

(2013) 05 DEL CK 0236

In the Delhi High Court

Case No : LPA 2024 of 2006 and CM Application 14316 of 2006

Jesus and Mary College and Others

APPELLANT

Vs

Ms. Anu Saxena and Others

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 30

Citation : (2013) 05 DEL CK 0236

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : A. Mariarputham, Mr. Romy Chacko and Ms. Monika, in LPA 2024/2006, CM appl. 14316/2006, W.P. C 15042/2006 and CM appl.

11955/2006, for the Appellant; Meenakshi Lekhi and Ms. Zeba Khair, Advocates for R-1 and Mr. Amit Bansal, Advocate for R-2 and R-3 in LPA 2024/2006 and CM Appl. 14316/2006 and Mr. Amit Bansal, Advocate for R-1 in W.P. (C) 15042/2006 and CM Appl. 11955/2006, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—The appellant who is also the petitioner in W.P. (C) 15042/2006 challenges, as aggrieved by the judgment and order of the learned Single Judge dated 05.10.2006, whereby the respondents' writ petition under Article 226 challenging the de facto termination consequent to acceptance of her resignation (which she had withdrawn) was allowed. The appellant who is also the writ petitioner (hereinafter referred to as "the College") had employed the respondent. Thereafter, she had tendered her resignation on 15.7.1989. Subsequently, she was re-employed by the College on 17.10.1994. The controversy which led to the filing of the writ petition pertains to her resignation which was tendered by her on 09.3.2004 to the Principal of the College. In turn, the letter of resignation expressed that it ought to be accepted immediately. Subsequently, the respondent resiled and sought for withdrawal of the resignation. However, the College's position was that the resignation had been accepted. The respondent countered this by stating that the Principal was not a

competent authority to accept the resignation and in the absence of any competent governing body, her termination upon the said alleged resignation did not bind the parties and had no status in law. In fact, her case was that her withdrawal of the resignation was on 11.3.2004 and that the letter relieving her from service was issued on 19.3.2004.

2. The learned Single Judge accepted the respondent's contentions and held that the resignation had not been accepted by properly construed authority and that did not bind the parties. The appellant which is aggrieved had made submissions through its senior counsel, -foremost being that it being an institution established and administered by a minority, it is entitled to protection under Article 30 of the Constitution of India. In that context, it was argued that the direction to reinstate the employee was impermissible. For this purpose, the counsel had relied upon the decisions reported i.e. S.B. Dutt Vs. University of Delhi, ; Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, and Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, It was also urged that having regard to the functions of the College, the writ proceedings were inappropriate and could not lie against the College.

3. In support of the submissions, learned counsel for the respondent had relied upon several decisions including the ones reported as Federal Bank Ltd. Vs. Sagar Thomas and Others, and Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others,

4. During the course of submissions, it was brought to the notice of the Court that the learned Single Judge's judgment had been complied with and the respondent/employee had been working in the College and had also been paid arrears of back salary for the period from 05.10.2006 onwards. In the light of these developments, this Court suggested to the appellants that having regard to the long period of service-barring two and half years or so when the respondent was out of employment-it would be perhaps appropriate that the appellant reconsider the matter and accept the judgment of the learned Single Judge. In the light of this, counsel for the College was granted time to obtain instructions. Today, counsel for the College submits that according to the instructions given, the respondent may be allowed to continue in the service and would not be disturbed. However, counsel further states that the decision of the learned Single Judge should not be determinative and conclusive as to the maintainability of the writ proceedings or the question of reinstatement in such circumstances vis-a-vis the appellant College. It is also urged that having regard to the amicable settlement which the College is proposing the respondent should not insist upon payment of full back salary for the period she was out of employment i.e. from 10.3.2004 to 05.10.2006.

5. In the light of the submissions made, counsel for the respondent states that the entire back salary for the period she was out of employment would not be insisted upon and the matter would be left for the decision of the Court.

6. Having regard to the submissions made on behalf of the parties, this Court hereby directs the appellant to pay 50 per cent of the back wages and other benefits which the respondent would have been entitled to for the period 10.3.2004 to 05.10.2006. The respondent shall be, however, entitled to continuity of service and other benefits attached to it. At the same time, in view of the submissions made by counsel for the appellant, the Court clarifies that its acceptance of the judgment shall not be construed as conclusive qua its objections with regard to the maintainability of the writ proceedings or the availability of relief of reinstatement which was granted.

7. In view of the above, this Court hopes that the parties would fully cooperate with each other in future. As far as the writ proceedings are concerned, since the Court has not examined the merits of the College's challenge to the ordinance requiring prior approval before termination, its liberty to do so in appropriate proceedings is expressly reserved. The appeal and the writ proceedings along with all the pending applications are accordingly disposed-off in the above terms.