



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 10th August, 2023**

+ **W.P.(C) 7807/2022 and CM APPL. No. 23888/2022**

ARMY PUBLIC SCHOOL DHAULA KUAN Petitioner
Through: **Mr. Santosh Kumar Pandey,**
Advocate

versus

ARCHANA DHAWAN AND ANR Respondents
Through: **Mr.Pramod Gupta, Ms.Utkarsha**
and Mr.Pranjal, Advocates for R-
1
Mr.Gaurav Dhingra, Advocate for
R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

“a) Issue a writ of certiorari and quash the impugned Judgment dated 12.01.2022 passed by Ld .Delhi School Tribunal, Delhi in Appeal n. 09 if 2019 titled as Archana Dhawan Versus Army Public School and Anr;

b) Issue any other writ/direction as this Hon'ble Court may deem fit in the facts of the case.”

2. The factual matrix is recapitulated herein below:



- a) The respondent No. 1 joined the petitioner's school as TGT (Science) on 29th April 1983.
 - b) The respondent No.1 applied for the position of principal which was rejected by the petitioner school and eventually respondent no.1 submitted an application dated 12th November 2018 tendered her resignation on the ground that the environment in the school had not been conducive for welfare and growth of students and faculty at large.
 - c) The said Application for voluntary retirement was accepted by competent authority *vide* order dated 19th December 2018 with effect from 13th February 2019 and the same was forwarded to respondent No. 2 i.e. Directorate of Education on 26th December 2018.
 - d) The petitioner submitted another letter dated 05th February 2019 and 08th February 2019 whereby she withdrew her resignation.
 - e) The petitioner School vide order dated 12th February 2019 rejected her Application. Thereafter, the respondent No. 1 filed an Appeal No. 09 of 2019 before learned Delhi School Tribunal, Delhi on 25th March 2019 wherein she challenged the Order dated 12th February 2019 passed by the Petitioner's School.
 - f) The learned Tribunal vide Order dated 12th January 2022 allowed the Appeal. Therefore, aggrieved by the said judgement, the petitioner preferred the present petition.
3. Learned counsel appearing on behalf of the petitioner humbly submitted that according to Rule 114-A of DSEAR, 1973, respondent No. 1's resignation was accepted vide order dated 19th December 2018 w.e.f from 13th February 2019 and the same was forwarded for approval



of respondent No. 2 on 26th December 2018. The period of thirty days after giving the resignation as per Rule 114-A of DSEAR, 1973 came to an end on 25th January 2019.

4. It is further submitted that as per the law, the withdrawal of resignation is not permissible after 25th January 2019. The respondent no. 1 cannot on its whims and fancies give a resignation and subsequently, withdraw it.

5. It is submitted that respondent No. 1, a senior teacher tendered her resignation at a very crucial stage of the academic session which increased the load of the petitioner school.

6. It is submitted that from November 2018 till February 2019, respondent No.1's approach had become extremely lackadaisical in her work since she started avoiding responsibility as a coordinator, taking leaves frequently including on days of annual inspection sans any official intimation.

7. It is submitted that the Chairman and Patron of the petitioner School also met respondent No.1 to request her to reconsider her resignation, howbeit, the respondent was adamant in not reconsidering her decision.

8. It is submitted that the respondent No. 1 filed an Appeal No. 09 of 2019 before learned Delhi School Tribunal, Delhi wherein the tribunal allowed the said appeal, quashing the resignation of the respondent no. 1 and reinstating the respondent no. 1 back to her position vide order dated 12th January 2022.

9. It is contended that the Tribunal has not considered the material placed on the record and wrongly placed passed its order in the said



appeal.

10. It is further contended that the Tribunal has not considered the fact that the petitioner has herself voluntarily tendered the said resignation. Therefore, the respondent no. 1 cannot now pray for her reinstatement.

11. In view of the foregoing submissions, the counsel for the petitioner prayed that the petition may be allowed and the reliefs as claimed by the petitioner may be granted by this Court.

12. *Per contra*, learned Counsel on behalf of respondent No. 1, vehemently opposed the aforesaid submissions and averred that respondent No. 1 filed an Appeal under Section 8(3) of Delhi School Education Act, 1973 challenging order dated 12th February 2019 issued by the petitioner School (respondent therein) illegally rejecting her request for withdrawal of resignation and thereby, unlawfully terminating the services of a confirmed employee without following the procedure prescribed under Rule 118 read with Rule 120 of DSEAR.

13. It is submitted that an employee has complete and flexible right to withdraw its resignation before it has been effective and that unless the employee has been relieved from its services, the employer-employee relationship still persists.

14. It is submitted that the impugned order dated 12th February 2019 is illegal and termination of the respondent No. 1 by the Petitioner School is invalid and non-est in the eyes of law. Moreover, there was no definite reason given for illegal termination of the respondent No. 1 by the petitioner School.

15. It is also submitted that respondent No. 1 withdrew her resignation well before the date of her relieving i.e. 13th February 2019. Moreover,



the petitioner School tried to mislead and fabricate to harass Respondent No. 1 by the letter dated 25th February 2019.

16. It is submitted that appointment process for post of TGT (Science) had been initiated much before the resignation of the respondent no. 1 and replacement teacher was to be appointed in lieu of Mrs. Anita Verma.

17. It is also submitted that in any case, appointment of replacement teacher cannot be a ground to deny the Respondent No. 1, her rightful post on which she has been working as a confirmed employee for the past 35 years.

18. It is further submitted that the appeal has been correctly allowed by the Tribunal since, the Tribunal has passed a reasoned order taking into consideration the material on record, various judicial precedents and the arguments advanced by both the parties.

19. In view of the foregoing submissions, counsel for the respondents prayed that the present petition is devoid of any merits and may be dismissed by this Court.

20. Heard learned counsel for the parties and perused the material on record including the pleadings, the various documents on record including the impugned order and judicial precedents cited.

21. Keeping in view the arguments advanced by the parties, the following issue has been framed for adjudication by this Court:

'Whether the impugned order dated 12th January 2022 passed by learned Tribunal reinstating the respondent no. 1 within four weeks is liable to be set aside?'

22. To consider this issue, it is imperative to set out the relevant facts



as also elaborated hereinunder.

23. It is the case of petitioner that respondent No.1 joined the petitioner's School as TGT (Science) on 29th April 1983 and on 12th November 2018, the respondent No. 1 tendered her resignation and the said Application was accepted by the competent authority vide order dated 19th December 2018 with effect from 13th February 2019. However, at the fag end, respondent No. 1 withdrew her resignation vide letters dated 5th February 2019 and 8th February 2019. This was strongly rejected by the petitioner School vide order dated 12th February 2019.

24. Further, respondent no. 1 filed an Appeal filed under Section 8(3) of Delhi School Education Act, 1973, the Learned Tribunal set aside the aforesaid impugned Order dated 12th January 2022 and reinstated respondent No. 1. The relevant paragraph of the impugned order is reproduced herein:

“44. I have carefully perused the records of the case and considered the submissions. I am in agreement with the Advocate for the appellant. The reason follow.

45. 'Resignation' means spontaneous relinquishment of one's right on service. It connotes 'the act of giving up' or 'relinquishing of service'. 'To relinquish an office' means 'to cease to hold the office' or 'to leave the job' or 'to leave the position'. 'To cease to hold the office' or 'to lose hold of the office' implies to 'detach' 'unfasten', 'undo' or 'untie' 'the binding knot or link' which holds one to the office and the obligations and privileges that go with it.

46. To constitute a resignation 'it must be unconditional and with an intent to operate as such'. A resignation of a public office to be effective must be made with an intention of relinquishing the office by an act of relinquishment.



47. *In order to constitute a complete and operative resignation, there must be an intention to give up or relinquish the office and the concomitant act or act of relinquishment.*

48. *Act of relinquishment may take different forms or may assume a unilateral, bilateral or trilateral character, depending on the nature of the office and conditions governing it. If the act of relinquishment is of unilateral character it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti.*

49. *In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish by itself, would not be sufficient to result in relinquishment of the office as some action is required to be taken on such communication of the intention to relinquish, e.g. acceptance of the said request to relinquish the office, and in such case the relinquishment does not become effective or operative till such action is taken.*

50. *"Resignation" means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishment of the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment.*

51. *In trilateral character, as is the case under DSEAR, three stake holders have to act as per general law in the light of rule 114 A of DSEAR which reads as under:-*

"114A. Resignation The resignation submitted by an employee of a recognized private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director: Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period."



52. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication.

53. As per Advance Law Lexicon 4th edition, the word 'resign' means:-

• "To give up an office (S. 123(4), CPC (5 of 1908) and S.5(1)(b), Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955)], It is an act by which the employee voluntarily gives up his job, expression "Resign". J.K. Cotton Spg. & Wvg. Mills company Vs. State of U.P., AIR-1990 SC 1808. • With regard to an office "resign" "implies that the party resigning has been elected into the office which he resigns; a man cannot 'resign' that which he is not entitled to (per COCKBURN, C.J., R. V. Blizard, 36 LJQB 21 : LR 2 QB 57)."

54. As per Advance Law Lexicon 4th edition, the word 'Give up' means:-

• TO GIVE UP, DELIVER, SURRENDER, YIELD, CEDE, CONCEDE. We give up our house to the accommodation of our friends; we deliver property into the hands of the owner. To give up is a colloquial substitute for either surrender or yield. A man gives up his place, his right, his claim, and the like; he surrenders a fortress, a vessel, or his property to his creditors. Cede is properly to surrender by virtue of a treaty: we may surrender town as an act of necessity; but the cession of a country is purely a political transaction: thus, generals frequently surrender such towns as they are not able to defend; and governments cede such countries as they find it not convenient to retain. To concede, which is but a variation of cede, is a mode of yielding which may be either an act of discretion or courtesy; as when a government concedes to the demands of the people certain privileges or when an individual concedes any point in dispute for the sake of peace.



• *TO GIVE UP, ABANDON, RESIGN, FOREGO.* To give up and abandon both denote a positive decision of the mind; but the former may be the act of the understanding or the will, the latter is more commonly the act of the will and the passions: to give up is applied to familiar cases; abandon to matters of importance: one gives up an idea, and intention, a plan, and the like; one abandons a project, a scheme, a measure of government. A man gives up his situation by a positive act of his choice; he resigns his office when he feels it inconvenient to hold it. Forego which signifies to let go, is comparable with resign, inasmuch as it expresses a passive action; but we resign that which we have, and we forego that which we might have.

55. 'Resignation' at the same page has been given the following meaning:- • "A resignation of an office, to be complete, implies the consent of the incumbent.

• "Resignation implies that the person resigning has been elected into the office he resigns. One cannot resign that which he is not entitled to, and which he has no right to occupy.

• Act of giving up an office which implies that the party resigning has been elected to the office which he resigns because a man cannot 'resign' that which he is not entitled to.

• It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position. [Corpus Juris Secundum, Vol. 77, p. 311, as cited in Prabha Atri vs. State of U.P., (2003) 1 sec 701, para 7: AIR 2003 sc 534].

• In relation to an office, it connotes the act of giving up or relinquishing the office. To "relinquish an office" means to "cease to hold" the office, or to "lose hold of" the office. Union of India, vs. Gopal Chandra Misra, AIR 1978 SC 694.

• In the general juristic sense, in order to constitute a complete and operative resignation there must be the



intention to give up or relinquish the office and the concomitant act of its relinquishment. The act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions of governing it. Moti Ram v. Param Dev, (1993) 2 SCC 725.

- *"Resignation" means the spontaneous relinquishment of one's own right and in relation to an office; it connotes the act of giving up or relinquishing the office. Moti Ram v. Param Dev, (1993) 2 SCC 725.*

- *To constitute a 'resignation', it must be unconditional and with intention to operate as such. Prabha Atri v. State of U.P., (2003) 1 SCC 701, para 10: AIR 2003 SC 534. • The word 'resignation' in relation to an office, connotes the act of giving up or relinquishing the office. [Srikantha S. M. v. Bharath Earth Movers Ltd. (2005) 8 SCC 314, 320, para 12]*

- *The word 'resignation' conveyed by the latin maxim Resignatio est juris propii spontanea refutatio. (Resignation is a spontaneous relinquishment of one's own right). A complete and effective act of resigning an office is one which severs the link of the resignor with his office and terminates its tenure. [Srikantha S. M. v. Bharath Earth Movers Ltd. (2005) 8 SCC 314, 320]*

- *Resignation would mean that employee wants to sever his relation from the employer without any riders, then only it would amount to resignation. But if his intentions are not to sever his relations immediately but from a prospective date or subject to certain conditions then, the resignation would become effective on fulfillment of those conditions. Mahesh Chander Tyagi v. Director of Education, 1996 (1) AD (Del) 65.*

- *Only the acceptance of a resignation makes an office vacant and not the resignation. This applies to the case of an Honorary Magistrate also. AIR 1924 Mad 395.*

56. Keeping in view the above exposition of law and dictionary meanings, I have no hitch to observe that provisions of DSEAR contemplate trilateral acts of stake



holders for making the resignation as complete. First act which is required is the resignation by the employee, second act which is required is the acceptance of the resignation by the managing committee by passing of a resolution and third act is approval of the DOE as contemplated under 114 A.

57. In the present case the resignation was to come in to effect on 13.02.2019 as per letter dated 19.12.2018. Unilateral act of the appellant would have matured on 13.02.2019, in view of juxtaposed view of Annexure A-2 and A-3. The management instead of waiting for maturity of the request on 13.02.2019, went out of its way by acting illegally in accepting the resignation on 19.12.2018. In fact meeting of managing committee was required to be convened after 13.02.2019. Rule 114 A would have come in picture only after 13.02.2019. A resolution post 12.02.2019 was required to be passed by the managing committee concerning acceptance of the resignation and DOE should have been approached after 12.02.2019. Resignation letter and resolution should have accompanied the letter seeking approval from DOE under rule 114 A post 12.02.2019. It is admitted position that it has not so taken place. Minutes of meeting should have been annexed not only with the letter seeking approval under rule 114A but with the reply of appeal as well which has also not been done in this case for which an adverse inference has to be drawn. Respondent school has not given any details about 'management' which according to school accepted the resignation. Acceptance of resignation has to be by the managing committee and not by management as it is the managing committee which is the Appointing Authority. No specification has been given by the school as to who were the persons in the management as is so mentioned in letter dated 12.02.2019, 9.12.2018, 26.12.2018. So it can be said that school has failed to show that resignation was in fact accepted. Another reason to say so is that school has not placed on record so called ratification by the school management committee as



undertaken in the letter dated 26.12.2018. So adverse inference is hereby drawn.

58. The aforementioned statutory requirements have not been complied with in the present case of prospective resignation, Legal position with respect to prospective resignation is slightly different as has been exposted by a Division Bench of the Hon'ble Delhi High Court in Secretary, Home Department, Govt. of Maharashtra Mantralya Mumbai Vs. Sanjay Pandey bearing WP(C) no. 12804/2005 decided on 15.12.2005, head note of which reads as under:- A. Registration-Withdrawal of-when a future date is specified in a resignation letter, such a resignation could be withdrawn by the concerned employee at any time before the same was accepted- A resignation can always be withdrawn by the concerned employee before the effective date- Even if such a resignation letter is accepted and effective date of the resignation is subsequent therto and if the employee withdraws his resignation even after acceptance but before the effective date, the same also does not sever the relationship of master and servant between the concerned employee and the employer. B. Resignation- withdrawal of- Respondent No. 1 had withdrawn his resignation which was to be operative from the date of acceptance as he had stated in the letter that it should be accepted with immediate effect, yet the same was accepted by the competent authority only after the same was withdrawn by respondent No. 1- Not only his resignation was accepted from a retrospective date but also on the ground that the respondent No. 1 was working elsewhere during his absence in violation of the rules- In case there was any violation of the rules by respondent No. 1 that could be a case of misconduct for which separate proceedings were required to be drawn up by the petitioner- They should not have short-circuited the said procedure by accepting the resignation which was withdrawn by respondent No. 1 by his conduct and by writing a letter to one of the authorities- Since the intention has expressed for withdrawing the resignation letter and since the same was



submitted to one of the authorities to whom letter of resignation was sent, the same was required to be communicated to the appointing authority promptly with intimation that the respondent No. 1 had withdrawn his resignation and for necessary action- Petition is held to be without any merit and is dismissed.

59. It is no more res integra that resignation can be withdrawn before it attains finality. 'Accepted' in the present case in view of the facts would mean acceptance after 13.02.2019 and not prior thereto. This was not a unilateral case of resignation as per Union of India vs Gopal Chandra Misra reported in (1978) 2 SCC 301. In the case of "UOI Vs G.C Misra" the resignation was treated as withdrawn despite being a unilateral act as it was before the date of it coming into effect. Hon'ble Mr. Justice Gopal Chandra Misra had selected a date from which he had to demit his office and had withdrawn his resignation prior to the date chosen by him. His act of withdrawal was held to be legal and he was held entitled to continue.

60. In Mahesh Chander Tyagi Vs. Director of Education Law finder Doc Id # 808290 the facts were that Mr. Mahesh Chandra Tyagi was appointed on temporary basis on the post of TGT (Science) by the school. On 03.09.1991 he submitted a conditional resignation giving 3 month notice as he had qualified the written test for post of TGT (Science) on 3rd December 1991. He applied for extension of notice period till 3rd March 1992. That this fact was acknowledged by R-3 and period was extended till 2nd March, 1992. Mahesh Chander Tyagi withdrew his conditional resignation vide letter dated 30th January 1992 and reported for duty on 3rd March 1992. He was denied the duties by the school.

61. As per para 3, it was submitted that resignation has been accepted . and approval was also accorded under rule 114 A. Date of acceptance of resignation by the management was stated to be as 24th September 1992 and petitioner was relieved w.e.f 2nd March 1992. It was



contended that DOE was not permitted to recall its order of acceptance as under rule 114 A.

62. In para 9 discussion as to what is resignation has been made and the same is reproduced:

"The word resignation under this Rule would mean clear resignation without attaching any conditions. If the conditions are attached to the resignation then unless those conditions are complied the resignation cannot be said to have been accepted nor could be forwarded to respondent No. 1 under the said Rule. The word resignation as per the Concise Oxford Dictionary means "the act or an instance of resigning from ones job or office, 2 the document etc. conveying this intention, 3 the state of being resigned; the uncomplaining endurance of sorrow or difficulty." Resignation would mean that the employee wants to sever his relation from the employer without any riders then only it would amount to resignation. But if his intentions are not to sever his relation immediately but from a prospective date or subject to certain conditions then to my mind the resignation would become effective on fulfilment of these conditions. Till then it cannot be said there is a resignation in the eye of law. Resignation with a rider will come into force only when the conditions stipulated therein are complied. Hence the respondent Nos. 2 and 3 cannot by applying the deeming clause in Rule 114-A throw away the petitioner from service. Moreover respondent no. 1 in his affidavit categorically has stated that respondent No. 3 never sent the resignation of the petitioner along with his letter and therefore the Director of Education was not aware of the term of the resignation. It is also the case of the Director of Education that had it been known that the resignation was conditional he would not have accorded the approval. The fact that the conditional resignation of the petitioner was not forwarded to the respondent No.



1 has not been controverted by respondents No. 2 and 3. Therefore the interpretation given to Rule 114-A and reliance placed on the said Rule by respondents No. 2 and 3 is misplaced. The conditional resignation stood withdrawn by the petitioner on 30th January, 1992 i.e. much before the 30 days period was over hence respondents 2 and 3 cannot take advantage of the same. Even if it is assumed that the provision of , rule 114-A are attracted still the conditional resignation having been accepted by the Management on 11th January, 1992 the period of 30 days had not yet expired when the petitioner withdrew the same. It is fully established and admitted by all the parties that unless the resignation was accepted by the Management it could not take effect. It was only after the acceptance by the Management that it could be forwarded to the Director of Education for approval. Hence the period of 30 days has to be counted from the date when approval was accorded by the Management which in this case was 11th January 1992. The letter was written to the Director of Education for acceptance of that resignation thereafter. Therefore the question of applying the deeming provision did not arise in the facts of this case. The Management and the school authority ought to have brought all these facts to the notice of the Director of Education. Non furnishing of complete facts by respondents No. 2 and 3 amounts to concealment of fact as deposed by the respondent No. 1. Hence the approval accorded by the Director of education as stated by Mr. B. N. Bajpai Education Officer Zona S-17 was on the basis of incomplete facts supplied by the school authority. Thus respondent No. 1 after hearing all facts was within his right to review the order and issue direction respondents No. 2 and 3 to permit the petitioner to resume duty. By no stretch of imagination it can be said that if on the basis of half-fed facts an action was taken by the Director of Education then he becomes



powerless to rectify or correct the same. In fact justice demands that once true facts came to his notice he must undo the injustice instead of keeping indifferent and perpetuate the wrong. That is the impact of Rule 114-A. This rule impose restrictions on the powers of the Management and School Authorities in arbitrarily throwing away the services of a teacher. The Director of Education had in fact the power to review his order passed order Rule 114-A once he forms an opinion that earlier order according approval was not based on full facts and correct facts."

63. Facts of this case are covered by this judgment also as the resignation in present case is also of prospective character.

64. Case of the appellant is on a far far better footing as it has -trilateral character and required action at different times by three stake holders i.e. employee, managing committee and Director Education who have not acted as per the mandate of provisions of DSEAR.

65. In the present case it is clear that complete cessation of employer and employee relationship had not come in existence as so exposited in M.R. Prabhakar Vs. Canara Bank reported in (2012) 9 SCC 671. 66. Status of employer and employee had also not come to an end as per the opinion of the author of 'the Law of the services and dismissals' at page 3072, 5th edition as well. Relevant portion is as under:

"Resignation terminates the status of master and servant- The resignation of an employee of Cochin Port Trust was accepted by the authorities on 5th February, 1964 to enable him to take up appointment In Indian Institute of Technology. The employee joined the Institution on 10th of February, 1964. The employee later on resigned from the service of the Institute on



24th of July, 1964 and applied for the Cochin Port Trust for reinstatement. It was held that the acceptance of the resignation on 24th July, 1964 was sufficient to snap the chain of master and servant and he could not claim relief of reinstatement. O.T. Mohan Chandrum V. Chairman Cochin Port Trust, (1968) Lab IC 709 was relied."

67. Author with respect to prospective resignation has observed at page 3073. Relevant portion is as under: "Resignation accepted but made effective from a subsequent date, effect,-

In P. Kasilingan V.k P.S.G. College of Technology, a lecturer of a College tendered a letter of apology followed by a letter of resignation just when the departmental proceedings were to commence against him. His resignation was accepted and the same was to be effective from a subsequent date within a few days. Thereafter he was relieved from service on payment of all dues. The said teacher filed an appeal against the order to the State Government under section 20 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 alleging that his resignation was not voluntary. The Government appointed an inquiry officer, but rejecting the inquiry report held that the resignation was not voluntary and ordered his reinstatement. In a petition against that order filed by the college, the High court quashed the order of the Government. Finally the Supreme Court of India while allowing the appeal of teacher observed that the order of High Court was beyond its jurisdiction under Article 226 of the constitution and the State Government was directed to reinstate the teacher in service with a direction and to decide the entitlement of his arrears of pay and allowances after affording the teacher an opportunity of hearing."



68. At page 3076, The Author by relying on Srikantha S. M Vs. Bharath Earth movers Limited reported in (2005) 8 SCC 314 has opined as follows and mandate applies to the facts of this case squarely. Relevant portion is as under:-

"Employer accepting resignation from a future date, employee withdrawing before the date.- In Srikantha S.M v. Bharath Earth Movers Ltd. the employee a Senior Manager in the employee on not being assigned any work from 7th December, 1992, tendered his resignation on 4th January, 1993 and sought to be relieved from duties from the date as per Company Rules. The resignation was accepted on 4th January, 1993 itself with immediate effect. By another letter, the employer was informed that his casual leave had been sanctioned from 5th January, 1993 to 13th January, 1993 as 14th January, 1993 being a holiday. The employee would be relieved by the closed of working hours on 15th January, 1993. On 8th January, 1993, by a letter, the employee withdrew his resignation. On 15th January, 1993, the service certificate in original alongwith a cheque for a certain amount was given to him at 17.30 hrs. He was not allowed to work after 15th January, 1993. Contending that in view of the withdrawal of the employee's resignation on 8th January, 1993, the employer could not have accepted the same and he ought to have continued him in service. The Supreme Court of India was of the view that though the employer had accepted the resignation of the employee on 4th January, 1993 and he was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5th January, 1993 to 13th January, 1993. Moreover, he was informed that he would be relieved alter office hours on 15th January, 1993. The vinculum juris a bond of union, a tie, therefore, continued and the relationship of - employer and employee did not come to an end on 4th January, 1993. The relieving order and payment of



salary it was held, is abundantly clear that the employee was continued in service of the Company upto 15th January, 1993, therefore, the employer could have withdrawn his resignation before that date. A letter of withdrawal of resignation was submitted by the employer on 8th January, 1993 it was, therefore, incumbent on the Company had acted contrary to the law. The action of the Company was quashed and set aside. In State Bank of Patiala v. Phoolpati, the resignation of the employee was tendered with request to accept the same from future date. Resignation was withdrawn before that date on the ground that resignation was tendered under mental tension due to the effect of medication as then resignor was ill and was suffering from fever. The employer called upon the employee to justify his stand by producing proof of ailment and documents and making it clear that in the event of failure to submit the documents, he would be relieved from the service from the date indicated in the resignation letter, but instead of furnishing the documents, the employee sent another letter to the employer reiterating his prayer for acceptance of his resignation, as such request for resignation accepted and the employee relieved from service. Thereafter employee died, but during his lifetime he never questioned legality of the employee's action of relieving him from service, therefore, action of State Bank of Patiala was held Justified."

69. *Knot of employer and employee relationship in this case would have come to an end only after doing of clearance formalities by the appellant as was the condition imposed by the school in the letter dated 19.12.2018 which provided "Please do the clearance formalities before leaving the job," Letter 12.02.2019 also contains "please do the clearance formalities at the earliest".*

70. *It is not the case of the school that appellant had performed the act of clearance of formalities, So it can be*



said without any hitch that relationship of employer and employee was in existence in this case and arguments to contrary are disallowed,

71. Another requirement is that resignation has to be voluntary in character as so expounded in *P,K Ramchandra Iyer Vs. Union of India* reported in 1984 (2) SCC 141 Law Finder docid #79836. Facts of the case indicate that resignation was not fully voluntary and was taken a spur of moment.

72. The letter dated 12.11.2018 goes to show that letter was written by the appellant in anguish as is evident from the second para of the letter "I have to undertake this step as of late the environment in the school has not been conducive for the welfare and growth of students and faculty at large". The version given by the appellant concerning she having been made to write a detailed letter dated 08.02.2019 pursuant to her one line letter dated 05.02.2019 'I wish to withdraw my resignation-' is appealable to reason. Letter dated 08.02.2019 states in para 1st and 2nd as follows:- "As I revisit the reason stated for my resignation, I realize that I misread the sudden change in the conditions and environment in the school. My decision to resign was hasty. At this point of time, I definitely feel that school is going in the right direction, and hence want to withdraw my resignation."

73. Letter dated 14.02.2019, after the request of the appellant was turned down, goes in consonance with the stand taken by the appellant in the appeal that she was given a deceitful treatment. As per School, appellant had resigned as she was not successful in becoming the Principal of the school despite use of unfair means which allegation has been refuted by the appellant.

74. Submissions of Sh. Parmod Gupta during the arguments that appellant had commented about the factual environment of the school and she was made to write the letter dated 08.02.2019 under dictation of Major Sumeet Malik and Brigadier Rajpal Punia appeals to reason in the facts and circumstances of the case and is a reason to hold



that resignation was not voluntary. This conclusion finds support from the letter written by appellant vide A-5.

75. Another reason due to which the appellant has to succeed is that knot of relationship between the school and the appellant was in place and appellant was within her legal right to withdraw her resignation as knot would have untied only after 12.02.2019 which is not the fact situation. ,

76. Version of the school is not tenable in view of the factual matrix and legal position. School has relied on letters dated 19.12.2018 and 26.12.2018 which were premature and cannot be permitted to be acted upon. Communication to the appellant dated 11.12.2018 was of no help as school acted prematurely in this regard.

77. Submission that post of the appellant had been filled up cannot be believed and also cannot be accepted. The same cannot be believed for the reason that no record w.r.t filling up of this post has been produced. The appellant is right in contending that school could not have filled up her post prior to 13.02.2019 as her resignation was to become effective on 13.02.2019. Her submission that production of records by the school would have exposed the school in this regard carries weight as school despite the plea of the appellant, has not produced the attendance register. An adverse inference has therefore to be drawn against the school as envisaged under section 106 of Indian Evidence Act.

78. Reliance on Clause 5 of DOPT OM date 12.11.1988 particularly subclause (i),(ii) and (iv) is of no help in view of the aforesaid legal and factual position. Appellant has denied that she had refused to do more duties and had the least work load of 12 classes. In view of non production of record concerning stand of the appellant to the effect that she had identical load of 16 classes in addition to that of class coordinator has to be upheld.

79. Submission that appellant was required to meet the chairman and Patron of the school which she did but could not provide any justifiable . reason of resignation during



midsession are not tenable, in view of the rebuttal by the appellant who had stated that she has completed the syllabus as well as its revision. School has not produced any rules/regulations by virtue of which appellant was required to meet the chairman and the Patron. So the submissions of the school shall have to be rejected. Appellant has explained the reason of her absence which is appealable to reason.

80. Argument that acceptance and non permitting of withdrawal of resignation are sole prerogative of the appointing authority is not applicable in the present case as school has violated the provisions of DSEAR in this regard. Explanation given by the school concerning Ms. Anita Verma, Ms. Sanjukta Chatterjee and Mr. Bhupender Nautiyal cannot be believed in the absence of records in this regard.

81. The provisions of subrules (i), (ii) and (iv) of Clause 5 of DOPTOM dated 11.12.1988 are of no help as subrule (i) is not applicable in the present case for two reason, the 1st one is that 'school was required ta act w.r.t integrity, efficiency/conduct under rule 117 to 123 which it has not done. No material has been placed on record by the school from which it can be said that appellant had from 12.11.2018 to 13.02.2019 done the acts which had reflected on her integrity, efficiency or conduct. Appellant on the other hand has shown that there was material change in the circumstances as her family members and well wishers had advised not to resign in between. School has failed to prove that appellant acted in any improper way. Giving of suggestion for betterment of the school and imparting of education to the children cannot be said to be an improper conduct by any standard.

82. Subrule (iv) is also of no help as school could not have filled up the post in advance and was duty bound to keep the post of the appellant vacant till 13.02.2019.



83. *Judgments of DGESIC Vs. Purshottam Malani, Raj Kumar Vs. Union of India decided on 18.04.1968, AIR 1969 SC 180: 1968 SCR (3) 875 and Stale of Punjab Vs. Amar Singh Harika, reported in AIR 1966 SC 1313 are of no help as the same are distinguishable on facts.*

84. *In CW no. 3558/1994 decided on 01.10.1995 rule 114 A has been explained and the judgment of Raj Kumar has been distinguished and that of Balram Gupta Vs Union of India AIR 1987 SC 2354 has been followed. Para 9 of the Judgment defines the resignation and is not being reproduced for the sake of brevity.*

85. *In view of the reasons given hereinabove, appeal is allowed and impugned termination order 12.02.2019 is hereby set aside. Respondent No. 1 is directed to reinstate the appellant within a period of 4 weeks. Appellant will be entitled to all consequential benefits. She will be entitled to full wages from date of order onwards.*

86. *With respect to back wages, in view of mandate of Rule 121 of DSEA&R 1973, read with Guru Harkrishan Public School through its managing Committee v/s. DOE, 2015, Lab I.C 4410 of Delhi High Court Full Bench, appellant is directed to submit an exhaustive representation before the management of respondent school within a period of 4 weeks from today as to how and in what manner appellant is entitled to full back wages. The Respondent school is directed to decide the representation to be given by the appellant within 4 weeks of receiving of the same by a speaking order and to communicate the order alongwith the copy of the same to the appellant. Ordered accordingly. File be consigned to record room."*

25. At this stage it is apposite to consider relevant Rules including Rule 114-A of Delhi School Education Act, 1973 which states:

'The resignation submitted by an employee for a



recognized private school shall be accepted within a period of thirty days from the date of receipt of the resignation by the managing committee with the approval of Director. Provided that if no approval is received within 30 days, then such approval would be deemed to have received after expiry of the said period.'

26. The principle regarding the resignation to be tendered by the under Rule 114-A of Delhi School Education Act, 1973 has been further enunciated by the Division Bench of this Court in the judgment of ***Kulachi Hansraj Model School and Others v. Kirtijain and Anr, 2023 SCC OnLine Del 1980*** as follows:

“27. Rule 114A was a subject matter of a decision of this Court in Anirudh Kumar Pandey v. Management of Modern Public School, (2018) 1 AD (Delhi) 560, wherein a Coordinate Bench of this Court, while interpreting the said Rule, observed as under:

14. The plain language of this provision clearly stipulates that whenever the resignation is submitted by an employee, it shall be accepted by the Managing Committee of a recognised private school within a period of 30 days from the date of submission of resignation letter. Thirty days is the outer limit given to the Managing Committee to accept such resignation letter. It does not mean that the Managing Committee has to defer its decision for 30 days. The Rule requires that the Managing Committee shall take its decision within 30 days. In the case of Bajaj Hindustan Limited v. State of U.P., (2016) 12 SCC 613, the Supreme Court has discussed the meaning of expression “approval”, “prior approval”, “previous approval” or “permission”. The Court has held in paragraphs 11 and 12 reproduced as under:

“11. In Black's Law Dictionary (Fifth Edition), the word “approval” has been explained thus:



Approval-The act of confirming ratifying assenting, sanctioning or consenting to some act or thing done by another.

Hence, approval to an act or decision can also be subsequent to the act or decision.

12. In UP. Avas Evam Vikas Parishad (supra), this Court made the distinction between permission, prior approval and approval. Para 6 of the judgment is quoted hereinabove:

6 This Court in Life Insurance Corpn. of India v. Escorts Ltd., (1986) 1 SCC 264, considering the distinction between “special permission” and “general permission”, previous approval” or “prior approval” in para 63 held that:

63...we are conscious that the word prior’ or previous’ may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29 (1) of the Act.

Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act.”

15. It is clear that the language used in Rule 114A of Delhi School Education Rules, 1973, is “with the approval of Director.” The Rule does not require that the resignation has to be accepted by the Managing Committee “with the prior approval” nor does it require that the Managing Committee should accept it “with the permission” of DoE. It simply states that the approval of the Director has to be sought. The approval therefore has to be post acceptance of resignation letter. The act of the Managing Committee holds good till the DoE disapprove their action and if it is not so disapproved and the approval is granted then the act



of the Managing Committee hold good from the date of its decision itself. This interpretation of the Rule is further ratified by the deeming provision contained in the Proviso of the said Rule, which clearly states that if no communication is received from DoE the approval shall be deemed to have been accorded. Consequently, it is the decision of the Managing Committee which is final and approval can be accorded ex post facto.

28. Clearly, it is settled position of law that if a resignation is submitted by an employee of a recognized school, it is obligatory on the part of the Managing Committee of the school to accept the same within a period of 30 days from the receipt of the resignation letter or from such future date as may be indicated in the resignation letter. However, the approval of the Director may or may not precede the acceptance of resignation. Such approval can even be accorded ex post facto also.”

27. In light of the Division Bench judgment alongwith the Rule 114-A of Delhi School Education Act, 1973, it is a settled law that resignation should firstly be rendered voluntarily. Moreover, the period of 30 days for accepting the resignation commences from the receiving of the resignation letter or from such future date from which such resignation is rendered.

28. In the present case, the resignation rendered by respondent No. 1 on given on 12th November 2018, to be effective from future date of 13th February 2019. However, the respondent no. 1 has withdrawn its resignation vide the letters dated 5th February and 8th February 2019. Moreover, as per Rule 114-A of Delhi School Education Act, 1973 resignation in the instant case was with effect from 13th February 2019 according to the letter dated 19th December 2018. The petitioner school



vide order dated 12th February 2019 did not accept such request of the petitioner citing reason that the school has already planned for recruiting someone for the said vacancy.

29. This Court is of the view that the petitioner school acted illegally by not taking into accepting the request for withdrawal of resignation vide the letters dated 5th February and 8th February 2019. Moreover, the petitioner school did not take into account that the resignation was to come into effect from 13th February 2019. The respondent no. 1 teacher was entitled to withdraw its resignation prior to 13th February 2019.

30. The resignation should be made voluntarily by the employee, if any case such employee withdraws such resignation, it is duly entitled for such resignation.

31. The observations of the learned Tribunal in this respect are correct and need no interference. It is clear that resignation '*accepted*' in the instant case shall imply acceptance after 13th February 2019 not prior thereto.

32. This Court is of the view that there is nothing in the impugned order by the Learned Tribunal which suggests that there is any error or any other irregularity which goes to the root of the matter and invites the intervention of this Court while exercising its extraordinary powers under Article 226 of Constitution of India.

33. This Court also discerns no material to establish the propositions put forth by the petitioner. There is no material to characterize that the impugned office order was arbitrary and contrary to rules as envisaged under Delhi School Education Act, 1973.

34. The version of the Petitioner School qua the fact that the post of



Respondent No. 1 had been filled up, further reliance placed on Clause 5 (i), (ii), (iv) of DOPT OM dated 12th November 1998 and argument on non-permitting of withdrawal of resignation is not tenable in view of factual matrix and legal position of present case.

35. Moreover, the Respondent No. 1 was well within her legal right to withdraw her resignation as the relationship between Petitioner School and Respondent No. 1 would have ended only after 12th February 2019. Adverting to judicial precedents cited by Petitioner, reliance cannot be placed upon the same as the instant case is distinguishable on many counts.

36. In view of the above discussion of facts and law, this Court finds no error in the impugned order dated 12th January 2022 in setting aside the order passed by petitioner School dated 12th February 2019 and upholds the reinstatement of the respondent No. 1 on the same post on which she was working at time of her removal from the service i.e. TGT (Physics) and Coordinator of Classes VI-VIII.

37. Based on the aforementioned arguments, this Writ Petition is accordingly dismissed.

38. Pending applications, if any, also stand dismissed.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 10, 2023
SV/DB

Click here to check corrigendum, if any