

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

(NAHARLAGUN)

1. WP(C) 215 (AP)2018

***Dr. Pratap Kumar Bandyopadhyay,
C/o Mr. Riba Building,
C-Sector, Naharlagun,
P.O./P.S.-Naharlagun,
Dist-Papumpare,
Arunachal Pradesh-791110.***

.... Petitioner

-Versus-

1. ***The union of India,
Represented by the Secretary (Higher Education),
Ministry of Human Resource Development (MHRD),
Shastri Bhawan, New Delhi.***
2. ***The State of Arunachal Pradesh,
Represented by the Director of Higher and Technical
Education,
Papumpare District, Arunachal Pradesh-791111.***
3. ***The Registrar,
National Institute of Technology (NIT), Arunachal
Pradesh
At Yupia, Papumpare District, Arunachal Pradesh.***
4. ***Dr. Rajiv Kumar Garg,
Director of National Institute of Technology (NIT),
Arunachal Pradesh at Yupia, Papumpare District,
Arunachal Pradesh***

..... Respondents

2. WP (C) 585 (AP)2018

***Dr. Pratap Kumar Bandyopadhyay,
C/o Mr. Riba Building,
C-Sector, Naharlagun,
P.O./P.S.-Naharlagun,
Dist-Papumpare,
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National Institute of Technology (NIT), Arunachal
Pradesh
At Yupia, Papumpare District, Arunachal Pradesh.***
4. ***The Chairman,
20th and 21st Board of Governors, National
Institute of Technology (NIT), Arunachal Pradesh
at Yupia, Papumpare District, Arunachal Pradesh
791112 held on 13.04.2018 and 19.01.2018
respectively.***

..... Respondents

**:::BEFORE:::
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

By Advocates:

For the petitioner: Ms. T. Jini, Advocate.

For the respondents: Mr. R. Saikia, learned Standing counsel-NIT.

Date of hearing : 13.03.2019

Date of Judgment : 19.03.2019

JUDGMENT & ORDER (CAV)

By this common judgment and order, the aforesaid 2 (two) writ petitions filed by the same petitioner are being disposed of.

2. The facts pertaining to the case may be dilated as follows:-

3. The petitioner at the relevant time was employed as an Associate Professor in the National Institute of Technology, Arunachal Pradesh. Such appointment was vide an order dated 19.08.2016 under which the petitioner was on probation for a period of 2 (two) years. It is the case of the petitioner that while in service as an Associate Professor, he was given the charge of the Registrar of the institute in addition to his regular duties vide an order dated 10.07.2017. In the meantime, the respondent No. 4 was appointed as

the Director of the Institute and according to the petitioner on his own whims and fancies, the respondent No. 4 had re-shuffled the charges and vide an order dated 13.02.2018, the additional charge of Registrar was removed from the petitioner and vide another order, he was made the charge of the post of Public Relation Officer (for short, 'PRO'). The petitioner has alleged that while performing his duties as PRO, he was subjected to various threats and was unable to perform his duties peacefully. The petitioner did not feel safe and ultimately vide letter dated 14.03.2018, he made a prayer to relieve him from the charge of PRO. However, as projected in the writ petitions, instead of considering the case of the petitioner, on the same date i.e. 14.03.2018, a Show-Cause Notice was issued to the petitioner as to why he had not applied for extension of his service after attaining 62 years of age. It is the case of the petitioner that such notice had disturbed him immensely and under heavy pressure on 15.03.2018 he had submitted his resignation. But, after proper application of mind and re-consideration, the petitioner decided to withdraw his resignation and accordingly, submitted a representation dated 16.03.2018. However, in the meantime, vide order dated 16.03.2018, the petitioner was informed that his resignation was accepted. It is this action which is the subject matter of challenge in this writ petition.

4. The petitioner has made the prayer to set aside the notice dated 14.03.2018 for initiating disciplinary action, order dated 16.03.2018 whereby he was said to be superannuated; to cancel the resignation letter dated 14/15.03.2018 by the petitioner; a direction to accept the withdrawal of the resignation; and for consideration of his representations.

5. The 2nd writ petition has been filed during pendency of the first writ petition challenging the subsequent development and also certain actions which were revealed from the affidavit-in-opposition filed by the respondent in the first writ petition, namely, WP (C) 215 (AP) 2018. More specifically, the petitioner has contended that in the affidavit-in-opposition, disclosure has been made about the 21st meeting of the Board of Governors held on 19.11.2018 which had approved the resignation of the petitioner. According to the petitioner, such approval was in violation of the order of the Court as well as the decision of the 20th **BoG** meeting held on 13.04.2018. In the 2nd

writ petition a prayer has been made for quashing the Item No.21.18 which is alleged to be in violation of the law as well as the order of this Court passed in WP (C) 215 (AP) 2018.

6. In both the writ petitions, the contesting respondents, namely, National Institute of Technology, Arunachal Pradesh has filed its affidavit-in-opposition. The petitioner had also file reply affidavit as well as the additional affidavit to bring on record certain facts.

7. I have heard Ms. T. Jini, the learned counsel for the petitioner as well as Mr. R. Saikia, the learned standing counsel NIT. The pleadings as well as materials on record have been carefully examined and the rival contentions have been duly considered.

8. The issue which calls for determination is whether there was a resignation submitted by the petitioner and whether its acceptance is valid in the eyes of law. Such determination needs to be tested in view of the rules governing the services of the petitioner and the law of the land holding the field.

9. There is no dispute that the service of the petitioner was on probation. The Rules which governs the parties have been annexed to the writ petition and have been published in the Official Gazette vide a notification dated 23.04.2009 which is called "***The First Statute of the National Institute of Technology***". Under Clause 30, the procedure of resignation has been laid down which is hereinbelow extracted:-

"30. RESIGNATION

Notwithstanding anything contained in the foregoing provisions of these first Statutes, a member of the Staff of institute may resign;

(i) If he is a permanent employee, only after giving three months' notice in writing to his appointing authority or by paying three months salary in lieu thereof; and

(ii) If he is not a permanent employee, only after giving one months' notice in writing to the appointing authority or by paying one months' salary in lieu thereof; provided that such resignation shall take effect only on the date on which the resignation is accepted by the appointing authority".

10. From a reading of the aforesaid provision and considering the fact that the petitioner was on probation, resignation could be tendered by giving one month notice in writing or by paying one month salary in-lieu thereof and such resignation shall take effect only on the date on which the resignation is accepted by the appointing authority. The aforesaid clause makes it clear that though notice period of a month is contemplated or payment of one month salary in lieu thereof, the effect would be from the date of acceptance of the resignation by the appointing authority. Though, a lot of facts have been pleaded in the writ petitions, the necessary pleadings and documents enclosed which require attention are those which pertain to the issue at hand. It is seen that on 14.03.2018, the petitioner has submitted his resignation and the said letter is annexed as Anexure-H-2 of the first writ petition namely WP (C) 215 (AP) 2018.

11. For ready reference, the contents of the said letter is extracted herein below:-

**"To
The Director,
NIT,
Yupia, Papumpare,
Arunachal Pradesh-791112
Dated :14/03/2018
Sub: Resignation from NIT, Arunachal Pradesh.
Dear Sir,
I am hereby resigning from my service at NIT, Arunachal Pradesh.
Kindly relieve me from my service as early as possible as per Rules.**

Dr. Pratap Kumar Bandyopadhyay

12. It appears from the said documents that on receipt of the same, the Director had made an endorsement to the petitioner requesting him to reconsider his resignation and it was only after his reply that action as per law

would be taken. The said endorsement was made on the date of the application itself i.e. 14.03.2018. As endorsement will have a major bearing in the adjudication of the present dispute, the same is extracted herein below:-

"Before considering your application for resignation, I would like to know whether you are still interested in continuing job for NITAP as per the BoG minutes (Item 16.18). After your reply, the action as per rules shall be taken. You are requested to reply promptly.

Dr. Pratap Kumar Bandyopadhyay

13. The petitioner on the very next date i.e. 15.03.2018 submitted another application reiterating his stand and again submitted his resignation. The petitioner reiterated that his resignation be accepted and to relieve him as per Rule by clearing all his dues.

14. The reading of the offer of resignation dated 14.03.2018 and its reiteration dated 15.03.2018 make it clear that there was no condition attached to such resignation. Accordingly, vide the communication dated 16.03.2018 issued by the Registrar (in-charge) of the respondent Institute, the resignation was held to be accepted and accordingly, the petitioner was allowed to superannuate w.e.f. 31.10.2017 i.e. the date of attaining the age of 62 years. The petitioner was also directed to repay the salaries which was paid to him from 01.11.2017 in view of the fact that no service was rendered by him. The order also categorically mentioned that the same was issued with the approval of the competent authority. After receipt of the aforesaid acceptance, the petitioner issued a letter dated 16.03.2018 to the Director whereby he had requested to extend his service up-to 15.03.2018. Since it is the submission of the learned counsel for the petitioner that vide letter dated 16.03.2018, the resignation was withdrawn, it would be prudent to extract the contents of the said letter.

"To

The Director,

NIT, AP,

Yupia, Papumpare,

Arunachal Pradesh-791112

Dt:16.03.2018

Sub: Superannuation-reg.,,

Ref: NIT/AP/Estt.08/2011-12/Vol-VIII/1032, dated 16.03.2018.

Dear Sir,

The superannuation age of all Central Technical Institute vide No.F.22-5/2007-TS-III dated 12.07.2007 is raised to 65 years as per CCS rule passed by the MHRD Govt. of India. I gave the service to the institute till date. The question is NIT's BoG can supersede the MHRD, Govt. Order. Though in the 16th BoG says "age of retirement is 62 and extension upto 8 years on suitability and on yearly basis may be granted to the member of faculty". The authority means Director has to give this. As I was allowed to render my service after giving me monthly salaries it is assumed that authority found me suitable. I was regular employee. Nowhere it is mentioned that I have to apply for extension after attaining 62 years. I joined after 16th BoG. I never know this superannuation clause but I heard. In this regard in the last BoG I raised the issue of retirement age but Chairperson remarked the retirement of faculty in Technical Institute is 65 what i remembered but it is not recorded as it is in CCS Rule/ RR Rule.

You and previous Director allowed me to work and gave the responsibilities even after crossing 62 years from which it is obvious I am allowed to work after 62 years even after crossing 62 years even I told you once.

Any way I would request you kindly extend my service upt 15th March, 2018 so that as I offered my service to institute by teaching and discharging all responsibilities given to me upto 16th March, 2018.

If you do not consider above request then I would request you to adjust my dues of 7 CPC arrears and monthly deposits in CPS Scheme and balance payment (if any) may be transferred to my bank salary a/c.

Let me know to whom I am to hand over all the items.

Regards & Thanks.

Dr. Pratap Kumar Bandyopadhyay

15. Though the said letter has been termed by the learned counsel for the petitioner as letter of withdrawal of resignation, reading of the same does not reveal that by the said letter, the resignation was withdrawn. It becomes apparent that since office order dated 16.03.2018 by which the resignation was accepted had also contained the clause for repayment of the salaries

from 01.11.2017, the petitioner had issued the aforesaid letter. On the other hand, on the same date i.e. 16.03.2018 the petitioner had written another letter to the Director resigning from the post of HoD ECE immediately and that because of such resignation, the petitioner would not be attending the meeting of the Senate and some other faculty members may be endorsed with the said job.

16. It is the case of the petitioner that as per his perception, the employer/ employees relationship was not severed on alleged withdrawal of the resignation and accordingly, he had submitted a representation dated 27.03.2018 to the Chairperson of the institute making certain grievances and putting certain explanation regarding his conduct. The same was followed by another letter dated 30.03.2018 to all the high dignitaries of the country including the Hon'ble President, Hon'ble Prime Minister, Hon'ble Chief Justice of Supreme Court of India, Hon'ble Chief Justice of Gauhati High Court and Hon'ble Chief Justice of Kolkatta High Court, amongst others. By the said representation, a number of allegations have been made against the respondent institute making reckless allegation against the Director and other faculty members of the institute. However, in the said representation, the petitioner maintained his stand that he was compelled to resign from his job.

17. The institute has contested both the writ petitions by filing affidavit-in-opposition. Referring to the enclosure to the affidavit-in-opposition, the learned counsel has submitted that apart from tendering resignation vide the letter dated 14.03.2018, on the same date i.e. 14.03.2018, the petitioner had submitted another application to the Director stating that he was submitting his resignation from the post of Public Relation Officer and that the same should be accepted. On the body of the letter, the Director had initially expressed/ reiterated with a remark "***being a Senior faculty member please support the system***". This letter has not been annexed to the Writ petition. As stated above, the reiteration of resignation was done by the petitioner on 15.03.2018 and on receipt of the same, the Director had constituted a Committee of certain faculty members with a request to give its recommendation. It was also requested to examine the case as per the terms and conditions of the appointment letter, the CCS Rules and the Board of

Governor Decision. By such constitution, the Committee held a meeting on 15.03.2018 and after a threadbare discussion recommended for acceptance of the resignation and to recover the dues from the petitioner. The Director of the Institute, by such minutes sought for permission to relieve the petitioner as per his resignation and the relieving would be effective from the date of his retirement at the age of 62 years. The permission was accordingly approved by the Chairman acting on behalf of the BoG on the same date. The learned counsel for the Institute by referring to the Rules has submitted that in certain situation, the Chairman is vested with the powers to act on behalf of the Board of Governors. After such approval, vide note dated 16.03.2018 initiated by the Registrar, the approval of the Director was sought for issuing the necessary orders of acceptance of resignation and to allow the petitioner to superannuate in terms of the resignation submitted by him. After approval of the note by the Director who had also referred to the approval of the Chairman, Board of Governors, the office order dated 16.03.2018 has been issued by the Registrar. The learned counsel submits that there is absolutely no illegality or irregularity in the aforesaid process and the writ petitions are instituted and after-thought. The petitioner had filed a rejoinder affidavit and also an additional affidavit annexing certain more documents. References has also been made to an order dated 05.06.2018 passed in WP (C) 215 (AP) 2018 which states that if the Board of Governors in question had not taken any decision with regard to resignation of the petitioner, the BoG, until further orders shall not accept the resignation of the petitioner submitted on 14th & 15th March, 2018, if not already accepted. Alleging violation of the said order, the 2nd writ petition namely WP (C) 585 (AP) 2018 has been filed.

18. Countering the argument of the petitioner, Shri R. Saikia, the learned counsel for the respondent Institute has submitted that there is no question of violation of any order of this Court. The learned counsel submits that the order dated 05.06.2018 itself was a conditional one and the record would reveal that the decision to accept the resignation was already taken by the Board of Governors and the resignation itself was accepted on 16.03.2018. Therefore, the embargo provided by the Court was not applicable. In any case, the learned counsel for the Institute submits that the issue not being

the subject matter of adjudication of the first writ petition, the 2nd writ petition is not maintainable.

19. Ms. T. Jini, the learned counsel for the petitioner submitted that the concerned Clause No. 30 of the Rules governing the parties contemplates a notice period and therefore, before expiry of such notice of one month, the resignation would not be effective. The learned counsel in support of her submissions relies upon the following case laws:-

- 1) (1984) 2 SCC 141- P.K.Ramachandra Iyer and Ors.,vs-Union of India and Ors;**
- 2) (1987) Sup SCC 228-Balram Gupta-vs-Union of India (UOI) and Anr;**
- 3) 1989 Supp (2) SCC 175- Punjab National Bank-vs-P.K. Mittal;**
- 4) (1997) 4 SCC 280-Power Finance Corporation Ltd.,-vs-Pramod Kumar Bhatia;**
- 5) (1998) 9 SCC 559- J. N. Srivastava-vs-Union of India (UOI) and Another;**
- 6) (2003) 1 SCC 701-Dr. Prabha Atri-vs-State of U.P. and Ors;**
- 7) (2005) 8 SCC 314-Srikantha S.M.-vs-Bharath Earth Movers Ltd; and**
- 8) (2009) 15 SCC 705-Shanti Sports Club and Another-vs-Union of India (UOI) and Ors.**

20. The learned counsel for the petitioner had also cited certain decisions of different High Courts in support of her submission. However, for the purpose of adjudication of this Case, the decisions of the Hon'ble Supreme Court may be taken into consideration.

21. In the case of *P.K.Ramachandra Iyer (Supra)*, the Hon'ble Apex Court was considering the issue of removal of membership of the incumbent from the post of gratitude faculty by the Academic Council. The Hon'ble Apex

Court came to a finding that the said act was *mala fide* which was deprecated by the Hon'ble Apex Court.

22. In the case of ***Balram Gupta (Supra)***, the Hon'ble Apex Court was dealing with a situation regarding submission of voluntary retirement. In fact, the Hon'ble Apex Court had interfered because unreasonable long time was taken by the administration to communicate the acceptance of the offer of the petitioner by which time, there was a change in the facts and circumstances.

23. In the case of ***Punjab National Bank (Supra)***, the resignation by one of its employee was under examination. The Hon'ble Apex Court has held that an offer of resignation can be withdrawn before the same becomes effective.

24. In the case of ***J. N. Srivastava (Supra)***, the Hon'ble Apex Court reiterated that a proposal for voluntary retirement could be withdrawn by the employee before its acceptance.

25. In the case of ***Power Finance Corporation Ltd (Supra)***, the Hon'ble Supreme Court has laid down that an offer of voluntary retirement has to be non-conditional and if certain conditions are attached, the same becomes effective only on fulfilment of such conditions.

26. In the case of ***Dr. Prabha Atri (Supra)***, the Hon'ble Apex Court was examining whether an offer of resignation was given voluntarily or not. By citing the earlier decisions of the Hon'ble Apex Court rendered in the case of ***P.K.Ramachandra Iyer (Supra)***, the Hon'ble Apex Court held that such an offer of resignation has to be unconditionally with an intention to operate as such.

27. In the case of ***Shanti Sports Club (Supra)***, the Hon'ble Apex Court by referring to the earlier decisions had held that an order unless communicated cannot be said to have taken effect.

28. There is absolutely no dispute on the proposition of law laid down by the Hon'ble Apex Court. However, it is the applicability of the ratio which needs to be examined from the facts and circumstances of the case in hand. The Hon'ble Apex Court has laid down that an offer for resignation/ voluntary retirement can be withdrawn before its acceptance. In a given situation, the Hon'ble Apex Court had also held that if such an offer is not accepted within the time stipulated, it may be a case of deemed acceptance as an employee who wishes to leave the employer out of his own volition cannot be forced to remain in service with that employer. What is of prominent importance in this case, is that, when the petitioner had submitted his first letter of resignation, it was the employer who had put a note to him to re-consider his decision. Thereafter, the petitioner was persistent to resign from his service and left with no other option, the respondent university by following the due process of law has accepted the resignation and communicated the same to the petitioner. Such communication was preceded by the approval of the Chairman/ Board of Governors. The Rules holding the field also permits that on certain situation, the Chairman can act on behalf Board of Governors.

29. What is more pertinent bringing to notice in this case is that though the petitioner alleges that he had withdrawn his offer for resignation vide letter dated 16.03.2018, the reading of the said letter of alleged withdrawal which has been annexed as Annexure-I nowhere says anything about withdrawing that too before the final acceptance and communication vide office order dated 16.03.2018. Therefore, this Court cannot come to a conclusion that the process of submitting resignation and its acceptance was not complete. The case laws cited by the learned counsel for the petitioner do not support the case of the petitioner factually as in the instant case, Annexure-I i.e. letter dated 16.03.2018 cannot be construed to be a letter of withdrawal of resignation by the petitioner.

30. This Court also finds force on the submission of Shri R. Saikia, the learned Standing counsel for the University that unless the decision of the Committee and approval of the Chairman is put to Challenge, the consequential order dated 16.03.2018 cannot be challenged. According to this Court, the decision of the Committee and the approval by the Chairman are

the foundation of the order dated 16.03.2018 and unless the foundation is challenged, the consequential action cannot be a matter of challenge. It is a settled law that while exercising jurisdiction under Article 226 of the Constitution of India, it is the decision making process which can be a matter of scrutiny and not the decision itself.

31. As regards the 2nd writ petition being WP (C) 585 (AP) 2018, this Court is of the view that the same lacks any basis as the order dated 05.06.2018 passed by this Court in WP (C) 215 (AP) 2018 which is the foundation for institution of the 2nd writ petition was, *ex-facie*, a conditional one and neither of the two conditions were in favour of the petitioner.

32. In view of the aforesaid discussions and on consideration of the rival contentions of the learned counsel, this Court is of the opinion that the present writ petitions are not fit cases for interference by exercising its extraordinary powers under Article 226 of the Constitution of India. Accordingly, the writ petitions stand dismissed.

33. At this juncture, on the question of the recovery from the petitioner, the learned standing counsel of the University submits, on instructions, that such recovery would not be done keeping in view the peculiar facts and circumstances of the case and the fact that the petitioner is no longer in the service.

With the above observation, this writ petitions stand dismissed.

JUDGE

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