

(2013) 03 DEL CK 0191
In the Delhi High Court
Case No : Writ Petition (C) 1494 of 2013

Dr. Sabita Shome

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0191

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Shankar Raju, for the Appellant; Meera Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On February 21, 1994, the petitioner joined service as a probationer against the post of Specialist Grade-II. The

probation was for a period of one year. Neither conformation nor extension of the probation was conveyed to her on completing one year service.

She continued to serve and perform duties till April 12, 1998 and thereafter remained unauthorisedly absent from April 13, 1998 to February 17,

2000. In other words she remained unauthorisedly absent for 1 year and 10 months. We highlight that prior thereto she had worked only for 1

year and 2 months. Joining back on February 18, 2000, the petitioner was charge-sheeted for the offence of unauthorised absence. During

pendency of the inquiry, she submitted a resignation on June 5, 2004 which was accepted by the competent authority on March 29, 2005. The

reason for the delay being the petitioner facing a departmental inquiry for a major penalty requiring the department to take a decision whether

under the circumstances the petitioner could be permitted to resign or not.

2. Settling all dues, on June 21, 2006 the petitioner sent a representation praying that she be permitted to withdraw the resignation. She pointed out that due to her husband's suffering from Hepatopulmonary Syndrome, a liver ailment, she had to take care of her bedridden husband and this was the reason why she could not attend her duties. She stated that the condition of her husband improved in the year 2006. The petitioner cited instance of Dr. V.K. Dogra who had resigned in the year 1992 but was permitted to withdraw the resignation after 8 years.

3. The department did not accept request made by the petitioner on June 21, 2006 to withdraw her resignation and this has led to the instant litigation commencing its journey before the Central Administrative Tribunal.

4. Needless to state, the Tribunal has not agreed with the petitioner.

5. The issue whether the petitioner stood confirmed or she was still on probation when she submitted her resignation is a non-issue inasmuch as:

Whether a probationer submits a resignation or a confirmed employee submit resignation makes no difference to the question of the employee exercising the right to withdraw the resignation.

6. Thus, this aspect of the matter which has been extensively dealt with by the Tribunal is ignored by us. We treat that the petitioner stood confirmed.

7. Rule 26 of the CCS (Pension) Rules, 1972 requires a resignation to be accepted by the competent authority and upon acceptance entails

forfeiture of past service. Sub-Rule 4 of Rule 26 of the CCS (Pension) Rules, 1972 empowers the appointing authority to permit a person to

withdraw the resignation in public interest provided not more than 90 days have lapsed between the date when the resignation became effective

and the date on which a person is allowed to resume duty. Rule 88 of the CCS (Pension) Rules, 1972 empowers the Ministry of Department of

the Government concerned to dispense with or relax the requirement of the Pension Rules if operation of the Rules causes undue hardship or

justice and equity so demands.

8. Thus, the question to be considered by us is: Whether the action of the department in not permitting petitioner to withdraw the resignation after 1

year and 3 months of the same having been accepted is legal or valid?

9. Now, with respect to matters of discretion, the jurisdiction of the Court is limited. It is the decision making process which has to be scrutinised

by the Court and not the decision. An inquiry into the decision making process would include an inquiry whether the authority has properly drawn

its attention to all relevant facts and has ignored the irrelevant facts.

10. From the order passed by the competent authority we find that the competent authority has taken note of the fact that the petitioner had

rendered actual service of less than 5 years when she had submitted the letter to resign from service. The authority has taken note of the fact that

the petitioner had been unauthorisedly absent for 1 year and 10 months. The authority has taken note of the fact that the petitioner was facing the

charge-sheet. As regards Dr. V.K. Dogra, the authority concerned has taken note of the fact that Dr. V.K. Dogra had a long past service

rendered when he submitted a resignation and that the reason why he had resigned was to be that his community was in the troubled State of

Jammu & Kashmir where militancy was at its peak.

11. Thus, all relevant facts have been considered by the competent authority and neither was the Tribunal to re-appreciate the same nor are we.

The Tribunal has rightly refused to re-appreciate the facts.

12. An employee who renders less service and resigns would obviously be entitled to lesser indulgence when the employee seeks to withdraw the

resignation as against an employee who has rendered longer service.

13. Besides, on matters of discretion no two cases can be identical. The writ petition is accordingly dismissed in limine but without any order as to

costs.