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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 522/89

New Delhi this the 21st day of March, 1994.

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Dr. J. N. Sharma S/O Aman Singh,
R/O 3364, Ram Nagar,
Shahdara, Delhi-110032.

... Applicant

By Advocate Shri G. D. Gupta

Versus

1. The Administrator,
Union Territory of Delhi,
Delhi Administration,
Delhi.

2. Secretary (Education),
Delhi Administration,
Delhi.

3. The Director of Education,
Delhi Administration,
Delhi.

4. The Principal,
Nirankari Baba Gurcharan
Singh Memorial College,
Sohna (Gurgaon).

5. The Administrative Officer,
E. III, Directorate of Education,
Delhi Administration,
Delhi.

... Respondents

None for the Respondents

O R D E R (CRAL)

Hon'ble Mr. Justice V. S. Malimath -

The petitioner was a Language Teacher in the Government Middle School. He applied through proper channel for the post of Lecturer in a private aided College. He was duly selected and offered appointment. He joined the new post in the private College on 18.7.1979. On the ground that the petitioner had joined

the new post without getting himself relieved and taking permission of the authorities, a disciplinary inquiry was held against him. The same resulted in an order being passed on 16.11.1982 removing him from service with immediate effect. The appeal preferred against the said order was dismissed on 27.9.1984 vide Annexure-B to the O.A. It is in this background that the petitioner has approached this Tribunal for relief.

2. From the pleadings and the correspondence produced in this case it is clear that the petitioner left the services of the School and accepted the new appointment with the private College without completing the formalities for relinquishing the post of the Teacher. There is some material to show that after some time he left the service and handed over charge of certain articles to the Headmaster. This would give an impression that perhaps the petitioner's going away was to the knowledge of the Headmaster. When the petitioner made a request in writing that his lien be retained in the School, he was informed that it was not possible to accede to his request and that he should tender resignation from the post held by him in the School from the date he quit the job on his own. That was also the view of the authorities in the Education Department. The petitioner, however, persisted in demanding that his lien be retained and did not tender resignation as called upon by the authorities. It is in this background that the authorities were required to hold a disciplinary inquiry against the petitioner.

2. If we look at the substance of the matter, what becomes clear is that the School authorities and the Education Department were not insisting that the petitioner should continue to serve as a Teacher in the School and were willing to allow him to join his new post as a lecturer in the private College. Whereas the School authorities and the Education Department took the stand that the severance of the relationship of master and servant between the parties has to be brought about by the petitioner by tendering his resignation, the petitioner on the other hand, was not willing to adopt that course and went on insisting that he should have a lien on the job so that he could come back to that job in the event of the ad hoc appointment given in the College getting terminated by efflux of time or otherwise. It is obvious that the School authorities and the Education Department were quite willing to allow him to go and take-up another job but were not willing to keep his lien in the School as sought by the petitioner. Looked at from this angle, it would appear to be very harsh to deal with the petitioner in a manner which has been done in this case. What is clear from the conduct of the School authorities and the Education Department is that they were interested in severance of the relationship of master and servant and to ensure that the petitioner will not have any lien on the post in the School so that it could be filled up in accordance with law by appointing another incumbent in place of the petitioner. This object undoubtedly could have been achieved by the petitioner by tendering his resignation.

The counsel for the petitioner is also right in pointing out that the same result can be brought about by the petitioner seeking voluntary retirement from the date he quit the job resulting in severance of relationship of master and servant between the parties and termination of the lien of the petitioner on the job in the School. Obviously, this was not thought out either by the School authorities or by the Education Department or by the petitioner. The petitioner was obviously not interested at that time in this course being adopted because it would take away the lien by tendering resignation from the post. He has now realised the futility of his fight for retention of the lien. We are also inclined to agree with the stand taken by the School authorities and the Education Department that having regard to the circumstances of the case, the question of retaining the lien of the petitioner in the job is neither just nor reasonable. Hence, it is but proper that there is severance of the relationship of master and servant between the parties with effect from the date the petitioner quit the job and the termination of his lien also from that date.

3. The petitioner having now realised that he should have accepted the suggestion made by the department and the School authorities to tender resignation, has offered to seek voluntary retirement with effect from the date from which he quit the job in the School without any condition that his lien should be retained. This, in our opinion, is the just and reasonable course having regard to the circumstances of the case.

It is no doubt true that we are showing indulgence to the petitioner of permitting him to seek voluntary retirement at this stage after he fought in the disciplinary proceedings for what he claims was his just right. But then if the conduct of the petitioner is bonafide, we see no good reason why we should not extend equitable consideration having regard to the material facts and circumstances of this case, and not on the ground that the petitioner has a legal right to make such demand.

4. Severance of relationship between master and servant and termination of lien can also be brought by the petitioner seeking voluntary retirement instead of tendering resignation. Hence, we see no good reason why the petitioner should not be permitted to seek voluntary retirement instead of tendering resignation. We are inclined to accept the request of the petitioner having regard to the peculiar facts and circumstances of this case. We are not happy to retain the punishment imposed during the disciplinary inquiry on the petitioner.

5. Having regard to the circumstances of this case, we dispose of this application with the following directions :-

1. If the petitioner submits a representation seeking voluntary retirement w.e.f. 18.7.1979 to the School authorities, the same shall be processed and accepted.

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2. On the acceptance of the request of the petitioner for voluntary retirement, lien on the post held by him in the School would automatically stand terminated.
3. On the acceptance of the request for voluntary retirement, the impugned order imposing the penalty of removal from service and the appellate order affirming the same shall stand vacated.
4. The petitioner shall be entitled to whatever are his rights in accordance with law on the basis that he stood voluntarily retired w.e.d. 18.7.1979.
5. As this order is being made having regard to the peculiar facts and circumstances of this case on equitable considerations, we make it clear that this order shall not be treated as a precedent.
6. No costs.

Adige
(S. R. Adige)
Member (A)

Malimath
(V. S. Malimath)
Chairman

/as/