

**(2012) 02 AHC CK 0343**

**Allahabad High Court**

**Case No:** Special Appeal No. 1281 of 2007

Dr. Ram Kishore Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Feb. 13, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 26, 28, 29

**Citation:** (2012) 4 ADJ 379 : (2012) 133 FLR 457

**Hon'ble Judges:** Rakesh Tiwari, J; Dinesh Gupta, J

**Bench:** Division Bench

**Advocate:** Kshetresh Chandra Shukla, for the Appellant; C.S.C., Ankush Tandon, Vikas Budhwar and S.C., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Hon"ble Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record. Challenge in this special appeal is to the impugned order and judgment in Dr. Ram Kishore Shukla v. State of U.P. and others, 2007 (9) ADJ 210 whereby the aforesaid writ petition had been dismissed.

2. The appellant has prayed for quashing of the order dated 11.3.2005 passed by the District Inspector of Schools, Allahabad and for a direction to the respondents to treat his resignation letter as null and void as well as treat him in service and permit him to work till his retirement as lecturer in "Kala" subject.

3. Following order was passed by this Court on 18.1.2011.

Sri K.C. Shukla, learned counsel for the appellant has submitted that petitioner was working as L.T. Grade (Kala) teacher in Shiv Charan Das Kanhaiya Lal Inter College, Allahabad (hereinafter referred to as the institution). His services were confirmed on

the said post on 27.8.1974 and thereafter, by order of the Deputy Director of Education, dated 12.6.1979 the only post of L.T. Grade (Kala) teacher was converted into lecturer's grade by upgradation of L.T. Grade post. The petitioner started working as Lecturer on the upgraded post. In the year 1994, committee of management of the institution has sent requisition to the Commission for filling up five posts including one post of (Kala) of L.T. grade. The Commission did not select any teacher. Therefore again a requisition was sent for the same posts in the year 2003.

It appears that the petitioner tendered his resignation on 18.11.2003 from the post of lecturer due to some family problems and the same was accepted by the management on 23.11.2003 with the condition that petitioner shall work till the end of the academic session i.e. 30.6.2004. According to the case of committee of management, this order of acceptance of the resignation was communicated to the petitioner on 1.12.2003 but the petitioner denies this fact and submits that acceptance of his resignation was never informed or served upon him. It also appears that he filed an application on 17.2.2004 for withdrawal of his resignation which was rejected by the committee of management on 2.5.2004. The petitioner challenged the order dated 2.5.2004 before the D.I.O.S., who also vide his order dated 11.3.2005 upheld the order of the committee of management rejecting the withdrawal application. Civil misc. Writ Petition No. 34352 of 2005 had then been moved by the appellant challenging the order dated 11.3.2005 which was dismissed by order and judgment dated 12.7.2007.

Sri K.C. Shukla, counsel for the appellant submits that although Hon. Single Judge dealing with the matter has reached to the conclusion that resignation submitted by the petitioner was not valid, even then His Lordship has refused to order for payment of salary to the petitioner on the ground that conduct of the petitioner was very bad as he was instrumental in appointment of his son as L.T. Grade teacher. According to Sri Shukla, resignation of the petitioner has no relevance with the joining of petitioner's son as L.T. Grade teacher who was selected by the Commission and who joined the college as was required by the D.I.O.S. where the petitioner was working in lecturer grade.

We have raised a specific query to Sri Vikas Budhwar, appearing for the management that once vacancy of L.T. Grade (Kala) teacher was not available after conversion of the only post, then how requisition was sent for that post in the year 1994 and thereafter again in the year 2003 if the post was not in existence. It may be noted that the factum of sending requisition for filling up five posts including only one post of L.T. Grade (Kala) teacher, has not been disputed.

Sri Budhwar prays for time to file counter-affidavit as no counter-affidavit has yet been filed. He as well as the learned standing counsel both are granted three weeks time to file counter-affidavit, to which rejoinder affidavit may be filed within two weeks thereafter. Learned Standing counsel shall also bring on record the

sanctioned strength of the college including posts of lecturers and L.T. Grade teachers for the relevant years.

List after expiry of five weeks.

4. Brief facts giving rise to the instant special appeal are that the appellant was initially appointed in Shiv Charan Das Kanhiya Lal Inter College, Allahabad on 11.9.1973 as L.T. grade (Kala) teacher in "Kala" subject. His appointment was duly approved by the District Inspector of Schools on 17.9.1973 and thereafter on 17.5.1975 he was confirmed on the said post with effect from 27.8.1974. Thereafter, on 12.6.1979, on the request of the Manager of the college, the Deputy Director of Education 4th Region, Allahabad upgraded the post of L.T. Grade "Kala" to that of Lecturer "Kala" with the condition that the post of L.T. Grade "Kala" teacher be not filled up. The appellant was then promoted as Lecturer "Kala", for which approval was duly accorded by the District Inspector of Schools and his promotion was made effective from the date of up-gradation of the post i.e. 12.6.1979. On 18.11.2003 the appellant sent his resignation to the Manager of the Committee of Management stating that due to family circumstances he was unable to work as Lecturer "Kala". The said resignation was received by the Manager on 19.11.2003.

5. The agenda for issuance of letter of appointment to Sri Pawan Kumar Shukla, the son of the appellant as well as the resignation letter dated 18.11.2003 of the appellant were considered by the Committee of Management in the meeting held on 21.11.2003. Firstly, the resignation of the appellant was accepted with the request that he would continue to teach till 30.6.2004 i.e. the end of the academic session. It was then resolved that Sri Pawan Kumar Shukla the son of the appellant, who had been selected by the Commission may be appointed as L.T. grade (Kala) teacher in the institution. The decision of the Committee of Management was also communicated to him by the Manager on 1.12.2003 and in pursuance thereof the appellant continued to work as lecturer "Kala" and was paid his salary till the end of the session on 30.6.2004. The petitioner thereafter by means of his letter dated 17.2.2004 informed the Manager of the institution that since his family circumstances have changed, the letter of resignation submitted by him on 18.11.2003 be treated as withdrawn.

6. The request of the appellant for treating his resignation as withdrawn was rejected by the Committee of Management vide its order dated 2.5.2004. The petitioner then submitted a representation before the District Inspector of Schools which too was rejected by him vide his order dated 11.3.2005. Aggrieved by these orders dated 2.5.2004 and 11.3.2005 passed by Respondent Nos. 3 and 2 respectively, writ petition No. 34352 of 2005 was preferred by the appellant praying for a direction to the respondents to treat him in service and accordingly permit him to continue to work in the college as Lecturer in "Kala" subject. It was also prayed that direction be issued to the respondents to pay him his salary accordingly till he attains the age of superannuation.

7. It appears from record that following teaching posts have been sanctioned in the institution in question.

	Principal	1 post
2.	Lecturer	11 posts
3.	Assistant Teacher in L.T. Grade Teacher	13 posts
4.	Assistant Teacher in CT. Grade	10 posts
5.	Assistant Teacher in J.T.C.	1 post

8. Out of 13 posts of Assistant Teachers in L.T. Grade, a post of Assistant Teacher in "Kala" subject and another in subject of "Physical Education" were abolished by the District Inspector of Schools, Allahabad, ten posts of CT. Grade including "Kala" had been converted to L.T. Grade on account of CT. Grade having been declared as dying cadre. Since there 3 posts of lecturer and 2 posts of L.T. Grade were vacant, (which came into existence on account of declaration of CT. Grade as dying cadre). Subsequently, the Manager of the institution requested the District Inspector of Schools, Allahabad for appointing teachers on. the aforesaid two posts in L.T. Grade in the institution or grant permission for filling up the same pursuant to requisition sent by him.

9. The Manager by means of his letter dated 17.6.2003 to the Secretary, U.P. Secondary Education Service Selection Board, Allahabad requested for appointment of one Assistant Teacher in "Kala" subject as per requisition for filling up the direct posts. Consequently, the Secretary, U.P. Secondary Education Service Selection Board, Allahabad after selection recommended the name of Sri Pawan Kumar Shukla to the DIOS, Allahabad for his appointment as Assistant Teacher in "Kala" subject in the institution. In his turn on 8.9.2003 the DIOS, Allahabad by his letter dated 8.9.2003 directed the Manager of the institution to issue letter of appointment to Sri Pawan Kumar Shukla for appointment as Assistant Teacher in aforesaid subject in the institution.

10. Learned counsel for the appellant submits that the appellant has specifically stated in paragraph 20 of the writ petition that he by means of his letter dated 17.2.2004 to the Manager requested that his resignation letter be treated as withdrawn on which he was forced to put the date as 18.11.2003 but the learned Single Judge has failed to notice the facts in the impugned judgment; and that the appellant petitioner had also submitted letters dated 28.2.2004 and 7.5.2004 before the DIOS, Allahabad for treating his resignation letter as cancelled and further for permitting him to work and payment of his salary accordingly.

11. He then submits that resignation tendered by him on 18.11.2003 was not voluntary and was without giving 3 months" prior notice would have expired in the month of February, but as he had not given 3 months prior notice to the Management, its acceptance in meeting dated 21.11.2003 would be illegal, invalid and void ab-initio and that in the aforesaid circumstances his resignation was not worthy of acceptance in view Regulation 26 read with Regulation 29 of Chapter HI of the U.P. Intermediate Education Act, 1921. The said Regulations 26 and 29 are being quoted below :

Regulation 26.(1).-The services of a permanent employee may be terminated by giving him three months notice or three months" pay in lieu thereof, on the ground of the abolition of the post which the employee is holding. The abolition may be due to one of the following reasons:

- (a) Retrenchment decided upon for reasons of financial stringency.
- (b) Abolition of a subject.
- (c) Abolition of section or class.

2. For the purpose of computing the period of notice mentioned in clause (1) or for determining the amount to be paid in lieu thereof the period of summer vacation shall be excluded.

Regulation 29.-Any employee may resign by giving a notice or pay in lieu thereof to which he would have been entitled in case of termination of his services by the management:

Provided that

- (i) no employee shall give notice expiring in the month of January, February or March;
- (ii) Summer vacation may be included in the period of the notice;
- (iii) an employee selected for appointment in Government service or in the service of any local body shall not be required to give due notice and shall be required to resign from service in time to join the new appointment if the application for the post had been made through proper channel.
- (iv) It will be open to the management to waive its claim to the notice.

12. It is on the basis of the aforesaid regulations he submits that no employee shall be given notice expiring in the months of January, February and March. Since the date of alleged resignation was 18.11.2003, therefore, the same would be effective after 3 months i.e. February, 2004. Hence, the view taken by the learned Single Judge while dismissing the writ petition is incorrect being against the provisions of law and facts.

13. It is stated that the learned Single Judge misdirected in holding that there was only one post in Kala subject in the Institution. According to him, this finding is totally erroneous and against the material on records particularly in view of the admitted fact that the appellant was promoted as Lecturer "Kala" on its upgradation on 12.6.1969 whereas Sri Pawan Kumar Shukla had been appointed on a vacant post in CT. Grade by direct recruitment by the Commission.

14. He has relied upon paragraph 6 of the writ petition and para 2 of the counter-affidavit filed by Sri Mahendra Kumar Singh, DIOS, Allahabad dated 11.3.2005 in this regard wherein it has been averred that requisition letters dated 6.6.1994 and 17.6.2003 were sent by the Committee of Management to the U.P. Secondary Education Service Selection Board (hereinafter referred to as the "Board") for appointment of teachers on the vacant posts of Book Craft and Allied Art (L.T. Grade) which was a separate post of L.T. Grade (Kala) teacher in the college in question. Pursuant thereto the DIOS by means of his letter dated 18.9.2003 to the Management of the College directed to allow Sri Pawan Kumar Shukla to join as L.T. Grade teacher in the college. In para 2 of CA aforesaid it is averred that the order dated 11.3.2005 passed rejecting the representation of the petitioner. It is submitted that applications for appointment of teachers against L.T. Grade vacancies, existing at that time were requisitioned for at a time much prior to submission of resignation by the petitioner from the post of lecturer, hence it is clearly establishes that it had given appointment to Sri Pawan Kumar Shukla against a vacant post of L.T. Grade which was not on the post of lecturer on which appellant was working.

15. Learned counsel for the respondents submits that the appellant had tendered unconditional resignation letter which was accepted by the Committee of Management. He then by his letter dated 18.11.2003 sought to withdraw his resignation letter on the ground that his family circumstances have changed. Since his resignation was accepted prior to his letter for withdrawal of his resignation, hence his request for withdrawal of his resignation was rightly not accepted as the appellant cannot take benefit of even any technicalities of law even though there is none in the instant case. It is stated that in the present case, as per his own showing, the appellant had tendered his resignation on 18.11.2003. Once the resignation of the appellant which was unconditional was accepted by resolution of the Committee of Management dated 23.11.2003 and its acceptance having been communicated to the appellant on 25.11.2003, it was not open for him to challenge the correctness of action of the answering respondent on the ground of being against Regulations 26 and 29 of Chapter III of the Regulations framed under the Uttar Pradesh Education Act, 1921.

16. He also submits that the learned Single Judge in exercise of his powers under Article 226 of the Constitution of India rightly considered the order dated 11.3.2005 passed by the DIOS and did not interfere with the said order.

17. After hearing learned counsel for the parties and on perusal of record, we are of the opinion that submissions of the learned counsel for the appellant are not acceptable as there is no averment in the letter dated 17.2.2004 of the appellant seeking withdrawal of his resignation that he is forced to resign and there is also no complaint filed by the appellant with regard to the management forcing him to tender his resignation.

18. As regards the finding in the judgment impugned that there was only one post of lecturer in "Kala" subject we find from the record that one post of L.T. Grade teacher had been advertised much prior to resignation letter by the appellant submitted to Committee of Management. It appears that pursuant to requisition letters dated 6.6.1994 and 17.6.2003 Sri Pawan Kumar Shukla, the son of the appellant had applied against the vacant post of L.T. Grade teacher in the subject of Book Craft and Allied Art and was selected. His application for appointment on vacant post of L.T. Grade teacher in "Kala" was prior to tendering of resignation of his father, the appellant from the post of lecturer.

19. Therefore, it appears that the appellant was working as lecturer in "Kala" subject whereas his son was selected against vacant post of L.T. Grade teacher on the post of teacher in the subjects of Book Crafts and Allied Arts which was a distinct post from the post of lecturer on which his father was working. It is also not in dispute that the appellant had submitted his application for withdrawal of his resignation letter after it had been accepted by the Committee of Management in its meeting dated 23.11.2003.

20. In the facts and circumstances, in our considered opinion, this will not have any effect on the conclusions rightly drawn by the learned Single Judge that the appellant had resigned from service of his own free will and it was not a forced resignation letter obtained by the Management. It appears from perusal of his resignation letter that he in the aforesaid resignation letter nowhere has stated that he was forced to resign from service by the Committee of Management. Further while withdrawing the resignation letter he has also not pleaded so. There appears to be no complaint made by the appellant to police or to higher authorities that he had been forced to resign. The appellant on the contrary has averred therein that he wants to withdraw his resignation letter on account of his family circumstances.

21. Since it is not in dispute that the resignation letter of the appellant had been accepted by the Committee of Management prior to appointment of Sri Pawan Kumar Shukla on a vacant post of L.T. Grade teacher and not on the post of lecturer on which the appellant was working. Therefore, it could not have been withdrawn after his resignation had been accepted by the Committee. The appellant having resigned on his own free will from service and also having attained the age of superannuation is not entitled to any relief.

22. Misconceived reliance has been placed upon Regulations 26, 28 and 29 of Chapter III of U.P. Intermediate Education Act, 1921. It may be that notice had been given by the appellant petitioner which expiring in the month of February, 2004 and was against the proviso to regulation 29 but this will not have any effect in this case as the Committee of Management while accepting the resignation letter had requested the appellant petitioner to continue till 30th June, 2004, hence notice period of 3 months was well in advance as his services were to expire on 30.6.2004 after he was given benefit of the session pursuant to acceptance of his resignation letter.

23. Regard may also be had to the fact that when the post of his father was converted it was on condition that it shall not be filled up thereafter. Therefore for this reason too the post of lecturer held by the appellant could have been filled up by appointment of Sri Pawan Kumar Shukla on it.

24. For all the reasons stated above, we are not inclined to interfere in the impugned order and judgment of the learned Single Judge. However, the remarks by him in the judgment are expunged for reason that it could not be proved from record that appellant was in any way instrumental in appointment of Sri Pawan Kumar Shukla by tendering his resignation and request for withdrawal of the same which has rightly been rejected by the Committee of Management and the DIOS. The special appeal is accordingly, dismissed. No order as to costs.