

THE HIGH COURT OF MADHYA PRADESH

Writ Appeal No.820/2017

Hari Prasad Tiwari Vs. State of M.P. & others

Jabalpur, dated 28/03/2018

Mr. Vivek Shukla, Advocate for the appellant.

Mr. B.D.Singh, Government Advocate for the respondents/State.

The challenge in the present appeal is to an order passed by the learned Single Bench on 4.7.2017 in Writ Petition No.18214/2015, directed against an order dated 23.2.2015 passed by the Collector, Sidhi, whereby the appellant was removed from service accepting his resignation letter dated 1.11.2014. The challenge is also to an order dated 15.6.2015 passed by the Collector after remand by the Commissioner.

2. The argument of the appellant was that his resignation was submitted before the Group Incharge Principal of the School and such resignation letter was returned to the appellant on 25.11.2014 but still, an order has been passed by the Collector on 23.2.2015 accepting the resignation of the appellant.

3. The State was directed to enquire as to whether original resignation letter was with the State or has been returned to the appellant. In terms of such order, an affidavit has been filed on 18.1.2018 to the following effect:-

“4. It is submitted that admittedly, the appellant submitted the resignation on 01.11.2014 addressing to the Principal Sankul which was not the competent authority to accept the resignation, however, the copy of the said resignation was also forwarded to other authorities including the authorities to take decision on the said

resignation. The Collector is a head of the Mission within the district and is designated as Mission Director, he is also Chairman of the District Education Guarantee Scheme Committee under which petitioner had been working.”

4. Thereafter, a question arose whether the copy of the resignation submitted to the Collector was a carbon copy or photocopy. Therefore, to examine the record of the Collector, the record was requisitioned. Today, record has been produced. A perusal of the record shows that the Collector had only photocopy of the resignation letter dated 1.11.2014, on the basis of which an order of acceptance of the resignation was passed on 23.2.2015 *inter alia* on the ground that the appellant has closed his school and did not attend his duties in the school.

5. Shri B.D.Singh, learned counsel for the respondents submitted that the resignation submitted by the appellant was never withdrawn by him; therefore, acceptance conveyed on 23.2.2015 cannot be permitted to be disputed by the appellant.

6. We do not find any merit in the argument raised. The acceptance of the resignation would arise only if there was a valid resignation. Such resignation is required to be dealt with by the Competent Authority. The Competent Authority is the Collector of the District. However, the Collector did not have original resignation letter but only photocopy of the same. The original resignation letter was returned to the appellant by the Incharge Principal of the school on 25.11.2014. Therefore, on 23.2.2015 when the alleged resignation was accepted, then the Collector did not have original copy of the resignation.

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7. Thus, in the absence of any valid resignation, it cannot be said that the appellant was required to withdraw the resignation before it was accepted on 23.2.2015. Thus, we find that the order dated 23.2.2015 and dated 15.6.2015 are not legally sustainable. Consequently, such orders are set aside. Having setting aside the said orders, we grant liberty to the Competent Authority to take action against the appellant as may be permissible on account of his failure to attend duties of the School in accordance with law. The question as to whether the appellant is entitled to pay and allowances for the interregnum period will be decided by the Collector in accordance with law.

8. In view thereof, the order passed by the learned Single Bench is set aside. The writ appeal and the writ petition stands allowed with the above observations.

(Hemant Gupta)
Chief Justice

(Vijay Kumar Shukla)
Judge

C.

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