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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8494/2015**

DIRECTORATE OF EDUCATION

..... Petitioner

Through: Ms. Avnish Ahlawat, Standing
Counsel for GNCTD with Mr. Nitesh
Kumar Singh, Advocates with Mr.
Shashi Pal Singh, OSD, Zone-7

versus

MANISHA SHARMA

..... Respondent

Through: Mr M. K. Bhardwaj, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
28.11.2019

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Dr. S. Muralidhar, J.:

1. The Directorate of Education ('DoE'), Government of NCT of Delhi has filed this writ petition challenging an order dated 14th July, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), allowing O.A. No. 3994/2013 filed by the Respondent herein whereby it was directed that the Petitioner issue appropriate orders, accepting the Respondent's request for withdrawal of her resignation, and allowing her to resume duty. The CAT also directed that the period of interruption from the date of her resignation i.e. 9th March, 2012, till the date the Respondent resume duty, be condoned.

2. The background facts are that the Respondent was serving as a Post Graduate Teacher ('PGT') under the GNCTD. She decided to contest as a

candidate in the elections to the Municipal Corporation of Delhi ('MCD') as Counsellor. Accordingly, she applied on 7th March, 2012 to the Petitioner, seeking to resign from the services, with effect from 9th March, 2012.

3. The Respondent's resignation from service was accepted by the Competent Authority ('CA') by an order dated 16th April, 2012. As it transpired, the Respondent lost election. On 18th April, 2012, she submitted a representation to the Petitioner seeking to withdraw her resignation. By an order dated 1st June, 2012, the Petitioner rejected her request.

4. The further appeal by the Respondent to the Secretary of Education was rejected on 13th September, 2013, as was communicated to her by way of a letter dated 11th October, 2013. Thereafter, the Respondent filed O.A. No.3994/2013 before the CAT, challenging both the order dated 1st June, 2012 and the letter dated 11th October, 2013. After referring to Rule 26 of the Central Civil Services (Pension) Rules, 1972, the CAT noted that a person has no absolute right to withdraw his/her request for resignation after the resignation becomes effective. However, it was further noted that no reasons were given by the Petitioner for rejecting the Respondent's request of withdrawal of her resignation.

5. The CAT observed that the rejection was sought to be justified by making a reference to Rule 5 of the Central Civil Services (Conduct) Rules, 1964 and the notification dated 28th July, 2011 of the Department of Personnel & Training ('DoPT') whereby the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 2011 were issued, inserting Sub Rule (1A) in

Rule 5, setting out the conditions under which the Central Government may permit a member of a service to withdraw his/her resignation in public interest. It was held that the above notification had no application to the case of the Respondent.

6. The CAT also referred to the decision dated 18th March, 2005 of this Court in *Nirmal Verma v. MCD 118 (2005) DLT 665*, following which a Coordinate Bench of the CAT had in an order dated 9th May, 2013 passed in O.A. No. 3362/2011 (*Mahesh Kumar v. Union of India and Ors.*) quashed an order, rejecting the request of the Applicant in that case for withdrawal of resignation. In that case also, after resigning from service, the Applicant contested elections to the post of Counsellor in the Municipal Corporation of Gurgaon. After losing the election, he made a representation for withdrawal of resignation. When his request was rejected, he approached the CAT. Referring to the decision in *Nirmal Verma v. MCD (supra)*, the CAT allowed his request.

7. The CAT also referred to the decision in *State of Haryana v. Ram Kumar Mann (1997) 3 SCC 321*, which the CAT sought to distinguish by referring to Rule 26 (4) of the CCS (Pension) Rules, 1972 that permitted a person to withdraw his/her resignation on the conditions stipulated therein. According to the CAT, since the Respondent would not have been qualified to contend the election to the MCD without resigning, she was “compelled” to do so and that said “compelling reason” cannot be said to have any reflection on her integrity, efficiency or conduct. Further, it was noted that the post from which she had resigned had not been filled up in the meanwhile. Her

conduct in seeking to rejoin was not improper. For the aforementioned reasons, it was held that the Petitioner was not justified in rejecting the request made by the Respondent to withdraw her resignation.

8. At the first hearing in the petition on 4th September, 2015, while directing notice to be issued to the Respondent, this Court stayed the operation of the impugned order dated 14th July, 2015 of the CAT.

9. This Court has heard the submissions of Ms. Avnish Ahlawat, learned Standing Counsel appearing for the GNCTD and Mr. M. K. Bhardwaj, learned counsel appearing for the Respondent.

10. The Court finds that the CAT has essentially gone by the decision of the learned Single Judge of this Court in *Nirmal Verma v. MCD and Anr.* (*supra*). There the Petitioner, who was a principal of a primary school of the MCD, submitted a technical resignation in order to contest the municipal election. After she lost the election, she applied to withdraw the technical resignation. This was rejected by stating that on account of her participation in politics, she became ineligible for the job under Rule 5 of the CCS (Conduct) Rules. The learned Single Judge referred to Rule 26 (4) of the CCS (Pension) Rules and held that it was not the Respondent's case that she was "ineligible for withdrawal of resignation or not fulfilling any of the conditions, as laid down in Rule 26 (4) of the CCS (Pension) Rules. It was held that Rule 5 of the CCS (Conduct) Rules was not attracted, since she had duly disclosed the purpose for which she was tendering her resignation.

11. The Court finds that the CAT has used every one of the grounds cited in

Nirmal Verma v. MCD (supra) as a ground for holding the rejection of the Respondent's request illegal. In *Mahesh Kumar v. Union of India (supra)*, the CAT again followed the decision in *Nirmal Verma v. MCD (supra)*.

12. Having considered Rule 26 (4) of the CCS (Pension) Rules, this Court finds that it would not stand attracted at all in the facts and circumstances of the present case. The said Rule reads as under:

“26 (4). The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:

- (i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;
- (ii) that during the period intervening between the date on which the resignation become effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;
- (iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;
- (iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.”

13. None of the conditions spelt out in Rule 26 (4) (i) to (iv) of the CCS

(Pension) Rules stand attracted in the present case. There is no “material change” in the circumstances which originally compelled the Respondent to tender her resignation. In the present case, the Respondent voluntarily resigned because she wanted to contest elections. Unless she resigned, she would not have been qualified to contest elections. Having resigned, and on that basis having contesting the election, she cannot be heard to say that she was under any compulsion. Once the resignation has been accepted and acted upon, there is no question of permitting a person who resigned to withdraw such a resignation. It is a different matter if after having resigned, the Respondent did not contest the MCD elections at all and in those circumstances sought to rejoin service by seeking to withdraw her resignation.

14. The Court is unable to agree with the reasoning in *Nirmal Verma v. MCD (supra)* that since there was no misconduct on the part of the candidate, she should be permitted to withdraw her resignation. What was not noticed in *Nirmal Verma v. MCD (supra)* is the fact that the resignation had already been acted upon and that Rule 26 (4), in any event, did not stand attracted.

15. In *State of Haryana v. Ram Kumar Mann (supra)*, it was held that merely because the government may have permitted some people to withdraw their resignations would not *per se* give the right to another person to seek to withdraw a resignation that had already been acted upon. It was observed as under:

“3. The question, therefore, is: whether the view taken by the High Court is correct in law? It is seen that the respondent had

voluntarily resigned from the service and the resignation was accepted by the Government on May 18, 1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on May 18, 1982. It may be that the Government for their own reasons, given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similar circumstanced person claim equality under Section 14 for reinstatement? Answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits.”

16. The above observations squarely apply to the facts in the present case.

17. It must be noted here that following the aforementioned decision in *State of Haryana v. Ram Kumar Mann* (*supra*), a Full Bench of the Punjab and Haryana High Court in *Kartar Singh v. State of Haryana* (1998) 119 PLR 448, in reference to the interpretation of Rule 7.5 of the Punjab Civil Service Rules, which is *in pari materia* with Rule 26 (4) of the CCS (Pension) Rules observed as under:

“10. A reading of the aforesaid rule would indicate that in a given case if the resignation is tendered by the Government employee for some compelling reasons, which do not involve any reflection on his integrity, efficiency or conduct and a request for withdrawal of resignation is made as a result of material change in the circumstances which originally compelled him to tender the resignation, the Government may in a given case on being satisfied that the aforesaid grounds had existed, may allow the withdrawal of resignation after the same has been accepted. The question is -Whether submitting of resignation for the purpose of contesting an election is a compelling reason? According to us, the answer has to be in the negative. After a person has decided that he wishes to leave the Government service to join politics and for that purpose decides to contest the election would in our mind amount to that the person is no more interested in the Government service and is rather interested in politics. Even the Conduct Rules provide that a Government servant would not indulge in politics while in Government service. The point as framed by the Admitting Bench came up for consideration before a Division Bench of this Court in *Rajinder Bhushan v. State of Punjab* (*supra*). The Counsel for the petitioner, Rajinder Bhushan in the aforesaid case had contended that his client fulfilled all the requirements of Rule 7.5(4) (*supra*) and, therefore, there was no reason as to why the request of his client for withdrawing the resignation after the same had been accepted should not have been allowed. incidentally, it may be observed that the facts of *Rajinder Bhushan's case* (*supra*) were *pari-materia* to the facts of the present case. A contention was also raised that in some other

similar cases the Government had granted permission to withdraw the resignation after the same had been accepted. It was observed by the Division Bench as under:

"9. We do not accept the contention of Mr. Malik. A careful reading of the above rule shows that the guiding principle underlying the above rule is public interest. Sub-clause (i) of Clause (4) further shows that the rule has been framed in order to deal with cases of resignation which a Government employee has submitted "for some compelling reasons" and "request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation." Sub-clause (ii) further gives an indication that in the interregnum period i.e. from the resignation till the date on which request for withdrawal is made, the conduct of the person was in no way improper. We find it almost impossible to hold that contesting the State Assembly elections would amount to a compelling reason for submitting the resignation within the meaning of the above rule. In our view, it would be ridiculous that a Government servant submits resignation, contests the State Assembly elections and on losing the same reports back and insists that he shall be taken back into service with continuity as referred to in sub-rule (6) reproduced above. Nor can the conduct of an officer to contest elections while being in Government service be considered to be not improper"

18. It was further held in paragraph 15 as under:

"15. The only reason which has been given by the petitioner for submitting resignation was that he wanted to contest the election to the Haryana Legislative Assembly. This cannot be said to be a compelling or over-whelming reason to submit the resignation. After the same is accepted, the incumbent has to show that the resignation may be allowed to be withdrawn as he

had submitted his resignation under some compelling circumstances. According to the learned Counsel for the petitioner, the compelling circumstances have to be for withdrawing the resignation after the same has been accepted. We do not agree with the learned Counsel. According to our considered view, the petitioner, who alleges himself to be belonging to a poor family i.e. being a member of Scheduled Caste and is wholly and solely dependent on his service, would not have, as a reasonable and prudent person, thought of resigning his service only for the purpose of contesting the election. At least this ground could not be accepted to be covered under the expression "over-whelming/compelling reasons." As observed above, the compelling/over-whelming reasons are to be seen at the time the incumbent puts in his resignation."

19. In the present case as well, there were indeed no compelling circumstances for the Respondent to have submitted her resignation, except that she wanted to contest elections.

20. Consequently, this Court is unable to sustain the impugned order dated 14th July, 2015 of the CAT passed in O.A. No. 3994/2013 and accordingly sets it aside. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 28, 2019

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