

(2018) 03 RAJ CK 0201

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3334 of 2017

Raju Ranjan @APPELLANT@Hash Chairman, Army Welfare Education Society

Date of Decision : 15-03-2018

Acts Referred:

Army Public Schools Rules — Rule 126, 186(I)
Constitution of India, 1950 — Article 12

Citation : (2018) 03 RAJ CK 0201

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Arti Gupta, Nitu Gupta, Kailash Jangid

Final Decision : Partly Allowed

Judgement

^ This writ petition has been filed by the petitioner aggrieved against order dated 10.03.2017 (Annexure-5), whereby, the resignation of the petitioner

from the post of Post Graduate Teacher (Computer Science) (??PGT CS??)^ has been accepted and the petitioner has been relieved w.e.f.

14.03.2017.^ A further direction has been sought to consider the petitioner for permanent appointment on the post of PGT.

It is, inter alia, indicated in the writ petition that the petitioner has a degree of M.C.A. acquired by him in the year 2010; petitioner applied pursuant to

the advertisement in the year 2012 and was selected as PGT in Computer Science on ad hoc/temporary basis and served from 02.07.2012 to

31.03.2013, 08.04.2013 to 24.12.2013, 06.01.2014 to 31.03.2014, 08.04.2014 to 24.12.2014 and 05.01.2015 to 31.03.2015.

Experience certificates in this regard have been filed as Annexurexs-1 & 2.

Whereafter by order dated 31.03.2015 (Annexure-3) the petitioner was appointed as PGT CS on regular basis.^ It was, inter alia, indicated in the

letter of appointment that initially the petitioner would be on probation for a period of one year, which may be extended further for another one year by the appointing authority.Â Whereafter by order dated 16.03.2016 the probation period of the petitioner was extended for another year w.e.f.

08.04.2016 till 07.04.2017.Â

It is claimed in the writ petition that on account of certain incidence, whereby, the petitioner was humiliated and was forced to arrange a computer or

to resign from the post, the petitioner resigned from the post of PGT CS on 24.01.2017 (part of Annexure-R/1) and indicated that last date of

employment will be 31.03.2017.Â Whereafter the said letter of resignation was withdrawn on the next day i.e 25.01.2017 (part of Annexure-R/1). It

is then indicated in the writ petition that several untoward incidences happened in the School, regarding which, the petitioner made complaints and an

inquiry was instituted with respondent No. 2 â?" the Principal of the School as Member, which was objected to by the petitioner.Â However, on

14.03.2017 the petitioner received an email indicating acceptance of his resignation alongwith one monthâ??s advance salary and security deposit. It

is also indicted that security deposit will be credited in his bank account.Â On receiving the letter accepting the resignation of the petitioner

(Annexure-5), the petitioner got issued a notice dated 11.03.2017 from his counsel.

It is, inter alia, indicated by learned counsel for the petitioner that the action of the respondents in accepting resignation of the petitioner, which

resignation was withdrawn on the next date of tendering, is absolutely illegal and against settled legal position and, therefore, the order impugned

(Annexure-5) deserves to be quashed and set aside.

It was submitted that when admittedly the petitioner had resigned from his post by letter dated 24.01.2017 w.e.f. 01.04.2017 and immediately on the

next day i.e. 25.01.2017 the resignation letter was withdrawn, which was admittedly received by the respondents on the same day, there was no

occasion for the respondents to accept the resignation on 10.03.2017 and relieve the petitioner w.e.f. 14.03.2017.

Submissions were also made that the practice of the respondents in granting ad hoc appointments with 8 to 10 daysâ?? gap in between and granting

regular appointment after serving for almost 3 years, is ex facie illegal and

contrary to several judgments delivered in the case of respondent institution itself and, therefore, the action of the respondents in this regard also deserves to be quashed and set aside and services of the petitioner deserve to be regularized from 02.07.2012 itself with all consequential benefits.

Reliance was placed on judgments of Delhi High Court in Vandana Rana v. Directorate of Education & Ors. : W.P.(C) 5757/2016, decided on

02.02.2017, Anita Soharu Guleria v. Director of Education & Ors. : W.P.(C) No. 1845/2014, decided on 25.02.2015, LPA No. 227/2015 : Army

Welfare Education Society & Anr. v. Anita Soharu Guleria & Anr., decided on 29.10.2015 by Division Bench and order of Honâ??ble Supreme

Court in Army Welfare Education Society & Anr. v. Anita Soharu Guleria & Anr. : Special Leave to Appeal (C) No. 3609/2016, decided on

12.02.2016.

Learned counsel for the respondent raised preliminary objections about maintainability of the writ petition, inter alia, on the ground that the respondent

Army Education Welfare Society and its education institutions are not State within the meaning of Article 12 of the Constitution of India and,

therefore, the writ petition is not maintainable.Â Further objection has been raised that the Principal, Army Public School has been impleaded as party

but the Chairman of the School was not impleaded and, therefore, in his absence the petition is not maintainable.

Further submissions have been made that the respondents have followed the provisions of Rule 126 of the Rules and Regulations for Army Public

Schools (â??the Rulesâ??) which deals with probation.Â Submissions have also been made that the petitioner was appointed on ad hoc basis as he

did not clear the CSB examination, which is mandatory for regular appointment and after passing of the CSB examination, the petitioner has been

appointed on regular basis indicating his probation period from 08.04.2015 to 07.04.2016, which period was extended from 08.04.2016 to 07.04.2017

and in between resignation was submitted on 24.01.2017.Â It is claimed that on receipt of the resignation the same was forwarded by the Principal to

the Management on 25.01.2017, whereafter the same was accepted by the Committee after going through the complete procedure. Further

submissions have been made that the request for withdrawal of the resignation has been dealt with as per the provisions of the Rule 186(I) of the

Rules.

With reference to the documents annexed with the reply, it was emphasized by learned counsel for the respondent that the petitioner submitted his

resignation on 24.01.2017 w.e.f. 01.04.2017, which was forwarded by the Principal to the competent authority on 25.01.2017, which resignation was

accepted by the competent authority i.e. the Chairman on 31.01.2017.Â The withdrawal of resignation submitted by the petitioner on 25.01.2017 was

forwarded by the Principal on 04.02.2017, which request for withdrawal was turned down by the Chairman on 01.03.2017.Â The allegations about

humiliation etc. and certain other instances have been denied.Â

Further submissions were made that in terms of Rule 186(I) of the Rules, resignation of an employee once accepted is final and if an application is

made prior to the effective date of resignation, the competent authority may, for reasons to be recorded, allow or disallow such request and, as such,

once the request has been turned down by the competent authority, the petitioner is not entitled to any relief.

Submissions were sought to be made that as the petitioner was on probation, he could not raise any grievance with regard to determination of his

employment. The respondents have also placed on record a copy of the findings of Inquiry Committee, wherein, recommendation has been made to

take necessary action against the petitioner.Â Submissions have been made that the conduct of the petitioner is not appropriate and warnings have

been given to him.Â Â Submissions have also been made about complaints received from the landlord of the petitioner.Â It is submitted that the

petition filed by the petitioner deserves to be dismissed

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

At the outset, it may be noticed that the petitioner has mixed up the two different causes of action in the present writ petition. The writ petition was

filed by the petitioner on 22.03.2017, before which, on 10.03.2017 his resignation had been accepted w.e.f. 14.03.2017 and on the date when the

petition was filed, the petitioner was out of employment on account of acceptance of his resignation and in the writ petition the relief was sought for

grant of â??permanent appointmentâ?? and â??withdraw the resignation of the petitioner and take back on the postâ??.

The averments made in the writ petition are to say the least very sketchy, inasmuch as, even the letter of resignation/withdrawal of resignation have not been filed alongwith the writ petition, however, the respondents have placed the same on record. Further, absolutely unnecessary documents have been placed on record alongwith rejoinder and certain issues, which are totally alien to the present controversy, have been sought to be incorporated.Â Be that as it may.

So far as the objection raised by the counsel for the respondents regarding maintainability of the writ petition against the respondent Society is concerned, the issue has been exhaustively dealt with by Allahabad High Court in *Rachna Gupta v. Union of India* : (2014) 1 ILR (All) 469, wherein, after referring to several judgments involving the Army Public Schools it was, inter alia, concluded that there was no difficulty in holding that Army Public School is certainly amenable to the writ jurisdiction and the preliminary objection was overruled.

Similarly in *Surendra Singh & Ors. v. Union of India & Ors.* :

CWP No. 20514/2018, decided on 22.07.2016 by Punjab & Haryana High Court qua the Army Welfare Education Society, relying on judgment in

Army Welfare Education Society & Anr. v. Manju Nautiyal & Anr. : LPA No. 223/2015, decided on 29.10.2015 by Delhi High Court, it was held that the writ petition was maintainable.

In view of the judgments of three High Courts in the case of *Rachna Gupta* (supra), *Surendra Singh* (supra) and *Manju Nautiyal* (supra) pertaining to the respondent Army Public School/Army Welfare Education Society, there is no substance in the submissions made by learned counsel for the respondent, which are, therefore, rejected.

So far as the objection regarding non-impleadment of the Chairman of Army Public School as party to the present writ petition is concerned, a bare

look at the order accepting resignation dated 10.03.2017 (Annexure-5) would indicate that the same has been issued by the Principal and the same does not even refer to any other authority of the Army Public School.

Besides the above, if the respondent Principal was not the competent/concerned authority, what was the occasion for her to file the caveat before this

Court and when notice was ordered to be issued by the Court on 22.03.2017, to accept the same on behalf of the respondents in two sets i.e.

apparently for both the respondents.Â Â

In view thereof, the objection raised in this regard also has no substance.

Coming to the merits of the present writ petition, the resignation letter dated 24.01.2017, reads as under:-

â??To,

The Principal,

Army Public School,

Jodhpur

Subject :-Resignation Notice

Respected Mam,

I wish to formally notify you that I am resigning from my position as PGT CS. My Last date of employment will be 31st March, 2017 as per my

obligations under the term of employment contract.

I appreciate the opportunities I have given at this school and your professional guidance and support. I have been giving my full dedication, honesty to

this institution since 2nd July, 2012.Â I wanted to work here for my whole life but cannot continue now.

Yours sincerely

Sd/Raju Ranjan

PGT CS

APS Jodhpur.â??

A bare look at the above letter would reveal that the petitioner had resigned from a future date i.e. 31.03.2017.Â On the very next date i.e.

25.01.2017 the petitioner wrote the following letter:-

â??Application letter for withdrawal of Resignation Letter 25th January, 2017

To,

The Principal, Army Public School, Jodhpur.

Subject :-Withdrawal of resignation letter

Respected Mam,

I realize that my resignation may have caused inconvenience and wish to apologize for that.

I want to withdraw my resignation dated 24th January, 2017 from the post of

PGT CS in Army Public School, Jodhpur.

I wanted to look out for better opportunities but I realized that the last approx 5 years I had spent in this institution building up a team are invaluable.Â

We all developed a sense of faith, dedication and trust among ourselves.Â I do not want to forgo all the recognition and importance the institution has given to me.

I once again request you to reconsider my withdrawal of resignation.

Raju Ranjan

PGT CS

APS JODHPURÂ??

A bare look at the above letter would indicate that the petitioner had indicated withdrawal of his resignation letter dated 24.01.2017.

The note-sheets produced by the respondent School clearly indicate that after the resignation was submitted by the petitioner on 24.01.2017, the

Principal forwarded the same to the competent authority on 25.01.2017, which was dealt with by the coordinating officer on 27.01.2017 and approved

by the Chairman on 31.01.2017.Â Â

It is surprising that when the letter withdrawing the resignation dated 24.01.2017 was admittedly submitted by the petitioner on 25.01.2017 why said

letter of withdrawal was not brought to the notice of the competent authority/the same was not dealt with immediately and, therefore, it is apparent

that the approval of petitionerâ??s resignation took place after the same was withdrawn by the petitioner on 25.01.2017.Â

A bare look at the another order-sheet produced by the respondent indicates that the letter withdrawing the resignation was dealt with by the Principal

on 04.02.2017, the coordinating officer dealt with the same on 09.02.2017 and the Chairman passed the order on 01.03.2017 turning down the request

for withdrawal of resignation.

Whereafter, though the petitioner had offered his resignation w.e.f. 01.04.2017, on 10.03.2017 letter was issued to him putting end to his services

w.e.f. 14.03.2017 indicating acceptance of his resignation.

It is well settled by judgment of Honâ??ble Supreme Court in Balram Gupta v. Union of India & Anr. : AIR 1987 SC 2354 that an employee is

entitled to withdraw his notice of resignation before the same takes effect.

Though the said judgment was delivered in relation to an application for grant of voluntary retirement, the same principles would apply to the present case also as the resignation was given from a future date and not only that the same was withdrawn before the due date, it was withdrawn even before the same was accepted as the acceptance took place on 31.01.2017, before which, the resignation had been withdrawn on 25.01.2017.Â

Merely because the Principal decided not to communicate the withdrawal of the resignation to the competent authority before the same was accepted, the same cannot be a reason enough for putting into operation the letter of resignation which in fact stood withdrawn before approval.

A specious plea has been raised by learned counsel for the respondent that the file alongwith resignation letter had been sent for approval on

25.01.2017 and till such time that the file was received back, the letter withdrawing the resignation could not be processed.Â

The plea besides being specious, as noticed hereinbefore, is totally baseless and only reflects the attitude of the Principal qua the petitioner.

Learned counsel for the respondents placed reliance on Rule 186(I) of the Rules for justifying the refusal of withdrawal of resignation.Â The said

Rule reads as under:-

â??186(I) Resignation of an employee, once accepted by the competent authority, will become final.Â Prior to the effective date of resignation, the employee may make a request for withdrawal of his application of resignation and the competent authority may, for reasons to be recorded, allow or disallow such request of withdrawal of the resignation.â??

A bare look at the above provision would reveal that the provision provides for withdrawal of the resignation prior to the effective date of resignation, once accepted by the competent authority and for reasons to be recorded, the request may be allowed or disallowed.Â However, the above provision does not deal with a situation where a resignation is withdrawn even prior to its acceptance by the competent authority and, therefore, the above provision has no application to the facts of the present case.

The submissions made regarding the petitioner being on probation cannot be countenanced, inasmuch as, the services of the petitioner have not been

terminated by the respondents on account of any unsatisfactory performance during the probation period and only by letter dated 10.03.2017

(Annexure-5), his resignation has been accepted w.e.f. 14.03.2017 and, therefore, the fact of the petitioner being on probation is of no consequence in the circumstances of the present case.

In view of the above discussion, it is apparent that the action of the respondents in accepting the resignation of the petitioner by order dated

10.03.2017 (Annexure-5) cannot be sustained on any count when the same already stood withdrawn on 25.01.2017 before the resignation was

approved on 31.01.2017 and, therefore, the order passed by the competent authority on 01.03.2017 turning down the withdrawal of the resignation of

the petitioner is of no consequence.

So far as the prayer made by the petitioner seeking a permanent appointment on the post of PGT is concerned, vide letter of appointment dated

31.03.2017 (Annexure-3) the petitioner has already been accorded regular appointment and, therefore, the relief claimed in this regard cannot be

deciphered. Even as per various judgments, which have been cited by learned counsel for the petitioner including the judgment in the case of Anita

Soharu Guleria (supra), wherein, the learned Single Judge of Delhi High Court ordered that the petitioner therein will be taken to have been confirmed

in services from the first date of working of the fourth academic year, in which, the petitioner therein had commenced working with the respondent

School i.e. on 08.04.2013 as the petitioner therein was appointed for the first time on 28.06.2010 on ad hoc basis, the prayer appears to be wholly

misplaced. Even if the plea is taken as seeking regular appointment based on the said judgments, the regular

appointment had already been granted to the petitioner by order dated 31.03.2015 (Annexure-3) i.e. in the fourth academic year of his joining as

admittedly he had joined in academic year 2012-13 on ad hoc/temporary basis.

In view thereof, the vague relief claimed in the writ petition without any reference/context to the facts of the present case and the judgment cited by

learned counsel for the petitioner, according to which also, apparently relief has been granted to the petitioner vide Annexure-3, nothing further

remains to be done by the respondents in this regard.

So far as the submissions made and reliance placed by the respondents on the inquiry conducted against the petitioner is concerned, as already

observed hereinbefore, the very fact that no action pursuant to the said inquiry

report has been taken by the respondents, instead the resignation of the petitioner after withdrawal has been accepted, the said inquiry report is of no consequence in so far as the acceptance of the petitioner's resignation after withdrawal is concerned.

In view of the above discussion, the writ petition filed by the petitioner is partly allowed. The order dated 10.03.2017 (Annexure-5) accepting the resignation of the petitioner from the post of PGT CS by the respondents is quashed and set aside. The petitioner shall stand reinstated on the post of PGT CS forthwith. The petitioner would be entitled to all other consequential benefits, which should be granted to him within a period of six weeks from the date of this judgment.