

**CM-6192-C-2018 in/and
RSA-2313-2018**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(278)

**CM-6192-C-2018 in/and
RSA-2313-2018
Date of Decision : 16.02.2023**

Pardeep Dhir

...Appellant

Versus

D.A.V. College, Managing Committee, New Delhi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.D. Bawa, Advocate with
Mr. Samuel Gill, Advocate and
Mr. Dipanshu Kapur, Advocate for the appellant.

Harsimran Singh Sethi J. (Oral)

CM-6192-C-2018

Present application has been filed seeking condonation of delay
of 110 days in filing the appeal.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the same is allowed and delay of 110
days in filing the appeal is condoned.

RSA-2313-2018

The present regular second appeal has been filed challenging
the judgment and decree of the trial court dated 30.09.2014 by which, the
suit filed by the appellant-plaintiff was dismissed as well as against the

judgment and decree of the lower appellate court dated 04.05.2017 by which the appeal preferred impugning the judgment and decree of the trial court, was also dismissed.

Certain facts needs to be mentioned for the correct appreciation of the controversy in hand.

The appellant-plaintiff was appointed as a Lecturer in Physics by the D.A.V. College Managing Committee vide order dated 18.07.1994 and was posted at S.L. Bawa D.A.V. College for Boys, Batala, Khajuri Gate, Batala-respondent/defendant no. 4. On the said post of Lecturer, the appellant-plaintiff was confirmed on 08.07.1996.

While working on the post of Lecturer, the appellant-plaintiff submitted a resignation on 23.05.2002 with the clear indication that he resigns with immediate effect and the same be also accepted with immediate effect. Along with the resignation, he allowed the Management to deduct three months' salary required to be deposited so as to condone the three months notice period. After submitting the resignation on 23.05.2002, the appellant-plaintiff stopped coming to the College and he was informed by the authorities concerned vide letter dated 03.06.2002 that his resignation is accepted.

On 25.09.2002, the appellant-plaintiff made a representation that he has re-considered the tendering of resignation by him and the said resignation dated 23.05.2002 be treated as withdrawn and he be allowed to join the service again. The said representation was rejected by the respondents-defendants-D.A.V. College, Managing Committee on 28.09.2002 on the ground that as he has already left the College with

immediate effect after the submission of his resignation, he cannot be allowed to withdraw his resignation, which resignation already stands accepted by the Management vide letter dated 03.06.2002.

Feeling aggrieved against the decision of the respondent-Managing Committee for not allowing him to withdraw his resignation and also not allowing him to join the duties, the appellant-plaintiff filed a civil suit impugning the decision of the Managing Committee conveyed to him that once his resignation has already been accepted and he was not performing the duties of the post since the date of his resignation, he cannot be allowed to withdraw his resignation at that stage so as to allow him the duties again.

The notice of the civil suit was given to the respondent-Managing Committee and in their reply, the Managing Committee came out with the fact that the appellant-plaintiff had got a job in some other institution, which was the reason for tendering the resignation with immediate effect and after tendering the resignation, the appellant-plaintiff had joined another institution from the very next day of tendering the resignation in which institution he served till the filing of the representation hence, once the resignation tendered by the appellant-plaintiff on 23.05.2002 already stood accepted on 03.06.2002, the question of withdrawing the same does not arise.

Keeping in view the evidence, which came on record, the trial court dismissed the suit vide judgment and decree dated 30.09.2014 by recording a finding that the resignation submitted by the appellant-plaintiff was accepted by the Managing Committee and rather, he had resigned with

immediate effect and the withdrawal request was received much after acceptance of the resignation, hence, the Managing Committee was well within its right not to allow the appellant-plaintiff to withdraw his resignation, especially when the appellant-plaintiff had stopped attending the institution immediately from the date of resignation and had joined another institution.

Feeling aggrieved against the judgment and decree of the trial court dated 30.09.2014, the appellant-plaintiff filed an appeal before the lower appellate court, which also came to be dismissed vide judgment and decree dated 04.05.2017 hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that though, it is correct that the appellant-plaintiff resigned from the post of Lecturer with immediate effect on 23.05.2002 but the acceptance of his resignation on 03.06.2002 was not by the competent authority hence, the findings recorded by the courts below that the resignation was accepted on 03.06.2002 so as to dis-entitle the appellant-plaintiff to rejoin his service, is bad. Learned counsel submits that the acceptance of the resignation by authority not competent to do so renders the said acceptance of the resignation illegal and on the day when the appellant-plaintiff filed a representation seeking to rejoin the duties so as to withdraw the resignation, there was no valid acceptance of his resignation hence, the findings recorded by the courts below are perverse and contrary to the settled principle of law as, before a valid acceptance of the resignation, the appellant-plaintiff could have withdrawn the same.

The argument, which is being raised by learned counsel for the

appellant-plaintiff is not correct. In paragraph 12 of the judgment of the trial court, the resignation submitted by the appellant-plaintiff has been reproduced. A bare perusal of the same would show that the resignation was given by the appellant-plaintiff with immediate effect with the request that he should be relieved at the earliest. The said request was forwarded to the Managing Committee of the D.A.V. Colleges by the Principal and Principal concerned informed the appellant-plaintiff that D.A.V. Managing Committee had accepted the resignation. That being so, the ground being taken that competent authority had not accepted the resignation, is incorrect. Nothing has been brought to the notice of this court that the letter of the Principal dated 03.06.2002 informing the appellant-plaintiff that Managing Committee of D.A.V. College, New Delhi had accepted his resignation, is factually incorrect. In the absence of any evidence on record to the contrary, the findings have correctly been recorded by the courts below that once the appellant-plaintiff himself had sent the letter to the Managing Committee, New Delhi for acceptance of resignation, which stood accepted by the said Managing Committee and the appellant-plaintiff was relieved from service in pursuance to the said acceptances, the resignation submitted by the appellant-plaintiff came to an end. Hence, the grievance being raised by the appellant-plaintiff that his resignation was not accepted by the authority competent and was only accepted by the Principal, is incorrect. The findings recorded by the courts below on the said issue are inconsonance with the facts and the evidence on record and no perversity in the same has been pointed out by learned counsel for the appellant-plaintiff.

Further, the judgment which is being relied upon by learned

counsel for the appellant-plaintiff passed by the Hon'ble Supreme Court of India in Civil Appeals No. 2644 and 2655 of 1977 titled as ***Union of India Vs. Shri Gopal Chandra Misra and others***, decided on 15.02.1978, to contend that the tendering of the resignation will only become effective when the same is accepted by the competent authority, it is submitted that there was no quarrel with the said proposition of law.

In the facts and circumstances of the present case, as stated hereinbefore, the appellant-plaintiff was duly conveyed on 03.06.2002 that the resignation submitted by him has been accepted by the Managing Committee situated at New Delhi. On the said date, the resignation stood accepted whereas, the request for withdrawal is in the month of September, 2002 i.e. much after the acceptance hence, the judgment in ***Shri Gopal Chandra Misra's case (supra)***, cannot come to the rescue of the appellant-plaintiff in any manner.

Even otherwise, the conduct of the appellant-plaintiff clearly shows that he intended to resign from the post and wanted to leave the institution as he had already got a new job/service to join. The evidence has already come on record that immediately after tendering of resignation on 23.05.2002, the appellant-plaintiff stopped coming to the institution and joined the new assignment immediately thereafter and was working in the new institution even on the date when he submitted his request for withdrawal of resignation in the month of September, 2002. These conceded facts, which are on record, clearly shows that there was no intention of the appellant-plaintiff to continue working with the respondent-institution. Even if it is assumed for the sake of argument that the

resignation of the appellant-plaintiff was not accepted by the competent authority then also, keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 1552 of 2000 titled as ***Rajasthan State Electricity Board and others Vs. Brij Mohan Parihar***, decided on 21.02.2000, the Hon'ble Supreme Court of India has held that in case the conduct of an employee shows that he intended to resign and leave the institution and he was not discharging the duties after tendering the resignation, merely non-acceptance of the said resignation will not go in favour of the employee to claim that he continues to be in service. The relevant paragraphs 3, 4, 5 and 6 of the said judgment are as under :-

“3. The respondent was an employee of the Rajasthan State Electricity Board. He submitted his letter of resignation on October 10, 1983 in which it was mentioned that the resignation will be effective from November 25, 1983. The learned single Judge and the Division Bench, both have recorded a finding that the respondent offered himself for duty on August 22, 1987 through his letter of even date. It was then that the Board made an order dated August 24, 1987 accepting the letter of resignation with effect from November 25, 1983 and treating the respondent as relieved from the forenoon of November 25, 1983. The learned single Judge and the Division Bench of the High Court have further held that a formal letter accepting the resignation should have been issued and since it was not done, the respondent shall be deemed to have continued in service till August 22, 1987 when he reported to resume his duties.

4. We are not inclined to subscribe to this view. The respondent tendered his resignation vide his letter dated October 10, 1983 in which it was mentioned clearly that the resignation would be

effective from November 25, 1983. He absented himself from duty for four years from that date and reported only on August 22, 1987. This conduct itself on the part of the respondent is sufficient to indicate that he treated himself to have resigned from the post which he was holding, with effect from November 25, 1983, particularly when he himself thereafter demanded payment of gratuity and other post-retirement benefits.

5. Having regard to the circumstances of the case, the finding could not have been recorded by the learned single Judge or the Division Bench that the respondent shall be deemed to be continuing in service till August 22, 1987.

6. That being so, we allow the appeal, set aside the judgments passed by the single Judge and the Division Bench. In the particular circumstances of the case, the respondent shall be treated to have resigned from the post in question with effect from November 25, 1983. All retirement benefits as admissible under the rules shall be paid to him by the appellant Board possibly within three months.”

The case of the appellant-plaintiff is squarely covered by the judgment of ***Brij Mohan Parihar's case (supra)*** as immediately on the tendering of the resignation on 23.05.2002, which was with immediate effect, the appellant-plaintiff stopped coming to the institution so as to claim continuous in employment. Not only this, after 23.05.2002 i.e. when he tendered the resignation, the appellant-plaintiff joined a new institution to serve where he actually served, which is a conceded position hence, the conduct of the appellant-plaintiff shows that he treated himself to have resigned from the post. Therefore, claiming that the appellant-plaintiff continues to be in service till he filed a representation in September, 2002 for withdrawal of his resignation, is contrary to the settled principle of law

and the said argument cannot be accepted.

No other argument was raised.

Keeping in view the above, no infirmity is found in the judgment dated 30.09.2014 passed by the trial court as well as judgment of the lower appellate court dated 04.05.2017 as no perversity could be pointed out either on facts or on evidence qua the findings recorded therein.

No ground is made out for interference by this Court in the present regular second appeal.

Dismissed.

February 16, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No