

(1993) 11 SC CK 0087

Supreme Court of India

Case No: Civil Appeal No. 6041 Of 1993

State of U.P. and Others

APPELLANT

Vs

Ved Prakash Sharma (Dr)

RESPONDENT

Date of Decision: Nov. 1, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1995) 2 SCC 582 Supp

Hon'ble Judges: K. Ramaswamy, J; A. M. Ahmadii, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. DELAY condoned.

2. SPECIAL leave granted.

3. The respondent was appointed as Medical Officer in P.M.S. on temporary basis some time in 1973. Under the terms of the letter dated 28/01/1973 it was agreed by and between the parties as under :

"YOUR services can be terminated on one month's notice on either side." In terms of the said term in the letter of appointment, the respondent served notice on 14/03/1983 terminating his contract and thereby his appointment to the post in question. It appears that thereafter since he did not hear from the department he served the department till August 1983 and thereafter ceased to do so. The appellant has paid him the salary up to August 1983 and there is no dispute in that behalf. It appears that more than four years thereafter he sent a letter dated 10/12/1987 stating that he desired to withdraw his letter of resignation dated 14/03/1983. He did not hear from the authorities on this letter till 13/06/1990 whereby he was informed that since he had resigned by the letter of 14/03/1983 the

relationship of employer and employee had come to an end and nothing further could be done. It was only after the receipt of this letter of 13/06/1990 that he filed a writ petition in the High court for quashing the same and for a direction that he be taken back in service. The High court by the impugned order of 23/01/1992 quashed the communication dated 13/06/1990 and held that he shall be deemed to be in continued employment from 14/03/1983 and the question of payment of salary and other consequential benefits for the period from 14/03/1983 to the date on which he is reinstated in service will be determined by the department. It is against this order that the department has come in appeal.

4. The RE is no doubt that there has been a delay in the filing of the appeal. The learned counsel for the respondent submitted that the delay should not be condoned since even the application for obtaining the certified copy of the impugned order was preferred after the period of limitation had expired. It is indeed true that the State has not acted promptly but having regard to the facts and circumstances leading to the passing of the impugned order and the subsequent events we do not think that this is a case in which merely on the ground of delay the petition should fail. We have, therefore, condoned the delay.

5. WE are afraid we cannot allow the impugned order of the High court to stand. The facts clearly reveal that under the terms of the contract the respondent was entitled as of right to terminate the contract by one month's notice. That he did and, therefore, on the expiry of the period of one month the relationship came to an end. Under the contract that was a right conferred on the respondent which was not dependent on the management's goodwill. The management did not come in the picture as the right was absolute and on the expiry of 30 days the relationship came to an end. His continuance up to August 1983 makes no difference. It is also an admitted fact that after August 1983 he ceased to report for work which is indicative of his desire to terminate the contract of employment. Till 1987, i.e., for over four years he remained quiet and thereafter it suddenly occurred to him that he could take advantage of the fact that there was no formal acceptance of his resignation. He, therefore, dashed off a letter dated 10/12/1987 with a view to withdrawing his resignation letter of 14/03/1983. Even thereafter he did nothing and went on making periodical representations, the last of which was rejected on 13/06/1990. Treating that as a cause of action he filed the writ petition in question. We think that in the circumstances it is absolutely clear that he had the animus to terminate his relationship by the letter of 14/03/1983. There was, therefore, no question of his being taken back in service after such a long lapse merely because of want of a formal communication accepting the resignation. The conduct of the parties has also relevance and the conduct of the respondent in particular shows his intention to terminate the contract. Counsel, however, relied on the decision of this court in *Union of India v. Gopal Chandra Misra*, and referred to paragraph 33 thereof, but we find that the said decision has no application to the facts of this case. That was a case which turned on the interpretation of Article 217 proviso (a) and not a case of

the present type where under the terms of the contract, the respondent had a right to sever relationship by one month's notice.

6. WE are, therefore, of the opinion that the High court ought not to have interfered in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution after a lapse of several years. The High court should have realised that the respondent alone was responsible for the situation and must thank himself for the same. The management would have filled in the vacancy and cannot be expected to create a supernumerary post for no fault of its own. We, therefore, cannot allow the order to stand. We allow the appeal and set aside the impugned order and consequently the writ petition filed in the High court by the respondent will stand dismissed with no order as to costs.