

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-257/2015

Reserved on : 03.12.2015.

Pronounced on : 04.12.2015.

Hon'ble Mr. Justice L.N. Mittal, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Mrs. Rekha,
(Aged about 35 years)
W/o Sh. Sunil Kumar,
Lab Technician,
Ganga Sumithra Niwas,
R/o H.No. 123, Ground Floor,
New Delhi-110049.

..... Applicant

(through Sh. M.S. Saini, Advocate)

Versus

1. Chief Administrative Officer,
Dr. BRAIRC Hospital,
All India Institute of Medical Sciences,
Establishment Department,
Ansari Nagar, New Delhi-29.
2. Administrative Officer,
Dr. BRAIRC Hospital,
All India Institute of Medical Sciences,
Establishment Department,
Ansari Nagar, New Delhi-29.
3. Head of Department, Anesthesia,
Dr. BRAIRC Hospital,
All India Institute of Medical Sciences,
Establishment Department,
Ansari Nagar, New Delhi-29.

.... Respondents

(through Sh. R.K. Gupta, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as a Lab Technician in Dr. B.R. Ambedkar Hospital of All India Institute of Medical Sciences (AIIMS) when she applied for

Child Care Leave (CCL) to take care of her new born child. She was initially sanctioned leave for 75 days w.e.f. 16.02.2012 to 30.04.2012. According to her, she applied for further extension of leave but the same was declined. However, she continued to apply for extension of leave from time to time vide her applications dated 18.06.2012, 10.07.2012, 26.07.2012, 31.08.2012 and finally on 01.11.2012 to extend her leave upto 30.11.2012. According to her, no response to her applications was received. On the contrary, she received a charge memo dated 22.01.2013 in which it was alleged that she was unauthorizedly absent after taking 44 days of CCL upto 31.03.2012. It was also stated in the Memo that she was asked to join duty vide communication dated 25.05.2012 and reminded to do the same vide communications dated 13.06.2012 and 06.07.2012. It was also mentioned that she was issued a show cause notice on 19.07.2012. The applicant has further stated that due to her own problems and on receiving the charge memo she tendered her resignation on 29.01.2013. However, nothing was heard from the respondents. On 15.09.2014, when circumstances improved, she wrote to the respondents requesting them to permit her to withdraw her resignation and to join duty. The respondents, however, vide impugned communication dated 05.11.2014 informed her that her resignation had already been accepted by the competent authority and under the rules she cannot now be allowed to withdraw the same. She has, therefore, filed this O.A. seeking the following relief:-

“(a) allow the O.A. and quash & set aside the impugned Orders **(Annexure A-1 (Colly))**;

(b) direct the respondents to allow the applicant to join her duties with effect from 15-09-2014, further thereby regularizing the period of absence from 1-05-2012 as leave due permissible under the rules;

(c) to award costs on the respondents in favour of the Applicant;

(d) to pass any other order which this Hon'ble Tribunal may deem fit & appropriate.”

2. The applicant's resignation was accepted by communication dated 02.05.2013 (page-17 of the paper-book). The aforesaid communication reads as follows:-

"Subject :- Resignation from service Ms. Rekha, Lab. Technician acceptance thereof:-

The resignation from services tendered by Ms. Rekha, Lab. Technician has been accepted by the Competent Authority w.e.f. 16.2.2012 from the date of proceeding on leave and accordingly she is required to deposit a sum of Rs.84,458/- (Eighty Four Thousand Four Hundred Fifty Eight) only, on account of unexpired period of notice.

She is therefore required to return the EHS Card, Identity Card, Library Card and Name Plate issued to her if any.

She may therefore be relieved of her duties and accordingly a "No Demand Certificate" be issued.

2.1 The applicant has submitted that the respondents had admittedly initiated disciplinary proceedings against her and could not have accepted the resignation when the same was pending. The applicant had initially applied 75 days of CCL, which was sanctioned w.e.f. 16.02.2012 to 30.04.2014, yet the resignation of the applicant has been accepted retrospectively w.e.f. 16.02.2012. This despite the fact that the competent authority had itself sanctioned her leave upto 30.04.2012. The applicant has also submitted that the CCL asked for by her was due to her under rules. Her absence from duty was not wilful but due to circumstances beyond her control. Therefore, issuance of charge sheet against her was nothing but harassment. Not granting leave to her was violative of Articles 14, 16 & 39 of the Constitution and was indicative of vindictiveness on the part of the respondents. It was under these compelling circumstances that the applicant was forced to resign from her job.

3. In their reply, the respondents have submitted that the applicant initially joined service in AIIMS on 26.06.2004 as a Lab Attendant. On 27.08.2007, she was promoted to the post of Lab Technician. On her request, she was granted CCL w.e.f. 16.02.2012 to 30.03.2012 for 44 days vide communication dated 04.04.2012. On 16.04.2012, she applied for extension of CCL till 28.04.2012 but the same was not granted to her. On 23.05.2012, a report regarding her absence from duty was received from the Head of Unit and on 25.05.2012 she was called to attend duty. On 29.05.2012, in response to the aforesaid call for duty she again requested for extension of CCL upto 30.06.2012. However, she was reminded to join duty on 13.06.2012. She, in response submitted another application on 18.06.2012 requesting for extension of CCL upto 30.06.2012. On 01.07.2012, she again applied for CCL upto 30.07.2012. On 06.07.2012, a second reminder was issued to her to attend duty. She, however, continued to request for extension of CCL upto 30.07.2012. On 19.07.2012, a show cause notice was issued to her for not joining duty but in response to the same, she again requested for extension of CCL upto 30.09.2012. On 01.11.2012, Director, AIIMS approved initiation of disciplinary action against her under CCS(CCA) Rules, 1964. On 22.01.2013, a charge sheet was issued to her for unauthorized absence. In response to the charge sheet, she tendered her resignation from the job due to personal reasons. This was accepted by the Competent Authority on 02.05.2013 w.e.f. 16.02.2012. Thereafter, on 15.09.2014, she requested for permission to withdraw her resignation but this was rejected on 05.11.2014. Learned counsel for the respondents argued that the applicant could not have demanded sanction of CCL to her as a matter of right. Considering the pressure of work in AIIMS, the Competent Authority had

declined to extend CCL after initially sanctioning the same for 75 days. Since she remained on unauthorized absence despite issuance of several reminders and show cause notice, a charge sheet was issued to her on 22.01.2013. She submitted her resignation on 29.01.2013, which was accepted. Her prayer for withdrawal of resignation cannot be considered since Rules do not permit the same once the resignation had been accepted.

4. We have heard both sides and have perused the material on record. Learned counsel for the applicant produced a copy of Central Civil Services (Leave) (Amendment) Rules, 2009. By Clause-14 of the same, Rule-43-C was inserted in the Leave Rules providing for 730 days of CCL to women government servant having children of below 18 years of age. Learned counsel has relied on the judgment of Andhra High Court in the case of **Smt. K. Nagarathnam Vs. Hindustan Fluorocarbons Ltd.** (WP No. 9697/2000) dated 27.06.2012, in Para-17 of which, it has been observed that a government servant has a right to withdraw his resignation any time before the actual cessation of master and servant relationship between him and the organisation he is serving in. He has also relied on the judgment of Hon'ble High Court of Delhi in the case of **Secretary, Home Department Vs. Sanjay Pandey**, 2007(3) SLJ 68 in which it has been observed that a resignation letter can be withdrawn by the concerned employee at any time before it was accepted. In Para-12 of the same order, it has also been observed that acceptance of resignation from a retrospective date was in violation, illegal and contrary to law laid down by Hon'ble Supreme Court. Learned counsel also relied on the judgment of Hon'ble Supreme Court in the case of **Kakali Ghosh Vs. Chief Secretary, Andaman & Nicobar Administration and Ors.**, (Civil Appeal No. 4506/2014) dated 15.04.2014, in Para-17 of which it has been observed that since the respondents have not shown

any reason for refusing 730 days of continuous leave, the ground taken by them cannot be accepted. On the basis of above citations, learned counsel argued that firstly the action of the respondents in not sanctioning of the CCL due to the applicant was violative of the Rules since no reasons for declining the same were given. Secondly, the acceptance of resignation was unsustainable since it was accepted retrospectively w.e.f. 16.02.2012. Moreover, the respondents themselves had sanctioned CCL to the applicant upto 30.04.2012. Hence, acceptance of resignation from a date prior to that was bad in law. Learned counsel further submitted that the applicant had requested for withdrawal of resignation on 15.09.2014. Since acceptance of resignation of the applicant by the respondents was not in order for reasons stated above, it would follow that on 15.09.2014 when the applicant withdrew her resignation, the master servant relationship had not ceased. Thus, the applicant had every right to withdraw her resignation. In any case, it is an admitted position that the applicant had been charge sheeted on 22.01.2013 and on the date on which the resignation was purportedly accepted by the respondents, the aforesaid charge sheet was pending. Since under Rules resignation of an employee cannot be accepted during pendency of disciplinary proceedings, the communication dated 02.05.2013 becomes unsustainable for this reason as well.

5. On perusal of the record, we find that several errors have been committed by the respondents. First of all they sanctioned CCL to the applicant for 75 days w.e.f. 16.02.2012 to 30.04.2012 but refused to extend the same without assigning any reason despite the fact that the leave extension asked for by the applicant was due to her. Secondly, when they charge sheeted her, in the charge sheet they have mentioned that the applicant was on sanctioned leave only upto 31.03.2012 and was on unauthorized absence thereafter. This

was factually incorrect since the communication dated 13.06.2012 clearly says that the applicant had been sanctioned 75 days CCL upto 30.04.2012. Finally, when the respondents accepted applicant's resignation, they did so from 16.02.2012 despite the fact that they had themselves sanctioned leave to her upto 30.04.2012. Moreover, the acceptance of resignation was done on 02.05.2013 but was made effective retrospectively from 16.02.2012, which was clearly impermissible under law.

6. On the basis of above arguments, we are of the opinion that Communication dated 02.05.2013 by which the resignation of the applicant was purportedly accepted by the respondents is unsustainable in law and is therefore quashed and set aside. Consequently, the Communication 05.11.2014 by which request of the applicant for withdrawal of resignation was rejected on the ground that her resignation had already been accepted by the Competent Authority and that withdrawal of resignation after such acceptance was impermissible under Rules, also becomes unsustainable and is set aside. As a consequence of setting aside of the above two Communications, it would follow that the applicant was still in service on 15.09.2014 and when she applied for withdrawal of her resignation. As per case law cited above, as long as master and servant relationship had not ceased, the employee is at liberty to withdraw his resignation at any time. In view of the aforesaid, the respondents are bound to accept her request for withdrawal of her resignation and she has to be taken back on duty. We, therefore, direct that the applicant be taken back on duty within four weeks from the date of receipt of a certified copy of this order. The respondents shall pass separate orders as to how the period commencing from 01.05.2012 (CCL upto 30.04.2012 has already been sanctioned) till her date of joining be treated. The respondents shall also be at

liberty to proceed further with the charge sheet dated 22.01.2013 issued to the applicant, if so advised. Accordingly, the O.A. is disposed of. No costs.

(Shekhar Agarwal)
Member (A)

(L.N. Mittal)
Member(J)

/Vinita/

