

**Court No. - 6**

**Case :-** WRIT - A No. - 4813 of 2021

**Petitioner :-** Dr. Sonal Sachadev Aurora

**Respondent :-** State Of U.P.Thru.Addl.Chief Prin.Secy.Medical Educat. And Ors

**Counsel for Petitioner :-** Hari Prasad Gupta

**Counsel for Respondent :-** C.S.C.

**Hon'ble Vivek Chaudhary,J.**

1. Heard learned counsel for petitioner and learned Standing Counsel for the State.

2. Despite the best efforts of all still, how a working woman can be harassed even in this era is reflected in the facts of the present case. Petitioner, a doctor by qualification, after getting selected by U.P. Public Service Commission, in furtherance of appointment letter dated 21.12.2011, joined as lecturer at the Baba Saheb Bheem Rao Ambedkar Medical College and Allied Hospital, Kannauj on 06.01.2012. On being blessed with a child, she took child care leave from 23.01.2016 to 20.07.2016 i.e. for a period of 180 days. The same was sanctioned by the principal of the medical college on 25.02.2016. After the child care leave, petitioner intended to join but due to illness of the child was unable to resume her duties. On 19.07.2016 she again requested for extension of child care leave for another period of six months. The principal of the medical college by communication dated 02.08.2016 informed the petitioner that child care leave cannot be sanctioned for more than 180 days and required the petitioner to join within two days. Petitioner by her communication dated 22.08.2016 again requested for grant of leave. The principal did not agree to the request and by

letter dated 05.09.2016 and 22.10.2016 required the petitioner to join her duties. She could not join due to her given circumstances and necessity to look-after the child. On 08.11.2016 she again wrote a letter requesting for grant of any type of leave as the child, due to certain circumstances, was requiring constant care. The principal by his letter dated 12.11.2016, looking into the circumstances of the petitioner, informed the petitioner that only leave without pay can be sanctioned to her. Therefore, petitioner by her letter dated 05.12.2016 requested for grant of leave without pay for the period of absence from duty. Since petitioner was unable to join as the child was still requiring continuous care, she resigned by letter dated 01.05.2018. Till the date of resignation, neither any departmental proceeding against the petitioner were initiated nor she was punished by any order. The resignation was sent both, to the principal of the college as well as to the Director General Medical Education and Training, U.P., Lucknow. On 29.05.2018, the principal of the medical college also recommended the resignation to the Director General. By letter dated 24.05.2018 the government sought details upon the resignation of the petitioner from the Director General. The principal of the college replied the same and recommended that in the given circumstances resignation of the petitioner should be accepted. He also informed that no dues of the department are pending against petitioner and as per the record of his office no departmental inquiry is pending against her. As no reply to the resignation of petitioner was given, hence, on 25.02.2019, petitioner again wrote a letter to the principal for grant of leave without pay. Surprisingly, in February, 2019, an inquiry officer was nominated to hold a preliminary inquiry with regard to absence from duty of the petitioner. Petitioner submitted her reply to the letter written to her in the said preliminary inquiry. On 14.11.2019, a charge-sheet was issued to the petitioner. Petitioner submitted her reply to the charge-sheet and on 07.02.2020 again requested for acceptance of her resignation letter. Thereafter, without fixing any date, time and place in the inquiry and in fact without conducting any type of inquiry and without taking

any decision upon resignation of the petitioner, the State Government passed order dated 06.01.2021 terminating the petitioner from services. Hence, petitioner has approached this Court challenging the same.

3. The facts of the case clearly indicates that petitioner, a mother was facing difficulty in handling both, a child in need of care as well as her job with the State Government. In the given circumstances, initially she applied for leave as may be granted to her under the service rules and finding that the same is not possible she even resigned on 01.05.2018. The resignation was kept pending for as good as two years and a termination order is passed on 06.01.2021 only. Besides the entire inquiry on the face of it is illegal inasmuch as no date, time and place was fixed in the inquiry and no evidence was submitted to prove charge, the very conduct of the respondents is arbitrary and denies a fair play to a working woman. Any working woman, more particularly, a mother is required to be accommodated as far as possible. Presuming the worst, it was not possible for the department to grant any further leave to the petitioner, including leave without pay, suffice would have been in the given circumstances to accept the resignation of the petitioner. This Court fails to understand as to what purpose is achieved by the respondents by keeping the petitioner in service from 01.05.2018 i.e. from the date of resignation till 06.01.2021 i.e. the date on which she was terminated. During the said period, they could not appoint any other person in place of petitioner, therefore, work of the college continued to suffer and the public at large was in no manner benefited. The entire issue could have been best served by accepting her resignation. The petitioner had a right to resign on 01.05.2018 and her resignation had to be accepted as till that date neither any departmental inquiry was initiated against her nor there was any other reason available to the respondents for not accepting the resignation. Even her immediate superior administrative authority, i.e., the principal of the college, had recommended for acceptance of her resignation without any objection.

4. The Supreme Court in case of "**State of A.P. Vs. Chitra Venkata Rao**", reported in **[1975 (2) SCC 557]** has detailed the power of court while considering challenge to a departmental proceedings. Relevant portion of paragraph-21 of the said judgment reads:-

*"21.....The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. **The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion....."***  
*(emphasis added)*

5. Learned Standing Counsel also could not place any reason for not accepting the resignation of the petitioner.

6. Therefore, the petitioner in the given facts and circumstances is treated arbitrarily by the respondents. The respondents were bound to accept the resignation of petitioner and, there was no necessity to conduct any inquiry against the petitioner. Even otherwise the inquiry conducted without fixing any date, time, and place and evidence itself is vitiated.

7. In view of the aforesaid, the termination order dated 06.01.2021 is quashed. The respondents shall treat the petitioner as having resigned from her post w.e.f. 01.05.2018 and shall grant her benefit which she is entitled to by treating her to be in service till 01.05.2018. Such an exercise shall be conducted expeditiously, say in not more than two months from the date a copy of this order is placed before respondent no.2 Director, Medical Education & Training, 6th Floor, Jawahar Bhawan, Lucknow.

8. With the aforesaid, the writ petition is ***allowed***.

**Order Date :-** 8.3.2022

Arti/-

**(Vivek Chaudhary,J.)**