



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 1480 OF 2012**

Dr. Mrs. Suman V. Jain .....Appellant

Versus

Marwadi Sammelan through its .....Respondents  
Secretary and Others.

**J U D G M E N T**

**J.K. Maheshwari J.**

1. The instant appeal arises out of the judgment dated 04.07.2008, passed by the Division Bench of the ‘High Court of Judicature at Bombay’ in Appeal No. 63 of 2008, whereby the Division Bench dismissed the appeal preferred by the appellant and confirmed the order dated 08.08.2006 passed by learned Single Judge in Writ Petition No. 1611 of 2004. The said writ petition was filed by the appellant being aggrieved by an order dated 30.04.2004 passed by the ‘Mumbai University and College Tribunal, Mumbai’ (hereinafter referred to as “**College Tribunal**”) in ‘Civil Appeal No. 51 of 2003’. Before the College Tribunal, the appellant filed an appeal to quash the order dated 10.09.2003 passed by respondent No. 1 “Marwadi Sammelan Trust”

(hereinafter referred to as **“Trust”**) rejecting her request for withdrawal of resignation vide letter dated 09.09.2003. As such, this appeal is arising out of the orders passed by the three fora before whom the challenge was made by the appellant to the rejection of withdrawal of her prospective resignation, prior to the effective date, and the rejection of her prayer for rejoining the duties.

### **FINDINGS OF THE COLLEGE TRIBUNAL**

2. Assailing the rejection of request for withdrawal of the prospective resignation prior to the effective date, appellant preferred an Appeal No. 51 of 2003 before the College Tribunal. The College Tribunal vide judgment dated 30.04.2004 was of the opinion that since it was not an order of dismissal, removal or termination of service, therefore, the appeal was not maintainable under Section 59(1) of the Maharashtra Universities Act, 1994 (hereinafter referred to as **“1994 Act”**) and on such, the question of limitation under Section 59(2) does not arise. The College Tribunal having found that the appeal is not maintainable, even delved into the question of withdrawal of the prospective resignation before the effective date on merits. After appreciating the facts, it was held in law that the prospective resignation can

be withdrawn before the expiry of the intended date. However, on facts, it was held that there was an implied understanding between the parties' prohibiting withdrawal of resignation. Hence, according to the College Tribunal, the present case fell within the exception in the judgment of the House of Lords in the case of "***The Rev. Oswald Joseph Reichel Vs. The Right Rev. John Fielder (1889), House of Lords, XIV, 249***", and hence, the College Tribunal dismissed the appeal.

**FINDINGS RECORDED BY THE LEARNED SINGLE JUDGE**

3. The said judgment was challenged by filing a Writ Petition No. 1611 of 2004 before the Bombay High Court. Learned Single Judge considered the question as to whether a right to withdraw the prospective resignation can be given up or abandoned? While considering the same, learned Single Judge relied upon the judgment of ***Rev. Oswald (supra)*** and after quoting the same, observed that the right to withdraw the prospective resignation is capable of being given up or waived off by the person who holds that right. Later, the Court referred to the judgment on the principle of 'estoppel' and 'waiver' and in view of the letters dated 28.03.2003, 08.04.2003 and looking to the conduct of the appellant held that the findings recorded by the tribunal on merits

did not warrant any interference. Learned Single Judge failed to appreciate the aspect about the Tribunal having once found the appeal as not maintainable, as to how far it was justified in confirming the findings and examining the issue on merits.

**FINDINGS OF THE DIVISION BENCH OF HIGH COURT**

4. On challenge, the Division Bench confirmed those findings. In para 12 of the judgment, it was held that in normal circumstances, it was open for the appellant to withdraw her resignation before it came into effect, subject to a contract to the contrary. The Division Bench then proceeded to consider the issue as to whether the Tribunal committed any error in considering the factual aspect of the matter. The Division Bench considered the correspondence made from the very inception, i.e., letters dated 18.02.2003, 25.03.2003, 31.03.2003 and 11.8.2003 written by the appellant and letters dated 25.03.2003, 28.03.2003 and 08.04.2003 written by the management and observed that the acceptance of withdrawal of resignation was not objected for quite some time and that it reflected an understanding that the resignation was irrevocable, final and binding between the parties. Relying upon the judgment rendered in the case of **Rev. Oswald (supra)** and also in the case of **“Century Spinning and**

***Manufacturing Company Limited and Another Vs. The Ulhasnagar Municipal Council and Another, AIR 1971 SC 1021***” and ***“Union of India and Others Vs. M/s. Anglo Afghan Agencies Limited, AIR 1968 SC 718”*** on the issue of estoppel, the findings recorded by the College Tribunal and the learned Single Judge of the High Court were affirmed.

### **ARGUMENTS RAISED**

5. Learned counsel for the appellant placed reliance upon the judgment of ***“Union of India and Others Vs. Gopal Chand Misra and Others, (1978) 2 SCC 301”*** to contend that the decision of ***Rev. Oswald (supra)*** has been considered and distinguished in the said case. It is submitted that in the absence of any contrary provision governing the employment, prospective resignation given by an employee can be withdrawn at any time before it becomes effective. Reliance has further been placed on the judgments of ***“Srikantha S.M. Vs. Bharath Earth Movers Limited, (2005) 8 SCC 314”***; ***Balram Gupta Vs. Union of India and Another, 1987 (Supp) SCC 228***; ***“Air India Express Limited and Others Vs. Captain Gurdarshan Kaur Sandhu, (2019) 17 SCC 129”*** and ***“New Victoria Mills and Others Vs. Shrikant Arya, (2021) 13 SCC 771”***. It is pointed out that on filing of an appeal before

the Tribunal, there was a stay in favour of the appellant till the disposal of the said appeal, i.e., 30.04.2004. On disposal of the appeal by the College Tribunal and during the pendency of the proceedings before the High Court, she secured another job as Principal at M.M.P. Shah College and after joining on 01.10.2007, she worked till the age of superannuation, i.e., till 31.10.2015. It is urged that the period from the date of acceptance of the resignation till the joining in the new college may be directed to be regularized on reinstatement, as otherwise, it may cause serious prejudice to the appellant in the matter of payment of pension. It is stated that, in the instant case, there was no written contract or any contrary Rule governing the service of appellant, hence, it is contended that she was entitled to withdraw the prospective resignation. Learned Counsel contested the finding of implied contract after referring to the correspondence between the appellant and the management. According to the learned counsel, the said finding was recorded without appreciating the contents of the letter in their correct perspective. The College Tribunal, learned Single Judge and the Division Bench, according to learned counsel have relied upon the case of **Rev. Oswald (supra)** which was a judgment based on the deed of resignation executed before the witnesses. Therefore, the ratio of the said judgment is not

applicable in the facts of this case and the findings as recorded are not in conformity with the law.

6. Per contra, learned counsel for the Trust vehemently opposed the stand taken by the appellant and argued in support of the reasonings and findings of the impugned judgment. It is contended that the present case is not a case of withdrawal of resignation from a future effective date, rather it is a case where, by mutual understanding resignation was accepted by the management and the controversy was put to rest. Learned counsel contends that in fact both parties have mutually agreed and the controversy was put at rest by accepting the resignation. Further, the doctrine of "*locus poenitentiae*" or the opportunity for withdrawal of resignation by change of mind is of no help to the appellant because the letter dated 08.04.2003 was not objected for quite some time. According to the learned counsel, from the correspondence between the appellant and the respondent it is clear that the management intended to initiate departmental inquiry and to avoid that inquiry, appellant submitted her resignation from the prospective date, which was accepted as irrevocable, final and binding. Thus, the findings recorded by the College Tribunal, learned Single Judge and the Division Bench

against the appellant according to learned counsel warrants no interference. In support of the contentions, reliance has been placed on **“BSES Yamuna Power Limited Vs. Ghanshyam Chand Sharma and Others, (2020) 3 SCC 346”**, **“B.L. Shreedhar and Others Vs. K.N. Munireddy and Others, (2003) 2 SCC 355”**, **Air India Express Limited (supra)**, **Gopal Chand Misra (supra)**, **Balram Gupta (supra)** and **The Rev. Oswald (supra)** and it has been submitted that this appeal deserves to be dismissed.

7. Learned counsel for the Respondent Nos. 3 and 4 submits that the College was run by the Trust affiliated by **“Shreemati Nathibhai Damodar Thackersey Women’s University”** (hereinafter referred to as **“SNDT University”**). As per Clause 8(3)(d) of SNDT Women’s University Statute, the Governing Body of the management is empowered to accept the resignation on giving six months’ notice or payment of salary and the government has no role to play in refusal or acceptance of the resignation. However, in the facts of the case, once the resignation has been accepted by the Governing Body, the findings as recorded by the Tribunal and High Court did not warrant any interference.



8. In view of the findings recorded by the three fora, and the arguments advanced by learned counsels for the parties in the facts of this case, the following questions arise for determination before this Court –

- A. Whether in the facts of the case, withdrawal of resignation dated 25.03.2003 submitted by the appellant prior to the effective date, i.e., 24.09.2003 ought to have been permitted?*
- B. Whether in the facts of the case, letter of the Management dated 08.04.2003 accepting the resignation was final, binding and irrevocable; and the rejection of the request for withdrawal of such resignation was in accordance with law?*
- C. Whether in the facts of the case, what relief could be granted to the Appellant?*

**DISCUSSION ON QUESTIONS (A) AND (B)**

9. For the sake of convenience and since the discussion on the facts and legal issues are common, questions (A) and (B) are taken up together and dealt with simultaneously. On perusal of the findings as recorded by the three fora, it is spelt out that relying

upon the judgment of the House of Lords in the case of **Rev. Oswald (supra)**, appeal, writ petition and the further appeal to Division Bench have been dismissed. Therefore, we first need to analyze in detail the said judgment. In the said case, the controversy arose from the conduct of the 'Vicar' who was informed by the Bishop that he must either submit to an inquiry or cease to hold his benefice. On such proposal being made by the Bishop, the Vicar executed an unconditional deed of resignation before the witnesses and sent it to the Bishop's Secretary on which the Bishop postponed the formal acceptance of Vicar's resignation until first of October. However, on tenth of June, the Vicar by another document revoked the earlier deed of resignation and communicated the same to the Bishop's Secretary on sixteenth of July. The Bishop in spite of the revocation by Vicar, signed the document and accepted the resignation from the first of October and declared the vicarage void. Aggrieved by the same, the Vicar brought an action against the Bishop and others seeking a declaration that he was a Vicar and the acceptance of the resignation by the Bishop was void. He also sought an injunction to restrain the defendants from treating the benefice as vacant. The matter reached the House of Lords in appeal, which affirmed the decision of the Court of Appeal and held that the resignation

was voluntary, absolute, validly executed and irrevocable. Hence, the action brought by the Vicar was not successful.

10. The judgment of **Rev. Oswald** (supra) was placed before the Constitution Bench of this Court for consideration in the case of **Gopal Chandra Misra (supra)** and in para 69, it was distinguished on facts and observed as thus –

“69. *Reichal is no authority for the proposition that an unconditional prospective resignation, without more, normally becomes absolute and operative the moment it is conveyed to the appropriate authority. The special feature of the case was that Reichal had, of his own free will, entered into a “perfectly binding agreement” with the Bishop, according to which, the Bishop had agreed to abstain from commencing an inquiry into the serious charges against Reichal if the latter tendered his resignation. In pursuance of that lawful agreement, Reichal tendered his resignation and did all to complete it, and the Bishop also at the other end, abstained from instituting proceedings against him in the Ecclesiastical Court. The agreement was thus not a nudum pactum but one for good consideration and had been acted upon and “consummated before the supposed withdrawal of the resignation of Mr. Reichal”, who could not, therefore, be permitted “to upset the agreement” at his unilateral option and withdraw the resignation “without the consent of the Bishop”. It was in view of these exceptional circumstances, Their Lordships held Reichal’s resignation had become absolute and irrevocable. No extraordinary circumstances of this nature exist in the instant case.”*

11. The Constitution Bench in the said case laid down the principles with regard to prospective or potential resignation and held that such resignation can be withdrawn at any time before it becomes effective. The relevant paras 28, 29, and 41 are reproduced, for ready reference, as thus –

- “28. *The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated: “I beg to resign my office as Judge, High Court of Judicature at Allahabad.” Had this sentence stood alone, or been the only content of this letter, it would operate as a complete resignation in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read: “I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977.” The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an intimation or notice of the writer's intention to resign his office as Judge, on a future date viz. August 1, 1977. For the sake of convenience, we might call this communication as a prospective or potential resignation, but before the arrival of the indicated future date it was certainly not a complete and operative resignation because, by itself, it did not and could not, sever the writer from the office of the Judge, or terminate his tenure as such.*
29. *Thus tested, sending of the letter dated May 7, 1977 by Appellant 2 to the President, did not constitute a complete and operative resignation*

*within the contemplation of the expression “resigns his office” used in proviso (a) to Article 217(1). Before the arrival of the indicated future date (August 1, 1977), it was wholly inert, inoperative and ineffective, and could not, and in fact did not, cause any jural effect.*

xxx                      xxx                      xxx                      xxx

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. ”*

12. As per the law laid down above by the Constitution Bench, the prospective or intending resignation would be complete and operative on arrival of the indicated future date in the absence of anything contrary in the terms and conditions of the employment or contract. The intimation sent in writing to the Competent Authority by the incumbent employee of his intention or proposal to resign from his office/post from a future specified date can be withdrawn at any time before it becomes effective.

13. Now to appreciate the findings recorded by three fora, the facts of the present case are required to be discussed with precision. In the case at hand, the appellant was appointed as

Principal on 01.07.1992 in “B.M. Ruia Girls and G.D. Birla Girls College” (hereinafter referred to as “**College**”), affiliated to SNDT University and run by respondent No. 1 – Trust. Her appointment was permanent, and she was discharging the duties for a decade long period. In the month of December 1998, the management of the Trust was changed, and the functioning of the school was taken over by the new management. In 2001, one Mr. Biani was appointed as Convenor and it is alleged that there was interference in the day-to-day functions and passing of lewd and inappropriate comments. Distressed by it, the appellant along with her colleagues wrote a letter dated 18.02.2003 containing some allegations and raised a protest. It should also be noticed that one of the Trustees sent a letter to appellant on 05.03.2003, stating that there are certain allegations of financial irregularities and indiscipline against her, and she was called upon to submit her justification. Appellant did not submit any response to the said letter, and vide letter dated 04.03.2003, withdrew her protest letter. On 25.03.2003, due to serious health issues, the appellant submitted an intimation of resignation to the President of Trust and informed that she wishes to resign from future date, i.e., 24.09.2003. The President on the same date informed the appellant that the Management Committee has decided to conduct

a detailed enquiry by a “Fact Finding Committee”. Appellant was directed to proceed on leave for two months and hand over the charge to one Mrs. Purvi Shah who shall work as “officiating Principal” with immediate effect. Shortly within three days, i.e., on 28.03.2003, the President informed the appellant to submit a fresh unconditional resignation. For ready reference, the relevant portion of the said letter is reproduced as under –

“ xxx xxx xxx xxx

*If you want to resign unconditionally of your own volition with immediate effect and settle the controversy on this footing, the management can perhaps consider your request to drop the enquiry subject to affirmation of managing committee. Your resignation with effect from 24.09.2003 is not acceptable to the management. Six months’ notice can be waived on both sides in view of the present situation is not mandatory. If you are not willing to resign unconditionally with immediate effect, it is your choice. If you want to resign with immediate effect, the management may perhaps be persuaded to drop the proposed enquiry in larger interest of the institute.*

*If no reply is received from you within 48 hours from receipt of this letter, the management shall take appropriate action in the matter as deemed fit.*

xxx xxx xxx xxx ”

14. The appellant did not submit a fresh resignation and submitted her response to the said letter on 31.03.2003 and requested the management to consider her prayer to accept resignation from prospective date, i.e., 24.09.2003. The relevant

portion of the letter specifying the reasons are reproduced as under

—

“ xxx xxx xxx xxx

(1) *As per Government statute, I am supposed to give a 6 months' notice before resigning from the post of Principal. I would like to adhere to this government rule. (Ref. Dated )*

(2) *I have a total of approximately 7 months' leave to my credit which I would like to avail of before resigning. Since I shall be receiving my remuneration from the government, there will be no financial burden on the management.*

(3) *Since I am already on long leave on medical advice, I shall not be in a position to attend college till I am medically fit to do so in view of the very serious nature of my brain and spine problems.*

*In view of the above, I request you to accept my resignation valid from 24.09.2003. I am hopeful that the management will take a sympathetic view of my request.*

xxx xxx xxx xxx ”

15. Thereafter, the management vide letter dated 08.04.2003 accepted the resignation in the following terms and replied to the appellant. The necessary relevant portion is reproduced as thus –

“ xxx xxx xxx xxx

*I acknowledge receipt of your letter dated 31.03.2003.*

*The management hereby accepts your unconditional resignation with 6 months' notice, i.e., with effect from 24<sup>th</sup> September 2003 as final, binding and irrevocable. You shall be on leave till 23.09.2003. As suggested by you, the entire leave period shall be debited to your leave account.*



*In view of the above, the allegations and averments on either side need not be dealt with. The same are not admitted. The unpleasant dispute and the controversy is thus closed on the above footing.*

*We have already appointed officiating Principal. We shall proceed with the appointment of a regular Principal with effect from 24.09.2003. The process shall be started soon. During this period, you shall not represent the college before any authority or elsewhere.*

xxx                      xxx                      xxx                      xxx                      ”

16. From the above correspondence, it appears that the management wanted unconditional resignation from appellant and to waive the notice period mutually, they further proposed to consider dropping the enquiry which was not accepted by the appellant. The appellant did not submit any unconditional resignation and reiterated to consider her resignation dated 25.03.2003 with effect from the future date i.e., 24.09.2003 as prayed vide response dated 31.03.2003. The management on its own accepted the said resignation from future date but unilaterally mentioned as follows: – *“hereby accept your unconditional resignation with six months’ notice w.e.f. 24.09.2003 as final, binding and irrevocable.”*

17. The stand taken by the respondent that the contents of letter dated 11.08.2003 written by appellant is a sort of an implied understanding. Hence, the contents of the letter is required to be

reproduced to appreciate the findings as recorded in this regard by the three fora which reads as thus –

“ xxx xxx xxx xxx

*This is to point out to you that some office bearers of the managing committee have on certain occasions (meetings, functions etc.) including a program held in the college on 09.09.2003 made unsubstantiated, unproved, incorrect and unauthentic allegations against me publicly.*

*This is contrary to your own letter dated 08.04.2003 in which it has been mentioned that “The allegations and averments on either side need not be dealt with. The same are not admitted. The unpleasant dispute and controversy is thus closed on the above footing.*

*Making false allegations publicly amounts to character assassination and defamation.*

*I therefore request you to ensure that henceforth members of the managing committee do not publicly or otherwise make false defamatory statements against me.*

xxx xxx xxx xxx ”

On perusal of the same, the reference to the letter dated 08.04.2003 made in the said letter of 11.08.2003, referring to the contents, particularly the lines *“The allegations and averments on either side need not be dealt with. The same are not admitted. The unpleasant dispute and controversy thus end on above footing”*, cannot be said to be an acknowledgment of unconditional resignation. The consent must be prior to the date of accepting the resignation. The contents of letter dated 11.08.2003 do not indicate that it was an acceptance of the resignation w.e.f.

24.09.2003 as final, binding and irrevocable. On the basis of the contents of the letter dated 11.08.2003, we cannot countenance the findings as recorded in impugned order, maintaining the order of rejection of her request to withdraw the potential resignation with future date.

18. We have perused the above correspondence in detail. It does not appear to us that the resignation was submitted by the appellant to foreclose the commencement of any enquiry against her. Nothing has been placed on record to demonstrate that the resignation was submitted in lieu of the waiving of any departmental enquiry. Any correspondence of the appellant showing prior consent has also not been placed before us. The College Tribunal and the High Court recorded the finding relying on the letter dated 08.04.2003 attributing an acknowledgment by the appellant vide letter dated 11.08.2003. The Courts below have treated it to be an implied understanding or contract because the letter of 08.04.2003 was not replied to for quite some time.

19. On perusal of the contents of the resignation letter dated 25.03.2003, it is clear that the appellant requested to accept her resignation from future date w.e.f. 24.09.2003 due to medical reasons. Vide letter dated 28.03.2003, the management demanded

unconditional resignation of appellant waiving the 6 months' notice period by mutual consent, which was not agreed and a reply was submitted on 31.03.2003 justifying the resignation from a prospective date. Thereafter, vide letter dated 08.04.2003 the resignation dated 25.03.2003 was accepted from a prospective date 'unilaterally' using the words "final, binding and irrevocable."

20. The judgment in **Rev. Oswald (supra)** was relied upon in the impugned judgment to say that facts of the instant case are similar. In our view, the case of **Rev. Oswald (supra)** was a case in which unconditional deed of resignation was executed before the witnesses and sent to the Bishop's Secretary with an understanding of postponing the formal acceptance until the future date. The resignation deed so executed before witnesses was unilaterally withdrawn by the Vicar, therefore, the House of Lords held that the resignation was voluntary, absolute, validly executed and irrevocable.

21. In the case at hand, the unconditional resignation waiving the requirement of six months' notice as demanded by the Trust was not submitted by the appellant. Without prior consent, the acceptance of resignation vide letter dated 08.04.2003 using the words final, binding and irrevocable was unilateral. In the

subsequent letter dated 11.08.2003, acceptance of the words “final, binding and irrevocable” was not expressly made. In fact, it was in the context of the wordings of the letter dated 08.04.2003 extracted hereinabove. The averments in the letter dated 11.08.2003, which is after date of acceptance of resignation also does not disclose any implied agreement to the contents of the letter dated 08.04.2003. From above discussion, in our view, we cannot accept the said line of reasonings recorded by three fora. Therefore, in our view, the judgment of **Rev. Oswald (supra)** does not apply to the facts of the present case. Thus, dismissal of the petition of appellant on similarity of facts with the case of **Rev. Oswald (supra)** is not correct and such findings by three for are unsustainable. In our view, on the facts of this case, the ratio of the judgment of the Constitutional Bench in the case of **Gopal Chandra Misra (supra)** applies in full force.

22. Our said view is further fortified by the judgment of this Court in **Balram Gupta (supra)**, wherein reiterating the view taken in “**Raj Kumar Vs. Union of India, AIR 1969 SC 180**”, this Court held that till the resignation is accepted by the Competent Authority in consonance with the rules governing the acceptance, the employee has the ‘*locus poenitentiae*’, but not thereafter. On

the facts referred hereinabove of the present case, the withdrawal of the resignation was made two weeks prior to the effective date, i.e., on 09.09.2003, however, the appellant was having locus to withdraw the resignation prior to the effective date of resignation.

23. In a later judgment of this Court in **Srikantha S.M. (supra)**, the principle of “*vinculum juris*” has been propounded, paras 26 and 27 whereof, are relevant therefore, reproduced as thus –

“26. *On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5-1-1993 to 13-1-1993. Moreover, he was informed that he would be relieved after office hours on 15-1-1993. The vinculum juris [[Ed.: vinculum (per OED): A bond of union, a tie. Usually figurative, and juris (per Black's): Of Law; Of Right]], therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company up to 15-1-1993.*

27. *In the affidavit-in-reply filed by the Company, it was stated that resignation of the appellant was accepted immediately, and he was to be relieved on 4-1-1993. It was because of the request of the appellant that he was continued up to 15-1-1993. In the affidavit-in-rejoinder, the appellant had stated that he reported for duty on 15-1-1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque*

*of Rs 13,511 was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to 15-1-1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8-1-1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court, in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside. ”*

24. In the above case, on submitting the resignation, appellant was relieved on 04.01.1993 granting leave from 05.01.1993 till 13.01.1993. The effective date of resignation was prospective, i.e., 15.01.1993. The appellant therein withdrew the resignation before the effective date on 08.01.1993. The Company refused to accept such withdrawal of resignation. In the said factual context, this Court set-aside such an action of refusal to accept the withdrawal of resignation and explained the principle of “*vinculum juris*” holding that the relationship of employer and employee did not come to an end on the date of sending an intimation of withdrawal of resignation and it would continue till the actual date of acceptance. In the said case, after quashing the action of the

company, this Court held that it would be unjust to deny assignment of further work to the employee by the employer and the employee was held entitled for salary and other consequential benefits. In our view, the facts of the present case are broadly similar to the said case.

25. Learned counsel for Trust has placed reliance on the judgment of this Court in ***BSES Yamuna Power Limited (supra)***, however, the facts of the said case are different. In the said case, the resignation was treated as request for voluntary retirement however, the High Court counting the past service of petitioner held him entitled for pensionary benefits. The petitioner in the said case was regularized on 22.12.1971. He submitted resignation on 07.07.1990, which was accepted. The acceptance of the said resignation would have resulted in forfeiture of past service. The High Court has treated it as request for voluntary retirement and granted pensionary benefits. Dealing with the said issue, this Court after referring the provision of Rule 26 of Central Civil Services Pension Rules, 1972, clarified that the resignation would have entailed forfeiture of service, and such request cannot be treated as request for voluntary retirement. With the said discussion, the judgment of the High Court was set-aside. In our



view, looking to the facts of this case, the said judgment is of no help to the respondent.

26. The judgment of **Captain Gurdarshan Kaur Sandhu (supra)** has been relied upon by the counsels for both sides, wherein this Court in paragraph 12 reaffirmed the law laid down in **Gopal Chandra Misra (supra)** and **Balram Gupta (supra)**. The relevant para of the said judgment is reproduced as thus –

“12. *It is thus well settled that normally, until the resignation becomes effective, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paras 41 and 50 in Gopal Chandra Misra [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303], “in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post” or “in the absence of a legal contractual or constitutional bar, a ‘prospective resignation’ can be withdrawn at any time before it becomes effective”. Further, as laid down in Balram Gupta [Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126], “If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter. ”*

In the said case, this Court carved out an exception on the basis of a legal, contractual or a constitutional bar for withdrawal of prospective resignation as referred in paragraph 50 of **Gopal**

**Chandra Misra (supra)**. This Court referring to the “Civil Aviation Requirements, 2009” (hereinafter referred to as “**CAR**”) made a distinction that the public interest would prevail over the interest of an employee’s own interest. Interpreting Clause 3.7 of the CAR, the Court observed that without appointment of pilots for operating the flights, the public interest would be adversely affected. Thus, it was said that the guiding idea of the eventuality specified therein were the parameters required to be taken by employer in public interest and, the interest of an employee cannot be given prominence over the public interest. In our view, the said judgment has no application in the facts of instant case wherein the charge of Principal was given on the date of intimation of resignation itself, to one Mrs. Purvi Shah who was appointed as “officiating Principal” with immediate effect, directing the appellant to proceed on leave.

27. In view of the foregoing discussion, we answer question (A) and (B) in favour of appellant and hold that letter dated 25.03.2003 is an intimation of resignation from a prospective date i.e., 24.09.2003, which could have been withdrawn by the appellant prior to the effective date. There is no Rule or Regulation brought to our notice which restrains such withdrawal. There was no prior

consent to the letter dated 08.04.2003 for accepting resignation w.e.f. 24.09.2003 as 'final, binding and irrevocable' which is on record and therefore, by using such words, the acceptance of resignation was unilateral. As discussed, there was no implied contract and understanding with prior consent. Therefore, the withdrawal of such resignation by appellant prior to the effective date is permissible as per the law laid down in the case of **Gopal Chandra Misra (supra)** and **Srikantha S.M. (supra)**. Learned counsel for the parties have also relied on some more case law, but there is no need to burden our judgment as the question of law as decided in those cases is one and the same. It is further required to be observed that in view of the findings recorded hereinabove, we are not examining the question about how far the Tribunal was justified in dealing with the issue on merits. In view of the above discussion, both the questions are answered in favour of appellant.

#### **ANALYSIS OF QUESTION (C)**

28. In the absence of anything contrary in the provisions governing the terms and conditions of the office or post and in the absence of any legal contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective as discussed above. The Trust had made

arrangements giving officiating charge to the Principal in the place of appellant and as such there was no prejudice to public interest.

29. In the peculiar facts of this case, it is clear that the effective date of resignation was 24.09.2003. The College Tribunal granted stay on 20.09.2003 which remained operative till the final judgment was delivered by the College Tribunal on 30.04.2004. On filing of the writ petition and appeal against the order of Writ Court, it was decided against the appellant by the impugned judgment. During pendency of litigation before the High Court, the appellant got selected on the post of Principal in M.P.P. Shah College and on joining duty on 01.10.2007 worked till attaining the age of superannuation i.e., 31.10.2015. Thus, because of the setting-aside of the orders impugned and due to the superannuation, she cannot now be allowed to join the duty in the respondent No. 1 institution. Simultaneously, it would not be appropriate to give liberty to the Trust to initiate departmental action for the allegations as raised in the letter of Trustee dated 05.03.2003, especially after a lapse of more than 20 years, in particular when the appellant had already attained the age of superannuation in 2015. Therefore, while deciding the questions (A) and (B) in favour of appellant, we deem it appropriate to direct the Trust to

regularize the service period of the appellant from 24.09.2003 (when they wrongly treated the appellant as having resigned) till the date of joining the duty at the new Institution as Principal on 01.10.2007. In the facts of the case, the principle of 'no work no pay' would apply and the appellant would not be entitled to back-wages and salary for such regularized period, as she has not worked with the Trust. Thus, it would suffice to observe that in view of her deemed continuance and in view of our findings hereinabove, the period from 24.09.2003 to 01.10.2007 would be regularized by the respondent and be counted as period spent on duty for all purposes including pension.

30. In view of the above discussion, we direct that on the regularization of the period and treating the same as period spent on duty, the service tenure of the appellant, both in the institution run by Trust and in M.M.P. Shah College would be counted without any break in service. Since she would have then completed minimum 20 years' service required for pension under the Rules, she would be entitled to her pension and other retiral benefits. The retiral and pensionary benefits should be calculated and paid accordingly including the arrears of pension. The said exercise be completed within a period of four months from the date of this

judgment. On failure to pay retiral benefits/pension and arrears thereof within the time as specified, the appellant shall be entitled to interest @ 7% per annum.

31. Accordingly, this appeal stands allowed in the above terms, and the orders passed by the College Tribunal and the High Court stand set-aside. Pending application(s), if any, shall also stand disposed of. No order as to costs.

.....J.  
**(J.K. MAHESHWARI)**

.....J.  
**(K.V. VISWANATHAN)**

**New Delhi,  
20.02.2024**