

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-3893 of 2016

Shabana Haider
Versus
Federation of Pakistan & another

Date of Hearing: 21.11.2019

Petitioner: Through Malik Naeem Iqbal Advocate.

Respondent No.1: Through Mr. Aminullah Siddiqui, Deputy Attorney General.

Respondent No.2: Through Raja Qasit Nawaz Khan Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner seeks a declaration of letter dated 03.03.2016 to be illegal, unlawful and without jurisdiction.

2. Brief facts are that petitioner was working as Deputy Registrar vide SECP order dated 30.10.2007 and posted in Companies Registration Office, Karachi. On successful completion of the probation period, she was confirmed on 09.10.2008. It is the case of the petitioner that the respondent failed to adhere to its Home Resource Manual duly framed/issued in exercise of powers conferred under section 8 of SECP Act, 1997. Petitioner claimed to have aggrieved of an order dated 03.03.2016 as her request to withdraw her resignation, before its acceptance by the competent authority, was turned down in violation of clause 7.2.3(ii) of the ibid Human Resources Manual.

3. It is the case of the petitioner that the resignation was tendered under compelling circumstances as petitioner was subjected to

incessant, harassment and victimization. The impugned order claimed to be violative of the provisions of Human Resource Manual and the dictums laid down by the apex Court.

4. The petitioner tendered her resignation to SECP on 01.02.2016. She claimed to have exercised such rights in terms of clause 7 of the Human Resource Manual and she undertook to continue to work for SECP for the next 30 days, as notice period, completing her employment by March 01, 2016. She claimed to have withdrawn her resignation on 26.02.2016. She also claimed to have sent an email on February 29, 2016 at 10:41 A.M. It is claimed that in terms of aforesaid clause of Human Resource Manual, the Commission ought to have considered the request of withdrawal and it should not have been acted upon and accepted in haste or it should not have been accepted before completion of 30 days period and thus it deprived petitioner from exercising her right, as provided under clause (iv) of 7.2.3 of the Human Resource Manual.

5. In support of his contention, learned counsel for petitioner has relied upon the cases of Sanker Dutt Shukla v. President, Municipal Board, Auraiya reported in AIR 1956 Allahabad 70 and Jai Ram v. Union of India reported in AIR 1954 SC 584. Malik Naeem Iqbal, learned counsel for petitioner, has also relied upon the case of Registrar Lahore High Court v. Syed Javed Akbar reported in 2007 SCMR 792, Muhammad Khan v. Pakistan through Ministry of Interior Karachi reported in PLD 1958 West Pakistan Karachi 75 and Syed Faisal Raza Gillani v. Lahore High Court Lahore reported in 2015 PLC (CS) 337.

6. With this background we have heard the learned counsel and perused the material available on record.

7. The clause 7.2.3 of the instrument named as Human Resource Manual is crucial in reaching to a just and fair conclusion and for the convenience it is reproduced as under:-

"7.2.3 Resignation

- i. *An employee has to submit his/her resignation to the concerned Departmental Head by giving a (1) month notice or one month's gross salary in lieu of the notice period. The period of notice shall commence from the date on which a notice in writing is served by the employee. However, employee may not absent him/her (self) from the duty without approved leave.*
- ii. *The concerned Departmental Head shall forward the resignation of his/her employee after recommendation to HRD for the approval of the Commission.*
- iii. *An employee resignation shall not become effective if disciplinary proceedings are pending against the employee until and unless, otherwise approved by the Commission.*
- iv. *Cessation of employment of an employee tendering his/her resignation may only take effect subject to acceptance of the resignation, completion of the notice period (unless this is waived by the Commission) and clearance of all pending dues.*
- v. *In case an employee withdraws the resignation before its acceptance the resignation shall be deemed to have been withdrawn.*
- vi. ...
- vii. ...
- viii. ..."

8. There is no dispute to a fact that the resignation of petitioner was tendered on 01.02.2016 and accepted on 08.02.2016, which was communicated to the petitioner through an email when the information was delivered that the competent authority has approved the resignation. A crucial event occurred on 08.02.2016. It is the contention of petitioner's counsel that it should not have been accepted immediately in haste and should have been accepted on completion of 30 days period, as required under the relevant clause of HR Manual, referred above.

9. Relevant sub-clause (i) of the *ibid* clause i.e. 7.2.3 reflects that an employee is empowered to submit his/her resignation to the

concerned departmental head by giving one month notice or one month gross salary in lieu of notice period. The period of notice shall commence from the date the notice in writing served upon employee whereas the employee should not absent himself/herself from the duty without approved leave. Sub-clause (ii) of Clause 7.2.3 further provides that the concerned departmental head shall forward resignation of his/her employee after recommendation to HRD for the approval of the Commission. Sub clause (iii) of the ibid clause provides that an employee's resignation shall not become effective if the disciplinary proceedings are pending against the employee until and unless otherwise approved by the Commission.

10. Sub-clause (iv) is the most decisive sub-clause. It provides that cessation of employment of an employee tendering his/her resignation may only be effective, subject to acceptance of resignation, completion of the notice period (unless this is waived by the Commission), and clearance of all pending dues.

11. By virtue of this sub-clause i.e. sub-clause (iv) it cannot be deemed that the resignation ought to have been accepted on the eve of completion of the notice period. This sub-clause enabled the employer to accept the resignation any time after it was tendered. Cessation of employment is dependent on three steps which were in the way of cessation. First and foremost is acceptance of resignation followed by completion of the notice period (unless this is waived by the Commission) and clearance of pending dues. This sub-clause does not mean that a right of withdrawal of the resignation, which is already accepted, was still available with the employee.

12. The right of withdrawal of the resignation was available as long as the resignation was not accepted. This gained strength when sub-clause (v) is read along with this proposition. It provides that in case an

employee withdraws the resignation before its acceptance, the resignation shall be deemed to have been withdrawn. This is not the case here. The resignation was accepted on 08.02.2016 whereas the request for withdrawal of the resignation was made on 26.02.2016, on the imaginary ground that 30 days' notice period was yet to expire. In this context we may observe that notice period has nothing to do with the acceptance of resignation. On acceptance of resignation all that is essential for an employee is to complete the notice period i.e. to serve the Commission in case the employee had opted to give one month notice. The employee could have opted to pay salary in lieu thereof but that is not the case here.

13. Sub-clause (iv) of Clause 7.2.3 relates to completion of an employment, which in the present situation could only be completed by serving the Commission for a period of 30 days, which is the notice period unless otherwise waived by the Commission and clearance of all pending dues to be followed. In case the interpretation of petitioner's counsel is applied that it (right as to acceptance of the resignation) ought to have been exercised on the last day of the notice period, it would illogical to reconcile all sub-clauses of Clause 7.2.3.

14. In all the cases/case law, as relied upon by learned counsel for petitioner, the emphasis was made on withdrawal of resignation before acceptance and not on the completion of notice period, hence are distinguishable from the facts of the present case. In the instant case the cessation of employment (relationship) for another 30 days somehow linked with the notice period. If a resignation of the employee could only said to have been accepted and implemented on successful completion of two propositions i.e. completion of the notice period and clearance of all pending dues then perhaps the clearance of dues may affect the notice period as it may take long and the spirit of notice

period of 30 days would be violated. The completion of notice period and acceptance of resignation is somehow disjunctive and it cannot be said that the resignation should have been accepted on the last day of the completion of notice period.

15. In view of the above we are of the view that the petition is misconceived and the same was accordingly dismissed along with pending application vide short order dated 21.11.2019 of which these are the reasons.

Dated:

Judge

Judge