

(2014) 12 DEL CK 0269
In the Delhi High Court
Case No : Writ Petition (Civil) 4751/2014

Sujjan Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2014) 12 DEL CK 0269

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Narender Sharma, Advocate and Party-in-Person, Advocate for the Appellant; Vivek Goyal, CGSC, Advocate for the Respondent

Judgement

Kailash Gambhir, J.

?Laws control the lesser man. Right conduct controls the greater one?.

Mark Twain

1. On the last date, of hearing, the learned counsel for the petitioner took a passover in the matter to ascertain from the petitioner about the duration of the PG Diploma Course which was undertaken by him and after taking a passover, no one had appeared for the petitioner and the matter was adjourned to this date. Today, the learned counsel appearing for the petitioner, on instructions from the petitioner who is present in Court, submits that the petitioner had a PG diploma in Orthopaedics from the Vydehi Institute of Medical Sciences, Bangalore. He also submits that the petitioner was admitted in the said course on 31st May, 2009 and he completed the same in May, 2012.

2. In the instant petition, the petitioner seeks quashing of the letters dated 29th June, 2012 and 15th March, 2012 through which the respondents had accepted his resignation as were submitted by him vide letter dated 5.5.2010. The petitioner's grievance is that prior to the acceptance of the resignation, he had withdrawn the same vide letter dated 14.6.2011. The contention of the learned

counsel for the petitioner is that it is a settled legal position where an employee withdraws his resignation prior to its acceptance by the employer, such resignation should not be accepted by the employer.

3. We now turn to the facts of the case before us.

4. The petitioner had joined the services of respondent No. 1 as an Assistant Commandant (CPS-2006) in the year 2008 and he was lastly posted at 11th Battalion, Sashastra Seema Bal, Ministry of Home Affairs, Government of India at Didihat, Pithoragarh, Uttarakhand. As per the case of the petitioner, his father was abducted in the year 2009 and was murdered in January, 2010 and in these circumstances, the petitioner was the only person left to take care of his family and especially his aged mother; that he resigned from service due to personal problems but after having tendered his resignation with the respondents, he did not receive any communication from them except that a letter dated 16.11.2010 was sent to him directing him to pay a sum of Rs. 1,46,992/- towards his outstanding dues; that he had appeared before the Grievance Committee of the respondents on 14.6.2011 to discuss his personal grievances and thereafter he withdrew his resignation; that after having withdrawn his resignation, the respondents proceeded ahead to take a decision to accept his resignation as was made on 5.5.2010; that he made representations dated 24th June, 2012 and 14th July, 2012, to impress upon the respondents to accept his request for withdrawal of the resignation, but through Memorandum dated 29th June, 2012, the respondents had refused to accede to his request.

5. In the background of the above facts, the learned counsel for the petitioner has strongly urged that a direction be given to the respondents for allowing the petitioner to join back his service on the post of Assistant Commandant. He seeks quashing of the letters dated 29th June, 2012 and 15th March, 2012.

6. The petitioner is strongly opposed by Mr. Vivek Goyal, the learned Standing Counsel for the respondents. He submits that the petitioner has suppressed vital facts from this Court about having undertaken the aforesaid PG Diploma Course for a period of three years and it was only during the course of hearing that this fact came to light and subsequently, a direction was given to the learned counsel for the petitioner to disclose the relevant facts about the said PG Diploma Course undertaken by the petitioner. He also submits that the letter through which the resignation was withdrawn by the petitioner was never addressed to the Competent Authority which in case of the petitioner is the President of India and the same was wrongly addressed to the Director General. He further submits that delay on the part of the respondents in not accepting the resignation primarily took place as the petitioner had failed to pay the outstanding dues and other allowances, in terms of the request made to him vide letter dated 16.11.2010.

7. We have heard the learned counsel for the parties at some length.

8. The petitioner had resigned from his service vide his resignation letter dated

5.5.2010. On perusal of the resignation letter, the reason given by the petitioner was that his personal and family problems were not allowing him to pursue his duties in the police force because of his job being transferable, owing to which he was not able to give full attention to his family as and when needed. Vide communication dated 16.11.2010, the respondents had written a letter to the Director, Vydehi Institute of Medical Sciences, Bangalore so as to inform the petitioner, who was undergoing a PG Diploma Course from the said institute, to deposit the outstanding dues of Rs. 1,46,992/- so as to process his case for resignation from Government Service. In this letter, the respondents stated that efforts were made by the unit concerned to contact the petitioner at his Delhi residence but he could not be traced as his family members showed ignorance about his whereabouts. The respondents further stated that it was learnt by their office that the petitioner was presently undergoing a PG diploma (Orthopaedics) at the aforesaid institute and accordingly, a request was made to the institute to direct him to deposit the said outstanding dues to his unit at the earliest, otherwise, it would be bound to take legal action against him. In this letter, it was also communicated that the petitioner was unauthorizedly absent from the unit with effect from 25.6.2009 till the date of the said communication. In response to this communication, the petitioner deposited an amount of Rs. 96,075/- along with his letter dated 24.12.2010 and in his letter, he reiterated his request for acceptance of his resignation at the earliest. Undeniably, the respondents took an unduly long time in accepting the petitioner's resignation vide Memorandum dated 29th June, 2012 and in between, the petitioner vide his letter dated 14.6.2011 requested for withdrawal of his resignation. Under general principles, an offer of resignation can be withdrawn before the same is accepted by the Competent Authority and on the same reasoning, there can be no withdrawal after the offer of resignation is accepted.

9. The applicability of this general principle will however, depend on the facts of each case as neither at the time of resignation nor at the time of withdrawal, there should be any kind of malafide or deceitful conduct by either of the parties.

10. In *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, , the Supreme Court held as follows:

"It is well-settled that the High Court in exercise of its Jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This Jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priory, before invoking the Jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief....."

11. In the case of *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, , the Supreme Court held as follows:

"The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim."

12. In the facts of the present case, the petitioner who had tendered his resignation so as to take care of his family and personal needs, in fact took admission in a PG Diploma course at Vydehi Institute of Medical Sciences, Bangalore on 31st May, 2009 and the said course was for a period of three years. The petitioner was employed as an Assistant Commandant which was a group "A" post and his resignation was in fact a ploy to clandestinely undergo the said PG Diploma course and he had suppressed this fact from the respondents and has not bothered to disclose the same even in the present petition. It is unfortunate that the process of this Court is being used with malafides and dishonesty to achieve a purely selfish gain by the petitioner. The Courts are to be vigilant against all efforts to overshadow the ethos of justice and fair play. The jurisdiction of this Court, being extraordinary, is normally exercised keeping in view the principles of equity. To promote honesty and fair play is one of the ends of equity. This Court is not only a Court of law but also a Court of Equity. Therefore, looking into the act of the petitioner, we are of the view that the present petition is a gross abuse of the process of law and the same deserves to be dismissed, with costs of Rs. 10,000/-, which shall be deposited in the Delhi High Court Staff Welfare Fund within four weeks of this order.