction from the official quarter and all these indicates that the relationship did not seem to be very cordial between the employee and employer.

6. The learned Single Judge recorded his findings as under:

“18. These two submissions and documents would further strengthen the stand of the petitioner of having not tendered any resignation letter in the year 2004 and also to the fact that the said resignation letter which has been used by the respondent No.2 appears to be a letter which was at some earlier point of time given by the petitioner as a conditional letter to the Principal which infact he had never intended to be used for relinquishing his services.

19. Given the aforesaid facts and circumstances of the case, it appears that the order Annexure P/1 has been passed by the respondent No.2 with malafide intention of removing the petitioner from service under the respondent No.2 and that there is no strong cogent evidence available with the respondent No.2 to disprove the contention which the petitioner has raised in the Writ Petition or in the appeal that he had made before the Commissioner, Higher Education Department.

20. Another aspect which cannot be brushed aside is the document dated 23.09.2004 written by the petitioner himself and which was received by the department on the same day wherein he had specifically denied having tendered any resignation letter which means the petitioner had specifically brought to the notice of the authorities that he had never tendered any resignation, yet the authorities did not consider his representation in this regard.

21. In the given facts, acceptance of the resignation by the respondent No.2 on 23.09.2004 is not-sustainable and the same deserve to be and is accordingly set-aside so also the order passed by the Commissioner, Higher Education Department on 28.04.2006-Annexure P/1 which to stands set-aside/quashed. It is directed that the petitioner has to be treated as in service as Book-Lifter under the respondent No.2 right from 23.09.2004 onwards till date.”

7. In the above background not only the two Annexures P/1 and P/2 to the writ application stood quashed, but the private Respondent was also ordered to be restored back in service with 50% back-wages with all consequential benefits on the ground that since the employee in question had not worked, therefore, 100% back-wages may not be allowed on the principle of 'no work-no pay'.
8. It is this order of the learned Single Judge dated 26.11.2018 which is under challenge in the present writ application.

9. Learned counsel representing the Appellant submits that the finding given by the learned Single Judge with regard to the resignation letter seems to be erroneous, keeping in mind that if the Appellants wanted to be mischievous, they could have used the date on the resignation letter before issuing the letter of acceptance. However, the said letter which was a letter written by the employee and tendered by him was acted upon and no malafide ought to be attributed to such routine action of acceptance of the resignation letter of the employee.
10. The simplicity of submission cannot be accepted in isolation because the surrounding circumstances in relation to the dispute has also emerged and have been dealt with by the learned Single Judge in his order, extracts of which has been reproduced in earlier part of the order. Nothing new has been brought in appeal which demolishes those findings or casts any kind of doubt on the documents or the Annexures which throw light behind the decision so taken.
11. In totality therefore, we do not feel that the view so taken by the learned Single Judge on the pleadings and evidence so brought can be said to be erroneous view or conclusion arrived at. Obviously, things do not seem to be very happy in terms of relationship between the Management and the private Respondent for a while and we get a feeling that an old undated resignation letter could have been used for the purpose of dispensing with the service of the private Respondent for which there are enough indication and inference can be drawn thereto.
12. The appeal, therefore, has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge