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

Date of decision: 9th January, 2019

+ W.P.(C) 5371/2017

GOVIND RAWAT

..... Petitioner

Through: Mr. Matrugupta Mishra and
Ms. Aastha Chawla, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. V.S.R. Krishna and Mr. V.
Shashank Kumar, Adv. for R-
AIIMS

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G M E N T (O R A L)

1. The issue in controversy in this writ petition being very short, with consent of parties, the matter has been heard finally and is being disposed of by this judgment.

2. Consequent to his application and response to admission notice no. 2/2015, dated 10th May, 2015, issued by the All India Institute of Medical Sciences (AIIMS), the petitioner was admitted for the post graduate course in Prosthodontics, conducted by the AIIMS on 1st July, 2015. The memorandum, dated 11th June, 2015, informing the petitioner of his selection and admission contained the following clause :

“He/She will be on contract service for a period of 3 years and will be designated as Junior Resident. He/She will be paid salary in PB-3 with G.P. of Rs.5400/- plus NPA and other allowances as admissible under the rules in 1st year of the residency. In the event of his/her leaving the course within six months of joining, he/she shall be liable to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) and those who leave after six months of joining shall be liable to pay a sum of Rs. 5,00,000/- (Rupees Five Lakh Only) by way of compensation/losses incurred by the AIIMS due to such midstream departure. The salary for the month in which the date of resignation falls will stand forfeited. The “Sponsored” candidates will not be paid any emoluments by the Institute and the responsibility of their payment will be on their respective Government/Organizations.”

3. The petitioner joined the post graduate course in Prosthodontics on 1st July, 2015. The duration of the course was three years.

4. On 21st January, 2016, the petitioner wrote to the Dean of the AIIMS, informing that, owing to personal reasons, it was not possible for him to complete the post graduate course and requesting, therefore, that he be permitted to resign from the said course. The said letter may be reproduced thus :

“ Through proper channel

Dated :21/01/2016

To,

The Dean
AIIMS Ansari Nagar,

New Delhi.

Subject: Request for Resign of postgraduation course
(Academic Junior Residence).

Respected Sir,

This is to inform you that I am not able to complete my post graduation course because of some personal reasons. Please allow me to resign from the post of Junior Residence. I would be grateful for the same.

Yours faithfully,

Sd/-
Dr. Govind Rawat
Junior Residence Academic
Department of Prosthodontics
AIIMS, New Delhi”

5. The AIIMS responded to the said request of the petitioner, for permission to resign from the course, *vide* the following memorandum, dated 1st February, 2016 :

“ALL INDIA INSTITUTE OF MEDICAL SCINECES
ACADEMIC SECTION

No.F.4-7/2015-ACAD.1 Ansari Nagar, New Delhi-29
Dated : February 1, 2016.

MEMORANDUM

Subject: Request for acceptance of resignation in r/o. **Dr. Govind Rawat**, Junior Resident (PG) in the department of Prosthodontics.

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With reference to his/her application dated 21.01.2016 on the subject cited above, **Dr. Govind Rawat**, Junior Resident (PG) in the department of **Prosthodontics** is informed that the Dean has been pleased to accept his/her resignation w.e.f. 04-01-2016 *subject to the condition* that he/she has to deposit draft of Rs.5,00,000/- (Rupees Five Lakh only) towards Penalty for discontinuation of P.G. Course in the Mid-term. The salary for the month of January, 2016 is forfeited.

He/She is required to deposit EHS Card/Identity Card issued to him/her if any.

Sd/-

(Satish Kumar Singh)

Administrative Officer (Acad.)

Dr. Govind Rawat

Junior Resident (PG)

In the department of Prosthodontics

- Copy to: 1. Prof. And H.O.D. of Prosthodontics
2. Accounts Section II and III/RPC/CNC
3. Hostel Section
4. Dr. B.B. Dikshit Library”

(Emphasis Supplied)

6. It is clear from a reading of the afore-extracted memorandum, that the acceptance of the petitioner’s resignation has been made “*subject to the condition*” that ₹ 5,00,000/- is deposited by him. Learned counsel appearing for the AIIMS made a valiant effort to convince the Court that this order was in terms of the afore-extracted clause in the memorandum dated 11th June, 2015. I am unable to agree. The clause in the memorandum, no doubt, made the petitioner liable to pay ₹ 5,00,000/-, if he were to leave the course after six

months from the date of his joining. It may, therefore, have been permissible for the AIIMS to accept his resignation and thereafter, bind him by the said requirement of payment of ₹ 5,00,000/-. The memorandum, dated 1st February, 2016 (*supra*), however, did not choose to do so. What it did instead, was to make the acceptance of the petitioner's resignation *subject* to his paying ₹ 5,00,000/-. The inevitable sequitur would be that, if the amount of ₹ 5,00,000/- were not paid, the resignation would not stand accepted. That in my view, is the only interpretation which could be placed on the memorandum dated 1st February, 2016 (*supra*).

7. The petitioner wrote, on 8th March, 2016, to the AIIMS, stating that he desired to continue in the PG Course, as he did not have ₹ 5,00,000/-. The letter dated 8th March, 2016 may, however, for ready reference be reproduced thus :

Dated: 08/03/2016

To
The Registrar (Acad)
AIIMS, Ansari Nagar,
New Delhi

Subject: Request for cancellation of resignation and
to continue the post-graduation course

Respected Sir,

This is to inform you that I apply for the resign from P.G. Course on 21/01/2016 because I got selected for Dental Surgeon Post in District Hospital Bhind, Madhya Pradesh by MPPSC.

And you accept my resign under the condition that I have to pay Rupees 5,00,000/- as a penalty.

Respected sir, now I want to continue the PG course because I do not have 5,00,000/- Rupees because I belong to OBC Non-Creamy Layer category.

And I also request to Government of Madhya Pradesh for education leave to complete the PG Course. I would be grateful for the same.

Yours faithfully

Sd/-
Govind Rawat
Jr. Prosthodontics, CEPR, AIIMS,
New Delhi”

8. This was followed by another communication dated 24th May, 2016, from the petitioner to the Dean of the AIIMS, which read thus :

“

Dt. 24.05.2016

To

The Dean (Acad)
AIIMS, New Delhi

Subject: Request for cancellation of resign & to continue the post-graduation course.

Respected Sir,

This is to inform you that I apply for the Resignation from the Junior Residence post on 21.01.2016 because of some personal reasons. And my resign accepted under the condition that I have to pay ₹ 5 lacs as penalty.

Respected Sir, I am not able to pay the 5 lac rupees because I am poor student and I belong to OBC non-creamy layer category.

And I request to Registrar Sir on 08.03.2016 also but they not accept the request. Sir I came again-again with request this situation gave me a lot of mental stress but no one consider the request.

Respected Sir, I know I should have resign after consulting you, I take this decision in rush because of some personal reasons but sir I request for that and I want to continue my PG.

So please allow me. If you want to give me punishment please give 6 months extension or something else. But I am not able to pay 5 lacs rupees.

Thanking you,

Your's faithfully

Sd/-

Dr. Govind Rawat
Jr. Prosthodontics (CEPR)
Contact: 8010621713"

9. In my view, the above communications amount to a withdrawal by the petitioner, of his letter of resignation dated 21st January, 2016 (*supra*).

10. For the sake of the record, it may be noted that the petitioner had, initially approached the Central Administrative Tribunal, in the present matter, but that, *vide* an order dated 23rd May, 2017, the Tribunal held that it lacks jurisdiction to interfere.

11. To return to the recital of facts, the request of the petitioner, dated 8th March, 2016, for withdrawal of his resignation and for permission for him to complete his post graduation course in the AIIMS was rejected *vide* memorandum dated 30th March, 2016, which reads as under :

“ALL INDIA INSTITUTE OF MEDICAL SCINECES
ACADEMIC SECTION

F.No.4-7/2015-ACAD.1 Ansari Nagar, New Delhi-29

Dated: 30-03-2016

MEMORANDUM

Subject: Request for cancellation of Resign and to continue the post-graduation course- Dr. Govind Rawat, Ex-Junior Resident (PG) in the department of Dental Surgery.

With reference to his application dated 8th March, 2016 on the subject cited above, Dr. Rawat is informed that his request for cancellation of resign and to continue the post-graduation course has been considered by the Competent Authority of AIIMS but it is regretted that the same cannot be acceded to at this stage. Dr. Govind Rawat is further informed that *his resignation has already been accepted by the Dean w.e.f. 4.1.2016 vide memorandum dated 1.2.2016*. Accordingly, he has to deposit draft of Rs.5,00,000/- (Rupees Five Lakh Only) in favour of Director, AIIMS, New Delhi towards penalty for discontinuation of PG course in the Mid-term and deposit No dues etc from the concerned department. The salary for the month of January, 2016 is forfeited.

Sd/-
(Satish Kumar Singh)
Administrative Officer (Acad)

Dr. Govind Rawat
Ex-Junior Resident (PG)
In the department of Prosthodontics
Th: Chief, CDER

Dr. Govind Rawat
Village Barodi District
Shivpuri, Shivpuri
Madhya Pradesh-473551

Copy to: 1. Prof. And H.O.D. of Prosthodontics
2. Accounts Section II and III/RPC/CNC
3. Hostel Section
4. Dr. B.B. Dikshit Library”

(Emphasis Supplied)

12. Aggrieved thereby, the petitioner has moved this Court by means of the present writ petition.

13. In my view, the impugned memorandum dated 30th March, 2016 proceeds on a complete misreading of the earlier memorandum dated 1st February, 2016, whereby the application dated 21st January, 2016, of the petitioner, was considered and decided. The memorandum dated 1st February, 2016, clearly and unambiguously accepts the petitioner’s request for resignation from the AIIMS *subject to deposit*, by the petitioner, of ₹ 5,00,000/-. The said amount of ₹ 5,00,000/- not having been deposited by the petitioner, the acceptance of the petitioner’s request for resignation actually never crystalised at all, in law. Even if the petitioner had not chosen to withdraw his earlier request for resignation, in view of the fact that the acceptance

of the said request was *subject to* a condition, which was never fulfilled by the petitioner, there was, in fact and in law, no acceptance of the resignation of the petitioner, at all.

14. In view thereof, the petitioner is unquestionably entitled to continue pursuing his post graduate course in Prosthodontics, and the impugned letter, dated 30th March, 2016, issued by the AIIMS, is clearly in error in refusing the petitioner's request in that regard.

15. Consequently, for the reasons stated hereinabove, the impugned communication dated 30th March, 2016 is quashed and set aside. The writ petition is allowed with consequential relief to the petitioner. There shall be no order as to costs.

JANUARY 09, 2019/kr

C.HARI SHANKAR, J