2023 INSC 282

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO...1927.....OF 2023

(arising out of Petition for Special Leave to Appeal (Civil) No.2139 of 2021)

THE GOVT. OF NCT OF DELHI & ORS. .....APPELLANT(S)

VERSUS

KAMLESH RANI BHATLA .....RESPONDENT(S)

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted.

2. The appellants question the legality of a judgment of a Division Bench of the Delhi High Court, which in substance sustains an order of the Central Administrative Tribunal allowing the respondent to withdraw her resignation and permit her to re-join duty. At the material point of time, the respondent was working as an Assistant Teacher in a school under the Directorate of Education, Delhi Government, who are the appellants before us. She had tendered her resignation on 22nd March 2012 as she desired to participate in the elections for the post of a Counsellor of

Municipal Corporation of Delhi. Her request for resignation was accepted by the authorities on 29th March itself, with effect from 22nd March 2012. She, however, lost the election, which was held in the month of April the same year. On 21st April 2012, she applied for withdrawing her resignation and re-join duty for the post in question. This application, however, was kept pending in spite of several reminders in the years 2013 and 2014.

3. The respondent then filed a writ petition before the Delhi High Court. This was registered as W.P. (C) No. 1522 of 2014 and the said petition was disposed of on 20th March 2014 with the following directions and order:-

> *"6. The petitioner, is aggrieved by the fact that, there has been no decision on her request, as yet. The petitioner, apparently, has also taken recourse to the Right to Information Act, 2005 (RTI Act). In respect of the application made under the RTI Act, the petitioner though has received a response dated 18.01.2013 from respondent nos. I and 2, which only indicates that the decision regarding her request for withdrawal of resignation is ? under process.*
>
> *7. In view of the aforesaid facts, in my opinion, the respondents cannot, not take a decision in the matter. Therefore, the writ petition is disposed of with a direction to the respondents to deliberate upon and thereafter dispose of the request of the petitioner qua withdrawal of her resignation; albeit by a speaking order. The needful will be done expeditiously, though not later than 10 weeks from today. The copy of the order passed will be furnished to the petitioner. The respondents, while passing the order,*

will also take note of the judgment of this court dated 18.03.2005, passed in WP(C) No. 3303/2003, titled Nirmal Verma vs MCD and Anr.

8. The writ petition and the application are disposed of with the aforesaid directions."

(quoted verbatim from the paper book)

4. On 14th May 2015, the Deputy Director of Education, District South East, Government of National Capital Territory of Delhi had rejected her plea and, inter-alia, ordered:-

"... AND WHEREAS, the operative part of the judgment dated 18.03.2005 in W.P.(C) No. 3303/2003 of Hon'ble High Court Delhi is re-produced as under;-

"... It would, thus, be seen that in the cases cited above and as also in Durgesh Mohanpunu's case which is the latest case processed after the petitioner's case, the respondents have taken a consistent position that legally it is permissible for them to allow withdrawal of resignation after its acceptance and have followed the practice of restoration of service. In the petitioner's case also accordingly there is no ground made out for adopting a different yardstick or contrary legal submission to defeat the petitioner's case. Petitioner had also. within a month of the acceptance of her resignation and within a week of her losing the election requested for being permitted to withdraw the resignation in accordance with Rule 26(4) of CCS Pension Rules. It is not the case of respondents that petitioner was not having a good record or had been guilty of any misconduct: or impropriety or it being a case of any doubt on the integrity etc. Denial of reinstatement in service to the petitioner and not treating the petitioner at par with others in the absence of any distinguishing feature, renders the respondent's action arbitrary and tantamount to denial of equality as guaranteed under Article 14 of the Constitution of India. Reference in this regard may be made to Sengara Singh and Ors. v. State of Punjab and Ors. Reported at.....".

AND WHEREAS, the case of Mrs. Kamlesh Rani Bhatia cannot be equated .at par with Nirmal Verma case.

NOW, THEREFORE, after considering all the aspects of the matter, the request of Mrs. Kamlesh Rani Bhatia for withdrawal of her resignation is considered and found no merit, hence, rejected.

This, issues with the prior approval of competent authority & in compliance of order of Hon'ble High Court dated 20.03.2014, passed in W.P. (C) No 1522/2014."

(quoted verbatim from the paper book)

5. This order was challenged by the respondent before the Central Administrative Terminal. The Tribunal in a judgement delivered on 20th March 2017, relying upon Rule 26(4) of the Central Civil Services (Pension) Rules, 1972, sustained the respondent's case, primarily relying on judgement of the Delhi High Court in the case of **"Nirmal Verma -vs- MCD and Anr."** delivered on 18th March 2005 in Writ Petition (Civil) No.3303/2003.

6. We find from the order of the Tribunal that the main argument that was advanced before it by the appellant herein was that the case of **Nirmal Verma** (supra) was distinguishable in the sense that no chargesheet was issued to the applicant in that case whereas in the case of respondent, a chargesheet had been submitted alleging breach of certain provisions of the Central Civil Services (Conduct) Rules, 1964. The memorandum of charges was issued on 4th September 2011 and the two articles of charges related to her

involvement in political activities while working. Annexure II of Memorandum of charges stipulated: –

> *"ANNEXURE II*
>
> *STATEMENT OF IMPUTATION OF MISNDUCT/MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGES FARAMED AGAINST SMT, KAMLESH RANI BATLA, ASSTT. TEACHER.*
>
> *ARTICLE-I*
>
> *Smt. Kamlesh Rani Batla, Assistant Teacher while working in Govt. Sarvodya Coed. Middle School, J-Block, Sangam Vihar, New Delhi, during her duty hours, attended the meeting held by the BSP, the National Political Party without informing or taking permission from the department.*
>
> *ARTICLE-II*
>
> *Smt. Kamlesh Rani Batla, Assistant Teacher while working in Govt. Sarvodya Coed. Middie School, J-Block, Sangam Vihar, New Delhi, and during the elections period canvassing and delivering slogans for the BSP as evident from the CDs and photo clippings.*
>
> *Thus, she has violated Rule 3 of CCS Conduct Rules, 1964 which unbecoming of a government servant."*
>
> **(quoted verbatim from the paper book)**

7. As we have already indicated, only argument advanced by the appellant before the Tribunal was that a chargesheet was issued to the respondent before her resignation. On that basis, the authorities wanted to distinguish her case in relation to the case of **Nirmal Verma** (supra). The Tribunal observed and held:-

"5. The only argument advanced by the counsel for the respondents that a chargesheet was issued to the applicant before her resignation and accordingly the case of the applicant cannot stand on the same footing as that of Nirmal Verma, relied upon by her, does not seem to be justified for the simple reason that if a chargesheet was issued to the applicant then it was within the domain of the respondents not to accept her resignation and they could not have issued vigilance clearance. Once the respondents have given the vigilance clearance in respect of the applicant and allowed her to contest MCD election, hence, in my considered opinion, the respondents are estopped from taking the plea of pendency of chargesheet against the applicant. I am also of the view that the respondents were very much within their capacity not to accept the applicant's resignation pending enquiry, if any, rather they ought to have awaited the decision in the enquiry. Hence, at this stage, taking the above plea of pendency of chargesheet and distinguishing the character of the present case with that of Nirmal Verma's case (supra) seems to show their power vested with the respondents to deny or reject the applicant's application for withdrawal of her resignation. Since all the conditions set out under Rule 26 of CCS (Pensions) Rules, 1972 are satisfied by the applicant, the stand of the respondents to deny the applicant to withdraw her resignation is not reasonable in these circumstances apart from being contrary to law.

6. Going through the judgment in Nirmal Verma's case (supra), I find that the Hon'ble High Court of Delhi in a similar manner allowed the case of petitioner therein taking into consideration the rule position and directed the respondents to process the request of the petitioner for withdrawal of her resignation and also to allow her to join back her duties. Hence, adopting the same ratio as laid down by the Hon'ble High Court of Delhi in Nirmal Verma's' case (supra), I allow the instant OA with a direction to the respondents to process the case of the applicant for withdrawal of her resignation and allow her to join duty as Assistant Teacher and the intervening period be also decided as per existing rule with

consequential benefits. However, the respondents are at liberty to proceed with the pending chargesheet, if any, as per rules. No costs."

(quoted verbatim from the paper book)

8. The High Court in the order impugned, observing that no enquiry was conducted against respondent and even vigilance clearance was granted to her before accepting her resignation, rejected the writ petition filed by the appellant authorities.

9. Before us, on behalf of the appellant, Ms. Divan, learned Additional Solicitor General has cited a decision of the Delhi High Court in the case of **Directorate of Education -vs- Manisha Sharma** in W.P. (C) 8494/2015 decided on 28th November 2019. The Division Bench of the High Court in this judgement, had referred to the decision in the case of **Nirmal Verma** *(supra)* and observed: –

"14. The Court is unable to agree with the reasoning in Nirmal Verma v. MCD (supra) that since there was no misconduct on the part of the candidate, she should be permitted to withdraw her resignation. What was not noticed in Nirmal Verma v. MCD (supra) is the fact that the resignation had already been acted upon and that Rule 26(4), in any event, did not stand attracted."

10. Rule 26 of the CCS (Pension) Rules, 1972 stipulate:-

"26. Forfeiture of service on resignation.-
(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(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 on 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 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 on 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."

(5) Request for withdrawal of a resignation shall not be accepted by the Appointing Authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

> *(6) When an order is passed by the Appointing Authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.*
> *(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government."*

11. In the case of **Manisha Sharma** (supra), the Division Bench opined that there was no material change in the circumstances which originally compelled the respondent to tender her resignation therein and the respondent voluntarily resigned because she intended to contest the election. It was also held that once the resignation had been accepted and acted upon, thereafter, the incumbent could not contend that she was under any compulsion for tendering her resignation. Once resignation had been acted upon, there was no question of permitting a person to withdraw such resignation. This was the view taken by this Court in the case of **State of Haryana and others -vs- Ram Kumar Mann** [(1997) 3 SCC 321].

12. So far as the factual context of this case is concerned, as we have narrated above, the first order of the High Court was a direction upon the employer to take a decision. At that point of time, the ratio laid down in the case of **Nirmal Verma** (supra)

prevailed and the High Court had directed the authorities to take decision in terms of the said ratio while considering the plea of the respondent before us. The appellant had accepted that judgment and the rejection decision was taken within the parameters set by the High Court in the order passed on 20th March 2014. The only reason as to why the respondent's request for withdrawal of resignation was rejected was that a memorandum of charges had been issued against her. The authorities, in the order of rejection, did not take the stand that once accepted, a resignation cannot be withdrawn. At no stage of this case, which underwent two rounds of litigations, the authorities had raised the point which formed the basis of the judgment in the case of **Manisha Sharma** (supra). The appellants also did not reason their rejection order with the ground that there was no compelling reason for the respondent to tender her resignation. In the second round of proceedings from which this appeal arises, the Tribunal did not find justification for rejection of the respondent's plea for withdrawal of resignation to be acceptable. We have reproduced earlier in this judgment the reasoning given by the Tribunal in sustaining the respondent's case. Before the Tribunal, as also the High Court, the controversy remained confined to issue of memorandum of charges against the

respondent. Both the fora opined that the respondent's case could not be distinguished from the ratio of the case of **Nirmal Verma** (supra) merely on the strength of issue of memorandum of charges against her.

13. After the High Court sustained the Tribunal's verdict which went in favour of the respondent, on 28th November 2019, the Division Bench judgment in the case of **Manisha Sharma** (supra) was delivered. In this judgment, the Division Bench, on analysing the conditions specified in Rule 26(4) found that having resigned to contest the election, the respondent therein could not be heard to say that she was under compulsion. It was also held that once the resignation has been accepted and acted upon, then there is no question of permitting a person to withdraw such a resignation. In the facts of the present case, however, that ground was not invoked to reject the respondent's withdrawal request herein. Moreover, the parameter based on which the authorities were asked to take decision on the request for withdrawal of resignation was laid down by the High Court itself. The boundary within which the authorities were to examine the incumbent's plea was not questioned by the authorities before any forum. On the other hand, they accepted the

said parameter and rejected the plea thereby confining their consideration within the boundary demarcated by the High Court.

14. In our opinion, in the context of this case, the ratio of **Manisha Sharma** (supra) cannot be made applicable. We accept, as a proposition of law, the interpretation given to the Rule 26(4) by the Division Bench in the said judgment. But in the case of the respondent herein, her withdrawal plea was required to be examined within a given parameter and since the employer never challenged the direction laying down the scope within which they were to consider the withdrawal plea of the respondent, the right of the respondent to be considered within that parameter had crystallised. The authorities could not, and did not, go beyond that parameter.

15. Now the question arises as to whether we could import additional reasoning into the decision of the employer on the basis of interpretation given to said Rule 26(4) by the High Court subsequent in point of time. Ultimately, what we are dealing with in this appeal is a decision of an employer terminating the master-servant relationship on the basis of certain grounds laid down in the rejection order. It is a fact that Rule 26(4) operates in the case

of the respondent and in the event we had found that the first decision of the High Court was absolutely contrary to the provisions of the said Rules, we might have had accepted the argument of Ms. Divan founded on reasoning contained in the case of **Manisha Sharma** (supra). But as per the said provision, we do not find there is absolute bar on the employer in permitting withdrawal of resignation even after the same is accepted. Said Rule 26 does not contain any such provision. Moreover, sub-rule (4) of Rule 26 envisages certain situations wherein withdrawal of resignation might be permitted even after the resignation becomes effective. The situations contemplated in sub-clauses (ii) and (iii) of Rule 26(4) permit withdrawal of resignation after the same becomes effective. Resignation can become effective either by stipulation of law or by acceptance thereof. To illustrate the former situation, some statutory instrument may contain deeming provisions for resignation to become effective in the event after tendering the resignation letter, no decision is taken by the employer within a given timeframe. That is not the case here. So far as the present case is concerned, resignation can become effective only on acceptance thereof and sub-rule (4) of Rule 26 lays down situations in which there can be withdrawal even after resignation becomes

effective. This question, however, does not arise here as what we are examining in this judgment is legality of an order by which the respondent's plea for withdrawal of resignation was rejected on grounds spelt out in the order itself. The Tribunal and the High Court found the reasoning of the appellant unsustainable.

16. In the peculiar facts of this case, in our opinion the judgment of the High Court sustaining the Tribunal's decision do not warrant any interference.

17. The present appeal is accordingly dismissed. All connected applications are disposed of.

18. There shall be no order as to costs.

.....J.
(ANIRUDDHA BOSE)

.....J.
(KRISHNA MURARI)

NEW DELHI;
23rd March, 2023.