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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 15.12.2021***

\+ **W.P. (C) 2611/2019 and CM Nos.29427/2021 & 41062/2021**

B.S. RAWAT .... Petitioner

Through: Petitioner in person

versus

DELHI TECHNOLOGICAL UNIVERSITY ..... Respondent

Through: Mr. Aldanish Rein and Ms. Maheravish Rein, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present writ petition has been filed by the Petitioner seeking a declaration that a Vice-Chancellor holding additional charge is not competent to exercise statutory powers. Petitioner also seeks issuance of a writ of *certiorari* quashing order dated 25.05.2016, whereby resignation of the Petitioner was accepted and the consequential order dated 31.05.2016, relieving the Petitioner from his duties. Challenge is also laid to order dated 03.11.2016, whereby request of the Petitioner for withdrawal of resignation was rejected by the Respondent.

2. Brief narrative of facts, as set out in the writ petition, is that Petitioner joined as Assistant Registrar with the Respondent/Delhi Technological University on 23.08.2010. On 19.05.2016, Petitioner

tendered his resignation, which was accepted by Professor Yogesh Singh on 22.05.2016 and a formal order was issued on 25.05.2016. Professor Yogesh Singh had assumed additional charge as a Vice-Chancellor of Respondent University on 24.09.2015. Petitioner was thereafter relieved from the services of the Respondent on 31.05.2016. On 14.07.2016, Professor Yogesh Singh joined as a whole-time salaried Vice-Chancellor of the Respondent University.

3. Petitioner withdrew his resignation on 22.09.2016, on the ground that the same was neither accepted nor ratified by the Competent Authority. Vide order dated 03.11.2016, request of the Petitioner for withdrawal of resignation was rejected by the Respondent and aggrieved by the said action, Petitioner approached this Court by filing the present writ petition.

CONTENTIONS OF THE PETITIONER

4. Resignation tendered by the Petitioner was not accepted by the Competent Authority and there being no acceptance in the eyes of law, resignation could be legally withdrawn by the Petitioner. As per Section 23(2)(ix) of the Delhi Technological University Act, 2009 (hereinafter referred to as 'DTU Act'), the Board of Management (hereinafter referred to as 'BOM') has the power to appoint persons to teaching, administrative and ministerial posts. Under Statute 10(2)(i) of the Delhi Technological University (First) Statutes, 2009 (hereinafter referred to as 'First Statutes'), BOM is empowered to make appointments of non-teaching staff, as may be necessary, on the recommendation of a Selection Committee. Therefore, by virtue of both these statutory provisions,

Competent Authority to accept resignation is only the BOM, i.e. Appointing Authority and a person holding additional charge as Vice-Chancellor had no power to accept the resignation of the Petitioner. In a nutshell, the contention is that it is only the Appointing Authority, which is competent to accept resignation and thus, the order accepting resignation of the Petitioner is without jurisdiction and *void ab initio*.

5. Reading of the impugned order dated 25.05.2016 reflects that the resignation was allegedly accepted by the Vice-Chancellor and Chairman, BOM, which is incorrect, since Professor Yogesh Singh was neither the Vice-Chancellor nor the Chairman, BOM on the date of acceptance of the resignation. As per amended Section 22(2) of the DTU Act, amended *vide* Section 2 of the DTU (Amendment) Act, 2012, Chairperson of the BOM is to be nominated by the Chancellor and shall be an eminent educationalist/scientist/engineer/technologist/industrialist. In the present case, Chancellor had not nominated Professor Yogesh Singh as a Chairperson of the BOM and thus, he had no authority to accept the resignation.

6. Reference to the acceptance of resignation by a 'Vice-Chancellor' in the impugned order is also *per se* false and illegal, inasmuch as Professor Yogesh Singh was not a Vice-Chancellor on the date of acceptance of resignation, i.e. 22.05.2016. Under Statute 3(B)(1) of the First Statutes, Vice-Chancellor shall be a whole-time salaried officer of the University. Professor Yogesh Singh had joined as a whole-time salaried Vice-Chancellor of the Respondent only on 14.07.2016, i.e. after the date of acceptance of Petitioner's resignation.

7. Even the grant of additional charge to Professor Yogesh Singh was against the statutory provisions and, therefore, acceptance of resignation by him has no legal sanctity. Procedure for appointment of interim Vice-Chancellor, as a stop-gap arrangement, is provided for in the First Statutes and cannot be deviated from. Statute 3(B)(7) of the First Statutes provides that if the office of Vice-Chancellor becomes vacant due to resignation or otherwise, the senior-most Pro Vice-Chancellor shall perform the duties of a Vice-Chancellor and if there is no Pro Vice-Chancellor, the senior-most Dean shall perform functions of the Vice-Chancellor, until the new Vice-Chancellor assumes office or until the existing Vice-Chancellor resumes the duties of his office, as the case may be. As per the said provision, when Professor Pradeep Kumar, the then regular Vice-Chancellor resigned, Professor S.K. Garg was the senior-most Pro Vice-Chancellor and should have been appointed to perform the functions of a Vice-Chancellor, as a stop-gap arrangement. There is no provision under the DTU Act or the First Statutes which enables the Chancellor, DTU to grant 'additional charge' of Vice-Chancellor to any other person. Therefore, the order of Government of NCT of Delhi dated 18.09.2015 conveying the directions of Hon'ble Lieutenant Governor of Delhi/Chancellor, DTU for giving additional charge to Professor Yogesh Singh, who at the relevant point in time was Director, Netaji Subhas Institute of Technology ('NSIT'), was *per se* illegal and contrary to the statutory provisions. This position, in law, is admitted by the Hon'ble Lieutenant Governor in the noting dated 12.06.2019, *albeit* dealing with a provision *pari materia* to Statute

3(B)(7) of the First Statutes, being Statute 3(B)(6) of The Indraprastha Vishwavidyalaya Act, 1998. It is annotated in the noting that the Statutes provide a clear path of succession in case the office of Vice-Chancellor becomes vacant and that it was not clear whether there is any discretion provided in the Statutes to deviate from the prescribed procedure. It was also observed that any deviation may lead to avoidable litigation and controversy. It was thus advised that the procedure prescribed by the Statutes be followed to assign the charge of Vice-Chancellor of the concerned University. After the advice and opinion of the Hon'ble Lieutenant Governor, the charge of Vice-Chancellor, GGSIP University was given to Professor Ashutosh Mohan, who was the senior-most Dean, *vide* office order dated 12.06.2019.

8. In any event, a Vice-Chancellor has the power to make short term appointments only, not exceeding six months and that too, with the approval of the BOM as per Statute 4(9) of the First Statutes. Petitioner was appointed to the post of Assistant Registrar against a regular sanctioned vacancy and the appointment was not a short term appointment. Therefore, Vice-Chancellor not being the Appointing Authority of the Petitioner could not have accepted the resignation.

9. Section 23(3)(f) of the DTU Act clearly prescribes that every meeting of the BOM shall be presided over by the Chairperson and in his absence, by a Member chosen by the Members present. In the case of the Petitioner, resignation tendered by him was never placed before the BOM for its decision and the Vice-Chancellor holding the additional charge was never chosen by Members to preside any BOM meeting. Therefore,

resignation tendered by the Petitioner was never accepted by a Competent Authority and could be withdrawn by the Petitioner before its acceptance.

10. DoPT O.M. dated 11.02.1988 clearly provides that if a Government servant, who has submitted resignation, sends an intimation in writing to the Appointing Authority, withdrawing his earlier letter of resignation, before its acceptance by the Appointing Authority, resignation shall be deemed to have been automatically withdrawn and there is no question of accepting the resignation. Acceptance of resignation on 22.05.2016, communicated to the Petitioner *vide* office order dated 25.05.2016, was not an acceptance in the eyes of law and, therefore, withdrawal of resignation on 22.09.2016 was legally permissible and ought to have been allowed by the Respondent. Reliance was placed for the said proposition on the judgments of the Supreme Court in ***Raj Kumar vs. Union of India***, ***(1968) 3 SCR 857*** and ***Union of India vs. Shri Gopal Chandra Mishra and Ors., (1978) 2 SCC 301***.

11. It is a settled law that an officer holding an additional or current duty charge cannot exercise statutory powers vested in a full-fledged incumbent of the post. Since Professor Yogesh Singh was holding an additional charge of the Vice-Chancellor prior to 14.07.2016, he could not exercise the power of accepting resignation, which is not an administrative or executive function but is purely a statutory function. In this context, reliance was placed on Fundamental Rule 49 and Rule 12(2) of the CCS (CCA) Rules, 1965 as well as MHA O.M. dated 24.01.1963 and MHRD letter dated 07.08.2014. Reliance was also placed on the

judgment of the Division Bench of the Punjab and Haryana High Court in ***Hardwari Lal v. Union of India, 1990 SCC OnLine P&H 313***.

12. Without prejudice to the above, resignation submitted by the Petitioner was conditional inasmuch as it was clearly mentioned in the Memorandum dated 25.05.2016 that resignation was being accepted subject to the Petitioner furnishing 'No Dues Certificate' from all the concerned Branches/Departments latest by 27.05.2016, to enable the authority to take further necessary action in the matter. 'No Dues Certificate' was issued by the Respondent on 10.08.2016, which is evident from the Certificate itself, annexed as Annexure P-24 to the Rejoinder affidavit. Thus, relieving of the Petitioner from the services of the University with effect from 31.05.2016 was illegal. Reliance was placed on the judgments in ***Bank of India v. Kalidas Haribhau More, 1999 SCC OnLine Bom 226*** and ***Satyendra Prasad v. Coal India Limited, 2012 SCC OnLine Jhar 944***.

13. Since the action of acceptance of resignation as well as rejecting the request for withdrawal of the same was illegal, Petitioner is entitled to reinstatement with effect from the date he was relieved from the services of the Respondent. Petitioner is also entitled to full back-wages from the date of reinstatement as it is a settled law that the principle of 'no work no pay' will be inapplicable to a case where the employee was willing to work but the employer, by his illegal action of termination, kept the employee out of service. This has been so held by the Supreme Court in ***Union of India and Ors. vs. K.V. Jankiraman and Ors., (1991) 4 SCC 109***.

14. In case of wrongful termination of service, reinstatement with continuity of service and full back-wages is the normal rule. An employer objecting to the grant of back-wages must establish cogent and valid reasons to deviate from the said Rule. Reliance was placed on the judgment of the Supreme Court in ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324***. Appellant was recruited against a regular sanctioned post and was a permanent employee and neither a daily wager nor a temporary employee and is thus entitled to the benefit of the normal Rule, i.e. reinstatement with back-wages. In the case of ***Hindustan Tin Works Pvt. Ltd. vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors., (1979) 2 SCC 80***, the Supreme Court held that there is no justification to give premium to an employer for his wrong-doings by relieving him of the burden to pay to the employee his dues in the form of full back-wages. Back-wages should be awarded after computing the same on the basis of periodical revision of salary between the period 2016 to 2021, as held by the Supreme Court in the case of ***Raj Kumar (supra)***, along with interest at the rate of 9% p.a. from the date of relieving till the date of reinstatement.

CONTENTIONS ON BEHALF OF THE RESPONDENT

15. Petitioner joined DTU as Assistant Registrar w.e.f. 09.09.2010 and was taken on strength against a sanctioned post *vide* order dated 29.10.2010. Vide letter dated 19.05.2016, Petitioner tendered his resignation on the ground that he was no more interested to work as an Assistant Registrar with the Respondent. Another letter dated 23.05.2016 was submitted by the Petitioner seeking waiver of advance notice period

and acceptance of resignation with effect from 31.05.2016. Consequently, Petitioner's resignation was accepted by the Competent Authority and he was relieved from services of the Respondent on 31.05.2016, waiving the notice period, as requested by the Petitioner and, therefore, Petitioner can have no grievance in this regard.

16. The Appointing Authority in case of the Petitioner is the BOM. However, in the 16th Meeting of the BOM, held on 27.05.2015, after due deliberation, BOM delegated 'total powers' to the Vice-Chancellor, till the appointment of the Chairman of the BOM, for smooth functioning of the University. Professor Yogesh Singh, Director, NSIT, was assigned additional charge of Vice-Chancellor of the Respondent *vide* order dated 18.09.2015, issued by the Director, Directorate of Training and Technical Education, Govt. of NCT of Delhi and he joined on 24.09.2015. In the 18th Meeting of BOM, held on 04.03.2016, factum of assumption of additional charge of Vice-Chancellor by Professor Yogesh Singh was placed as Agenda No. 18.17 and the information was taken on record. Since the Petitioner had himself requested for waiver of the advance notice period, looking at the urgency of the matter, Professor Yogesh Singh accepted the resignation on 22.05.2016 and formal order issued on 25.05.2016 was duly communicated to him. BOM was informed of the relieving of the Petitioner in the 20th Meeting, held on 26.09.2016.

17. Petitioner sought withdrawal of his resignation on 22.09.2016, which was clearly after the acceptance of the resignation and also after he was relieved from the services of the Respondent and, therefore, the request was rejected. It is a settled law that withdrawal of resignation

cannot be accepted after the resignation has been accepted and/or the employee is relieved from his services. DoPT O.M. dated 11.02.1988 clearly stipulates that a resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant, who has submitted his resignation, sends an intimation in writing to the Appointing Authority withdrawing his resignation before its acceptance by the Appointing Authority, resignation will be deemed to be withdrawn and cannot be accepted. Where the resignation has been accepted by the Competent Authority and the Government servant is to be relieved from a future date, if any request for withdrawing is made before the Government servant is relieved of his duties, his request to withdraw should be allowed. Where, however, the request for withdrawal has to be refused, ground of rejection must be recorded and intimated to the concerned Government servant.

18. It is wrong to contend on behalf of the Petitioner that the resignation was not accepted by a Competent Authority. Statute 10(2)(o) of the First Statutes empowers BOM to delegate any/all its powers to the Vice-Chancellor. Under Statute 10(2)(i), the power to make appointment to a non-teaching post vests with the BOM, on recommendations of a Selection Committee, constituted for the purpose. In the present case, BOM had delegated all its powers to the Vice-Chancellor. Professor Yogesh Singh was given additional charge of a Vice-Chancellor and, therefore, he had the power and jurisdiction to accept the resignation of the Petitioner, as a delegatee of BOM and no illegality can be found with the said action.

19. Without prejudice to the above, assuming that there was any irregularity in the action of Professor Yogesh Singh, at the time of accepting the resignation, the action was ratified by the BOM in its 20th Meeting held on 26.09.2016, where the BOM was informed of the aforesaid action of accepting the resignation and in the 21st Meeting of the BOM, held on 23.11.2016, wherein the decisions taken in the 20th Meeting were confirmed. Being ratified by the Appointing Authority, action of acceptance of resignation was valid and the decision to reject the request for withdrawal, after acceptance, cannot be faulted with.

ANALYSIS AND FINDINGS

20. I have heard the Petitioner, who appeared in person and learned counsel for the Respondent and examined their rival contentions.

21. Facts to the extent they are undisputed and relevant to the present petition, are that the Petitioner was appointed as an Assistant Registrar against a sanctioned post in the Respondent University and was a regular employee of the University. Resignation was tendered by the Petitioner on 19.05.2016 and was accepted by Professor Yogesh Singh on 22.05.2016. Acceptance was communicated to the Petitioner *vide* formal order dated 25.05.2016 and he was relieved from the services of the Respondent on 31.05.2016. On 22.09.2016, Petitioner sought to withdraw the resignation on the ground that the same had neither been accepted nor ratified by the Competent Authority. Request for withdrawal was rejected by the Respondent on 03.11.2016 on the ground that it was a clear resignation, which had been accepted by the Competent Authority and the withdrawal could not be acceded to.

22. It needs a mention at the outset that before the Respondent as well as in the pleadings in the writ petition and rejoinder, Petitioner has taken a consistent stand that the resignation tendered by him was a 'technical resignation'. However, at the start of oral arguments, it was conceded that the resignation was not a 'technical' resignation as envisaged in service jurisprudence and the Rules relating thereto. Thus, neither party addressed any arguments on the said issue. This Court, therefore, proceeds on the basis that the resignation was not a 'technical' resignation.

23. Contention of the Respondent that once a resignation is accepted, the same cannot be withdrawn by an employee, is beyond a debate. Reliance has been rightly placed on the DoPT O.M. dated 11.02.1988, relevant portion of which is extracted hereunder:-

> *"3. A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing*

authority and suitably intimated to the Government servant concerned."

24. It is equally well settled that if an employee withdraws the resignation before its acceptance, the resignation is deemed to be withdrawn and cannot be accepted. To this extent, DoPT O.M. relied upon by the Respondent clearly holds the field and the Supreme Court has enunciated the said principle in several judgments. In order to avoid prolixity, I may only refer to one judgment of the Supreme Court in ***Shri Gopal Chandra Mishra (supra)***, relevant portion of which is extracted hereunder:-

> *"41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment.*
>
> *xxx xxx xxx*
>
> *50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is*

accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

25. The common thread that runs in the aforementioned DoPT O.M. and the judicial pronouncements on the subject, is that acceptance of resignation must be by a Competent Authority. It needs no gainsaying that if the resignation has not been accepted by an Authority having the competence or jurisdiction to do so, the acceptance will be *non-est* and illegal in the eyes of law and it shall be open to the employee to withdraw the resignation in such an eventuality. It further emerges from a plain reading of the DoPT O.M. dated 11.02.1988, relied upon by the Respondent and extracted hereinabove, that acceptance of resignation must be by the 'Appointing Authority' and once accepted by the Appointing Authority, i.e. the Competent Authority, resignation cannot be legally withdrawn. As a corollary, if the resignation is not accepted by the Appointing Authority, the order accepting the resignation is *non-est* in the eyes of law and has no legal validity or sanctity.

26. The primordial issue that thus arises in the present case is whether the resignation tendered by the Petitioner was accepted by the Appointing Authority.

27. It is a common ground between the parties that the Appointing Authority of the Petitioner was the BOM. This is also clearly discernible from Section 23(2)(ix) of the DTU Act and Statute 10(2)(i) of the First Statutes and the relevant provisions are extracted hereunder for ready reference:-

> *"23. Powers, functions and meetings of the Board of Management.*
>
> *(1) xxx xxx xxx*
>
> *(2) The Board of Management shall have the following powers and functions, namely:-*
>
> > *(ix) to appoint persons in teaching, administrative and ministerial posts;"*
>
> *"10. The Board of Management. –*
>
> *(1) xxx xxx xxx*
>
> *(2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Board of Management shall, in addition to the other powers vested in it by and under the Statutes, have the following powers, namely;*
>
> > *(i) to make appointments of non-teaching staff as may be necessary, on the recommendations of the selection committees constituted for the purpose:"*

28. There is merit in the contention of the Respondent that the BOM has the power to delegate any of its powers to the Vice-Chancellor and on recommendations of the Vice-Chancellor, to the Pro Vice-Chancellors,

Registrars, etc. as stipulated in Statute 10(2)(o) of the First Statutes. Statute 10(2)(o) reads as follows:-

> *"10. The Board of Management. –*
>
> *(1) xxx xxx xxx*
>
> *(2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Board of Management shall, in addition to the other powers vested in it by and under the Statutes, have the following powers, namely;*
>
> > *(o) to delegate any of its powers to the Vice-Chancellor, and on the recommendations of the Vice-Chancellor to the Pro Vice-Chancellors, Registrars, the Controller of Finance or any other Officer, employee or authority of the University or to a Committee appointed by it;"*

29. 'Vice-Chancellor' has been defined in Statute 3(B)(1) of the First Statutes, according to which, the Vice-Chancellor shall be a whole-time salaried Officer of the University. 'University' has been defined in Section 2(u) of the DTU Act to mean the Delhi Technological University as incorporated under the said Act. Section 2(u) and Statute 3(B)(1) are extracted hereunder:-

> *"Section 2(u) "University" means the Delhi Technological University as incorporated under this Act; and"*
>
> *"3(B) The Vice-Chancellor—*
>
> *(1) shall be a whole-time salaried officer of the University."*

30. It is an undisputed position that in the present case, resignation of the Petitioner was not accepted by the BOM, i.e. the Appointing Authority. Respondent has, however, predicated its case on the delegation

of powers by BOM in favour of Professor Yogesh Singh. The contention is that Professor Yogesh Singh was holding additional charge of a Vice-Chancellor and thus, he rightly accepted the resignation as a delegatee of the BOM. In order to examine the correctness of the stand, it would be imperative to look into the Minutes of the 16th BOM meeting, relied upon by the Respondent with regard to delegation to the Vice-Chancellor as also whether the powers of BOM could be exercised by Professor Yogesh Singh, as a delegatee.

31. Insofar as the delegation by the BOM is concerned, Respondent has placed on record Minutes of 16th BOM Meeting held on 27.05.2015, wherein one of the Agendas was 'delegation of power to the Vice-Chancellor'. Agenda 16.6 is as under :-

> *"Agenda 16.6: Delegation of power to the Vice Chancellor*
>
> *Decision: The Board after due deliberation delegated total power to the Vice Chancellor till the appointment of Chairman BOM for the smooth functioning of the University."*

32. Perusal of the Agenda reflects that the BOM had delegated total powers to 'Vice-Chancellor' till the appointment of Chairman, BOM for smooth functioning of the University. On 27.05.2015, when the powers were delegated, Professor Pradeep Kumar was the regular Vice-Chancellor, holding the said post as a whole-time salaried officer of the University, in terms of Statute 3(B)(1) of the First Statutes and no fault can be found with the delegation and in any event, this is not even a matter of challenge before this Court.

33. Professor Pradeep Kumar was relieved from the office of Vice-Chancellor w.e.f. 23.09.2015, after his resignation was accepted. This is evident from a reading of para 10 of the writ petition and Minutes of 16th BOM Meeting. Pursuant to acceptance of resignation of Professor Pradeep Kumar, Professor Yogesh Singh, who was working as Director, NSIT was assigned the additional charge of Vice-Chancellor *vide* order dated 18.09.2015, issued by Government of NCT of Delhi. Admittedly, resignation tendered by the Petitioner was accepted by Professor Yogesh Singh, while holding additional charge of a Vice-Chancellor. There is no separate document on record, evidencing delegation in favour of Professor Yogesh Singh, as holder of 'additional charge' of a Vice-Chancellor and in fact, Respondent has relied only on the 16th BOM Meeting to substantiate its argument of delegation in favour of Professor Yogesh Singh.

34. It bears repetition to state that the question that begs an answer is whether Professor Yogesh Singh, holding additional charge of a Vice-Chancellor, was competent to accept the resignation, allegedly exercising power as a delegatee of BOM. Answer to this question, in my view, would first and foremost entail consideration and analysis of provisions of Statute 3(B)(7) of the First Statutes, which is profitably extracted hereunder:-

> *"3(B) The Vice-Chancellor—*
>
> *(7) If the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise, or if he is unable to perform his duties due to ill health or any other reason, the senior-most Pro Vice-Chancellor shall perform the duties of*

the Vice-Chancellor, and if there is no Pro Vice-Chancellor, the senior-most Dean shall perform the functions of the Vice-Chancellor until the new Vice-Chancellor assumes office or until the existing Vice-Chancellor resumes the duties of his office, as the case may be."

35. The aforesaid provision, beyond a scintilla of doubt, prescribes the person(s) who are authorised to perform the duties/functions of a Vice-Chancellor, when the office is vacant. Statute 3(B)(7) stipulates that if the office of the Vice-Chancellor becomes vacant due to death, resignation, etc., the senior-most Pro Vice-Chancellor shall perform the duties of the Vice-Chancellor and if there is no Pro Vice-Chancellor, the senior-most Dean shall perform the functions until the new Vice-Chancellor assumes office or until the existing Vice-Chancellor resumes the duties, as the case may be. The succession is, therefore, clearly provided within the First Statutes, in the eventuality of the office of the Vice-Chancellor becoming vacant. Respondent has been unable to draw the attention of the Court to any provision in the DTU Act or the First Statutes which permits deviation from the succession and appointment of any officer other than the senior-most Pro Vice-Chancellor or in his absence, the senior-most Dean, in case the office of regular Vice-Chancellor becomes vacant.

36. Petitioner has clearly averred in para 10 of the writ petition that when Professor Pradeep Kumar resigned as Vice-Chancellor, Professor S.K. Garg was the senior-most Pro Vice-Chancellor and only he could have been authorised to perform the functions of a Vice-Chancellor as a stop-gap arrangement, till the regular incumbent was appointed. There is

no denial to the averment in the counter-affidavit and even during the course of hearing, learned counsel for the Respondent has been unable to rebut the said position. Once the First Statutes prescribes the procedure that is required to be adopted for appointment against a vacant post of a Vice-Chancellor, as a stop-gap arrangement, so that the work of the University does not suffer, there is no justification for deviating from the said path. Professor Yogesh Singh was admittedly working as Director, NSIT at the relevant time and was neither the senior-most Pro Vice-Chancellor nor the senior-most Dean of the Respondent. Thus, he did not meet the requirements and parameters laid down in Statute 3(B)(7), enabling him to exercise powers or perform functions of a Vice-Chancellor, in the absence of a regular incumbent. This Court is thus constrained to hold that Professor Yogesh Singh was not legally entitled to exercise the powers of the Appointing Authority, i.e. the BOM in the capacity of a delegatee and was thus not empowered to accept the resignation of the Petitioner.

37. While the statutory provision is explicit and clear, however, it is relevant to take a note of the fact that the provision with regard to appointment of an incumbent, as a stop-gap arrangement, in the absence of a regular Vice-Chancellor, has been understood even by the Competent Authority, in the past, in the manner sought to be urged by the Petitioner. Petitioner has placed on record notings relating to filling up the vacancy of a Vice-Chancellor of GGSIP University, as a stop-gap arrangement, pending finalization of the process of appointment of a regular Vice-Chancellor. The noting further indicates that a similar provision as

Statute 3(B)(7) of the First Statutes was under consideration in the said case being Statute 3(B)(6) of The Indraprastha Vishwavidyalaya Act, 1998, which is as follows :-

> *"If the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise, or if he is unable to perform his duties due to ill health or any other reason, the senior-most Pro Vice-Chancellor shall perform the duties of the Vice-Chancellor, and if there is no Pro Vice-Chancellor, the senior-most Dean shall perform the functions of the Vice-Chancellor until the new Vice-Chancellor assumes office or until the existing Vice-Chancellor resumes the duties of his office, as the case may be."*

38. One of the proposals was to consider the appointment of an existing Vice-Chancellor of some other University under the Government of NCT of Delhi. However, after examining the proposal, it was opined by the Hon'ble Lieutenant Governor on 12.06.2019 that the Statutes provided a clear path of succession in case the office of the Vice-Chancellor becomes vacant and it was not clear if any discretion was provided in the Statutes to deviate from the prescribed procedure. It was also advised that deviation from the Statutes may lead to avoidable litigation and controversy and, therefore, the procedure prescribed by the Statues to assign the charge of Vice-Chancellor must be followed. Petitioner has also placed on record the order dated 12.06.2019, which was subsequently issued, based on the advice and opinion of the Competent Authority, whereby the senior-most Dean was appointed to perform the functions of the Vice-Chancellor, till the regular Vice-Chancellor was appointed or till the date of his current tenure, whichever was earlier. What thus transpires is that the statutory provision

has been understood to mean and connote that in the absence of a regular Vice-Chancellor, the charge of the Vice-Chancellor can only be given in accordance with the procedure prescribed in the Statutes and no deviation is legally permissible.

39. It is a settled principle that power vested in an authority or officer by virtue of a Statute can only be exercised by that authority or officer or by a delegate, where delegation is authorized and not by others. ***Halsbury's Laws of England (Vol. I, 4th Ed., Para 32)*** summarizes the principle as follows :-

> *"32. Sub-delegation of powers.– In accordance with the maxim delegatus non protest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising, sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind."*

40. Learned counsel for the Respondent had also sought to argue that even assuming that initial acceptance of resignation by Professor Yogesh Singh was irregular, the action stood ratified by the Appointing Authority, i.e. the BOM in its 20th and 21st Meetings, held on 26.09.2016 and 23.11.2016 respectively. This contention only deserves to be rejected. It is a settled law that an irregular act can be ratified either expressly or impliedly by the Competent Authority but acts which are illegal and, therefore, void cannot be ratified. In the present case, the acceptance of resignation was by an Authority lacking the competence and jurisdiction

to accept the resignation. It was also in violation of the statutory provisions where only the Appointing Authority being the BOM or its delegatee could exercise the power to accept the resignation. Professor Yogesh Singh was neither the Appointing Authority nor its delegatee and as an additional charge holder, clearly lacked the jurisdiction and competence to accept the resignation. Such an act cannot be termed as an irregular act, capable of being ratified in law. Being an illegal act, it was *void ab initio* and could not have been ratified by the BOM. In this regard, I am fortified by judgments of the Supreme Court in ***V.C., Banaras Hindu University and Ors. vs. Shrikant, (2006) 11 SCC 42*** and ***State of Orissa v. Mamta Mohanty, (2011) 3 SCC 436***, the Allahabad High Court in ***Sunita Chandra v. Union of India, 2019 SCC OnLine All 4860*** and Punjab and Haryana High Court in ***Hardwari Lal (supra)***.

41. In ***V.C., Banaras Hindu University (supra)***, it was held by the Supreme Court that once the initial order passed by the Vice-Chancellor was wholly without jurisdiction, the same was a nullity and thus, the purported approval by the Executive Council would not cure the defect.

42. The Punjab and Haryana High Court in ***Hardwari Lal (supra)*** held as under :-

> *"25. It is obvious from the facts and circumstances mentioned above, that acceptance of resignation and waiving off the period of notice or salary in lieu thereof, is not a simple administrative function. In fact, it amounts to acting on behalf of the Bank. Initiating disciplinary proceedings in regard to removal, dismissal or awarding of punishment or determining the condition of service are the functions either of the Board of Directors or of the person to whom the Board of Directors delegated its powers. The*

delegatee cannot further delegate the powers conferred upon him, in the absence of a specific authority to sub-delegate. The learned counsel for the respondents failed to show that the Managing Director was authorised to sub-delegate his authority.

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27. Otherwise also, ratification being a conscience act, nothing can be inferred from the documents placed on the record that the authorities, i.e. either the Managing Director or the Executive Committee or the Board of Directors expressly or by implication had applied their mind for the ratification of acceptance of resignation and waiving off the period of three months notice or salary in lieu thereof. We find support for our above observations from the view taken by their Lordships of the Supreme Court in Punjab National Bank v. Shri P.K. Mittal [1989 (1) S.L.R. 596.] , wherein it was observed that termination of a service before the expiry of three months as required by the Regulations was illegal and without jurisdiction. It would come into operation only on the expiry of three months. In the case in hand, it is only the Board of Directors or the Managing Director who could have waived the period of notice or salary in lieu thereof. In view of the admitted facts, it is clear that before any effective order on the resignation was passed by either of the competent authorities, the resignation stood withdrawn. Even otherwise, by reading the order, dated August 7, 1982, it cannot be said that the Managing Director applied his mind with a view to ratify the act of General Manager accepting the resignation and waiving the period of notice. There cannot be any ratification unless the ratifier is conscious of the fact and consciously ratified it expressly or implied by the act or the irregularity committed. The ratification can be made only of irregular or voidable acts. Void acts cannot be ratified. It was not shown by referring to any provisions of law by which void acts could be ratified. There is no gainsaying that acceptance of resignation on

May 14, 1982 was without jurisdiction, void and was non est in the eye of law, inasmuch as the General Managers were never clothed with the authority or powers of a competent person to accept the resignation. The act was void ab initio and thus no ratification could have been effected. Our views are in conformity and are supported by the observations in East and West Insurance Co. Ltd. v. Mrs. Kamala Jayantilal Mehta [A.I.R. 1956 Bombay 537.], wherein it was observed as under:

> *"Where a valid resolution has been passed by someone lacking the necessary authority the persons with the requisite authority may adopt the resolution validly passed and thereby ratify it. But where the objection to the resolution is not the wanting of authority but illegality in the very making of it, in the very passing of it, then it is impossible to accept the contention that the doctrine of ratification can validate a resolution which when it was passed as invalid."*

28. We find further support from a decision in Letters Patent Appeal No. 366 of 1986 (Haryana Seeds Development Corporation Ltd. v. Shri J.K. Aggarwal, decided on September 13, 1988) wherein it was observed that under the Memorandum and Articles of Association, it was for the Board of Directors to appoint and remove a person and the removal of a person by its Executive could not be ratified later by the Board. It is immaterial, whether there was any prohibition restraining the Managing Director from sub-delegating his powers or not. Statutory authority draws its strength or power either from the statute or by the Resolutions of the authority. It cannot be presumed that in the absence of any express prohibition on delegation of powers, there vests an inherent power in the Managing Director. In case of statutory bodies who are legal entities and can only speak through resolutions, as it has no living mind, the power has to be referable to some source. Thus,

the power of a person in its legal entity can be drawn either under the statute or under the Resolution passed by the authorities.

29. We are further of the view that acceptance of resignation or removal of a person from service are the conditions of service and power to accept resignation cannot be termed as merely an administrative power."

43. What follows from the above discussion is that the resignation tendered by the Petitioner was not accepted by a Competent Authority and was thus *non-est* in the eyes of law. Once the resignation was not validly accepted, it was open to the Petitioner to withdraw the same on 22.09.2016 and, therefore, the order rejecting the request of the Petitioner for withdrawal of the resignation is illegal and arbitrary and deserves to be quashed. In view of the aforesaid, this Court need not delve into the other contentions raised by the parties.

44. The issue that next arises is whether the Petitioner is entitled to the relief of reinstatement. In this context, I may allude to a judgment of the Supreme Court in ***Deepali Gundu (supra)***, wherein it was held as under:-

"21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstate" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince.

As per Merriam-Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edn., "reinstatement" means:

> *"To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed."*

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same

emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three-Judge Bench in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held: (SCC pp. 85-86, paras 9 and 11)

> *"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is*

questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to

litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

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11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular."

(emphasis supplied)

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38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule."

45. In ***Hindustan Tin Works (supra)***, a three-Judge Bench of the Supreme Court, *albeit* in the context of termination in the regime of industrial jurisprudence, observed that where the termination of service is found and held to be bad in law, a declaration that the workman should continue in service can be given. Relief of reinstatement can thus be given where termination is found to be invalid, i.e. the umbilical cord is broken by the illegal acts of the employer. The logic and rationale for granting reinstatement, where the act of an employer is found to be illegal, is clear that the employer has by his wrongful act illegally deprived the workman of his right to work and earnings. In view of this line of judgments, it needs to be ingeminated that whenever an employee-employer relationship is discontinued on account of a wrongful and illegal action of the employer, the normal rule *albeit* subject to exceptions is that the employee is restored to the position where he or she was employed. In a number of judgments, the Supreme Court has interpreted the word 'reinstatement' to mean and connote reinstalled/ re-established/restored to an earlier position or a former state or condition or office. No doubt that the Supreme Court has, in a few judgments, enunciated the principle that reinstatement cannot always be an automatic consequence of holding the termination to be unfair, however, those are

mainly where the employees were daily wagers or employed on short term employment basis. In fact, in ***Mahboob Deepak vs. Nagar Panchayat, Gajraula, (2008) 1 SCC 575***, the Supreme Court carved out factors and parameters which must be taken into account for determining relief, which are as follows:-

> *"7. The factors which are relevant for determining the same, inter alia, are:*
>
> *(i) whether in making the appointment, the statutory rules, if any, had been complied with;*
>
> *(ii) the period he had worked;*
>
> *(iii) whether there existed any vacancy; and*
>
> *(iv) whether he obtained some other employment on the date of termination or passing of the award."*

46. In the present case, it is a matter of record that Petitioner was employed on a regular basis as Assistant Registrar with the Respondent, against a sanctioned post. It is not a case of a daily wager or short term employment. This Court has found the action of the Respondent in rejecting the request for withdrawal of resignation to be illegal and contrary to the statutory provisions since the resignation itself was not accepted by the Competent Authority. Relevant would it be to state that when the Petitioner withdrew his resignation, he categorically stated in the withdrawal application that the resignation was neither accepted nor ratified by the Competent Authority. Had the Respondent applied its mind at that stage to the statutory provisions and the competence of Professor Yogesh Singh to accept the resignation, perhaps the request of the Petitioner for withdrawal of resignation would have been acceded to.

Petitioner has suffered the order of rejection resulting in his services being discontinued with the Respondent. If this Court was to deny the relief of reinstatement to the Petitioner, having held that he has been wronged, it would not only be highly unjust to the Petitioner but would also amount to giving a premium to the Respondent for its wrongful acts. In view of the conspectus of the judgments alluded to above, in my view, the Petitioner deserves to be reinstated back in service with the Respondent.

47. Learned counsel for the Respondent, without prejudice to the other contentions, had also opposed the grant of back-wages on the ground that Petitioner had been gainfully employed during the period he was out of service of the Respondent. It was argued that Petitioner was employed as Deputy Registrar with the National Institute of Technology, Calicut at a higher pay-scale and was relieved from the said Institute only on 11.01.2019, as per the communication dated 05.10.2020 sent by the said Institute. Respondent filed an additional affidavit bringing on record the said communication. Petitioner has responded to the additional affidavit and submitted that he is entitled to reinstatement with all consequential benefits including full back-wages except for the period 08.02.2017 to 11.01.2019, the period when he was admittedly gainfully employed.

48. Insofar as back-wages are concerned, since the Petitioner has conceded that he is not entitled to back-wages for the period 08.02.2017 to 11.01.2019, the question of grant of back-wages for the said period need not detain this Court any longer. The Court is, therefore, only concerned with the question of grant of back-wages from the date the

Petitioner was relieved, i.e. 31.05.2016 till the date of reinstatement, excluding the aforementioned period.

49. In view of the aforesaid finding of this Court that Petitioner is deemed to be in service from 31.05.2016, Petitioner is entitled to full back-wages except for the period he was gainfully employed with the National Institute of Technology, Calicut and for which period the claim has been readily and fairly given up by the Petitioner. The law on back-wages needs no reiteration. However, for the sake of completeness, I may refer to the principles laid down by the Supreme Court in ***Hindustan Tin Works (supra)*** *albeit* in the context of the Industrial Disputes Act, 1947 as under:-

> *"11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (see Susannah Sharp v. Wakefield [(1891) AC 173, 179])."*

50. In ***Deepali Gundu (supra)***, the Supreme Court laid down the following principles for determining back-wages:-

"37. After noticing several precedents to which reference has been made hereinabove, the two-Judge Bench observed: (J.K. Synthetics case [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] SCC pp. 448-50, paras 17-21)

> *"17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed…*
>
> *18. Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh [Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591 : 2005 SCC (L&S) 716] and Uday Narain Pandey [U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479 : 2006 SCC (L&S) 250]. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date*

of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back wages were awarded, related to termination/ retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental enquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the

dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all."

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the

superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim

continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

51. Accordingly, writ petition is allowed. Order dated 25.05.2016, whereby the resignation tendered by the Petitioner was accepted as well as order dated 31.05.2016, whereby Petitioner was relieved and order dated 03.11.2016, whereby the request of the Petitioner for withdrawal of resignation was rejected, are quashed and set aside. Respondent is directed to reinstate the Petitioner into service within a period of four weeks from today. Petitioner shall be entitled to all consequential benefits including continuity of service. Petitioner shall also be entitled to full back-wages along with interest at the rate of 9% p.a. from the date he was relieved from the services of the Respondent till the date of reinstatement, except for the period he was gainfully employed.

52. Writ petition is disposed of with all pending applications, with no orders as to costs.

JYOTI SINGH, J

DECEMBER 15th, 2021
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