

Neutral Citation No. - 2024:AHC:40783

AFR

Reserved

Court No. - 48

Case :- WRIT - A No. - 608 of 2022

Petitioner :- Poornima Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Kushmondeya Shahi, Tanuj Shahi

Counsel for Respondent :- Bhanu Pratap Singh
Kachhawah, C.S.C., Sanjay Kumar Srivastava

Hon'ble Manjive Shukla, J.

1. Heard Sri Tanuj Shahi, learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1 and 3 as well as learned counsel appearing for the Respondents No.2, 4 and 5.

2. Petitioner has filed this writ petition challenging therein the order dated 31.3.2021 passed by the District Basic Education Officer, Etah whereby her resignation from the post of Assistant Teacher has been accepted.

3. Brief facts of the case are that petitioner appeared in the selection for appointment on the posts of Assistant Teachers of Junior Basic Schools run by the U.P. Basic Education Board. Petitioner was selected and thereafter was issued an appointment order on 5.12.2020. Pursuant to appointment order dated 5.12.2020, petitioner was allowed to join in the office of District Basic Education Officer, Etah and thereafter vide order dated 21.12.2020 she was directed to work on the post of Assistant Teacher in Junior Basic School Lalpur, Block Awagarh, District Etah.

4. Petitioner submitted her joining on the post of Assistant

Teacher in Junior Basic School Lalpur, Block Awagarh, District Etah on 23.12.2020 and thereafter, the District Basic Education Officer, Etah passed another order on 29.1.2021 whereby petitioner was posted as Assistant Teacher in Junior Basic School Mirzapur, Block Awagarh, District Etah. Petitioner submitted her joining in Junior Basic School Mirzapur, Block Awagarh, District Etah on 3.2.2021. Petitioner being unmarried female candidate was having some difficulty to reach the aforesaid school as the same was situated at a distant place therefore, she requested the District Basic Education Officer, Etah for changing her posting to another school. Petitioner has alleged in the writ petition that instead of considering her request, one Mr. Vikrant Pratap Singh posted as clerk in the office of District Basic Education Officer, Etah provided a printed letter and affidavit to the petitioner and asked her to sign the said papers with an assurance that in the next counselling on the basis of such papers her posting may be changed.

5. Petitioner under impression given by the aforesaid Mr. Vikrant Pratap Singh signed the aforesaid letter and affidavit and submitted in the office of District Basic Education Officer, Etah on 5.2.2021. Thereafter, she realized that the contents of the letter and affidavit which she submitted on 5.2.2021 amount to her resignation from the post of Assistant Teacher.

6. Petitioner immediately after realizing her mistake submitted application on 5.2.2021 itself to the District Basic Education Officer, Etah whereby she withdrew her resignation dated 5.2.2021. Petitioner also submitted

application to District Magistrate, Etah on 8.2.2021 through registered post whereby she informed about the entire case to the District Magistrate, Etah and requested him to help her out. As per online postal tracking report, the aforesaid letter dated 8.2.2021 has been delivered in the office of District Magistrate, Etah on 15.2.2021.

7. Later on, petitioner again submitted an application on 11.2.2021 to the District Basic Education Officer, Etah through registered post whereby she requested that her resignation dated 5.2.2021 may not be accepted as she does not want to resign from her post. Petitioner in the application dated 11.2.2021 further stated that she was under depression and thus, tendered resignation on 5.2.2021 but now she does not intend to resign from her post. As per online postal tracking report, the aforesaid letter dated 11.2.2021 has been delivered in the office of District Basic Education Officer, Etah on 17.2.2021. The application dated 11.2.2021 and online postal tracking report have been annexed at page-34 and 35 of the writ petition.

8. Since no action was taken by the District Basic Education Officer, Etah therefore, petitioner also submitted representations to the higher authorities.

9. To the utter dismay of the petitioner, she was served the copy of the order dated 31.3.2021 vide communication dated 3.6.2021 sent by the Block Education Officer whereby petitioner for the first time came to know that her resignation from the post of Assistant Teacher dated 5.2.2021 has been accepted by the District Basic Education Officer, Etah vide order dated 31.3.2021.

10. Petitioner in her writ petition has taken various grounds to challenge the order dated 31.3.2021 including that the order accepting resignation of the petitioner has been passed in the month of June but it has been dated as 31.3.2021. Her main ground to challenge the order dated 31.3.2021 is that once petitioner withdrew her resignation dated 5.2.2021 by submitting applications dated 5.2.201 and 11.2.2021, the same could not have been accepted.

11. Learned counsel appearing for the petitioner has vehemently argued that it is well settled proposition of law through catena of judgments of this court as well as of Hon'ble Supreme Court that resignation can be withdrawn at any time before its acceptance therefore, since petitioner withdrew her resignation by submitting applications on 5.2.2021 and 11.2.2021, there was no occasion for the District Basic Education Officer, Etah to accept her resignation on 31.3.2021. Learned counsel appearing for the petitioner has further argued that since order dated 31.3.2021 has been passed after petitioner withdrew her resignation by submitting applications on 5.2.2021 and 11.2.2021, the order dated 31.3.2021 is absolutely unsustainable in the eyes of law.

12. Learned counsel appearing for the petitioner has relied on Rule 7 of the Uttar Pradesh Government Servants Resignation Rules, 2000 wherein it has been categorically provided that a government servant may withdraw his resignation by making a request in writing to the appointing authority before its acceptance.

13. Reliance has also been placed by the learned counsel

appearing for the petitioner on the judgment rendered by the Division Bench of this Court in the case of **Lalit Mohan Upadhyay Vs. The Principal, Kumaun Engineering College, Dwarhat, District Almora and others, (2000) 1 UPLBEC 130**, judgment and order dated 12.1.2021 passed by learned Single Judge of this Court in **Writ Petition No.12263 (S/S) of 2020, Pravesh Kumar Pal Vs. State of U.P. and others** and judgment and order dated 30.5.2016 rendered by this Court in the case of **Dinesh Prasad Chaurasia Vs. Managing Director and others, 2016 (6) ADJ 550**. Learned counsel appearing for the petitioner on the strength of aforesaid judgments has submitted before this Court that it is well settled proposition of law that resignation tendered by an employee can be withdrawn at any time before its acceptance and in the case of petitioner, she withdrew her resignation dated 5.2.2021 by submitting applications dated 5.2.2021 and 11.2.2021 therefore, the order dated 31.3.2021 accepting petitioner's resignation is absolutely unsustainable in the eyes of law.

14. Learned counsel appearing for the petitioner has thus concluded his arguments and has submitted that order dated 31.3.2021 is liable to be quashed by this Court and the writ petition filed by the petitioner deserves to be allowed.

15. On the other hand, learned counsel appearing for the Respondents No.2, 4 and 5 has submitted that petitioner tendered her resignation on 5.2.2021 and same has been accepted by the District Basic Education Officer, Etah on 31.3.2021. It has further been submitted that so far as applications dated 5.2.2021 and 11.2.2021 submitted by the

petitioner are concerned, the contents of paragraphs 10 to 12 of the writ petition have been denied in paragraph 7 of the counter affidavit.

16. Learned counsel appearing for the Respondents No.2, 4 and 5 has further submitted that petitioner was not willing to work in the school in which she was posted therefore, she willingly submitted the resignation from her post and that has been duly accepted by the District Basic Education Officer, Etah vide order dated 31.3.2021, which is perfectly in accordance with law and does not call for any interference by this Court.

17. Learned counsel appearing for the Respondents No.2, 4 and 5 has thus concluded his arguments and has submitted that writ petition filed by the petitioner being absolutely misconceived is liable to be dismissed by this Court.

18. I have considered the rival arguments advanced by the learned counsels appearing for the parties and I find that petitioner was appointed on the post of Assistant Teacher in Junior Basic School at District Etah on 5.12.2020 and thereafter, she tendered her resignation on 5.2.2021. This court finds that petitioner in paragraphs 10 and 11 of the writ petition has categorically stated that she submitted applications on 5.2.2021 and 11.2.2021 to the District Basic Education Officer, Etah whereby she withdrew her resignation. The application dated 5.2.2021 was given in the office of District Basic Education Officer, Etah and it bears endorsement of receipt by some official working in the office. The application dated 11.2.2021 has been sent through registered post and online postal tracking report has also been

annexed to show that the said application has been delivered in the office of District Basic Education Officer, Etah. Respondent No.4 has filed counter affidavit in which contents of paragraphs 10 to 12 of the writ petition have been denied and it has been stated that petitioner has never submitted any application for cancellation of her resignation, before 31.3.2021.

19. Petitioner has filed rejoinder affidavit to the aforesaid counter affidavit and has reiterated her stand that she submitted applications on 5.2.2021 and 11.2.2021 whereby she withdrew her resignation.

20. This court is of the view that once petitioner in her writ petition has stated that she has submitted one application on 5.2.2021 and another on 11.2.2021 and has annexed online postal tracking report to show that application dated 11.2.2021 has been delivered in the office of the District Basic Education Officer, Etah, bald denial made in the counter affidavit filed by Respondent No.4 cannot be accepted.

21. This court finds that petitioner submitted her resignation on 5.2.2021 and thereafter she has withdrawn the said resignation by submitting two applications before the District Basic Education Officer, Etah, first personally in his office on 5.2.2021 itself and second, through registered post on 11.2.2021.

22. The Uttar Pradesh Government Servants Resignation Rules, 2000 have been framed to deal with the matters of resignation from service by government servants. Rules 6 and 7 are relevant for the purpose of adjudication of the present

case therefore, Rules 6 and 7 of the Rules of 2000 are extracted as under:-

"6. Termination of service.-(1) The services of the said Government servant shall stand terminated with effect from the date of issue of order of the acceptance of his resignation or from such future date as mentioned therein.

7. Withdrawal of Resignation.- The Government servant may withdraw his resignation by making a request in writing to the appointing authority only before the date of termination of his services as provided in rule 6 of these rules."

23. On conjoint reading of Rules 6 and 7 of the Rules of 2000, this Court is of the categorical view that resignation tendered by the government servant can be withdrawn at any time before its acceptance.

24. The Division Bench of this Court in the case of **Lalit Mohan Upadhyay Vs. The Principal, Kumaun Engineering College, Dwarhat, District Almora and others, (2000) 1 UPLBEC 130** has categorically held that resignation tendered by the employee can be withdrawn before its acceptance by the employer. Relevant paragraphs of the judgment rendered in the case of *Lalit Mohan Upadhyay (supra)* are extracted as under:-

"5. In our opinion, the Principal had no authority or jurisdiction to accept the petitioner's resignation as the petitioner's Appointing Authority is the Board of Governors and hence only the Board of Governors can accept his resignation. In fact, the Principal has recognised this legal position as he forwarded the papers to the Board, but there was no acceptance by the Board of Governors and instead it was the State Government which accepted the resignation on 17.1.1994 i.e.. long after the petitioner had withdrawn his resignation.

6. In Union of India v. Copal Chand Mishra. AIR 1978 SC 694. it has been held that resignation can be withdrawn at any time before it becomes effective. In the case of employees for whom acceptance of resignation is necessary, obviously the resignation becomes effective only when it is accepted. Similarly in M/s. J. K. Cotton Spinning & Weaving Mills Co. Ltd.. Kanpur v. State of U. P. and others, AIR 1990 SC 1808, it has been held that resignation is not complete until it is accepted by the proper authority. The same view has been taken in several other decisions. In the present case, since the petitioner's resignation was withdrawn before it was accepted, hence in our opinion the withdrawal of the resignation was valid and acceptance of the resignation was illegal.

7. Hence we set aside the Impugned order dated 27.1.1994 (Annexure-22 to the writ petition) and hold that the petitioner validly withdrew his resignation. The petitioner will be reinstated in service within six weeks from

the date of production of a certified copy of this order before the authority concerned and shall be treated in continuous service as if his service had never come to an end. He will get seniority and all consequential benefits and also arrears within three months from the date of production of a certified copy of this order. No order as to costs."

25. This Court vide order dated 12.1.2021 passed in **Writ Petition No.12263 (S/S) of 2020, Pravesh Kumar Pal Vs. State of U.P. and others**, has held in the following terms:-

"After hearing learned counsel for the parties, it is found that the petitioner had withdrawn his resignation on 3.10.2018 prior to the passing of the impugned order dated 9.10.2018, which is not in dispute in the counter affidavit filed on behalf of Respondent Nos.2 to 4. The Rule 7 of the Rules 2000 is very clear that the application for withdrawal of resignation is to be prior to the acceptance of the resignation. In the present case the resignation was accepted by the impugned order dated 9.10.2018 and the application was preferred by the petitioner on 3.10.2018.

Learned counsel for the respondents is not in a position to dispute the legal provision i.e. Rule 7 of the Rules 2000 and its applicability in the present case. The arguments raised by the learned counsel for the respondents that the knowledge of the application for withdrawal of the resignation submitted by the petitioner is only after the passing of the impugned order. At the same time in the counter affidavit it is not disputed that the petitioner had made an application for withdrawal of the resignation on 3.10.2018 and the office had taken time to place the same before the Competent Authority i.e. Respondent No.2. However, the fact is that the resignation was withdrawn before its acceptance. The petitioner would not be responsible for delay on the part of the office for placing it before Respondent No.2 late. The case of the petitioner is covered by the judgement of this Court dated 31.08.2017 passed in Writ-A No.- 47852 of 2000 (Tanweer Alam vs. U.P. Cooperative Spinning Mills Fed. Ltd & Others) (Supra). "

26. This court has considered the issue of withdrawal of resignation before its acceptance in the case of **Dinesh Prasad Chaurasia Vs. Managing Director and others, 2016 (6) ADJ 550** and has held that resignation tendered by an employee can be withdrawn at any time before its acceptance. Relevant paragraphs of the judgment rendered in the case of *Dinesh Prasad Chaurasia (supra)* are extracted as under:-

10. So far as legal proposition with regard to resignation and its acceptance are concerned, the same is settled. Clause 23 of the U.P. Forest Corporation General Service Regulation, 1985, which has been extracted above, provides that resignation will not become effective till it is accepted by the competent authority. The resignation submitted by petitioner on 28.10.1986 remained on paper, and was not accepted till it was withdrawn on 28.2.1996. It is not in dispute that letter dated 28.2.1996 was duly served.

Once the resignation was withdrawn by petitioner prior to its acceptance by the competent authority, it was not open for the respondents to have accepted the same, vide order impugned dated 30th December, 1998. This is particularly so, as the offer on part of petitioner to sever the contract of employment was not subsisting on the date when it was accepted. The acceptance of resignation, therefore, was incompetent. Even otherwise, law is settled that resignation can be accepted, so long as it is not withdrawn. The observation made by the Apex Court in para-22 of Raj Narain (supra) reads as under:-

"22. For the reasons mentioned above, we think that the learned judge was not justified in striking out Issue No. 1. On the other hand, he should have reframed that issue, as mentioned earlier. Before leaving- this question, it is necessary to mention one other fact. Yashpal Kapur appears to have tendered his resignation to the office he was holding on January 13, 1971. The certified copy of the notification produced shows that the President accepted his resignation on the 25th of January '71 and the same was gazetted on February 6, 1971. The order of the President shows that he accepted Yashpal Kapur's resignation with effect from January 14, 1971. The learned trial judge without examining the true effect of the President's order has abruptly come to the conclusion that Yashpal Kapur's resignation became effective as from January 14, 1971. This conclusion, in our opinion, requires re examination. It is necessary to examine whether a government servant's resignation can be accepted with effect from an earlier date. At any rate whether such an acceptance has any validity in considering a corrupt practice under S. 123(7). If such a course is permissible, it might enable the government to defeat the mandate of S. 123(7). The question as to when a government servant's resignation becomes effective came up for consideration by this Court in Raj Kumar v. Union of India(1). Therein this Court ruled that when a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Hence the question as to when Yashpal Kapur's resignation became effective will have to be examined with reference to his conditions of service. This examination having nor been done, the conclusion of the learned trial judge that it became effective on January 14, 1971, has to be ignored."

11. Reliance has also been placed upon a judgment of the Apex Court in Balram Gupta Vs. Union of India and another, reported in AIR 1987 SC 2354. Paras-10 to 13 of the judgment, which are relevant for the purpose, are reproduced:-

"10. This question arose in the case of one Shri Satish Chandra, then a Judge in the High Court of Allahabad in Union of India v. Shri Gopal Chandra Misra and others, [1978] 3 S.C.R. 12. There the second respondent Shri Satish Chandra wrote to the President of India, on May 7, 1977, intimating his resignation from the office of Judge of the Allahabad High Court, with effect from 1st of August, 1977. On July 15, 1977, he again wrote to the President, revoking his earlier communication, and commenced deciding matters in Court from July 16, 1977. On 1st of August, 1977 the first respondent Shri Misra, an advocate of the said High Court filed a writ petition under Article 226 of the Constitution contending that the resignation of Shri Satish Chandra having been duly communicated to the President of India in accordance with Article 217(1) Proviso (a) of the Constitution was final and

irrevocable, and that the continuance of said Shri Satish Chandra as a Judge of the High Court there- after, was an usurpation of public office. The High Court allowed the petition holding that Shri Satish Chandra was not competent to revoke his resignation letter. On appeal this Court held that the resigning office necessarily involved relinquishment of the office which implied cessation or termination of, or cutting as under from the office. A complete and effective act of resigning office is one which severs the link of the resigner with his office and terminates its tenure. In the context of Article 217(1) this assumes the character of a decisive test, because the expression "resign his office" occurs in a proviso which excepts or qualifies the substantive clause fixing the office tenure of a judge upto the age of 62 years. It was further reiterated that in the absence of a legal, contractual or constitutional bar, an intimation in writing sent to the appropriate authority by an incumbent, of his intention or proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective i.e., before it effects termination of the tenure of the office/post, or employment. This general rule equally applies to Government servants and constitutional functionaries, this Court reiterated. The other peculiar essence of Article 2 17 which was discussed need not detain us in the facts of this case. On the principle of general law the offer to relinquishment could have been withdrawn by the appellant before the date it became effective if sub-rule (4) of Rule 48-A was not there.

11. In Air India etc. etc. v. Nergesh Meerza & Ors. etc. etc., [1982] 1 S.C.R. 438, there the Court struck down certain provisions of Air India Employees Service Regulations. We are not concerned with the actual controversy. But the Court reiterated that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. On behalf of the respondent it was submitted that a Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in Raj Kumar v. Union of India, [1968] 3 S.C.R. 857. There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether subrule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in

our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason. The guidelines indicated are as follows:

"(2) A question has been raised whether a Government servant who has given to the appropriate authority notice of retirement under the para 2(2) above has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such right. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn if so desired for adequate reasons, provided the Government servant concerned is agreeable."

12. In this case the guidelines are that ordinarily permission should not be granted unless the Officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or management was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission, by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

12. In *Power Finance Corporation Ltd. Vs. Parmod Kumar Bhatia*, reported in 1997 (4) SCC 280, following observations have been made in paragraph-7:-

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

13. A Constitution Bench in *Union of India Vs. Gopal Chandra Misra and others*, reported in AIR 1978 SC 694, has been pleased to make following observations:-

"It will be repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor..... If he chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can, at any time before arrival of prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

14. In view of the settled legal position, as well as considering the fact that in terms of applicable service rules, resignation was to become effective only from the date of its acceptance by the competent authority, the decision taken by the respondents to accept resignation from the date of its tendering, after it had been withdrawn, is illegal and arbitrary. The order impugned, consequently, cannot be sustained.

15. Having reached the conclusion aforesaid, the next question, which arises for consideration, is as to what relief is liable to be granted to the petitioner. Law by now is well settled that back wages cannot be granted, as a matter of routine. Learned counsel for the petitioner has placed various decisions on this aspect of the matter. In *Shambhu Murari Sinha Vs. Project and Development India* and another, reported in 2000 (86) FLR 206, it has been observed that in such circumstances, the employee concerned would be entitled to continue with all consequential benefits. Para-4 of the judgment is reproduced:-

"4. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent-management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, *Balram Gupta vs. Union of India & Anr.* 1987 (Supp.) SCC 228; *J.N. Srivastava vs. Union of India & Anr.* (1998) 9 SCC 559 and *Power Finance Corporation Ltd. vs.*

Pramod Kumar Bhatia (1997) 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

16. In *Managing Director, Orissa State Handloom Weavers' Cooperative Society Ltd. Vs. Satyanarayan Pattnaik and another*, reported in 2014 (3) SCC 218, following observations have been made in para-4 of the judgment, awarding 20% of back wages:-

"4. Keeping the question of law open, looking at the peculiar facts of the case, we feel that the appeal deserves to be allowed to a limited extent by directing the appellant employer to pay only 20% of the back wages from the date when the respondent ceased to discharge his duties till the date he is reinstated in service. The respondent shall be reinstated in service within two weeks from today."

17. Per contra, learned counsel for the respondent Corporation submits that in the facts of the present case, the petitioner has virtually abandoned the services, and acceptance of resignation was a mere formality, and even if, the order of acceptance is held to be illegal, petitioner would not be entitled to any back wages.

18. From the materials, which have been brought on record, this Court finds that there was an intentional act on part of the petitioner not to perform his duties from 1985 onwards. Except for sending of certain letters, there was no serious intent on part of petitioner to actually work. It is only after 11 years that the resignation was withdrawn. Even thereafter, petitioner did nothing, and only in October, 1998, petitioner approached this Court by filing a writ petition.

19. From the facts aforesaid, this Court finds that it was not a case, in which respondents have prevented the petitioner from working, but petitioner was himself responsible for failing to perform his duties. Since the resignation was not accepted by the competent authority, and it had been withdrawn before its acceptance, as such, the order impugned cannot be sustained, but the petitioner would not be entitled to full back wages.

20. In the opinion of the Court, as the respondents could not have accepted the resignation after it stood withdrawn, the order impugned dated 30.12.1998 is set aside. Petitioner would be entitled to reinstatement alongwith continuity of service. In the peculiar facts and circumstances of the present case, petitioner would be entitled to a consolidated sum of Rs.1,00,000/- towards back wages."

27. In view of the law laid down in the aforesaid judgments, this court is of considered view that petitioner has withdrawn her resignation dated 5.2.2021 by submitting applications on 5.2.2021 and 11.2.2021 therefore, order dated 31.3.2021 whereby petitioner's resignation dated 5.2.2021 has been accepted, is unsustainable in the eyes of law and is liable to be quashed.

28. It is also to be seen that on order dated 31.3.2021 being quashed, what relief can be granted to the petitioner in respect of period in which she has actually not performed any work as Assistant Teacher.

29. This court is of the view that since petitioner has actually not worked from the date of her resignation therefore, she may be entitled only for 25% of the back wages.

30. In view of the aforesaid reasons, this writ petition is allowed. Order dated 31.3.2021 is quashed. The District Basic Education Officer, Etah is directed to allow the petitioner to join on her post of Assistant Teacher in Junior Basic School Mirzapur, Block Awagarh, District Etah within four weeks from today and to pay her current salary as and when it becomes due.

31. It is further provided that petitioner shall be entitled to get 25% of the salary admissible to her for the period from 5.2.2021 till the date of her reinstatement in service and the said amount shall be calculated and paid to the petitioner within four months from the date of service of certified copy of this order.

Order Date :- 6.3.2024

Salim