
(2006) 11 UK CK 0051

In the Uttarakhand High Court

Case No : Writ Petition No. 6167 of 2001 (S/S)

Jagdish Prasad Saini

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 UC 1413

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, for the Appellant; S.N. Babulkar assisted by, Ravi Babulkar, and Learned Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 of Constitution of India, the Petitioner has sought writ in the nature of certiorari quashing the order dated 28-01-2000, whereby the District Basic Education Officer, has declared the Petitioner's resignation accepted. A mandamus has also been sought against the Respondents directing them to pay the salary of the Petitioner, as he had withdrawn his letter of resignation dated 16-12-1999, before the date when it was to be accepted. The entry made in the service book, treating the Petitioner retired w.e.f. 16-01-2000, is also sought to be quashed.

2. Heard learned Counsel for the parties.

3. Brief facts of the case, as narrated in the petition, are that the Petitioner was Assistant Teacher in Nehru Inter College, Badshahpur, District Haridwar, run by the Committee of Management (Respondent No. 3). The Petitioner was working on aforesaid post since 15-01-1976. Admittedly, on 29-11-1999, Petitioner submitted a letter of resignation due to his family problems in which it was mentioned that the same had to be given effect from 16-01-2000. Copy of the resignation letter is annexed as Annexure-1 to the petition. The Petitioner's case

is that he withdrew the resignation on 16-12-1999 (copy Annexure-3 to the petition), before the same could have been accepted. It is alleged by the Petitioner that the Committee of Management with ulterior motive, got the resignation accepted and the Petitioner was shown retired from service w.e.f. 16-01-2000. It is further alleged by the Petitioner that on 28-01-2000, when the District Basic Education Officer, declared the resignation accepted in the presence of the Petitioner, the Petitioner was on leave and was not present before said authority. It is also alleged that one Rishi Pal (brother of a member of Management Committee) was got inducted in place of the Petitioner in a pre-planned manner. With these averments, the aforesaid prayers have been made challenging the impugned order, as illegal and arbitrary.

4. No counter affidavit has been filed on behalf of District Inspector of Schools or District Basic Education Officer since 2000 till date. However, a counter affidavit was filed on behalf of Respondent No. 3 in which it is admitted that the Petitioner did submit letter of resignation in the month of November, 1999. However, it is denied that the Petitioner withdrew his resignation before the acceptance of the same. It is further stated in the counter affidavit that on 28-01-2000, when the Basic Education Officer, declared the resignation accepted, the Petitioner himself was present before said authority. Not only this, according to the contesting Respondent, Petitioner even submitted application for payment of Provident Fund to him, as post retiral benefits. Defending appointment of Rishipai, the successor of the Petitioner, the allegation of malice is denied.

5. Admittedly, the Petitioner submitted resignation on 29/30-11-1999 from the post of Assistant Teacher in Nehru Junior High School, which was being run by Management Committee (Respondent No. 3). The question for consideration before this Court is whether the Petitioner withdrew the resignation before the same was accepted and whether the acceptance of the resignation is not valid. The fact relating to withdrawal of resignation vide letter dated 16-12-1999 is a disputed fact and has been denied by Respondent No. 3. The letter of acceptance dated 28-01-2000, which is Annexure-C.A. 1 to the counter affidavit is a letter of Respondent No. 2- District Basic Education Officer, who has mentioned while accepting the resignation that the Petitioner Jagdish Prasad Saini, Assistant Teacher was himself present and requested for the acceptance of his resignation letter. It can be believed that the members of Management Committee might be having interest to appoint their own man in place of the Petitioner but it is hard to believe that the Basic Education Officer, a public functionary would mention in the letter of acceptance that the Petitioner was himself present before him along with the Manager and Principal of School and the resignation was accepted in their presence.

6. Another fact on record, which makes story of withdrawal of resignation doubtful is that the Annexure-C.A. 2 to the counter affidavit, shows that after the resignation was accepted, the Petitioner himself had applied for payment of Provident Fund after his retirement w.e.f. 16-01-2000 and the said document is

signed not only by the Petitioner but also by the Manager of School and also by Principal of School. It is not disputed that the Petitioner is already getting post retiral benefits, as mentioned in letter dated 22-05-2001, which is part of Annexure-3.

7. Learned Counsel for the Petitioner, drew attention of this Court to the principle of law, laid down in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , Jagdish Chandra Nigam v. Scooter India Ltd. (2001) 2 UPLBEC 1863 and Punjab National Bank Vs. P.K. Mittal, and it is argued that the Petitioner was at liberty to withdraw the resignation at any time before the same was accepted. No doubt, it is settled principle of law that a resignation submitted by an employee before its acceptance can be withdrawn at any time by him. But in the present case, in the above facts and circumstances, it is doubtful if the Petitioner has actually withdrawn the resignation, submitted by him. Rather the presence of the Petitioner, recorded by the District Basic Education Officer, while accepting the resignation and also the fact that the Petitioner had applied for post retiral benefits, indicate that he had not actually withdrawn the resignation. As much, mere principle of law, contained in the aforesaid case law, do not help the Petitioner.

8. Lastly, it is contended on behalf of the Petitioner that the Petitioner was not communicated with the acceptance of his resignation and in view of principle of law laid down in Smt. Prabha Kakkar v. Joint Director of Education 2000 (2) LBESR 34 (All) (FB), it cannot be said that the acceptance of resignation, has become final before the same is communicated to the concerned employee. It is further submitted in this regard that there is no endorsement in C.A. 1 to the counter affidavit that the acceptance of the resignation was being sent to the Petitioner. Had there been no presence recorded by the Basic Education Officer regarding acceptance of resignation, the above submission could have been accepted by this Court. But since the Petitioner was personally present at the time when it was recorded that his resignation is accepted by the authority, merely for the technical reason that acceptance has not been communicated formally to him, does not materially prejudice the right of the Petitioner, as such, submission made in this regard is of no help to him.

9. For the reasons, as discussed above, in the opinion of this Court, the Petitioner is not entitled to the relief claimed by him. Therefore, the writ petition is liable to be dismissed. The same is dismissed. No order as to costs.