

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT INDORE
Original Application No. 738 of 2003

Gwalior, this the 21st day of June, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Ms. Sadhna Srivastav, Judicial Member

Rampratap Sharma
S/o Shri Ramgopal Sharma,
Aged 66 years, Occupation Retired Music
Teacher(Kendriya Vidyalaya Sangathan),
R/o 120, South Toda, Ganpati Temple,
June Indore, Indore(M.P.)

Applicant

(By Advocate – Shri Anil Trivedi)

V E R S U S

1. The Commissioner,
Kendriya Vidyalaya Sangathan,

Jawaharlal Nehru University,
New Mehroli Road, New Delhi-110 001.

2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bhopal (M.P.)

3. The Principal,
Kendriya Vidyalaya, Central Industrial
Security Force Campus, Barwah,
District Khargone(M.P.)

Respondents

(By Advocate – Shri Atul Shridharan)

O R D E R

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant has sought the following main reliefs:-

"(1) to declare the action of the respondents as illegal and arbitrary in not treating the period 1.7.1983 to 23.12.1988 as



continuous and without break service of the applicant and the aforesaid period being counted as continuous without break service, the fixation of pension of the applicant may kindly be ordered to be fixed and the order for modification of the pension fixation order Annexure A/11 may kindly be issued.

(2) That the applicant's service period from 1.7.1983 to 23.12.1983 should be treated as continuous and without any break and the respondents may kindly be ordered to make payment of salary, allowances, revised pension, arrears with interest thereon to the applicant and the order Annexure A/15 issued by Respondent No.1 dated 3.7.2003 may kindly be quashed.

2. The brief facts of the case are that the applicant was appointed by the respondent no.2 as Lower Division Clerk in the pay scale of Rs.260-400 in Kendriya Vidyalaya (for short 'KV'), Indore. He was appointed as a Music Teacher in the pay scale of Rs.330-560 in KV,Jabalpur. On account of his personal difficulties, he had submitted his resignation on 31.3.1983 to respondent no.2 from the post of Music Teacher, wherein it was requested to accept the said representation w.e.f 30.6.1983. Before the resignation of the applicant could be accepted, he had submitted an application on 4.5.1983 for withdrawing the resignation. The Principal, KV,Jabalpur informed the applicant on 7.5.1983 that the applicant's resignation has been accepted by the respondent no.2 on 23.4.1983 itself. Therefore, his application dated 4.5.1983 for withdrawal of resignation is not acceptable because once the resignation is accepted, it cannot be withdrawn.

2.1 The applicant has further submitted that he had submitted an application on 21.9.1983 which was not responded. He again sent a reminder on 30.1.1986. He again sent a representation on 24.8.1986 but no reply was received by the applicant from the respondents. Thereafter, he served a notice dated 15.12.1987 through his Advocate. Since no reply was received by the applicant, he moved before the Hon'ble High Court of Madhya Pradesh by filing a Misc. Petition No.1138/1988. After the aforesaid Misc. Petition was filed, the

applicant received a memorandum dated 16.12.1988 from respondent no.2 with reference to the representation submitted by the applicant dated 24.8.1986, granting him permission to withdraw the resignation from the post of Music Teacher. After receipt of this memorandum, the applicant joined his duties on 24.12.1988. After joining his duties, the applicant submitted a representation on 17.5.1989 to respondent no.2 making a request for treating the aforesaid period as continuous and without break in service, and to make payment of arrears of back wages and financial benefits. The applicant retired from service on 29.6.1996 on attaining the age of superannuation. The aforementioned Misc. Petition No.1138/1988 was dismissed vide order dated 16.5.1997 as having become infructuous. Thereafter the applicant filed a Writ Petition No.930/1998 before the Hon'ble High Court of Madhya Pradesh, which was disposed of vide order dated 25.7.2000 with a liberty to the applicant to approach this Tribunal for redressal of his grievances. Thereafter, the applicant filed O.A.No.715/2000 and this Tribunal vide order dated 21.2.2003 directed the applicant to submit a representation and the respondents were directed to consider the said representation and dispose it off by passing a speaking order. The respondent no.1 has now rejected the representation of the applicant by the impugned order dated 7/18.7.2003 (Annexure-A-15). Hence this Original Application.

3. The respondents in their reply have stated that in compliance with the directions given by this Tribunal in the aforesaid O.A.715/2000, the applicant had filed his representation dated 11.4.2003 before respondent no.1 stating that (i) he had tendered his resignation from the post of Music Teacher in the Kendriya Vidyalaya Sangathan (for short 'KVS') vide letter dated 31.3.1983 with a request to accept the same w.e.f. 30.6.1983. However, it is the applicant's case that before the date of acceptance, the applicant had vide letter dated 4.5.1983 withdrawn the said resignation letter and that in-spite of such withdrawal, the Principal of KV, Jabalpur vide



letter dated 7.5.1983 (Annexure-A-3) informed the applicant that his resignation was accepted by the respondent no.2 vide letter dated 23.4.1983, which according to the applicant was against the rules. According to the respondents, the applicant has submitted representations dated 30.1.1986, 25.8.1986 and 15.12.1987 to the respondent no.1 requesting consideration of the applicant's case on the lines of the case of Smt.Suman Singh, whose resignation was allowed to be withdrawn after seven years of her resignation who also was not granted any benefit for the period she was absent from duty. On the basis of the said representations, the applicant was permitted to withdraw his resignation and then the applicant rejoined his duties as Music Teacher at KV Khamaria on 24.12.1988. The respondents have placed reliance on Rule 26(6) of Central Civil Services (Pension)Rules,1972 which provides that "when an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service", and have submitted that on the said ground, the representation moved by the applicant was rejected.

4. The respondents have admitted that the applicant vide letter dated 4.5.1983 intimated to the respondent no.2 about the applicant's desire to withdraw the resignation letter and requested the respondent no.2 not to accept the same. The respondent no.2 vide memo dated 17.5.1983 rejected the applicant's request for withdrawing the resignation as the same has already been accepted ~~not~~ prior to his application for withdrawal. The respondents have further submitted that the memo dated 17.5.1983 "assumes seminal importance due to the fact that this was the order which gave rise to the cause of action vis-à-vis the grievance of the applicant, and the same has never been challenged before any forum or a court of law". In view of these facts,

the respondents have submitted that the present OA is without any merit and is liable to be dismissed.

5. Heard the learned counsel of both the parties.

6. The learned counsel for the applicant has argued that the applicant has submitted his request for withdrawal of the resignation before the effective date of resignation i.e. during the notice period itself. Thus, the applicant was prepared to work during this period but he was prevented from work by the respondents by not accepting his request to withdraw the resignation. Thus, the intervening period from 1.7.1983 to 23.12.1988 should be treated as duty for all purposes including the arrears of pay and he is entitled for all the consequential benefits including arrears of pay and revised pension.

7. On the other hand, the learned counsel for the respondents has submitted that the request of the applicant for acceptance of resignation was accepted vide letter dated 23.4.1983 and that order was not challenged by the applicant at any point of time before any forum and, therefore, the applicant is not entitled for the benefits of the intervening period. The learned counsel for the respondents has also submitted that the applicant vide his letter dated 25.8.1985 has prayed that he may be appointed afresh as has been done in the case of Smt. Suman Singh P.E.T. Since the applicant himself has made a request to be permitted to join his duties as a fresh appointee, he cannot now come up with the plea that the intervening period from 1983 to 1988 should be treated as continuity in service and he is entitled for all the consequential benefits for the intervening period.

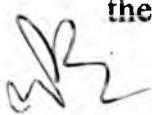
8. We have given careful consideration to the rival contentions. The undisputed facts of the case are that the applicant had sent letter of resignation dated 31.3.1983 to be effective from 30.6.1983. However, vide his letter dated 4.5.1983 (Annexure-R-3) the applicant has prayed for not to accept his aforesaid resignation and has withdrawn the said resignation. On receipt of the said letter, the Principal of KV 1STC vide his letter dated 7.5.1983 informed the

applicant that his resignation has been accepted w.e.f. 30.6.1983 by the Assistant Commissioner, KVS, Bhopal vide his letter dated 23.4.1983. The applicant submitted representations on 30.1.1986, 25.8.1986 and 15.12.1987 to Commissioner, KVS for rejoining his duties. Vide order dated 16.12.1988, the respondents permitted the applicant to withdraw his resignation and accordingly the applicant rejoined his duties on 24.12.1988. The respondents have, however, rejected the request of the applicant for treating the intervening period as the period spent on duty on the ground that the same cannot be counted under Rule 26(6) *ibid*.

9. We find that Rule 26(6) is applicable when "an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service". In this case the applicant has withdrawn his resignation before it became effective. Therefore, Rule 26(6) is not applicable in the instant case. The Govt. of India's decision No. (2)1 reproduced below Rule 26 of the CCS (Pension) Rules clearly states that "resignation is an intimation in writing sent to the competent authority by the incumbent of a post, of his intention or proposal to resign the office/post either immediately or from a future specified date". In this case the applicant has submitted his resignation on 31.3.1983 to be made effective from 30.6.1983 which is in accordance with the rules.

10. In the instant case we further find that the Government of India's decision No. 2(3) reproduced below Rule 26 of the CCS(Pension) Rules, 1972 [Swamy's Pension Compilation Thirteenth Edition, 1995] is relevant which stipulates as under :

"A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically



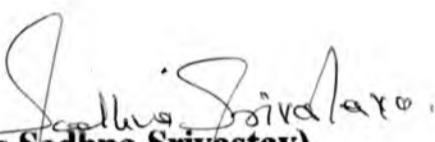
withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned".

11. In this case the request of the applicant for withdrawal of resignation was submitted by him before the effective date of resignation i.e. 30.6.1983 and, therefore, the respondents should have accepted the request of the applicant and allowed him to withdraw the resignation as provided in the aforementioned Govt. of India's instructions. We also find that the respondents have not allowed the applicant to withdraw his resignation and no reasons have been recorded and intimated to the applicant rejecting his request for withdrawal of resignation, as required in the Govt. of India's instructions reproduced above. Thus, the case of the applicant is squarely covered by the aforesaid Govt. of India's instructions and the respondents have wrongly interpreted Rule 26(6) in the case of the applicant. The Hon'ble Supreme Court in the case of Punjab National Bank Vs. P.K. Mittal, (1990)12 ATC 683 has held that the acceptance of resignation before expiry of the notice period is not permissible and it has been further held that the employee could withdraw his resignation before it became effective.

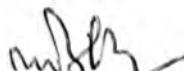
12. Thus, there was no fault on the part of the applicant for not performing the duties during the intervening period from 1983 to 1988. He wanted to work but he was prevented to work and therefore the responsibility for not permitting the applicant to work during the intervening period from 1983 to 1988 squarely lies with the respondents.



13. In the facts and circumstances of the case this Original Application is allowed. The respondents are directed to treat the applicant in service during the intervening period from 1.7.1983 to 23.12.1988 and grant him all consequential benefits including the arrears of pay and retrial dues within a period of four months from the date of communication of this order. No costs.


 (Ms. Sadhna Srivastav)

Judicial Member


 (M.P. Singh)
 Vice Chairman

पृथक्कन सं. ओ/न्या..... जबलपुर, दि.....
 प्रतिनिधि अव्योगिता:-

- (1) साधिय, उच्च न्यायालय दाय एवं न्यायालय, जबलपुर
- (2) आदेकल श्री/मिस्ट्री/क्स के काउंसल
- (3) प्रवासी श्री/मिस्ट्री/क्स के काउंसल
- (4) व्येष्यालय, दोप्रात, जबलपुर ज्ञानपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

Amrit Trivedi Advocate
 Atul Singh Dhawan
 PVR Dancer

उच्च न्यायालय

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