

(1999) 11 AHC CK 0115
In the Allahabad High Court
Case No : C.M.W.P. No. 10058 of 1994

Lalit Mohan Upadhyay

APPELLANT

Vs

Principal, Kumaon Engineering College, Dwarhat, Almora and
others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Citation : (2000) 2 AWC 917 : (2000) 1 UPLBEC 130

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Sudhanshu Dhulia, for the Appellant; S.C., B.D. Upadhaya and B.D. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and D.R. Chaudhary, JJ.

1. Heard Sri Sudhanshu Dhulia, learned counsel for the petitioner and Sri B. D. Shukla, learned counsel for the respondent No. 1 as well as learned Standing Counsel.

2. The petitioner was lecturer in Mathematics in Kumaon Engineering College. Dwarhat, District Almora- He submitted his resignation dated 6.9.1993 vide Annexure-8 to the writ petition, but he has alleged In paragraph 17 of the writ petition that he withdrew that resignation by Registered letter dated 10.9.1993 Annexure-9 to the writ petition. it has been further alleged in paragraph 27 of the writ petition that the resignation was accepted on 17.1.1994. The allegation in paragraph 17 of the writ petition that the petitioner had withdrawn his resignation letter dated 6.9.1993 by his subsequent letter dated 10.9.1993 is not denied. in paragraph 16 to the counter-affidavit, all that is stated is that paragraphs 17 and 18 of the writ petition are matters of record and hence need no reply. Thus the short submission of the learned counsel for the petitioner is that the petitioner had withdrawn his resignation before it was accepted.

3. Learned counsel for the petitioner has shown us the Model Bye Laws for Engineering College/institutes of U. P. in Bye Law No. 3 of the same it is provided as follows :

"3. Appointments : (1) All appointments to posts under the College/institute shall be made :

(2) By the Principal/Director, if the maximum of the scale does not exceed Rs. 3,500 and

(3) By the Board in other cases."

4. In Annexure-2 to the writ petition, it is mentioned that the pay scale of the petitioner was Rs. 2,200-4,000. Thus his maximum pay scale was above Rs. 3,500, and hence according to the Bye Law No. 3, the petitioner's Appointing Authority was the Board of Governors. Hence it is submitted that only the Board of Governors can accept the petitioner's resignation. Annexure-2 to the counter-affidavit shows that the petitioner's resignation letter dated 6.9.1993 was accepted by the Principal on the same date, but the Principal forwarded the matter to the Board of Governors with the following endorsement :

"Although usually one month's notice is required to be given by the employee while resigning, it is upto the Board of Governors to accept the resignation with immediate effect and to waive the notice period."

5. In our opinion, the Principal had no authority or jurisdiction to accept the petitioner's resignation as the petitioner's Appointing Authority is the Board of Governors and hence only the Board of Governors can accept his resignation. in fact, the Principal has recognised this legal position as he forwarded the papers to the Board, but there was no acceptance by the Board of Governors and instead it was the State Government which accepted the resignation on 17.1.1994 i.e.. long after the petitioner had withdrawn his resignation.

6. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, . it has been held that resignation can be withdrawn at any time before it becomes effective. in the case of employees for whom acceptance of resignation is necessary, obviously the resignation becomes effective only when it is accepted. Similarly in J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, , it has been held that resignation is not complete until it is accepted by the proper authority. The same view has been taken in several other decisions. in the present case, since the petitioner's resignation was withdrawn before it was accepted, hence in our opinion the withdrawal of the resignation was valid and acceptance of the resignation was illegal.

7. Hence we set aside the Impugned order dated 27.1.1994 (Annexure-22 to the writ petition) and hold that the petitioner valldly withdrew his resignation. The petitioner will be reinstated in service within six weeks from the date of production of a certified copy of this order before the authority concerned and shall be treated in continuous service as if his service had never come to an end.

He will get seniority and all consequential benefits and also arrears within three months from the date of production of a certified copy of this order. No order as to costs.