IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

WA.No.809 OF 2020

AGAINST THE JUDGMENT IN WP(C) 14345/2019(P) OF HIGH COURT OF KERALA DATED 18/5/2020

APPELLANT/RESPONDENT:

**NATIONAL INSTITUTE OF TECHNOLOGY CALICUT
THROUGH DIRECTOR, NIT CAMPUS P.O.,
CALICUT-673 601.**

**BY ADVS.
SRI.SHYAM PADMAN
SRI.C.M.ANDREWS
SRI.P.T.MOHANKUMAR
SMT.BOBY M.SEKHAR
SMT.IRENE ABRAHAM
SRI.HARISH ABRAHAM**

RESPONDENT/PETITIONER:

**BHARAT SINGH RAWAT
AGED 43 YEARS
EX-DEPUTY REGISTRAR, FLAT NO.38, HIM VIHAR APARTMENTS, FLAT NO.8, PATPARGANJ, I.P.EXTENSION, DELHI-110 092. MB. 9910905789.**

OTHER PRESENT:

SRI. BHAGAT SINGH RAWAT- PARTY-IN- PERSON

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-09-2020, ALONG WITH WA.816/2020, THE COURT ON 01-12-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

WA.No.816 OF 2020

AGAINST THE JUDGMENT IN WP(C) 14345/2019(P) OF HIGH COURT OF KERALA DATED 18/5/2020

APPELLANT/PETITIONER:

BHARAT SINGH RAWAT
AGED 43 YEARS
EX-DEPUTY REGISTRAR, VILLAGE LALITPUR,
P.O.HALDWA, TESHIL RAMNAGAR,
DISTRICT NAINITAL,
STATE UTTARAKHAND, PIN - 244-715.

BY BHARAT SINGH RAWAT(PARTY IN PERSON)

RESPONDENT/RESPONDENT:

NATIONAL INSTITUTE OF TECHNOLOGY CALICUT,
THROUGH DIRECTOR,
NIT CAMPUS P.O., CALICUT- 673 601.

R1 BY ADV. SRI.SHYAM PADMAN
R1 BY ADV. SRI.C.M.ANDREWS
R1 BY ADV. SRI.P.T.MOHANKUMAR
R1 BY ADV. SMT.BOBY M.SEKHAR
R1 BY ADV. SRI.HARISH ABRAHAM
R1 BY ADV. SMT.IRENE ABRAHAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-09-2020, ALONG WITH WA.809/2020, THE COURT ON 01-12-2020 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Dated this the 1st day of December, 2020

Shaffique, J.

These appeals arise out of judgment dated 18/5/2020 in WP(C) No. 14345/2019. The writ petitioner Sri.Bharat Singh Rawat joined as Deputy Registrar in the service of the National Institute of Technology, Calicut on 8/2/2017. He submitted a letter of resignation dated 8/11/2018 (Ext.P26). In Ext.P26 letter of resignation, he stated that he was not happy to work anymore in the Institute. He sought leave to withdraw the resignation, if he gets selection in any other department/organization before the date of relieving and request was made to condone the period of notice, if required. On receipt of the same, the Director of the respondent called upon him to furnish the detailed reasons for his unhappiness in the Institute and the letter of resignation was returned. The petitioner again, by letter dated 8/11/2018 (Ext.P5) reiterated his request for resignation, of course, stating that "I am not interested to work anymore in NITC, therefore, I tender my resignation, provided leave shall be granted to withdraw before

the date of relieving". The competent authority was also requested to condone the period of notice. In Ext.P5, the Registrar had made an endorsement on 16/11/2018 as under:

> *"As per the NIT Statutes, the permanent employee of the institute may resign after giving 3 months' notice. As per Swamy's hand-book on Resignation, it should be clear and unconditional; stating the clause of providing leave to withdraw is not in order. He may be relieved on suitable date without any conditions."*

2. By Ext.R(1)(b) dated 16/11/2018, petitioner was relieved from the duty of Deputy Registrar (Establishment) and he was given the duty of Deputy Registrar (Administration) on 16/11/2018. Petitioner went on leave on 16/11/2018 prefixing the holidays on 17/11/2018 and 18/11/2018.

3. The competent authority accepted the notice of resignation on 22/11/2018 and the acceptance was communicated to the petitioner on 4/12/2018 as per Ext.P10.

4. On 28/11/2018, petitioner had sent an email (Ext.P9) withdrawing the notice of resignation tendered as per Ext.P5 since he got selection on deputation in East Delhi Municipal Corporation. The respondent by Ext.P10(2) dated 4/12/2018 informed East Delhi Municipal Corporation that they have

accepted the notice of resignation submitted by the petitioner. By Ext.P11 dated 7/12/2018, petitioner requested the respondent to reconsider their decision in accepting the resignation and to withdraw the notice of resignation. Competent authority rejected the same as per Ext.P12 dated 7/1/2019. Petitioner was relieved on 11/1/2019 and he was issued with an experience certificate dated 11/1/2019. In the light of the aforesaid facts, petitioner challenged Ext.P10 and the rejection of his representations and sought for a direction to allow him to rejoin duty after withdrawing his resignation with full backwages and other allowances, and also for compensation, litigation costs etc.

5. The respondent apparently took up a contention that insofar as the petitioner had resigned from the said post which was accepted by the competent authority, he cannot seek for withdrawing the resignation after the date on which the competent authority had accepted his resignation.

6. Learned Single Judge after elaborately considering the factual and legal aspects involved in the matter allowed the writ petition and issued the following directions:-

“55. The writ petition stands ordered as follows:

(A) Orders in Ext.P10 dated 04.12.2018, Ext.P12 dated 07.01.2019 and Ext.P13 dated 11.01.2019 are quashed as illegal, contrary to the jurisdiction vested in respondent and the law laid down by the Supreme Court.

(B) That refusing to accept the request made in Ext.P9 dated 28.11.2018 is illegal. Petitioner is entitled to withdraw the notice of resignation dated 08.11.2018 before communication of acceptance is received from respondent.

(C) The petitioner is entitled to be reinstated with notional continuity of service and without back wages.

(D) The petitioner if is on probation, the respondent is entitled to extend the period of probation as per applicable rules. No order as to costs".

7. Both sides are in appeal. Petitioner had preferred the appeal as backwages was denied to him, whereas the Institute had challenged the other directions issued by the learned Single Judge. The writ petitioner/appellant in WA No. 816/2020 and the learned counsel appearing for the Institute, who is the appellant in WA No. 809/2020 were heard by virtual mode.

8. The writ petitioner while supporting the view taken by the learned Single Judge, argued for backwages, which was denied to him. He had also sent by way of e-mail, written submissions referring to large number of judgments, most of which relating to illegal termination and claim for backwages. Learned counsel appearing for the Institute submitted that, once

the Institute had accepted the resignation, the request for withdrawing the letter of resignation was not acceded since the petitioner was not interested to work in the establishment. He had, while making his submissions, placed before us a few judgments. We shall consider the judgments cited by either side, taking into consideration the factual aspects involved in the case and for the limited purpose of taking a decision in the matter, depending on its relevance to the facts of the case.

9. Before proceeding further, it is germane to consider how the learned Single Judge had considered the matter. The factual aspects involved in the case are not in dispute. There is no dispute about the fact that the petitioner had submitted the notice of resignation under Statute No.30 of the NIT First Statutes 2009. As per Statute No.30 of the First Statutes, a permanent employee is given option to resign after giving 3 months' notice in writing to the appointing authority or by paying 3 months' salary in lieu of notice to him. Proviso further states that resignation shall be effective on the date on which the resignation is accepted by the appointing authority. The learned Single Judge observed that to constitute perfect working of

Statute 30, the acceptance has to be communicated to the employee and until the communication is send, petitioner is entitled to withdraw the letter of resignation as held by the Apex Court in ***Union of India v. Gopal Chandra Misra*** [(1978) 2 SCC 301]. It was therefore held that the petitioner had a right to withdraw the resignation before the acceptance had been communicated to him. Further it was held that the employee is required to give 3 months' notice or pay in lieu of notice. Therefore, the severance of relationship comes into effect from the date of actual severance of employee-employer relationship. Insofar as the case on hand is bilateral, the acceptance of resignation can be termed as prospective and therefore, when the resignation is withdrawn before the relationship had come to an end, the withdrawal is justified. Reference is also made to the judgment in ***Air India Express Ltd. and others v. Capt.Gurdarshan Kaur Sandhu*** [(2019) 17 SCC 129]. With reference to the claim for backwages, the learned Single Judge observed that when both claims are balanced and notional continuity of service for the break period is granted, petitioner is not entitled for backwages.

10. Having regard to the aforesaid factual situation, apparently only the following issues arise for consideration in the case on hand:-

(i) Whether the resignation of the petitioner as per Ext.P5 stands validly accepted by the Institute on 22/11/2018 and whether communication of letter of acceptance of resignation is required for giving effect to the acceptance of the resignation.

(ii) Whether after acceptance of the resignation, and before the date of relieving, the employee can request for withdrawal of the letter of resignation, and whether the Institute is bound to allow the said request.

(iii) Whether the petitioner is entitled for reinstatement with full backwages.

11. It is settled law that every employee has a right to resign from the service of the employer. But the question as to when the letter of resignation would take effect, would depend on the statutory rules or the procedure prescribed in that regard.

12. What exactly is the rule governing the field is the first question to be addressed. The proviso to Statute 30 is rather clear which indicates that *“resignation shall take effect only on*

the date on which the resignation is accepted by the appointing authority". In this case, the appointing authority had accepted the resignation on 22/11/2018 as evident from the endorsement in Ext.P8. Ext.P8 dated 16/11/2018 is an inter-office communication at the instance of Registrar of the Institute. The resignation of the petitioner was accepted by the Director on 22/11/2018, which reads as under:-

> *"Resignation of Sri.Rawat is accepted. He may be released after three months notice period or as in B".*

"B" which is marked in Ext.P8 indicates that the employee can resign after giving 3 months' notice in writing or by paying 3 months' salary in lieu thereof. As already stated, on 28/11/2018, the petitioner had sent a communication withdrawing the resignation letter. From the aforesaid facts, two things are clear. The competent authority has accepted his resignation on 22/11/2018. But he was relieved from service only on 11/1/2019, even before the notice period.

13. First two issues can be considered together as those are interlinked. The third issue, with regard to the claim for backwages shall depend upon the view which we may take with reference to the first two issues. As already indicated, there is no

dispute about the fact that the competent authority had accepted the resignation of the petitioner on 22/11/2018 based on his letter of resignation dated 8/11/2018. The proviso to Statute 30 requires acceptance of resignation by the appointing authority, which has been done on 22/11/2018.

14. Let us now consider the case law on the subject. In ***Raj Kumar v. Union of India*** [(1968) 3 SCR 857], the Apex Court was considering the question whether communication of an order of resignation was required, in a matter relating to resignation of a person in the Indian Administrative Service. It was contended that so long as acceptance of the resignation was not communicated to the Officer, he can withdraw the resignation submitted by him. In that background, the Apex Court held as under:

> *"4. The letters written by the appellant on August 21, 1964, and August 30, 1964, did not indicate that the resignation was not to become effective until acceptances thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Article 309 of the Constitution which enacts*

that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.

5. Our attention was invited to a judgment of this Court in State of Punjab v. Amar Singh Harika (AIR 1966 SC 1313) in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State of Rajasthan did not immediately

implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties.

(emphasis supplied)"

15. In ***J.K. Cotton Spg. & Wvg. Mills Ltd. v. State of U.P.*** [(1990) 4 SCC 27], the Apex Court held at paragraph 8 as under:

"8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job".

16. In ***North Zone Cultural Centre v. Vedpathi Dinesh Kumar*** [(2003) 5 SCC 455], the Apex court considered the following questions:

"(i) The acceptance was not communicated till the withdrawal.

(ii) The respondent was permitted to attend duty even after the acceptance of resignation."

After referring to ***Raj Kumar's case*** (supra), it was held as under:

"16. Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the

withdrawal.

17. We will consider the effect of delayed communication of the acceptance of resignation separately hereinafter.

18. It is an admitted fact that so far as the appellant Organisation is concerned, there is no rule which requires the acceptance of the resignation to be communicated before the resignation could become effective."

17. The position of law has been restated in ***Chand Mal Chayal v. State of Rajasthan*** [(2006) 10 SCC 258], and it is held as under:

"By now it is a well-settled principle of law that an incumbent is entitled to withdraw his resignation before the acceptance. Once his resignation is accepted there is no jural relationship between the employee and the employer and the employee cannot claim for withdrawal of the resignation nor reinstatement in the post."

18. In ***Air India Express Ltd.*** (supra), the Apex Court had revisited the entire case law on the subject. That was a case in which a pilot working with Air India submitted a letter of resignation on 3/7/2017. Her resignation was accepted by Air India on 2/9/2017. A letter to that effect was sent by the competent officer. However it was stated that her expected release would be after completion of 6 months' notice period from the date of resignation. On 8/12/2017, she sent a letter to

Air India seeking to withdraw her resignation and sought for continuance in service which was denied by Air India. According to them, she was relieved from service w.e.f. 2/01/2018 i.e., on completion of 6 months' notice period. The matter came to be challenged before the High Court. The High Court placing reliance on judgments in ***Srikantah v. Bharath Earth Movers Ltd*** [(2005) 8 SCC 314], ***J.N.Srivastava v. Union of India*** [(1998) 9 SCC 559] and ***Shambhu Murari Sinha v. Project and Development India Ltd and Another*** [(2002) 3 SCC 437] observed that the resignation tendered by the officer could be withdrawn by her before she was actually relieved from service. Appeal was preferred and the Division Bench concurred with the view expressed by the learned Single Judge which resulted in the matter being considered by the Apex Court. The Apex Court considered the earlier judgments in ***Jai Ram v. Union of India*** (AIR 1954 SC 584), ***Raj Kumar*** (supra), ***Gopal Chandra Misra*** (supra), ***Balram Gupta v. Union of India*** [1987 (Suppl) SCC 228), ***Punjab National Bank v. P.K.Mittal*** [(1989) Suppl 2 SCC 175] and finally held at paragraphs 11 to 16 as under:-

"11. It is thus well settled that normally, until the resignation

becomes effective, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paragraphs 41 and 50 in Gopal Chandra Misra MANU/SC/0370/1978 : (1978) 2 SCC 301, "in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post" or "in the absence of a legal contractual or constitutional bar, a 'prospective resignation' can be withdrawn at any time before it becomes effective". Further, as laid down in Balram Gupta MANU/SC/0608/1987 : 1987 (Supp) SCC 228, "If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter."

12. In the light of the aforementioned principles the issue whether the Respondent could have withdrawn her letter of resignation depends upon answers to the following questions:

A) Whether the stipulation of the notice period in the CAR is intended to safeguard the interest of the employee?; and

B) Whether the provisions of the CAR and the governing principles stipulated therein are in the nature of special provisions coming within the exception stipulated in paragraphs 41 and 50 of the decision in Gopal Chandra Mishra MANU/SC/0370/1978 : (1978) 2 SCC 301 and paragraph 12 of the decision in Balram Gupta MANU/SC/0608/1987 : 1987 (Supp) SCC 228 thereby disabling the Respondent from withdrawing her resignation?

13. The CAR acknowledges that it takes considerable period to train a pilot to operate an aircraft and that as a part of the training, the new incumbent will be required to pass technical

and performance examinations and will have to undergo simulator and flying training and to undertake skill test to satisfy the requirements. Even after imparting of such training, said person would function only as a co-pilot till he reaches the level of expertise required of a pilot. The CAR states that the resignation without minimum notice of six months could result in last minute cancellation of flights and harassment to passengers. As the pilots are highly skilled personnel, a decision was taken that any act on part of the pilots including resignation from the airlines without minimum notice period of six months be treated as an act against public interest. The CAR, therefore, provides:

a) During the notice period neither the pilot shall refuse to undertake flight duties nor shall the employer deprive the pilot of his legitimate rights and privileges.

b) In case the air transport undertaking resorts to reduction in the salaries/perks, the pilot will be free to make a request for his release before the expiry of the notice period

c) On the expiry of the notice period an appropriate NOC shall be issued by the air transport undertaking

d) The notice period of six months could however be reduced if the NOC was provided to the pilot and his resignation was accepted earlier than six months.

In terms of the provisions of the CAR, the terms and conditions of appointment in the instant case specifically stated that the Respondent would give six months' notice in case she desired to leave the services of the Appellant.

14. The underlying principle and the basic idea behind stipulation of the mandatory notice period is public interest. It is not the interest of the employee which is intended to be safeguarded but the public interest which is to be sub-served.

It seeks to ensure that there would not be any last minute cancellation of flights causing enormous inconvenience to the travellers. It is for this reason that the concerned pilot is required to serve till the expiry of the notice period. The notice period may stand curtailed if NOC is given to the concerned pilot and the resignation is accepted even before the expiring of the notice period. It may, in a given case, be possible that the trained manpower to replace the pilot, who had tendered resignation, could be made available before the expiry of such notice period, in which case the employer is given a choice under Clause 3.7 of the CAR. Even in such eventuality, the guiding idea or parameter is public interest.

The stipulation of notice period is, therefore, only to sub-serve public interest and is designed to enable the air transport undertaking or employer to find a suitable replacement or a substitute. By very nature of the job profile a replacement for a pilot does not come so easily and therefore, the period of six months. The CAR acknowledges the fact that it would require considerable expenses and efforts to train the concerned replacement before he could be a worthy substitute. The notice period enables the air transport undertaking or the employer to gear itself up in that direction and obliges it to find a substitute or a replacement. The obligation to find a suitable replacement begins immediately on receipt of letter of resignation. In the present case, steps were taken by the Appellant to discharge such obligation and replacement in Captain Jiban Mahapatra was found. The normal principle that an employee can at any time before the resignation becomes effective, withdraw his resignation will therefore be subject to the core principles of the CAR. In our view, the instant matter would, therefore, be within the exception stipulated in

paragraphs 41 and 50 of the decision in Gopal Chandra Mishra MANU/SC/0370/1978 : (1978) 2 SCC 301 and paragraph 12 of the decision in Balram Gupta MANU/SC/0608/1987 : 1987 (Supp) SCC 228, and the Respondent could not have withdrawn the resignation.

15. The letter of resignation may now be considered to complete the discussion. Said resignation letter dated 03.07.2017 had three relevant statements:

1. I am tendering my resignation letter.
2. Please consider this as my six months' notice period
3. If any time I am forced to stay away from home for longer periods during this time, it will be legal for me to leave the company without completing the notice period, as these are the least of the reasons I have mentioned.

The first sentence shows that the intimation was unequivocal that the Respondent was tendering resignation. The following sentence referred to the notice period of six months, being the requirement under the CAR and the terms and conditions of the appointment. The third sentence clearly suggested that in case the Respondent was forced to stay away from home for longer periods during the notice period, it would be open to her to leave the company without completing the notice period. The notice period was thus only in terms of the requirements of the CAR.

16. In the circumstances, we hold that the Respondent could not have withdrawn the letter of resignation dated 03.07.2017. We, therefore, allow this appeal, set aside the judgment and orders passed by the Single Judge and the Division Bench of the High Court and dismiss Writ Petition (Civil) No. 1991 of 2018. No order as to costs."

The principle of law is therefore well settled. Before resignation

becomes effective, it is open to an employee to withdraw his resignation. As far as the case on hand is concerned, there is no dispute about the fact that the petitioner had submitted a letter of resignation. In his letter of resignation, he states as under:-

> *"Kindly refer to your offer letter vide No.P1/12331/RNTS/469/2016 dated 4.2.2017 and appointment letter dated 7.2.2017 issued under your signature.*
>
> *I am not interested to work anymore in NTTC, therefore I tender my resignation, provided leave shall be granted to withdraw before the date of relieving.*
>
> *It is also requested to the Competent authority to condone the period of notice.*
>
> *Thanking you with anticipation."*

He tendered his letter of resignation stating that he was not interested to work any more in the Institution, but that he should be granted leave to withdraw before the date of relieving. The Institute received Ext.P7 communication dated 20/11/2018 from East Delhi Municipal Corporation intimating that petitioner was selected for the post of ADC/Jt.A&C on deputation basis for a period of one year. From the records it is seen that the petitioner went on leave from 19/11/2018 to 22/11/2018. Thereafter he had sent an e-mail dated 26/11/2018 [Ext.R1(d)] to extend his leave from 23/11/2018 to 16/12/2018. Petitioner rejoined duty on

3/12/2018 without availing the full leave and he submitted another application for leave on 5/12/2018 to grant him leave from 10/12/2018 to 14/12/2018 as per Ext.R1(i). Later he sought for extension of leave till 23/12/2018 and he reported for duty on 24/12/2018. He was called upon to furnish necessary certificates as per office order dated 7/12/2018 [Ext.R1(k)] to which he sent an e-mail dated 26/12/2018 pointing out certain clerical errors. Ultimately his leave was regularized as per office order dated 7/1/2019 [Ext.R1(o)]. By Ext.P10 dated 4/12/2018, petitioner was informed that his resignation dated 8/11/2018 was approved by the competent authority on 22/11/2018 and he would be relieved from the service of the Institute w.e.f. 11/1/2019. This matter had been informed to East Delhi Municipal Corporation as well with copy to the petitioner. By another letter dated 7/12/2018 (Ext.P11), petitioner requested to consider his submission made on 28/11/2018 for withdrawing the resignation. In the said letter, he had stated that he was under tremendous family pressure during May to October, 2018 and it was extremely difficult for him to remain in the campus on account of family issues which had made him psychologically upset. A reply was sent to the said

letter on 7/2/2019 (Ext.P12), which reads as under:-

> *"1. This has reference to your letter dated 7.12.2018. The Competent Authority has considered all the relevant communications in this regard.*
>
> *2. You had tendered the notice of resignation dated 8.11.2018 citing the reason that you are not interested to work in this Institute anymore. The Competent Authority has accepted your resignation on 22.11.2018.*
>
> *3. Further vide your email dated 28.11.2018, while you were on leave, you have requested to withdraw your notice of resignation in order to enable you to join East Delhi Municipal Corporation on deputation basis, which further confirms that you have no interest in working in this Institute.*
>
> 4. *Your request dated 28.11.2018 & 7.12.2018 has been considered by the Competent Authority but is not acceded to. As per the Office Order dated 4.12.2018, you will be relieved from the services of the Institute on 11.1.2019 AN."*

19. Ext.P15 is the office memorandum dated 11/2/1988 of Government of India which provides for resignation from service and its procedure. Paragraph 3 has been relied upon by either side, which reads as under:-

> *"3. A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its*

> *acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned."*

20. Apparently going by the aforesaid provision, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. The rule further provides that if the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the concerned Government servant. According to the Institute, petitioner was a person who was not at all interested in the work and hence they have refused permission to withdraw the

resignation.

21. According to the department, the reason stated by the petitioner for resignation was that he was not interested to work any more and his request for withdrawing from the resignation only came on the wake of selection on deputation basis. The fact that the petitioner had no interest to resume the work in the Institute was rather clear. Hence, his request was not acceded by the competent authority and the decision was communicated to him as per Ext.P12 Office order dated 7/1/2019.

22. From the aforesaid facts and the law laid down on the point by the Apex Court, the following aspects are clear:-

(a) The letter of resignation was accepted by the competent authority on 22/11/2018. That as per Rules, the petitioner was entitled to seek for withdrawing his resignation before relieving from the said post. He had submitted his letter withdrawing the resignation before relieving from the post. But his request for withdrawing the letter of resignation was not permitted by the competent authority. As per paragraph 3 of the office memorandum (Ext.P15) referred above, it is open for the competent authority to refuse withdrawal of resignation for

reasons to be recorded in writing. Ext.P12 is the said communication given to the petitioner by which his request for withdrawing the resignation had been rejected. It is rather clear that the petitioner sought for withdrawing the resignation only when he got another job opportunity. In ***Air India Express Ltd*** (supra), the Apex Court held that the normal principle that an employee can at any time before the resignation becomes effective withdraw his resignation will be subject to the core principles of CAR and therefore, it would come within the exception stipulated in paragraphs 41 and 50 of the decision in ***Gopal Chandra Misra*** (supra) and paragraph 12 in ***Balram Gupta*** (supra). Of course, this is a case in which the petitioner had sought for withdrawing the resignation before him being relieved but the rule enables the competent authority to take a decision on that request.

(b) As already stated, the learned Single Judge proceeded on the basis that the notice of resignation was accepted prospectively after completion of notice period i.e., 3 months, which falls on 7/2/2019. It is held that the respondent by its order and communication had made the resignation only prospective.

This finding cannot be sustained. As per the proviso to Statute 30, the resignation is effective on the date on which the resignation is accepted by the competent authority. The finding of the learned Single Judge that unless the order of acceptance is served on the employee, there is no severance of relationship cannot be accepted. The question is, when does the resignation becomes effective? Resignation becomes effective on the date on which it is accepted. Only other aspect which remain was the notice period. Resignation of the petitioner was accepted on condition that he completes the notice period. In ***Raj Kumar*** (supra), a 3 Judge Bench of the Apex Court observed that when a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority.

23. In the case on hand, the respondent also admits the fact that the office memorandum dated 11/2/1988 applies to the

personnels employed by the Institute and any employee who had submitted resignation is entitled to withdraw his resignation before being relieved of duties. The office memorandum also enables the employer to refuse such a request, but the only requirement is that the ground of rejection should be duly recorded by the appointing authority and suitably intimated to the Government servant. Therefore, it has to be held that the petitioner was entitled to withdraw his resignation prior to his relieving from duties which he has already done. But, in the case on hand, such a request has been refused by the competent authority. The only aspect which requires to be considered is whether the refusal to accept his withdrawal from resignation is justified or not. In other words, the competent authority has the power to refuse withdrawal of resignation, but as per the office memorandum, the reason has to be recorded in writing and intimated to the employee. We have already extracted the office order dated 7/1/2019, in which it is clearly stated that they have refused to permit him to withdraw his resignation since he was not interested to work in the establishment. Though the petitioner had sought for a writ of certiorari to quash Ext.P12

(office order dated 7/1/2019), the petitioner had not challenged the validity of Ext.P12 on specific grounds or under what circumstances it is to be quashed. It is settled law that in exercise of its power under Article 226 of the Constitution of India against the finding of an inferior tribunal, the High Court would be justified in interfering only if it comes to the conclusion that either the order of the tribunal is contrary to some provisions of law; or the order of the tribunal is based upon certain inadmissible evidence; or the tribunal does not allow certain admissible evidence to be led in; or the conclusion of the tribunal is such which no reasonable man would arrive at. Therefore, we are of the view that there was justification on the part of the Institute in refusing to permit withdrawal of the letter of resignation given by the petitioner. The learned Single Judge was, therefore, not justified in quashing the impugned orders. Once it is found that there was justification on the part of the Institute in issuing Ext.P12, petitioner is not entitled for any reliefs.

24. The petitioner in his appeal filed as WA No. 816/2020 had challenged the denial of backwages. He had also placed reliance on several judgments of the Apex Court and the High

Courts in order to emphasise that when there is denial of employment or illegal termination from service, he was entitled for backwages. In our earlier discussion, we have already arrived at a conclusion that the petitioner had resigned from service and his request for withdrawing the resignation had been validly rejected by the competent authority. Under such circumstances, petitioner is not entitled for any relief regarding backwages. Learned Single Judge was therefore justified in rejecting the said claim.

In the result, Writ Appeal No.809/2020 is allowed setting aside the judgment of the learned Single Judge. Writ Appeal No.816/2020 is dismissed.

Sd/-

A.M.SHAFFIQUE

JUDGE

Sd/-

GOPINATH P.

JUDGE

Rp

True Copy

PS to Judge