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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2502 OF 2019

Namita Mahadev Uparkar

..Petitioner

vs.

Municipal Corporation of Gr.Mumbai
& anr.

..Respondents

.....

Mr. Joel Carlos i/b. Mr. Tushar R. Momaiyah for petitioner.
Mr. Abhijeet Kandarkar with Ms. Trupti Puranik for MCGM.

.....

**CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.**

DATE : 3 FEBRUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. By this Petition, the Petitioner has challenged the action of the Respondents of acting on the letter of 'resignation' and rejecting the representation by the Petitioner.

3. The Petitioner was working as Sub-Engineer (Civil) in Planning & Designing Department of the Respondent - Corporation. The Petitioner joined the services on 12 March 2007 and thereafter, continued to work in the Planning Department and

subsequently, in Road and Traffic Department. When the Petitioner reported to duty some other officer was sitting at her table on 29 September 2017. The Petitioner made a protest regarding the same. Things were not resolved. The Petitioner thereafter wrote a letter, which is the centre of this controversy, which reads thus :

*Eng. Namita M. Uparkar
Sub-Engineer (Arch.)
Date : 04.10.2017*

Sub :- Regarding tendering resignation from the post of Sub-Engineer (Arch.) due to the insulting treatment received from Admn. Officer from the office.

Sir,

I, Sub-Engineer, Namita Uparkar, have been engaged in your Department from April, 2015. I resorted to the way of sitting on the table of Admn. Officer with a view to express my protest towards the same on 03.10.2017 as that was the only option available with me to warn her. However, you have termed my action as misconduct and nobody has been advised regarding the treatment that was given to me although I was not mistaken. Instead of continuing to work by receiving such an insulting treatment, I consider it proper to tender resignation of my post while maintaining my self-respect.

*Sd/-4/10/2017
Eng. Namita M. Uparkar
Sub-Engineer (Arch.).*

4. The Respondent – Corporation took cognizance of the incident, and a warning was given to the Petitioner on 9 October

2017. The Petitioner was, therefore, of the impression that the episode had ended in a warning, and it was sorted out. The Petitioner thereafter received a communication in respect of her letter dated 4 October 2017 and seeking that her resignation is being accepted. To this Petitioner made a representation on stating that she was not in a fit state of mind and she had tendered the letter (resignation) in these circumstances and she was under the impression that the proceedings had resulted in a warning and dropped. By the impugned order, the Respondent rejected the representation and held that the resignation has become effective from 4 October 2017, i.e. the date of the letter issued by the Petitioner.

5. We have heard Mr. Joel Carlos, learned counsel appearing on behalf of the Petitioner and Mr. Abhijeet Kandarkar, learned counsel appearing on behalf of the Respondent – Corporation. Reply-affidavit has been filed.

6. We have perused the rules that govern the resignation by the employees of the Respondent – Corporation. Rule 28 of the Bombay Municipal Corporation (Service) Regulations, 1989 reads thus:-

*“28. Resignation and Notice pay :
 (a) One month’s notice of resignation by permanent/temporary employees :
 If a Corporation employee, whether permanent or*

temporary, desires to resign from the Corporation service, he will have to give notice in writing atleast one month prior to the contemplated date of effect of the resignation.

In default, he will have to remit to the Corporation treasury an amount equal to month's pay of the post (notice pay) from which he resigns, at the time of acceptance of resignation. In default of such remittance, the Municipal Commissioner may take suitable steps to recover such amount from the dues payable to him without prior notice and/or to recover the said amount of the notice pay by other means if sufficient dues are not available to his credit. The Municipal Commissioner may, however, waive the recovery of notice pay on merits.

The Municipal Commissioner may also waive the condition of one month's notice or accept a notice of shorter duration for special reasons to be recorded in writing.

A Corporation employee, who tenders resignation, continues to be in the Corporation service till the acceptance of his resignation is communicated to him in writing. Once the acceptance of the resignation is communicated to the employee, the resignation shall become effective. The employee shall have no option to withdraw the resignation after it becomes effective.

Provided that when no such communication of acceptance or non acceptance is issued by the appropriate authority within one month receipt of the notice of resignation or contemplated effective date of resignation, if any, whichever is later, the resignation will stand accepted.

In case the resignation is not accepted, the reasons therefor may be communicated. The written communication intimating either acceptance or non-acceptance of the resignation, as the case may be, shall be issued, either in person or by post by sending a communication by ordinary post at the last known address of the Corporation employee, under a certificate of posting.

Such intimation delivered or posted will be held as a valid intimation. Such intimation will become effective from the date of receipt of intimation if personally delivered, otherwise from the fifth day of posting of such intimation.

The Municipal Commissioner may, however, at his discretion, allow the resignation to be withdrawn in special circumstances before the date the resignation become effective.

If a Corporation employee, to whom the non-acceptance of resignation is communicated, does not attend duty after the contemplated effective date of resignation, his period of absence from that date may be treated as 'unauthorised absence' and the employee will also be liable to disciplinary action for such absence."

7. The Learned counsel for the Respondents relying on this Rule submitted that the letter dated 4 October 2017 was a clear indication of tendering of resignation and that it was validly accepted. He submitted that once the resignation is accepted the employee has no option to withdraw the resignation. He submitted that the case of the Petitioner regarding the letter of 4 October 2017 being merely a protest, cannot be accepted as the Petitioner herself has styled the same as a resignation.

8. It is correct that if a resignation is given as per the rules and it is validly accepted, there is a severance of the relationship between the employer and the employee and thereafter the completed severance cannot be restored. But for that purpose, the communication must be a resignation. The resignation brings to

an end, the employer and employee relationship and for the employee it is of vital importance. The language of communication has to be unequivocal, evincing a decision to bring the services to an end. Rule 20(a), which is invoked in the present case, contemplates a date of giving effect of the resignation. It also stipulates a notice prior to the date of effect of resignation. Thus the Rule specifies a resignation letter to be either with immediate effect or from a future date.

9. We have perused the communication dated 4 October 2017 and the original Marathi version. The Petitioner had protested about the treatment given to her and had said that instead of continuing to work by receiving such an insulting treatment, she considers it proper to tender the resignation of her post while maintaining her self-respect. What is therefore communicated was what she thinks to be a proper course of action. The words used are not that: 'I hereby tender my resignation with immediate effect'. There is no date given when the resignation would be effective. There is no clear indication that from a particular date, the Petitioner would cease to be in service. There had to be assertion in the letter that the resignation is being tendered with immediate effect. There is no such assertion. This is a protest letter.

10. Once the communication is not resignation in the eyes of the law, simply because the Petitioner refers to as 'resignation letter' in her subsequent letter, it would not become one. To explain which letter is being referred to, she had refusal to the communication as a 'resignation letter', Petitioner has nowhere accepted that by that letter she had voluntarily resigned. The case of the petitioner that she had not validly resigned and it was out of protest that the letter was written remains constant. The Respondents contended that the petitioner's subsequent conduct of not coming to work shows she had tendered resignation. There is no merit in this contention. If conduct is to be taken as an attendant circumstances, then the conduct of the Respondents is to the contrary. The Respondents had resolved the dispute and imposed a warning on the Petitioner. This would not be so if it was a simple case of resignation. Therefore nothing much turns on the conduct of the parties to decide this case on it.

11. It is clear to us by the bare reading of the letter dated 4 October 2017 that it cannot be treated as resignation letter with immediate effect. In this case, the Respondents have supplied an effective date. The Respondents are converting a protest letter threatening to resign to a letter of resignation with immediate effect. There cannot be a forcible exit of an employee in this fashion. It is not a case of an inquiry leading to the termination of an employee.

12. In these circumstances, the petitioner is entitled to succeed. The communication of the Petitioner that dated 15 December 2018 holding that by letter dated 4 October 2017 petitioner is deemed to now resigned with immediate effect, is quashed and set aside. The Writ Petition is allowed in terms of prayer clause (A).

13. At this stage, learned counsel for the Respondent seeks to stay to the order. The order of directing that the Petitioner would resume services will be given effect after eight weeks from the date this order is uploaded on the website of this Court.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)

Diksha
Rane

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signed by
Diksha Rane
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