

Committee of Management Dayanand Arya Kanya Degree College, Moradabad

Vs

Director of Higher Education Allahabad & Ors.

(G. N. Ray, G. B. Pattanaik JJ)

16.01.1998

ORDER

1. Leave granted.

2. Heard learned counsel for the parties. The short question that arises for decision of this Court in this appeal is whether the respondent Dr. Manju Saraswat continues as Principal of the Dayanand Arya Kanya Degree College, Moradabad, despite the fact that she had voluntarily tendered resignation from the said post long back. By the impugned judgment, the High Court has held that the acceptance of the resignation by the Managing Committee of the said college was not operative because the authorized Controller had not accepted such resignation and the Vice Chancellor of the concerned University had also not accorded approval of the decision of the Managing Committee in accepting the resignation tendered by the said Manju Saraswat.

3. There is no dispute to the fact that Smt. Manju Saraswat tendered resignation voluntarily and till today she had not withdrawn such resignation. There is also no dispute to the fact that at the relevant time when the Managing Committee had accepted the said resignation, the said Managing Committee was in office both de facto and de jure by virtue of the interim order passed by the High Court in the writ proceeding in favor of the Managing Committee. In the aforesaid circumstances, the High Court, in our view, has gone wrong in proceedings on the footing that the authorized controller had not accepted the resignation tendered by Smt. Manju Saraswat because the authorized controller was not in office at the relevant time when the voluntary resignation was accepted by the Managing Committee which was lawfully discharging the duties and functions of the Managing Committee. So far as the question of according approval by the Vice-Chancellor of the University is concerned, it may be pointed out that such approval is not contemplated under sub-section 3 of Section 35 of the Uttar Pradesh University Act, 1973 in the case of voluntary resignation by a teacher. The said sub-section applies when a decision to terminate the service of teacher whether by way of punishment or otherwise is taken by the management. If a teacher voluntarily tenders resignation and by that process withdraws from the service on own score, the question of termination of service does not arise. In this connection, reference may be made to the decision of this Court in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of U.P. & Ors. (1990 (4) SCC 27). It has been held in the said decision that if an employee voluntarily tenders resignation, it becomes an act of the employee who chooses to voluntarily give up job. Therefore, such situation will be covered by the expression voluntary retirement within the meaning of clause I of Section 2(a) of U.P. Industrial Disputes Act, 1947. It has also been indicated in the said decision that if the resignation is not voluntarily but it is tendered on account of coercion, such resignation cannot be held to be voluntary act of the employee expressly deciding to withdraw from service.

4. We have already indicated that such is not the case in this appeal. Therefore, there was no occasion for the Vice-Chancellor of the University to accord approval on a decision of the management to terminate the service of the concerned teacher. Since the Managing Committee which was lawfully in office at the relevant point of time and had accepted the voluntary resignation, the relationship of master and servant between the college authorities and Dr. Manju Saraswat had come to an end. Hence, there is no question of her continuance in the service in the said college. Mr. Vijay Bahugana, the learned senior counsel appearing for the respondent Dr. Manju Saraswat, has submitted that although such voluntary resignation was tendered by Dr. Manju Saraswat and the same had not been withdrawn by her, on account of some misconception, the fact remains that she had thereafter continued in service for long for which she had also been paid. Mr. Bahugana has submitted that the new Management has taken charge of the said college and it will be only appropriate if such Committee considers the case of Smt. Manju Saraswat sympathetically. It is not necessary for this Court to make any observation on such submission of Mr. Bahugana. It will be open to the concerned Managing Committee to consider the representation, if made by Dr. Manju Saraswat, on its merit. This appeal, therefore, succeeds and the impugned order is set aside without, however, any order as to costs.