

(2011) 09 DEL CK 0103

In the Delhi High Court

Case No : Writ Petition (C) 2475 of 2011

Dr. (Mrs.) Radhika Bahl

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26, 26(4), 26(6), 27, 3(1)

Citation : (2011) 184 DLT 273 : (2012) 132 FLR 421

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanjeev Sachdeva, Preet Pal Singh, Priyam Mehta and Abhimanyu Chopra, for the Appellant; Barkha Babbar and Bhupinder Sharma, (Law Office), BSF, for the Respondent

Judgement

Pradeep Nandrajog, J.—13.04.2002 Petitioner submitted an application to the Director General BSF expressing her wish to resign immediately from the post of Chief Medical Officer citing urgent and grave domestic problem of education and accommodation of her only son causing severe mental stress to her. It was expressly stated that the notice for resignation be treated as Petitioner resigning w.e.f. 13.4.2002.

2. It is apparent that the Petitioner could not resign in this manner. She was bound to give due timely intimation. In any case, no government servant can unilaterally sever the relationship with the Government. It is settled law that unless accepted, a resignation by a Government servant is meaningless.

3. But that is not the issue.

4. After a protracted exchange of correspondence, Petitioner's resignation was approved on 5.8.2003 and since she had stopped reporting for duties w.e.f. 13.4.2002, sanctioning various kinds of leave due to the Petitioner including extra ordinary leave without pay it was found that the Petitioner owed to the department Rs. 50,584/-and thus intimating her of various kinds of leave

sanctioned to her, post 13.4.2002 till order dated 5.8.2003 was passed, as also that she should deposit Rs. 50,584/-with PAD BSF New Delhi.

5. The Petitioner did not deposit the amount and immediately had a re-thought on the subject. On 19.10.2003 she withdrew her resignation and requested the Competent Authority to permit her to withdraw the resignation in public interest.

6. Rule 26 of the CCS Pension Rules is the source of the power of the Competent Authority to permit a person to withdraw his/her resignation in public interest, but on certain conditions. Clause (iii) of sub-rule 4 of Rule 26 is relevant to be noted and we do so. It reads as under:

Forfeiture of service on resignation

(1)

(2)

(3)

(4) The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:

(i)

(ii)

(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)

7. After initially rejecting request made by the Petitioner on 19.10.2003, but continuing to keep the channel of communication open, the Competent Authority of the Respondent permitted the Petitioner to withdraw her resignation. She was permitted to resume duty but it was observed that the period from 5.8.2003 till Petitioner resumed duties would not be counted as qualifying service for purposes of seniority/promotion/pensionary benefits and would be treated as dies non. It was clarified that for purposes of computing pension with respect to her past service, said period was being condoned under the proviso to Rule 27 of the CCS Pension Rules and FR-54.

8. Petitioner has since re-joined duty but urges that since the department took unduly long time in deciding her request to withdraw her resignation, she should not be penalized by being denuded of seniority and pensionary benefits for the period interregnum 5.8.2003 till she rejoined.

9. Now, Sub-rule 6 of Rule 26, reads as under:

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 in interruption shall not count as qualifying service.

10. Thus, in the teeth of a statutory rule, we cannot direct that the period in question should be counted as qualifying service for the reason any such direction by us would be in the teeth of a statutory rule and we would be breaching the boundaries of our jurisdiction.

11. But, we find a solution to the problem, being the power vested under Rule 88 of the CCS Pension Rules. It is the power to relax. The rule reads as under:

88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, cause undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirement of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.

12. Rule 3(1)(q) of the CCS Pension Rules defines qualifying service to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules.

13. Thus, there is no bar for the government to consider on a case to case basis to relax the requirement of the CCS Pension Rules so that an individual could be dealt with justly and equitably.

14. On the issue of seniority, nothing has been shown to us to deny benefit to the Petitioner of her original seniority, even if there is a break in service. It is not that the Petitioner has been re-inducted as a fresh appointee. What happens to her past service? Certainly, it cannot be washed away in its entirety.

15. We accordingly hold that as far as seniority is concerned, the Petitioner would be entitled to have her seniority reckoned from the date she was initially appointed and to said extent we set aside the contrary direction in the order dated 5.8.2003.

16. Learned Counsel for the Respondent says that the Petitioner never deposited Rs. 50,584/-and apart from other reasons, this led to her representation being considered belatedly.

17. This fact is being brought to our notice with respect to the issue whether benefit of rules being relaxed in favour of the Petitioner needs to be resorted to.

18. Since we are not deciding the issue for the reason the Petitioner never moved an application praying that power under Rule 88 be exercised, we leave it

open to the Competent Authority to take into account all relevant facts and thereafter decide whether the rigour of sub-rule 6 of Rule 26 of the CCS Pension Rules needs to be relaxed in favour of the Petitioner in the peculiar circumstance of the instant case where we find that Petitioner's request to withdraw resignation which was submitted on 19.10.2003 which was ultimately acceded to on 16.2.2006 i.e. after nearly 2 years and 4 months as against the period of 90 days from the date of resignation by which time permission to withdraw the resignation needed to be accorded to.

19. We issue a mandamus to the Competent Authority to treat the writ petition filed by the Petitioner as a representation praying that power be exercised under Rule 88 of the CCS Pension Rules and applicability of sub-rule 6 of Rule 26 of the CCS Pension Rules be waived qua her.

20. Necessary decision would be taken within a period of 16 weeks from date of receipt of certified copy of this decision and would be communicated to the Petitioner.