

(2016) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29835 of 2013.

**G. Priyanka - Petitioner @HASH State of Andhra Pradesh, Rep. by its
Principal Secretary, Higher (Technical) Education Department,
Secretariat, Hyderabad, and Others**

Date of Decision : 05-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 343 : (2016) 6 AndhLD 703 : (2017) LIC 551

Hon'ble Judges : Sri. A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri. K.R. Prabhakar, Advocate, for the Petitioner; G.P. for Higher Education, for the Respondent No. 1; Ms. M. Vidyavathi, Advocate, for the Respondent No. 2 and 3

Final Decision : Allowed

Judgement

Sri. A. Ramalingeswara Rao, J. - The petitioner is a Post Graduate from Sri Krishna Devaraya University. She belongs to Scheduled Caste community. While so, the Government enacted Rajiv Gandhi University of Knowledge Technologies Act, 2008, to cater to the educational needs of meritorious rural students in the state by providing qualitative education to the rural students and three campuses were established at Basar, Adilabad District, Nuzvid, Krishna District and R. K.Valley, Idupulapaya, YSR Kadapa District. All these three centres are residential institutions functioning from 2008-09 onwards. The meritorious 10th class passed outs of rural areas will be selected in the order of merit through public notification and they will be subjected to six year Integrated Engineering Program. The learning process is different from the traditional methodology. Basically, their learning is through video lectures and e-learning content but with the assistance of subject experts known as "Mentors". The duties of the Mentors include rendering assistance to the students round the clock.

2. The second respondent issued a notification on 03.04.2008 for appointment of Mentors through regular selection process, but they were placed under contract for a period of two years. While notifying the vacancies, the authorities followed

the roster system. The petitioner applied for the post of Mentor and was successful in the five stages of selection. An order of appointment was given to the petitioner on 25.09.2009 on contract basis initially for a period of one year with a consolidated pay of Rs. 20,000/- per month and she was posted in the third respondent campus. It appears that the Mentors were assured regularisation after completion of ten years of contract service. When there was a threat of their discontinuance, the petitioner along with others filed W.P.No.18415 of 2013, wherein this Court directed the respondents to continue the services of the petitioners therein. Though the initial period of contract expired, her services were continued and while rendering her service she tendered resignation to the post of Mentor on 28.05.2013 by sending email to the Director of the third respondent institution. However, within two days thereafter i.e., on 30.05.2013 she withdrew her resignation and sought leave for a period of one week from 03.06.2013 to 10.06.2013. After expiry of the leave, she submitted the joining report on 10.06.2013 and she was permitted to join the duty four days thereafter. She continued for the remaining period of June and July 2013. However, on 13.08.2013 she received intimation from the Registrar of the University accepting the resignation of the petitioner with effect from 01.06.2013. The said letter was received by her on 27.08.2013 and she submitted a representation on 28.08.2013 seeking her continuance as Mentor. It was followed by another representation on 30.08.2013. As no orders were passed, the present Writ Petition is filed.

3. This Court, by order dated 11.10.2013 directed the respondents to continue the petitioner in service for a period of four weeks, if the petitioner was in service, and the said order was extended by order dated 01.11.2013 by another period of four weeks. It was extended until further orders by order dated 26.12.2013.

4. The respondents filed W.V. M.P. No. 2338 of 2014 admitting the appointment of the petitioner as Mentor in Chemistry purely on contract basis for a period of one year from the date of her joining duty i.e., 15.10.2009 vide proceedings dated 25.09.2009 with a condition that the individual shall not have any right to make any claim with respect to the service rendered in the University in any form. However, the petitioner was continuing in service from time to time till her resignation on 28.05.2013. The matter was referred to the Vice Chancellor and she was relieved on 29.05.2013 taking into consideration her resignation. The petitioner sent another email on 29.05.2013 requesting to rejoin service duly withdrawing her previous email dated 28.05.2013. But, the Vice Chancellor accepted her resignation on 29.05.2013.

5. A better counter affidavit is filed on 21.07.2016 stating that the petitioner was irregular in discharging her duties as Mentor. It was admitted that she was paid remuneration/salary as contract employee till July 2013. It was specifically stated that as on the date of the order of this Court dated 11.12.2013 the petitioner was not in service.

6. In the light of the above pleadings, the point remains for consideration is whether the petitioner is entitled to withdraw her resignation before communication of its acceptance and whether the acceptance of resignation on 13.08.2013 and communication of the same to the petitioner on 27.08.2013 is valid in law.

7. The impugned order of resignation states that the resignation of the petitioner was accepted with effect from 01.06.2013 in view of the circumstances explained by the individual on 10.06.2012 and on the orders of the Vice Chancellor dated 31.07.2013. There is no reference to the letter of resignation sent by email on 28.05.2013. Though in the counter affidavit it is stated that the letter of resignation was accepted on 29.05.2013, the impugned order states that the Vice Chancellor passed an order on 31.07.2013. The resignation was accepted with retrospective effect, though the petitioner was continued in service till July 2013 and the impugned order of resignation was communicated to the petitioner on 27.08.2013. These are the glaring irregularities committed by the respondents. Now in the better counter affidavit it is stated that the petitioner's conduct was not proper and the following reasons were shown in support of the acceptance of resignation:

"1. The petitioner was absent to duty unauthorisedly from 16.04.2013 to 08.05.2013 without any leave or intimation - the letter of Administrative Officer of the 2nd respondent dated 09.05.2013.

2. The petitioner has failed to attend the invigilation duty on 30.06.2012 without intimation.

3. The petitioner has failed to attend the examination duty in afternoon sessions by putting her signature in the morning session for evening session on 11.02.2012."

8. It is clear from the record that on the alleged irregularities or misconduct no action was taken by the respondents at any point of time.

9. The law with regard to the resignation and withdrawal thereof is well settled. In *Punjab National Bank v. P.K. Mittal*, AIR 1989 SC 1083, the Supreme Court considered the case of a permanent officer in Punjab National Bank, who sent a communication to the bank by which he purported to resign from a future date adding that the date of receipt of his letter should be treated as date of commencement of notice period. But, when the bank informed him by a letter that his resignation was accepted with immediate effect by waiving a condition of notice, it was held that such letter would be without jurisdiction. The said case was considered in *Union of India v. Wing Commander T. Parthasarathy*, (2001) 1 SCC 158 . In the said decision, it was clearly held that no person should be deprived of a substantive right except on the basis of a statutory provision or rule or regulation. It was further held that the resignation being a voluntary act of employee, he may choose to resign with immediate effect or with a notice of less than 3 months if the employer agrees to the same or he may also resign at

a future date on the expiry or beyond the period of 3 months as envisaged under the governing regulation in that case, even though there is no such consent from the employer, and that, it was always open to the employee to withdraw the same before the date on which the resignation could have become effective. While coming to such conclusion, the Supreme Court took into consideration the following observations of the Constitution Bench in *Union of India v. Gopal Chandra Misra*, AIR 1978 SC 694.

"It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resigner. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal."

10. The Supreme Court went ahead in *Srikantha S.M. v. Bharath Earth Movers Ltd.*, (2005) 8 SCC 314 and held that even when the resignation was accepted and if it is withdrawn before the employee is relieved, the resignation cannot be held to have been accepted.

11. Learned Counsel for the respondents placed reliance on Condition No.7 of the letter of appointment dated 25.09.2009, which says that the individual shall give one month advance notice or pay back three months salary, in case the individual desires to leave the University before the contract period expires.

12. In the letter of resignation dated 28.05.2013 she stated that she may not be attending the college from June onwards and requested for consideration of the same as advance intimation of resignation to her duties. On 30.05.2013 she sent another mail stating that the doctors advised her to take rest and she may not be attending the duties in the month of June and requested for not considering the previous mail and specifically stated that she will be back to duties.

13. In the above circumstances and in view of the law laid down by the Apex

Court, this Court has no hesitation to hold that the communication of the second respondent dated 13.08.2013 accepting the resignation of the petitioner is invalid and contrary to law, and the same is, accordingly, set aside.

14. The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed.

15. There shall be no order as to costs.