
(1999) 05 AHC CK 0030
In the Allahabad High Court
Case No : C.M.W.P. No. 14742 of 1992

Smt. Shanta Sharma

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Citation : (1999) 3 AWC 2092 : (1999) 2 UPLBEC 1124

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Rastrapati Khare and R.N. Sharma, for the Appellant; S.C. and Krishna Murari, for the Respondent

Judgement

V.M. Sahai, J.—The main question that arises for consideration in this petition filed by Principal, of Jatiya Bal Vihar Junior High School. Khurja, Bulandshahr. is whether a resignation could be accepted by the authority before the due date mentioned in the notice.

2. The petitioner was appointed as Principal in the institution on 1.11.1975. It appears the relation between the petitioner and the committee of management were not good in 1992. She resigned on 9.3.1992 prospectively. In the notice given by her, it was mentioned that she was resigning due to personal reasons. The letter mentioned that she may be relieved of the duty after three months by accepting her resignation. But the committee of management was in great hurry. It accepted the resignation on the same day. On 15.3.1992, the petitioner lodged a first information report that her resignation has been obtained under duress on 9.3.1992 at 9.30 a.m. by the Manager of the college, her husband and certain other members of the committee. The petitioner on 21.3.1992 sent a letter to the management that she could not attend the institution, as she was unwell. Two days thereafter, she withdrew her resignation. She sent a letter to all concerned that she had withdrawn her resignation and she being well was now present to discharge her duties. There are various letters, which were exchanged between the parties in support of their stand. But the respondent did not permit

her to join. The petitioner, therefore, filed this petition for issuing a direction to the respondent to treat her as principal of the college.

3. I have heard Sri R. N. Sharma, the learned counsel for the petitioner. It is not necessary to decide whether the resignation letter was obtained forcibly as the claim of the petitioner that she having withdrawn her resignation before the due date, the letter sent by her became non est in law and its acceptance by the respondent before the due date did not bring an end to her services is correct. The argument of Sri Krishna Murari, the learned counsel for the respondent, on the other hand, was that the management having accepted her resignation, her services came to an end on 9.3.92 itself. The learned counsel vehemently argued that the principle laid down by the Apex Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, , were not applicable to the facts of this case.

4. The argument of the learned counsel cannot be accepted. A perusal of the resignation letter shows that it was to take effect after three months. The petitioner had clearly requested that she may be relieved after three months. Somewhat similar situation arose before Kerala High Court in *M. Kunjukrishnan Nadar Vs. Hon"ble Speaker, Kerala Legislative Assembly, Trivandrum and Others*, . One of the member of the assembly sent a resignation letter on 23.11.1963. It was accepted and notified by the speaker on 26.11.1963. The member withdrew his resignation on 26.11.63. The question that arose before the High Court was whether the member could withdraw his resignation once it was accepted. The High Court held :

".....the petitioner's letter of November 23, 1963, has to be held a letter resigning his seat in the Assembly on December 1, 1963, deposited with the Speaker on November 23, 1963. It remains a mute letter till December 1, 1963, when alone it can speak with effect. On November 29, 1963 the petitioner has withdrawn that letter by writing under his hand addressed to the Speaker himself/.....It is in effect the neutralization of the latent vitality in the former letter deposited with the Speaker. The withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker, which must thereafter be found to have become non est in the eye of law. The absence of a specific provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial as basic principles of law and procedure must be applied wherever they are relevant."

5. The principle was approved by the Apex Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, . The court observed as follows :

"In our opinion, what has been extracted above from the decision in the *M. Kunjukrishnan Nadar Vs. Hon"ble Speaker, Kerala Legislative Assembly, Trivandrum and Others*, correctly enunciates the principle that a prospective resignation remains mute and inoperative till the date on which it was intended to take effect is reached, and can be withdrawn and rendered non est at any

time before such date".

6. It is, therefore, clear that the letter of resignation sent by the petitioner was to remain mute till three months. But when it was withdrawn before the due date, it nullified the entrustment or deposit of the letter of resignation in the hands of management. The committee of management could not have accepted it on 9.3.1992. It could not bring to an end the services of the petitioner. Learned counsel for the respondent could not show any rule permitting acceptance of prospective resignation before expiry of due date.

7. In the result, the writ petition succeeds and is allowed. The respondents are directed to reinstate the petitioner in service with all consequential benefits of service as Principal of the institution. She shall also be entitled for her arrears of salary. It shall be paid to the petitioner. The directions given above shall be complied with by the respondents within a period of three months from the date of production of a certified copy of this judgment before them.