

Court No. - 4

Case :- WRIT - A No. - 23384 of 2020

Petitioner :- Dr.Priyanka Garg

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

Counsel for Petitioner :- Gaurav Mehrotra,Abhineet Jaiswal

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J.

1. Heard learned counsel for petitioner Sri Gaurav Mehrotra & Sri Abhinit Jaiswal 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 01.09.2010, joined as a lecturer at the Lala Lajpat Rai Memorial Medical College, Meerut & was subsequently promoted to the post of Associate Professor. On 19.09.2018, the petitioner was transferred from Meerut Medical College to Saharanpur Medical College. Though the petitioner has challenged the aforesaid transfer order, it could not succeed. Meanwhile, the State Government made an arrangement vide Office Memorandum dated 19.07.2019 whereby the petitioner along with some other Doctors were directed to render their services at Saharanpur Medical College along with the previous place of posting of petitioner i.e., Meerut Medical College.

3. The petitioner by means of several applications expressed her difficulty in rendering the services & sought child-care leave on account of medical issue of her daughter who has a severe case of Bronchial Asthma and suffers from frequent Asthmatic attacks which requires tonsillectomy plus immune therapy as well as constant care & attention.

4. The petitioner has further contended that neither her leave was sanctioned nor the salary was paid to her. The petitioner further submitted that she preferred a representation before respondent No.1 on 01.01.2020 & 08.01.2020 apprising therein that five applications had been preferred by her seeking child-care leave & medical leave, however, none of them were considered. It was also apprised that the petitioner has not even been paid her salary for the period July 2019 to September 2019 & January 2020 to 24.02.2020. The petitioner by means of representation dated 01.01.2020 & 08.01.2020 requested respondent No.1 to consider her bonafide & genuine claim else

she will be left with no other choice than to resign from the service.

5. It had been further stated that when no action on the aforesaid representation was taken by respondent No.1, the petitioner ultimately tendered her resignation on 24.02.2020. Shockingly, neither the resignation tendered by the petitioner was accepted nor rejected by respondent No.1 till 23.05.2020 i.e., till 3 months notice period for accepting her resignation expired.

6. It was after a lapse of more than 7 months from the date when the petitioner tendered her resignation that the impugned order dated 25.09.2020 was issued by respondent No.1 whereby an enquiry on account of being absent from duty was initiated against the petitioner. Further by means of another impugned order dated 26.09.2020 issued by respondent No.1, the resignation tendered by the petitioner was rejected on the ground of public interest.

7. On 02.12.2020, when the present matter was taken up while staying the disciplinary proceedings initiated against the petitioner vide order dated 25.09.2020, this Court passed the following order:-

"Heard Shri Gaurav Mehrotra, learned counsel for petitioner and Shri P. K. Singh, learned Additional Chief Standing Counsel for State.

Perused Annexure No. 8 which is, inter alia, a leave application by petitioner which was not acceded to nor was it rejected by communicating any such order. She tendered her resignation on 24.02.2020 as on account of the reasons mentioned in the said letter and other reasons pertaining to the health of her child etc. she was unable to leave Meerut permanently and work at Saharanpur where she had been working since 2017 as alleged. The notice period for resignation expired on 24.05.2020 during which no decision was communicated to her. It is said that it is only in July, 2020 that the Director General, Medical Education and Training, U.P Lucknow communicated the offer of resignation by petitioner dated 24.02.2020 to Principal Secretary who instead of taking a decision on the same initiated disciplinary proceedings against petitioner on 25.09.2020 for absence w.e.f. 21.03.2020 inspite of her letter of resignation not having been accepted in terms of Rule 4 and 5 of the Uttar Pradesh Government Servants Resignation Rules, 2000.

It is true that as per Rules and resignation becomes effective only on being accepted and not otherwise and Rule 5(iii)

provides a ground for rejection of such offer of resignation if an inquiry is contemplated or pending against applicant and in ordinary course the petitioner if she was unable to work for the reasons stated by her, she should have been taken leave instead of abstaining from work, but considering the over all facts and circumstances of the case, this is hardly a matter where action as impugned herein should have been taken. After initiation of disciplinary proceedings on 25.09.2020 her request for resignation has been rejected on the next date i.e. 26.09.2020

Let opposite parties justify the impugned action in the facts of the present case and as to why such a trivial matter should culminate in such action. Why should the matter not be given a quietus by accepting leave of petitioner without pay w.e.f. 21.03.2020 and allowing her to resign.

Let an affidavit be filed by the opposite parties positively within a period of 10 days.

She is permitted to apply for leave as per rule w.e.f. 21.03.2020 albeit without pay. List/ put up on 15.12.2020 as fresh.

Till the next date of listing the disciplinary proceedings against the petitioner shall remain stayed.

Let a copy of this order be given to learned counsel for parties within 48 hours on payment of usual charges."

8. By means of the aforesaid order dated 02.12.2020 passed by this Court, the opposite parties were given an opportunity to justify their impugned action. Alternatively, this Court had also indicated to the opposite parties to re-visit their orders by expressing that such a trivial matter should be given quietus by accepting leave of the petitioner without pay w.e.f. 21.03.2020 and allowing her to resign. However, in the Counter Affidavit, there is no mention of the impugned orders having been revisited by the opposite parties, as required by this Court.

9. 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 24.02.2020. The resignation was kept pending for as good as seven months and the impugned orders dated 25.09.2020 & 26.09.2020 were passed. 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 what purpose is achieved by the respondents by keeping the petitioner in service from 24.02.2020 i.e. from the date of resignation onwards. During the said period, they could not appoint any other person in place of the petitioner, therefore, the work of the college continued to suffer and the public at large in no manner benefited. The entire issue could have been best served by accepting her resignation. The petitioner had a right to resign on 24.02.2020 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 accepting her resignation from the service.

10. Learned Counsel for the petitioner has placed reliance upon the judgment & order dated 08.03.2022 passed in ***Writ-A No. 4813 of 2021, Dr. Sonal Sachdev Aurora Vs. State of U.P. & others.***

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

12. This Court finds that the case of the petitioner is squarely covered by the judgment of ***Dr. Sonal Sachdeva*** (Supra). The petitioner in the given facts and circumstances is treated arbitrarily by the respondents. The respondents were bound to accept the resignation of the petitioner and, there was no necessity to conduct any inquiry against the petitioner.

13. In view of the aforesaid, the impugned orders dated 25.09.2020 & 26.09.2020 are hereby quashed. The respondents shall treat the petitioner as having resigned from her post w.e.f. 24.02.2020 and shall grant her benefit which she is entitled to by treating her to be in service till 24.02.2020. 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.

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

[Vivek Chaudhary,J.]

Order Date :- 19.1.2023/Sachin