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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3840 OF 2021

Smt. Vijayamathengee Iyer

.. Petitioner

Versus

The Union of India & Ors.

.. Respondents

Mr. Shravan K. Giri a/w Mr. Saurabh Pakale, Mr. Shubham Upadhyay & Mr. Prakash Purohit for petitioner.
Mr. R. R. Shetty a/w Mr. D. A. Dubey for respondents.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: OCTOBER 6, 2021

PC:

1. Aggrieved by the dismissal of Original Application No. 146 of 2013 by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter "the Tribunal" for short) by its order dated December 18, 2018, the original applicant has presented this application under Article 226 of the Constitution of India before this Court.
2. The facts lie in a narrow compass.
3. The petitioner, at the relevant time, was employed in the Bhabha Atomic Research Centre (hereinafter "the Centre", for short). She was appointed as Scientific Assistant 'C' with effect from February 24, 1998 and posted at the Medical Division. Her service was confirmed by an order dated July 2, 2001 with

retrospective effect from February 25, 1999. In due course of time, the petitioner was promoted as Scientific Officer 'B' with effect from August 1, 2003. She was further promoted as Scientific Officer 'C' with effect from August 1, 2008. By her writing dated March 15, 2010, the petitioner submitted resignation from service on the ground that she was suffering from Systemic Lupus Erythrematous (SLE) and was on immune suppression therapy. According to the respondents, the petitioner was counselled several times for persuading her to revoke her resignation and to continue to serve the Centre. It is, however, the case of the petitioner that as per the advice of one of her superiors, she had withdrawn her resignation by a writing dated April 23, 2010. Unfortunately, there is no evidence to prove that such withdrawal letter was received by the respondents. It is the specific case of the respondents that they did not receive any such letter.

4. Be that as it may, the petitioner's resignation was acted upon. An order was issued on June 1, 2010 whereby the petitioner was permitted to relinquish charge with effect from May 26, 2010. According to the petitioner, this letter was received by her on July 6, 2010. It is also the case of the petitioner that in the meanwhile, on June 10, 2010 to be precise, she once again made a request to revoke the order of acceptance of her resignation on humanitarian ground. In support of her claim that she was under treatment, the petitioner enclosed relevant medical documents. The prayer of the petitioner was not considered, which resulted in her moving

the Tribunal with the original application which, as noted above, was dismissed.

5. We have heard Mr. Giri, learned advocate for the petitioner and Mr. Shetty, learned advocate for the respondents.

6. Rule 26 of the Central Civil Services (Pension) Rules, 1972 provides for forfeiture of service on resignation. Sub-rule (4), however, provides as follows: -

“(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 in 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 became effective and the date from on 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 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.”

7. This statutory provision leaves a small window open even for an employee, whose resignation has been accepted by the

Government, to seek revocation of such order of acceptance of resignation within ninety days of such acceptance. There is no doubt that the petitioner did, in fact, seek revocation within ninety days. However, the pre-condition for exercise of power conferred by sub-rule (4) is that the request for withdrawal of resignation has to be made as a result of a material change in the circumstances which originally compelled the employee to tender the resignation.

8. The Supreme Court in its decision reported in AIR 1987 SC 2354 [**Balram Gupta vs. Union of India**] had the occasion to consider sub-rule (4) of Rule 48 of the Central Civil Service (Pension) Rules 1972. Hon'ble Sabyasachi Mukharji, J. (as the Hon'ble Chief Justice of India then was) had the occasion to observe in paragraphs 12 and 13 as follows :-

"12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. 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 but the offer to retire and withdrawal of appellant's the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose, the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

9. Having regard to the aforesaid dictum, we are of the considered opinion that the petitioner is entitled only to limited relief of having her application dated June 10, 2010 considered by the respondents since the same was made within 90 days from date the resignation took effect, i.e., May 26, 2010. The Tribunal failed to notice sub-rule (4) of rule 26 as well as the decision in Balram Gupta (supra).

10. In the result, the impugned order is set aside. This writ petition, accordingly, stands disposed of with a direction upon the respondent no.2, the Secretary, Department of Atomic Energy, to consider the petitioner's prayer dated June 10, 2010 for revocation of the order of acceptance of resignation with effect from May 26, 2010, in accordance with law. It is desirable

if the petitioner is granted an opportunity of personal hearing. Should the Secretary hold against the petitioner, a reasoned order may be passed. On the contrary, if the petitioner is successful in persuading the Secretary to favourably consider her prayer, we leave it open to the Secretary to pass such order as he deems appropriate on facts and in the circumstances. All contentions are left open.

11. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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PANDIT
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