



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

240

CWP-3311-2021

Date of Decision: 21.04.2025

SUNIL

... Petitioner

VERSUS

**NATIONAL INSTITUTE OF TECHNOLOGY KURUKSHETRA
AND ORS.**

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vineet Sehgal, Advocate
for the petitioner.

Mr. A.S. Virk, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the order dated 24.11.2020 passed by the respondents declining to accept the request of the petitioner for withdrawing his resignation as well as the subsequent order dated 03.12.2020 passed by Assistant Registrar (GA), National Institute of Technology, Kurukshetra- respondent No.3 declining the same request made later and the relieving order of even date, the instant writ petition has been filed.

Learned counsel for the petitioner contends that the petitioner was working as a Clerk in Chandigarh Administration. He applied for the post of Superintendent pursuant to the Advertisement No.41 of 2018 issued by the respondent- National Institute of Technology, Kurukshetra (hereinafter referred to as 'NIT'). The petitioner was declared successful in the selection process and was accordingly offered appointment to the post of Superintendent on

08.03.2019 in Level 6 of Pay Matrix i.e. Rs.35400-1,12,400/- by the Registrar of respondent-NIT. The petitioner got relieved from Chandigarh Administration to join his newly assigned post. His lien was marked against the post of Clerk in Chandigarh Administration for a period of two years. The petitioner was thereafter posted as Superintendent in the Store Section of the respondent-NIT w.e.f. 01.05.2019 (forenoon). The petitioner, however, submitted a request on 05.12.2019 i.e. within a period of seven months of joining the respondent-NIT, for seeking "No Objection Certificate" to join back at his lien-marked post of Clerk in Chandigarh Administration. The said request was forwarded by the respondent-NIT to the Chandigarh Administration on 17.01.2020, whereupon a communication dated 29.01.2020 was received to the effect that the Chandigarh Administration had no objection to issue re-joining to the petitioner, in view of his subsisting lien. The petitioner, however, could not rejoin the Chandigarh Administration due to outbreak of COVID-19 pandemic and as such, had to seek a further extension to join. However, in the meanwhile, the case of the petitioner for confirmation to the post of Superintendent in the Store Section came up for consideration before the respondents. The petitioner accordingly submitted a request on 20.08.2020 to the effect that his confirmation to the post of Superintendent may be withheld due to his personal circumstances and him having already invoked his lien against the post of Clerk in Chandigarh Administration. Hence, the case of the petitioner for confirmation to the post of Superintendent in Store Section was deferred by the respondents-NIT.

A request was thereafter submitted by the petitioner to the respondent No.2 on 01.09.2020 praying for being relieved from service on 03.12.2020 to enable him to join back against the lien post of Clerk in

Chandigarh Administration. The resignation tendered by the petitioner on 01.09.2020 was accepted by the respondent-NIT vide order dated 23.09.2020 and it was intimated that he shall be relieved from service w.e.f. 03.12.2020, as requested.

The petitioner claims that he was thereafter counselled by his family members and on reconsideration of the totality of circumstances including fixing of his marriage, the petitioner made a request on 22.10.2020 to the respondents for seeking withdrawal of his application/resignation dated 01.09.2020 and requested that he be allowed to continue on the post of Superintendent with the respondent-NIT. The said request of 22.10.2020 seeking withdrawal of the resignation was, however, declined by the respondent-NIT vide order dated 24.11.2020. The said communication reads thus:

“Subject: Withdrawal of resignation from the services of this Institute regarding.

This is with reference to your application dated 23.10.2020, on the subject cited as above.

In this context, you are hereby informed that your request for withdrawal of resignation from the services of this Institute cannot be acceded to.”

Counsel contends that since the aforesaid order was non-speaking, hence, the petitioner immediately submitted a representation on 26.11.2020 and 27.11.2020 for reconsidering his request and reviewing their order by placing reliance upon the Rules applicable to the respondent-NIT w.r.t. the withdrawal of resignation. Vide order dated 03.12.2020, the respondent-NIT dismissed the representation of the petitioner yet again. The said order reads thus: -

Sub.: Withdrawal of Resignation from the post of Superintendent.

This is with reference to your applications dated 26.11.2020 & dated 27. 11. 2020, on the subject cited as above

In this context, it is informed that this Institute has rightly declined your request dated 23.10.2020 for withdrawal of resignation after its acceptance, since it has been validly accepted under the Rules as well as terms and conditions of your appointment letter dated 08.03.2019. Your relieving from the services of this Institute from the post of Superintendent was deferred to 03.12.2020 only for your benefit as per your request dated 04.09.2020.

It is quite clear from the perusal of records that few months after your joining on 01.05.2019, you had decided to join back your parent department, as it is also clear from your letter dated 05.12.2019, whereby you had requested to this Institute to get No Objection Certificate from your parent department for joining back as you intended to join back as Clerk with the Chandigarh Administration. It is further clear from your letter dated 20.08.2020, where you had requested to keep pending case of even your Confirmation to the post of Superintendent for 6 months as you intended to join back your parent department in view of the No Objection Certificate issued by the Chandigarh Administration vide their letter dated 29.01.2020, as you could not join back on account of COVID-19 pandemic.

Therefore, your request for withdrawal of resignation from the post of Superintendent cannot be acceded to."

Vide a separate order of 03.12.2020, the petitioner was also ordered to be relieved from the service of respondent-NIT to enable him to join the parent department in Chandigarh Administration. The petitioner thus

preferred the instant writ petition and had in the meanwhile also joined with the Chandigarh Administration.

Learned counsel for the petitioner contends that the respondent-NIT did not assign any reason as to why the petitioner's request for withdrawal of resignation was declined at the first instance vide communication dated 24.11.2020 and vide communication dated 03.12.2020. He contends that the sole reason given by the respondent-NIT in the communication dated 03.12.2020 is that the resignation already stood accepted under the Rules and only the relieving part was deferred to 03.12.2020 by acceding to the request made by the petitioner. It was further stated that since the petitioner had also not been confirmed to the post of Superintendent, on his own request, and as such the Rules relied upon by the petitioner would not be applicable.

Counsel contends that the said decision is sans the instructions issued by the Government of India vide Office Memorandum dated 11.02.1988 as well as 10.06.2019 in relation to withdrawal of resignation of Central Government Servants appointed after 31.12.2003 covered under the National Pension System. Learned counsel contends that the said instructions are applicable to the respondent-NIT as well and that as per the aforesaid office memorandum, a resignation becomes effective after its acceptance and on the Government Servant being relieved of his duties. In this regard, reliance is placed upon Clause 3 of the Office Memorandum dated 11.02.1988 which reads thus: -

“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.”

He also placed reliance on the Office Memorandum dated 10.06.2019, which is in continuation of the Office Memorandum dated 11.02.1988. The relevant extract thereof reads thus: -

“2. The appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely: -

- (a) XXX XXX XXX*
- (b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper.*

XXX XXX XXX”

Referring to the above, counsel contends that the Rules and Regulations entitle a government employee to seek withdrawal of the resignation before it becomes effective and that relieving of a government employee from his duties was integral to the resignation becoming effective. He contends that the respondents have chosen not to make a reference to the

aforesaid Rules and Regulations and have instead, without assigning any reason, declined the request of the petitioner for seeking withdrawal of resignation. He contends that there is no reference of any complaint pertaining to the work or integrity of the petitioner or of any other compelling reason due to which the petitioner can be said to be not suitable for the said job.

He further argues that the request of the petitioner for withdrawing his resignation was not acceded to also on the ground that the petitioner had not been confirmed to the post of Superintendent. He submits that notwithstanding that the Office Memorandum does not make any distinction between whether a person has been confirmed or not, the respondents themselves had undertaken the process of confirming the petitioner, which was, however, deferred on the request of the petitioner himself. There was, thus, nothing adverse against the petitioner as would have impeded his confirmation to the said post of Superintendent but for his own request. The same thus cannot be cited by the respondents to deprive the petitioner of his right to exercise an option to withdraw his resignation before the said resignation becomes effective.

Counsel for the respondents, on the other hand, contends with vehemence that the petitioner has been reading the instructions selectively and that law mandates that a document has to be read as a whole and also that every effort has to be made in interpretation of the document that each clause can be made enforceable and none remains a dead letter. He submits that Clause 6 of the Office Memorandum dated 10.06.2019 relied upon by the petitioner specifically stipulates that the provisions for withdrawal of resignation shall not be applicable on temporary Govt. Servants and since the petitioner had not been confirmed, hence, he cannot take any benefit of Clause -2 (b) of Office

Memorandum dated 10.06.2019. It is further submitted by the counsel for the respondents that the petitioner had joined with the respondents in May 2019 and within a period of seven months, he expressed his disinclination to continue with the respondents and submitted his resignation so as to avail his lien against the substantive post in the Chandigarh Administration. It is further submitted that the petitioner has not challenged Clauses of the Office Memorandum dated 10.06.2019 and that in the absence of any challenge to the same, the petitioner cannot claim that some/any Clause(s) of Office Memorandum should be rendered otiose and unenforceable in the given circumstances. He contends that such an exception, if not prescribed under the Office Memorandum, cannot be read into the same by way of judicial interpretation. Once the Competent Authority has consciously chosen not to confer any such right to exercise an option in favour of a temporary employee, the writ Court cannot travel into the reasons why an employee remained a temporary employee. Doing so would amount to travelling beyond the governing Clauses of the Office Memorandum dated 10.06.2019 and would be beyond the purview of power of judicial review when such clauses are not under challenge. He further contends that the petitioner approached this Court much after joining with the Chandigarh Administration and had the grievance been real, he would have come to the Court at the first instance and before exercising his option of joining back. It is also contended that a concluded enforceable agreement came into force on acceptance of the resignation and it was only on the request of the petitioner that his relieving was deferred to 03.12.2020. Extension of an indulgence against the stance of an employee cannot be capitalized by him for his own advantage.

No other argument has been raised by the counsel for the respective parties and no other law or judgment has been cited by them in support of their arguments.

I have heard learned counsel for the parties and have gone through the documents on record, the pleadings as well as the arguments put forth by them.

Even though an attempt has been made by the counsel for the petitioner in rebuttal to contend that Clause 2(b) is applicable even to the temporary Government Servants since the petitioner had been appointed against a regular sanctioned post and that Clause 6 would not be attracted, however, he is not in a position to refute that the clause imposing an impediment does not create any distinction on the basis of the post being a sanctioned post or otherwise but merely refers to the nature of engagement of a Government Servant and categorizes them as to whether the employee is temporary or permanent. Significantly, a specific objection to the said effect was raised by the respondents in paragraph No.12 of the written statement filed in September 2024 but no rejoinder against the same was filed. Hence, the prayer made by the counsel for the petitioner for seeking consideration of his application/request for withdrawal of his resignation while relying on Clause 2(b) of the Office Memo dated 10.06.2019 cannot be acceded to by ignoring Clause 6 of the same Office Memo, which renders the above memo inapplicable to a temporary government servant. Since the said office memo is supplementary and is in continuation of office memo dated 11.02.1988, hence, the clauses and conditions prescribed therein inherently get incorporated in the substantive office memorandum. The petitioner having submitted his application for

resignation as well as withdrawal thereof only in 2020 i.e. much after the above substantive office memo had come in force, he is deemed to be aware of the same.

Even though it may be a wishful desire of the petitioner that the said clause be not taken into consideration, however, in the event the argument of the counsel for the petitioner is accepted, Clause 6 of the office memo dated 10.06.2019 becomes nugatory and otiose. Such an interpretation thus would not withstand the settled legal principles of interpretation. Both the provisions would harmoniously exist only in case when the plain interpretation of said Clauses is accepted. Thus Clause 2(b) of the Office Memo dated 10.06.2019 would permit withdrawal of resignation only in respect of government servants who have been made permanent/confirmed against a post.

Further, acceptance of the arguments advanced by the counsel for the petitioner that the nature of engagement, whether temporary or permanent, has to be determined on as to whether the post is sanctioned or non-sanctioned would amount to reading into the regulations what has not been provided thereunder. Same would thus in effect be an act of legislation, which the High Court should not ordinarily engage in. In exercising its powers of judicial review, the High Court interprets the statutory provision but in the said process, it does not infuse a new law contrary to the specific legislative intent. A temporary employee having not been granted the right to seek withdrawal of resignation being a conscious decision taken by the respondent-Authorities, conferring any such power by reading into the document what is not provided therein would amount to undoing the specific intent of the Authority.

It is also noticed by this Court that the petitioner has not raised any challenge to the abovesaid Clause or the office memorandum nor has raised any argument about constitutionality, legality or validity thereof, and in the absence of any challenge to the same, it would even otherwise be inappropriate for this Court to ignore the said clause or to set aside the same.

It is also noticed that even though there is no reference of Clause 6 of the Office Memo dated 10.06.2019 in the order passed by the respondents but non-mentioning thereof is inconsequential firstly for the reason that there was no such claim made by the petitioner in the representation by referring to Office Memo dated 10.06.2019 and secondly the issue is purely legal and is infact complete reading of the document relied upon by the petitioner himself.

For the foregoing reasons, I find that a temporary government employee has not been given a right to seek withdrawal of a resignation under the Office Memo dated 10.06.2019. Thus, Clause 2(b) of the office memorandum dated 10.06.2019 cannot be read over to supersede the specific prohibition contained in Clause 6 thereof. Since petitioner was heavily relying on Clause 2(b), which cannot override Clause 6, hence, there would be no illegality in the order passed by the respondent-Authorities in declining to accept the request of the petitioner for withdrawing his resignation.

In view of the above, the petition stands dismissed.

APRIL 21, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No