

(1992) 08 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 15813 of 1990

Ramesh K. Srivastava

APPELLANT

Vs

Guru Nanak Dev University and
Others

RESPONDENT

Date of Decision: Aug. 27, 1992

Acts Referred:

- Guru Nanak Dev University Regulation - Regulation 8
- Guru Nanak Dev University Rules - Rule 12, 34, 37, 38, 38(1)

Citation: (1994) 1 ILR (P&H) 48

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Arun Jain and Kapil Kakkar, for the Appellant; P.S. Patwalia, Anuj Raura and G.S. Gill, for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, J.

Ramesh Kumar Srivastava, Head of Department of English, Guru Nanak Dev University seeks a writ in the nature of Certiorari so as to quash Annexures P-5, P-6 and P-7 and also maintains that in the facts and circumstances of the present case, the Respondents need to be issued a writ in the nature of mandamus directing them to allow him to withdraw his resignation dated 17th October, 1990 said to have been obtained from him under duress. In any case, the contention of the Petitioner is that the resignation, before it could be accepted by a competent authority, was withdrawn. The facts need to be noticed first.

2. As the relevant time, the Petitioner was working as Head of Department of English in the Guru Nanak Dev University Amritsar which is constituted under the Guru Nanak Dev University Act, 1969 (hereinafter to be referred as the Act). He was appointed as Lecturer in English in 1972 and was promoted as Professor in the

Department of English in 1984 and was further appointed as Head of Department of English in July, 1988.

3. It is stated that for the last many years, a number of abortive attempts were made by other teachers to oust him from the University. In one in which they succeeded is connected with Miss Sulip Minhas daughter of Shri A.S. Minhas, Superintendent of Police, Railways, Jalandhar who was Research Fellow in the Department of English and is stated to have been used as a tool in October 1990 so as to oust the Petitioner from his job. It is pleaded that Miss Minhas was promised ad hoc appointment as Lecturer in the Department of, English. During the relevant time, she went to the Petitioner to discuss the problems as well as types of questions to be asked in the interview for the post of ad hoc Lecturer for which she was a candidate. As the Petitioner was a member of the Selection Committee for the post of ad hoc Lecturer, he declined to answer the questions in connection, with the interview. The Petitioner is a Processor of American Literature in the University and, therefore, Miss Minhas turned the conversation to love and sex in the American Literature. The Petitioner hesitatingly replied to some of her questions but later came to know that Miss Minhas has tape-recorded the conversation with a view to coerce the Petitioner to submit his resignation from the post of Professorship of the Department of English. On October 17, 1990, Miss Minhas alongwith her father, Shri A.S. Minhas including one Mr. John Eliezer, Reader in English in the University, Mrs. Eliezer, also a teacher in Alexandra School Amritsar and one maternal uncle of Miss Minhas complained that the Petitioner had indulged into misconduct unbecoming of him with Miss Minhas and that with a view to authenticate the same, they claimed that they had tape-recorded version of the conversation. It is stated that about 20/25 police personnel armed in uniforms were also standing outside the Petitioner's residence. The persons aforesaid came to the room of the Petitioner and on gun point, it is alleged that they gave three options to the Petitioner. One to be ready to be killed second, to be forcibly taken away to some unknown place and third, to resign from the post of Professor of English immediately. The Petitioner is stated to have agreed to submit his, resignation from the post of Professor of English in face of the threat held out to him. The resignation dated 17th October, 1990 was dictated by one Mr. John Eliezer Respondent No. 4 and the same which is addressed to Vice-Chancellor reads thus:
I submit my resignation from the post of Professor of English with effect from 18th October, 1990.

4. Thereafter it is stated that the Petitioner was taken to the office of Vice-Chancellor in a car and letter of resignation was submitted to him by the father of Miss Minhas and Mr. John Eliezer while the Petitioner is stated to be kept outside the office of Vice-Chancellor. Later in the evening of October 17, 1990, that Vice-Chancellor called the Petitioner at his residence and apprised him the condition of three months notice for resignation for a permanent employee of the University. In view of that

the Petitioner was asked to submit another application requesting for waiving of condition of three months notice. The Petitioner is said to have written another resignation letter which has been placed on the records of the petition as Annexure P-2 and reads thus:

This is with reference to the letter of resignation given earlier in the day. Since I have to go out urgently the condition of three months notice may kindly be waived for acceptance of resignation.

5. Inasmuch as the Petitioner was conscious that there is a group of teachers hostile to him and the said group would pressurize the Vice-Chancellor to accept the resignation expeditiously, he met the Vice-Chancellor on 18th October, 1990 requesting him to defer the acceptance of resignation by a day or two. This request, it is stated, was acceded to by the Vice-Chancellor. The Petitioner thereafter left Amritsar under the fear of death and sent an Express Telegram to the Vice-Chancellor withdrawing the resignation Annexure PI. Confirmation copy of the telegram was sent to the Vice-chancellor by registered post.

6. On 20th October, 1990, the Petitioner sent yet another letter to the Vice-Chancellor withdrawing resignation Annexure PI and requesting him for grant of leave for one year without pay for study and research. However the Vice Chancellor appointed Dr. Harsharan Singh, Respondent No. 3 as Head of Department of English for a period of three years with effect from 22nd October, 1990 in place of Petitioner in anticipation of approval of minutes of Syndicate. The resignation of Petitioner was accepted on 22nd October, 1990 with effect from 18th October, 1990 by the Vice Chancellor. In so far as the request of Petitioner with regard to waiving off three months notice is concerned, it was ordered that the matter be placed before the Syndicate. On 23rd October, 1990, the meeting of the Syndicate took place. As per paragraph 82 of the minutes of the meeting the request of Petitioner for waiving off condition of three months notice together with earlier resignation (Annexure PI) as well as telegram with confirmatory letter were considered by the Syndicate. Minutes were recorded that---resignation Annexure PI has already been accented with effect from 18th October, 1990 by the Vice-Chancellor and the request for waiving off condition of three months notice has been referred to the Syndicate. In so far as the allegation that it was a forced resignation was concerned, it was said that the same was an after thought and, therefore, there will be no question of permitting withdrawal of the resignation. After discussion the Syndicate endorsed the decision of the Vice-Chancellor in accepting the resignation of the Petitioner with effect from 18th October, 1990 and constituted a committee consisting of former Chief Justice R.S. Narula and Dr. S.S. Johal to examine the request regarding waiving off condition of three months notice. Copy of paragraph 32 from the minutes of the Syndicate meeting has been placed on the records as Annexure P-7. Petitioner on coming to know of the decision arrived at by the Syndicate--wide Annexure P-7 sent a telegram to the Chancellor of

the University appraising him of the circumstances leading to submission of his resignation and requesting him not to approve the action of the University. On the next day, yet another letter was sent to the Chancellor explaining the circumstances leading to submission of resignation and seeking a direction to be issued to the Vice-Chancellor to treat the resignation as cancelled. On 6th November, 1990, the Petitioner sent a letter to the Senior Superintendent of Police, Amritsar wherein details of discussion with Miss Sudip Minhas were mentioned and it was also alleged that there has been conspiracy to use the lady as a tool on the promise extended to her that she will be adjusted on the post of Lecturer on ad hoc basis. The other circumstances as have been narrated above were also mentioned in the letter aforesaid. It is stated that the letter aforesaid was converted into First Information Report No. 563 on 7th November, 1990 at 2.10 P.M. On 15th November, 1990, a legal notice was sent by the Petitioner through his counsel to the Vice-Chancellor to the University narrating the whole facts of the case and requesting him to treat the resignation as cancelled and sanction one year's leave without pay for study and research. On 29th November, 1990, reply to the aforesaid notice was received wherein it was stated that it was in exercise of the power delegated to the Vice-Chancellor by the Syndicate in the meeting held on 4th December, 1987 that the Vice-Chancellor had accepted the resignation and in so far as application Annexure P-2 regarding waiving of the condition of three months notice is concerned, the matter was referred to the Syndicate which endorsed the decision of the Vice-Chancellor and accepted the resignation and a committee was appointed to examine the request of waiving off three months notice condition. It is also stated that inasmuch telegram withdrawing the resignation was received after the acceptance of resignation there was no question of sanctioning the leave. The other allegations of the Petitioner were also denied. It is thereafter that the Petitioner came to this Court by way of present petition so as to seek the relief as has been indicated in the earlier part of the judgment.

7. The main case as projected in the petition and argued by the learned Counsel is that resignation could be withdrawn before its acceptance and inasmuch as the resignation was in fact withdrawn before its acceptance the same has no meaning whatsoever in the eyes of law and the Petitioner, thus, continues to be in service. It is also argued that according to Rule 37 Chapter II of the Statute of the University, the post of Professors falls in Class I and according to Rule 38(1) of Chapter II of the Statute of the University, the appointing authority is the Syndicate. Inasmuch as resignation Annexure PI was required to be accepted by the Syndicate and not any one else, the same having been withdrawn before it was accepted by the competent authority, it carried no meaning and, thus, the Petitioner continues to be in service. In so far as delegation of powers to accept the resignation by the Vice-Chancellor is concerned, it is stated that the said delegation is illegal for the reason that the power to appoint or dismiss cannot be delegated. On the parity of the same reasoning, it is argued that the power to accept resignation can also not be

delegated by the Syndicate to any other authority. It is also contended that there is no provision in the Act or the Statute framed there under which may empower the Syndicate to delegate the power to accept the resignation and therefore, the delegation done,--vide paragraph 3 of the meeting of the Syndicate held on 4th December, 1987 is illegal and void. It is also said that as per Rule 34(iv) of Chapter II of the Statute, a permanent employee is required to give three months notice for resigning or three months pay in lieu thereof unless otherwise directed by the appointing authority. In so far as the request of the Petitioner for waiving the condition of three months pay is concerned, the same is pending decision as the committee has been appointed to examine this matter and thereafter the Syndicate being the appointing authority has to decide the request of the Petitioner and till such time, decision is taken legally, the resignation of the Petitioner cannot be accepted. On facts, it is also canvassed that the resignation was forced upon the Petitioner at gun point after creating circumstances by hatching a conspiracy to use Sudip Minhas as a tool on the basis of talks with the Petitioner. It is also argued that a member of the teaching staff cannot resign before the end of the academic year i.e. April 30 and unless three months notice for the purpose is given to the University, as per Rule 12 of Chapter II of the Statute of the University. In view of nature and importance of the matter, this petition was ordered to be set down for hearing within a period of three months. This order was passed at the time of admission by the Motion Bench on 29th July, 1991.

7. In the written statement filed by Respondents No. 1 to 4, the cause of Petitioner is being seriously opposed. By way of preliminary objection, it has been pleaded that inasmuch as the petition raises disputed questions of fact, it cannot be determined without recording evidence and the Petitioner should approach appropriate forum but in so far as writ-is concerned, the same deserves to be dismissed. Since neither Miss Sudip Minhas nor her father has been arrayed as a party Respondent in the petition, it is pleaded that the petition which is based upon facts pertaining to the said persons, deserves to be dismissed for their non-joinder. On merit it is pleaded that Sudip Minhas was not promised any ad hoc appointment as Lecturer in the department of English as inducement although she was so appointed and was working as ad hoc Lecturer in the department of English. She was appointed to the post by selection on merit by a duly constituted committee. Proceedings of the Selection Committee Annexure R2/2 have been placed on the records. It is pleaded that the story put forward which centres around Miss Sudip Minhas is complete concoction. However, on account of non impleading of Sudip Minhas, it is stated that proper reply cannot be given. The allegations contained in the petition are said to be after thought and coined only at the time when the Petitioner wanted to withdraw the resignation. The resignation is stated to have been tendered by the Petitioner in person when no one was accompanying him and the said act having been done by the father of Miss Sudip Minhas and Mr. John Eliezer is stoutly denied. It is also denied that the Vice Chancellor ever called the Petitioner to his residence

where the latter might have submitted application requesting for waiving off condition of three months notice on the asking for the same as has been alleged by the Petitioner. On the other hand, the Petitioner submitted his resignation and thereafter on coming to know that he will have to deposit salary for three months period, he gave letter Annexure P2 that three months notice may be waived. The meeting of the Petitioner with Vice Chancellor on 18th October, 1990 so as to make a complaint regarding resignation letter dated 17th October, 1990 having been submitted under threat is denied. It is pleaded that the resignation was accepted by the Vice Chancellor in exercise of the powers conferred upon him by the Syndicate on 4th December, 1987. It is, however, admitted that the Petitioner sent a telegram which was received by the Respondents on 22nd October, 1990, but by that time the resignation had since already been accepted by the competent authority. It is stated that as per Statute 34(iv), the Petitioner had to pay to the University three months salary. However, since the Petitioner had moved another letter requesting that three months notice be waived, the matter with regard thereto was referred to the Syndicate which further constituted a Committee. Acting on the report of the Committee, the request of the Petitioner was accepted and the condition of three months notice was waived. The report of the Committee was accepted by the Syndicate on 28th March, 1991. The other points raised by the Petitioner have been controverted.

8. The Petitioner filed replication with a view to re-assert the points contained in the petition leading to submission of resignation but since I am inclined to decide the controversy on the legal issues raised in the matter, it is not deemed necessary to refer to the same.

9. It has been canvassed by the learned Counsel for the Respondents that the Petitioner had submitted the resignation voluntarily and the story coined by him is not true and that the resignation was accepted prior to withdrawal of the same and that the Vice Chancellor was competent under the Act and the Statutes, having been delegated the powers of the Syndicate to accept the resignation of the Petitioner.

10. I have heard the learned Counsel for the parties and with their help gone through the records of the case. In so far as the question raised in the petition regarding the voluntary or otherwise nature of the resignation is concerned, in my considered view, in the facts and circumstances of this case, the same cannot be permitted to be agitated in writ jurisdiction of this Court. Even though the learned Counsel for the Petitioner has pointed some facts and circumstances like various letters written by the Petitioner to the Vice-Chancellor and the Chancellor and later a complaint to the Senior Superintendent of Police with details which, was converted into a First Information Report as also that there could be no question for the Petitioner to submit the resignation without any reason that so ever particularly when he had achieved all heights of his career, I am of the view that to return a positive finding of fact, it requires recording of evidence and that it is not even

disputed by the Petitioner that cannot be permitted in writ jurisdiction of this Court. However, insofar as withdrawal of resignation before its acceptance is consented, the Petitioner appears to be on a solid wicket. Before however, reasons are given, it shall be apt to first examine the Act, Statutes and the relevant minutes of the meeting of the Syndicate that have bearing on the facts of this case.

11. Rule 37 Chapter II of the Statute of the University deals with classification of employees. Class A employees have been classified in (i) and (ii) of Rule 37. The posts of Principals, Professors, Readers, Lecturers, Curators and Micro-Analyst, have been classified as Class A posts. Rule 38.1 deals with the powers of the Syndicate to appoint Principals, Professors, Readers, Lecturers, Deputy Registrars, Assistant Registrars and such other officers as it may deem fit and their terms, conditions of service and duties shall be such as may be prescribed by the Ordinances. Thus, it is clear from the reading of Rule 37 and 38.1 of Chapter II of the Statute of University that whereas post of Professor is Class I post, appointment of the Professor can be made only by--Syndicate. It requires to be mentioned here that it is not disputed that the appointing authority alone can pass an order of dismissal and also accept resignation. It is, however, disputed as to when the resignation was accepted although there is no dispute as to when the same was submitted. Whereas the Petitioner contends that the resignation was accepted by the Vice-Chancellor on 22nd October, 1990, vide Annexure P-6, the case of the Respondents is that it was accepted on 19th October, 1990. It is no doubt true that Annexure P-6 is dated 22nd October, 1990. The same reads as follows:

By order of the Vice-Chancellor the resignation dated 17th October, 1990 of Dr. R.K. Srivastava, Professor and Head of Department of English is accepted with effect from 18th October, 1990.

12. The information forwarded to various persons mentioned in the later part of Annexure P-6 bear the date as 19th November, 1990. The learned Counsel appearing for the University has shown me the original acceptance of resignation and it appears that the stand of the University is correct that the resignation was accepted on 18th October, 1990. That, however, would not conclude the controversy as the main contention of learned Counsel appearing for the Petitioner is that before it could be accepted by a competent authority i.e. the Syndicate, the same was withdrawn. Therefore, the crucial question that needs determination in the present case is as to whether it is the Syndicate or the Vice-Chancellor who is the competent authority and even if it is the Syndicate, could the matter be delegated to the Vice Chancellor and as to whether the delegation is legal and permissible under the Act or the Statutes as also as to whether the delegation of powers with the Vice-Chancellor was with regard to those persons only regarding whom condition of three months notice was not applicable. As has been noticed above, is it no doubt true that the appointing authority of the Petitioner was Syndicate and not the Vice-Chancellor. In so far as delegation is concerned, the same was done way back

in 1987,--vide Annexure R2/1. Paragraph 3 from the minutes of the meeting of the Syndicate held on 4th December, 1987 reads thus:

Considered and resolved that the recommendations 19th June. 1987 of the Committee appointed by the Syndicate on 29th May, 1987 (para 3) regarding delegation of powers, approved as per Appendix-I. Resolved Further that as long as Statutes/Ordinance stated in Appendix II are not amended, the Syndicate under Statute 28.1 page 31 of Guru Nanak Dev University Calendar Volume I, 1986 delegate those powers to the Vice-Chancellor as an interim measure.

Appendix I reads as under:

Subject

Syndicate

13. It is also borne out from Rule 34(iv) of Chapter II of the Statute that a permanent employee is required to give three months notice for resigning or three month's pay in lieu thereof, unless otherwise directed by the appointing authority. The aforesaid Rule Made as under:

34(iv): A permanent employee shall be required to give three math's notice in case he desires to be relieved, or he shall pay to the University three month's salary, in lieu of such notice, unless otherwise directed by the appointing authority. Provided that three months Notice shall not be required in case of an employee who proceeded on extra-ordinary leave without pay with permission to take up employment else where, and does not rejoin on the expiry of the leave:

Provided further that such a person must inform the University atleast three months prior to the expiry of extra-ordinary leave without pay that he would not be re-joining the University, and in case he fails to give this information, he shall be liable to pay the University three months salary.

14. It is not disputed that the request of Petitioner for waiving the aforesaid condition was still pending when the Petitioner had withdrawn the resignation.

15. Only Statute 12 in Chapter II of the Calendar 1986, Volume I remains to be noticed and the same reads thus:

12. A member of the teaching staff holding permanent post of Professor or a Reader or a Lecturer bi the University shall not be allowed without permission of the Syndicate, to resign his post before the and of the academic year, i.e. April 30 and he shall give for this purpose not less than three months notice to the University, provided that the Syndicate may, in special cases, waive notice to such extent as it may think fit.

16. A cumulative reading of the relevant Statutes quoted above would, thus, manifest beyond doubt that the appointing authority of the Petitioner was Syndicate and, therefore, it is the Syndicate alone which could accept the resignation. It is also clear that the Syndicate has delegated its powers to the Vice-Chancellor with regard to acceptance of resignation--vide Annexure R2/1 but it is rather pertinent to note that such a delegation is with regard to Class A officers without waiving the notice of three months. Rule 34(iv) reproduced above would also show that a permanent employee is to give three months notice in case he desires to be relieved otherwise he has to pay to the University three months salary in lieu of such notice. This can be done unless otherwise directed by the appointing authority. At the cost of repetition, it is required to be mentioned here that the appointing authority of the Petitioner was admittedly Syndicate. Condition of three months notice can be waived only by the Syndicate as is spelled out from Statute 12 reproduced above to the effect that a member of the teaching staff holding, permanent post of Professor as the Petitioner is cannot be allowed, without the permission of Syndicate, to resign his post before the academic year i.e. April 30 and he shall have to give not less than three months notice to the University. It is only in special case that the Syndicate can waive notice to such extent as it may think fit. The power delegated to the Vice Chancellor--vide Annexure R2/1 is, thus, in consonance with the provisions quoted above and it is presumed that while delegating the powers, "the" Syndicate was conscious of the fact that the delegation could be only when a person tendering his resignation does not ask for waiving off three months notice or pays salary in lieu thereof, It is settled law that the delegation has to be strictly construed. The Vice-Chancellor, as per the relevant Statutes reproduced above had no jurisdiction whatsoever to waive the condition of three months notice and if the Petitioner had withdrawn to such acceptance, he could not be asked to stick to his earlier action of resigning the post.

17. The learned Counsel for the Petitioner has argued other points as well like the delegation was only by way of interim measure and the same cannot be continued for such a long time as also that in any case the interim measure which in fact amends the Statute should have been got approved from the Chancellor and that the Vice-Chancellor could not be delegated the powers of acceptance of resignation at all but inasmuch as the petition deserves to be allowed on the ground that the delegation given to the Vice-Chancellor was only limited and will not cover the cases where condition of waiving off three months notice was involved, (sic) do not propose to discuss the same.

18. Mr. Patwalia, learned Counsel appearing for the University in reply to what has been said by Mr. Arun Jain has come with only one argument which deserves to be noticed. It is argued that period of three months notice had been provided only to safeguard the interests of the party to whom the notice is given and to enable it to make alternative arrangements and that the said period can be waived or reduced at the instance of that party. In the same strain, it is argued that where the

University was to terminate the services of an employee it had to give three months notice so as to enable him to acquire alternative employment but the University who is the employer could waive this. Similarly, the notice to the University of the employee's resignation was intended to facilitate making of alternative arrangements by the University such as posting of a substitute and it was open to the University to waive this wholly or in part. To fortify the aforesaid stand, the learned Counsel relies upon a Division Bench authority in *Delhi Electricity Supply Undertaking v. Tara Chand* 1978 (2) S.L.R. 425. The facts of the aforesaid case reveal that one Tara Chand was appointed on 17th April, 1953 as a Chowkidar by the Assistant Executive Officer of the Delhi State Electricity Board. He was confirmed with effect from 27th December, 1955. In 1957, Delhi Municipal Corporation Act was passed. On 26th November, 1959, Tara Chand was allotted certain residential quarters. In 1961, the General Manager passed an order delegating his powers in respect of certain categories of subordinate Staff to the Administrative Officer. In 1962, an order was passed transferring Tara Chand from Jama Masjid Sub stores to the Jangpura office. This was not to the liking of Tara Chand and he reacted by writing a long letter on 3rd February, 1962. On 19th March, 1962, an order was passed to the effect that Tara Chand had submitted his resignation on 3rd February, 1962 and the same has been accepted with effect from 1st April, 1962. Tara Chand wrote a second letter which was addressed to the A.F.O. On 1st April, 1962, the Delhi State Electricity Board relieved him of his duties. On 16th April, 1962, Administrative Officer General prepared a note for the attention of the General Manager with reference to a letter received from Tara Chand. The General Manager directed,--vide orders dated 25th April, 1962 that Tara Chand should be informed of the rejection of his application. It is thereafter that Tara Chand was called upon to vacate the quarters allotted to him and on 25/27th May, 1962 he was told that his application was rejected by the General Manager. The letter written by Tara Chand concluded in the following terms:

Under protest due to cruel behaviour and unfair terms of the officers concerned of the DESU throughout of my nine years service I am being compelled by them hereby to resign for the sake, of the saving of lives of myself and my family members.

19. This letter was treated as letter of resignation by Tara Chand from his job and was accepted by the administration with effect from 1st April, 1962. The Labour Court after examining in detail the circumstances came to the conclusion that it was only a letter of grievances and not one of resignation. When the matter came before single Judge, it was held that, proper interpretation of the letter was purely a question of fact and it was expressed that it could not be said that the Labour Court was wrong in treating the letter as not a letter of resignation. The Labour Court also held that even if it was a letter of resignation, it was not properly and validly accepted. This finding was upheld by the learned single Judge. It is in the aforesaid circumstances that when the matter came before a Division Bench of the Delhi High Court, it was held that the matter was not one of resignation and the view of the

Labour Court and the single Judge was correct. While dealing with the affirmative finding returned by the Labour Court that even if it was a letter of resignation, the same was not validly accepted, the contentions of learned Counsel were noticed first one of which is as follows:

that, under the regulations governing the undertaking, at the relevant time, it was open, to an employee to terminate his service by giving three months notice thereof and that no question would arise of anybody accepting the resignation.

20. While dealing with the contention aforesaid in paragraph 17 of the report, Regulation 8 pertaining to termination of service was noticed. The same reads thus:

8. Termination of Service Except as otherwise specified in the appointment order, the services of a servant of a Board may be terminated:

(a) without any notice:

(i) During the period of probation or on its completion and without assigning any reason therefore;

(ii) in case which termination of service is the result of disciplinary action;

(iii) on the expiry of the period of engagement or on the completion of work for which engaged.

(b) With Notice:

(i) of 3 months from either side without any cause to be assigned in case of permanent service;

(ii) of one month from either side without any cause to be assigned in case of temporary service.

(c) Where the services of a servant of Board are terminated in accordance with the terms of his appointment the Board may give pay in lieu of notice or for the period by which the notice period falls short.

21. The answer to the contention raised by the learned Counsel was given by the Division Bench in paragraph 19 and it was held that the Regulation provides for the termination of the services of any employee, not only at the instance of the employer but, also at the instance of the employee, which can only mean resignation and voluntary retirement. In the case of permanent servant, therefore his service gets terminated by notice of three months from either side. Thus, when an employee gives notice, that he has resigned from service, it takes effect automatically, at the end of three months, (emphasis supplied). There being no power in the employer to prevent a person from resigning or to force him to continue in service beyond the above period, there is no question of any acceptance of the resignation. Without any action the part of the DESU, therefore, the resignation became effective on the expiry of three months from 1st March, 1962.

However, even the notice period of three months has been provided only to safeguard the interests of the party to whom the notice is given and to enable it to make alternative arrangements. So, this period could be waived or reduced at the instance of that party. For example, in a case where the DESU terminates the services of an employee it has to give three months' notice so that the employee could take steps to acquire alternative employment but he could waive this and go away earlier. Similarly, the notice to the DESU of the employee's resignation was intended to facilitate making of alternative arrangements by the DESU such as posting of a substitute etc. and it was open to the DESU to waive this wholly or in part. Thus, it is argued that the termination of Tara Chand's service was effective on 1st April, 1962 when he was asked to hand over and also handed over charge.

22. The facts of the case relied upon by the learned Counsel and which have been given in all its material details show that the letter which was interpreted to be letter of resignation by the employer was written on 3rd February, 1962. On 19th March, 1962, an order was passed that Tara Chand had submitted his resignation on 3rd February, 1962 and the same has been accepted with effect from 1st April, 1962. Tara Chand had written another letter thereafter which appears to be letter for withdrawing resignation. It was held in the facts and circumstances of the aforesaid case that resignation became effective on the expiry of three months from 3rd February, 1962. It is not clearly made out as to when the second letter was written by Tara Chand. In case it was written after 1st April, 1962, the same would be obviously after the effective date of resignation i.e. three months after the resignation was submitted. Be that as it may, it is clear that the Regulation governing termination of service does not contain anything like paying three months salary in lieu of three months notice and in case of permanent employee, three months notice could just be given by either side without any cause to be assigned. In the present case, it is clearly made out that if a person was to give three months notice he could not quit immediately unless he was to tender three months pay. It is also made out from the provisions of the Statute quoted above that condition of three months notice was exempted only if the same was to be Waived by the employer but I am of the considered view that in such circumstances an employee was well within his right to withdraw his resignation. The judgment cited by the learned Counsel for the University would not come to its rescue. Further, as has been discussed above, the resignation in the present case could be accepted only by the Syndicate and there is no quarrel with the proposition that before acceptance of resignation, the same can be successfully withdrawn. The Petitioner had withdrawn his resignation before it was accepted by the Syndicate and, therefore, the judgment relied by the Respondent-University would have no application to the facts of this case.

23. The up-shot of the entire discussion is that this petition (is allowed. The Petitioner would be allowed to withdraw his resignation as prayed for by him,--vide Annexures P3 and P4. Order Annexure P6 accepting the resignation of Petitioner by

the Vice Chancellor with effect from 18th October, 1990 and order, Annexure P7 paragraph 82 of the minutes of the meeting of the Syndicate held on 23rd October, 1990 regarding waiving of the condition of three months notice after the withdrawal of the resignation are quashed. The Petitioner (consequently shall be deemed to be in service for all this while.) It shall, however, be open to the Respondent authorities to proceed against the Petitioner if they may so chose with regard to allegations that might be against the Petitioner on account; of his conversation with Miss Sudip Minhas in accordance with law. In the circumstances, however, there shall be no order as to costs.