

CWP-27193-2018 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-27193-2018 (O&M)
Date of decision : 16.08.2019**

Aarti

... Petitioner

Versus

Pt. B.D. Sharma University of Health Sciences, Rohtak

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anurag Goyal, Advocate
for the petitioner.

Mr. Nilesh Bhardwaj, Advocate
for the respondent.

AMIT RAWAL, J.

CM-10944-2019

For the reasons stated in the application, which is supported by an affidavit, written statement along with Annexure R-1 on behalf of the respondent is taken on record.

CM stands disposed of.

MAIN CASE

The short point involved in present writ petition is whether the respondent can accept the resignation of the petitioner, when the aforementioned resignation was sought to be withdrawn, much prior to its acceptance.

Succinctly the facts as emanated from the pleadings of the parties to the *lis* are that on recommendations of the Establishment

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Committee through an advertisement, petitioner was appointed as Staff Nurse under General Category, vide appointment letter dated 15.04.2017 (Annexure P-1). However, due to family circumstances, submitted an application for resignation with one month salary, vide letter dated 22.06.2018 (Annexure P-2). Before it could be accepted, another representation dated 18.07.2018 (Annexure P-3) was submitted by drawing the request of cancellation/withdrawal of resignation.

Mr. Anurag Goyal, learned counsel for the petitioner, submitted that there was no response to representation dated 18.07.2018 seeking cancellation of resignation. Second representation dated 27.08.2018 (Annexure P-4) with a request to rejoin duty, was also submitted. It is only, in the reply, the respondent disclosed that resignation was accepted, on 30.07.2018. The aforementioned order is not sustainable in the view of law laid down by Hon'ble the Supreme Court in **"Punjab National Bank V/s P.K. Mittal" 1989(1) SLR 596** and Division Bench's judgment of Delhi High Court in **"Sameer Aggarwal V/s Punjab National Bank and others" 2003 (4) SCT 391** as well as Division Bench's judgment of this Court in **"Gurbachan Singh V/s State of Haryana" 2003 (3) SCT 251.**

Per contra, Mr. Nilesh Bhardwaj, learned counsel appearing on behalf of the respondent submitted that there is no challenge to acceptance of resignation dated 30.07.2018 (Annexure R-1). Moreover, the contents of the same reveals that the resignation was accepted w.e.f. 22.06.2018.

It is also a matter of record that at time of submission of resignation, petitioner was under probation and she has no right to hold such post. Submission of resignation letter was in consonance with Clause 2 of the Appointment Letter, which envisages that post was temporary but likely

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to be continued subject to terminable, on one month's notice, on either side.

There is no ambiguity and fallacy in the order accepting resignation, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for parties and appraised paper book.

Facts, as noticed above, are not in dispute.

It would be in the fitness of things to extract para 2 of the Appointment Letter, fixing time period for termination of the services as well as contents of office order dated 30.07.2018 (Annexure R-1), which read as under:-

"Para No.2 of the Appointment Letter

2. The post is temporary but likely to be continued and your appointment will be terminable on one month's notice on either side.

Contents of Office Order dated 30.07.2018

The resignation tendered by Sh/Smt/Ms Aarti D/o Sh Jai Prakash Sharma Staff Nurse is hereby accepted w.e.f. 22.06.2018 AN i.e. on completion of 24 hours resignation notice, without prejudice to the claim arising hereafter against her, as per, No Dues Certificate received from various department/officers, there is nothing outstanding against her."

The fact of the matter is that the respondent has not been able to deny the receipt of representation dated 27.08.2018 (Annexure P-4), whereby petitioner, in support of her previous request, had withdrawn her resignation, thus, there was no occasion for the respondent to accept the resignation post the request of cancellation of the same.

Argument of Mr. Nilesh Bhardwaj, qua non-challenging of order dated 30.07.2018 is neither here nor there, as vide Annexure P-5,

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dated 07.09.2018, Deputy Superintendent (Cell-I), Post Graduate Institute of Medical Science, Rohtak, informed that resignation was accepted, on 30.07.2018, but copy thereof was not enclosed.

The law with regard to withdrawal of resignation is no longer *res integra*. In **Punjab National Bank's case** (supra), it has been held that resignation would become effective from that date or on expiry of three months from date of resignation. Until the resignation becomes effective, it is always open to the employee to withdraw letter of resignation. If at all, there was deemed acceptance, there was no occasion for the respondent to pass written/speaking order dated 30.07.2018 (Annexure R-1). There is also no denial to the fact that petitioner had submitted application for withdrawal of resignation dated 18.07.2018 (Annexure P-3) as well as representation dated 27.08.2018 (Annexure P-4). It was before the expiry of one month's notice, thus, in such circumstances, action of the respondent in accepting the resignation w.e.f. 22.06.2018, being illegal and fallacious and same is hereby quashed. The writ petition stands allowed.

16.08.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No