

## **Dr. Prabha Atri vs The State Of U.P. & Ors on 11 December, 2002**

**Equivalent citations: AIR 2003 SUPREME COURT 534, 2003 (1) SCC 701, 2002 AIR SCW 5162, 2003 LAB. I. C. 375, 2003 ALL. L. J. 224, 2003 (1) SERVLJ 234 SC, 2003 (1) UJ (SC) 415, 2003 (1) ALL CJ 709, 2003 ALL CJ 1 709, (2003) 1 SERVLJ 234, 2002 (7) SLT 284, 2003 (2) SRJ 528, 2003 UJ(SC) 1 415, (2003) 1 PAT LJR 185, (2003) 1 CURLR 221, (2003) 1 LABLJ 1123, (2003) 1 INDLD 101, (2003) 1 SCT 251, (2003) 2 SERVLR 437, (2002) 9 SCALE 227, (2003) 2 ESC 105, (2003) 1 UPLBEC 772, (2003) 1 ALL WC 574, (2003) 1 JLJR 185, (2003) 1 MAD LJ 103, (2003) 1 LAB LN 762, (2003) 1 SUPREME 61, 2003 LABLR 230, 2003 SCC (L&S) 118**

**Bench: Doraiswamy Raju, Shivaraj V. Patil**

CASE NO.:

Appeal (civil) 8317-8318 of 2002

PETITIONER:

Dr. Prabha Atri

RESPONDENT:

The State of U.P. & ors.

DATE OF JUDGMENT: 11/12/2002

BENCH:

Doraiswamy Raju & Shivaraj V. Patil.

JUDGMENT:

**J U D G M E N T** [Arising out of S.L.P. (C) Nos.10035-10036 of 2002] RAJU, J.

Leave granted.

The appellant, who was working as Anaesthetist in Kamla Nehru Memorial Hospital, Allahabad, was issued with a Memo dated 5.1.1999, bringing to her notice a lapse in that she left without informing even Dr. Banerjee, when he requested her around 1300 hrs. to give anaesthesia to one patient admitted in emergency with shock due to ruptured uterus, which needed urgent operation, and such conduct not only amounted to negligence as per Hospital Service Rule 10(i) but also was against medical ethics. She was also asked to submit her explanation by 5.00 P.M. on 6.1.1999, failing which it would be taken that she accepted the lapse and the Hospital would be at liberty to proceed against her as per Service Rules. Since the appellant did not respond, on 8.1.1999 the appellant was placed under suspension with immediate effect, pending institution of a domestic enquiry pertaining to the above incident. On receipt of the said Memo on 9.1.1999, the appellant replied to the Secretary of

the Hospital that she had already clarified her position verbally in his presence that on that day she was sick and very tired, that Dr. Navneeta Banerjee also denied having made any complaint as such except writing for purposes of record about the incident and that formal reply in writing was not sent since she had already explained the position and nothing more was required. She further added in her letter as hereunder:-

"Your letter is uncalled for and should be withdrawn. I have been working in this Hospital since May 10, 1978 and have always worked in the best interest of the patients. It is tragic instead of taking a lenient view of my sickness you have opted to punish me.

If the foregoing is not acceptable to you then I have no option left but to render my resignation with immediate effect."

Thereupon, by an Order dated 9.1.1999, the appellant was informed that the suspension order could not be withdrawn since her explanation was not found to be satisfactory. A separate order dated 9.1.1999 was also said to have been passed as hereunder: "Reference is invited to letter dated 9.1.1999 of Dr. Prabha Atri, Anaesthetist, vide which she has submitted her resignationis accepted with immediate effect as requested. Dr. P. Atri is advised to submit No Dues Certificate as per Hospital Service Rule so that her terminal benefits may be processed for payment."

Yet another order was also said to have been passed on the same day wherein after adverting to the acceptance of the resignation, it has been stated that the domestic enquiry ordered on 8.1.1999 to enquire into the incident pertaining to Dr. Atri should not be proceeded with. In response to the same in her letter dated 14.1.1999, the appellant stated that she never resigned and not only she nowhere stated that she is resigning but unnecessarily something has been read between the lines. Reiterating her stand that she had not resigned but shown only intention to resign, the appellant requested for rectifying the mistaken understanding of her earlier letter by taking necessary steps in the correct perspective. The Secretary of the Hospital by his communication dated 16.1.1999 reiterated the correctness of the action taken and declined to reconsider the matter.

Thereupon, the appellant filed Civil Misc. W.P. No.13186 of 1999 before the High Court of Allahabad, but without success and has come up before this Court challenging the order dated 18.12.2001 of the High Court, declining to interfere and dismissing the Writ Petition.

Heard Mr. Rakesh Dwivedi, learned senior counsel for the appellant, and Mr. Ranjit Kumar, learned counsel for the respondents.

The only question that mainly requires to be considered is as to whether the letter dated 9.1.1999 could be construed to mean or amounted to a letter of resignation or merely an expression of her intention to resign, if her claims in respect of the alleged lapse are not viewed favourably. Rule 9 of the Hospital Service Rules provided for resignation or abandonment of service by an employee. It is stated therein that a permanent employee is required to give three months notice of resignation in writing to the appointing authority or three months salary in lieu of notice and that he/she may be

required to serve the period for such notice. In case of non-compliance with the above, the employee concerned is not only liable to pay an amount equal to three months salary but such amount shall be realizable from the dues, if any, of the employee lying with the Hospital. In Words and Phrases (Permanent Edition) Vol. 37 at page 476, it is found stated that, "To constitute a "resignation", it must be unconditional and with intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office." At page 474 of the very same book, it is found stated: "Statements by club's President and corresponding Secretary that they would resign, if constant bickering among members did not cease, constituted merely threatened offers, not tenders, of their resignations." It is also stated therein that "A 'resignation' of a public office to be effective must be made with intention of relinquishing the office accompanied by act of relinquishment". In the ordinary dictionary sense, the word 'Resignation' was considered to mean the spontaneous relinquishment of one's own right, as conveyed by the maxim:

*Resignatio est juris proprii spontanea refutatio* [Black's Law Dictionary 6th Edition]. In Corpus Juris Secundum. Vol.77, page 311, it is found stated "It has been said that 'Resignation' is a term of legal art, having legal connotations which describe certain legal results. It is characteristically, the voluntary surrender of a position by the one resigning, made freely and not under duress and the word is defined generally as meaning the act of resigning or giving up, as a claim, possession or position."

In P.K. Ramachandra Iyer & Ors., etc. Vs. Union of India & Ors., etc. [(1984) 2 SCC 141], this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and "as such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimization shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates". In that context, this Court observed that the callous and heartless attitude of the Academic Council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and "out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer". In Moti Ram Vs. Param Devi & Anr. [(1993)2 SCC 725] , this Court observed as hereunder:-

"As pointed out by this Court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the

conditions governing it. [See: Union of India Vs. Gopal Chandra Misra]. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

In traversing the contention on behalf of the appellant that the letter in question dated 9.1.1999 could not be construed as a letter of resignation, on behalf of the respondent-Hospital authorities it is strenuously contended that such a letter coming from the appellant in the teeth of suspension order and proposed domestic enquiry expressing a desire to tender resignation and that too with immediate effect, cannot but be a resignation outright and simpliciter to avoid facing disciplinary proceedings and that, therefore, the competent authority acted well within its rights in treating it to be a resignation and accepting the same forthwith and as a consequence thereof, directing further not to proceed with the domestic enquiry already ordered. Finally, it has been submitted that if this Court is pleased to interfere in the matter the right of the Hospital Authorities to pursue the disciplinary action already initiated from the stage at which it stood on the date of acceptance of the resignation should not be jeopardized and liberty may be granted in this regard.

We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9.1.1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation', it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer (supra) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the Hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9.1.99 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her

so-called resignation. The words 'with immediate effect' in the said letter could not be given undue importance de hors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the Hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9.1.1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer (supra) the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9.1.1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the Writ Petition.

For all the reasons stated above, the order of the High Court under challenge in this appeal is set aside and the appeals are allowed. The communication dated 9.1.1999 purporting to accept a non-existent resignation is set aside. But, the respondent-Hospital authorities shall be at liberty to pursue the disciplinary proceedings initiated against her in accordance with law. No costs.