

CASE NO.:
Appeal (civil) 534 of 2001

PETITIONER:
The Secretary, Technical Education, U.P. & Ors

RESPONDENT:
Lalit Mohan Upadhyay & Anr

DATE OF JUDGMENT: 09/04/2007

BENCH:
A. K. Mathur & Lokeshwar Singh Pantia

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Pantia, J.

This appeal is directed against the judgment and order dated 02.11.1999 passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 10058/1994. By the impugned judgment, the High Court allowed the writ petition and set aside the order of acceptance of the letter of resignation tendered by Shri Lalit Mohan Upadhyay, Lecturer and the appellants were directed to reinstate him in service to the post of Lecturer in Mathematics.

The necessary facts in short may be stated:-

Kumaon Engineering College [for short "KEC"], Dwarahat, District Almorah, Uttar Pradesh (U.P.), was established in the year 1991 under the Plan Scheme of the State Government. This College is a residential and co-educational institution and all the students are required to reside in the hostel attached to the College.

On 12.10.1991, Shri L.M. Upadhyay - respondent No. 1 herein was appointed as a Lecturer in Mathematics on probation for a period of two years in KEC. He joined the service on 21.10.1991. On 18.03.1993, Ms. Geetanjali Gupta, a student of B.E. 2nd year (1992-93 batch), fell seriously ill. The Principal of the College - appellant No.2 herein deputed Shri L.M. Upadhyay, Ms. Hema Punetha, Library Clerk of the College to take the girl for medical treatment to the Civil Hospital, Ranikhet. When Ms. Geetanjali joined the College after recovery from illness, she was noticed upset and terribly disturbed by her classmates and teachers. It is the case of the appellants that on 04.04.1993 Ms. Geetanjali filed a complaint against Shri L.M. Upadhyay for his indecent behaviour with her in the hospital. Looking to the seriousness of the allegations, the Principal promptly wrote a letter dated 06.09.1993 to Assistant Professor-cum-Dean, Students Welfare of KEC (for short "DSW") asking her to carry out inquiry in camera about the correctness of the contents of the complaint made by Ms. Geetanjali against Shri L.M. Upadhyay. On receipt of the letter of the Principal, Ms. M. Srivastava, DSW, immediately called and examined the complainant Ms. Geetanjali, her classmates, namely, Ms. Nidhi Choudhary, Ms. Yasha Bharadwaj and Ms. Richa Aggarwal in support of the complaint. Ms. M. Srivastava submitted her report to the Principal on the same day, i.e., 06.09.1993. It is the case of the appellants that Shri L.M. Upadhyay on coming to know about filing of the complaint by the girl student and also holding of inquiry in camera by the

DSW, he, on the same day, submitted letter of resignation to the Principal requesting him (the Principal) to accept the same with immediate effect. The Principal, with a view to save the future career of Shri Upadhyay as well as to protect the reputation of the institution, accepted his request and forwarded the letter of resignation to the Chairman, Board of Governors, for necessary acceptance and approval with immediate effect.

It appears from the record that Shri L. M. Upadhyay had written a letter dated 10.09.1993 (Annexure \026 P3) to the Governor, U.P., the Chief Secretary, Government of U.P. and the Secretary, Technical Education (U.P.), alleging therein that the Principal of KEC had pressurized a girl student to lodge a false and frivolous complaint against him. He stated that on 06.09.1993, the Principal called him to his residence and forced him to put his signatures on the letter of resignation and thereafter he left the College campus with his bag and baggage on the same day. On receipt of the representation, the State Government on 10.10.1993 decided to appoint Professor N.L. Kachhera, Director, Kumaon Nehru Institute of Technology [for short "KNIT"], Sultanpur and Dean, Faculty of Engineering, Avadh University, Faizabad, to hold fact finding inquiry in the whole episode. Professor N.L. Kachhera, accordingly, held the inquiry and submitted his detailed report in which he stated that the charge of indecent and objectionable behaviour of Shri L.M. Upadhyay with a girl student in the Hospital stood proved. Again on the direction of Secretary (Education) to the State Government of U.P., the District Magistrate, Almora, on 15.12.1993, directed the Sub-Divisional Magistrate, Ranikhet, to hold a detailed inquiry on the charge of misbehaviour of Shri L.M. Upadhyay with a girl student in the hospital and also to enquire into the allegation whether Shri Upadhyay was forced or coerced by the Principal of the College to tender his resignation. The Sub-Divisional Magistrate in his detailed Report submitted to the District Magistrate reported that the charge of indecent behaviour levelled against Shri L. M. Upadhyay by a girl student during her stay in the hospital was found correct and counter allegation of Shri Upadhyay against the Principal was reported to be wrong.

Shri S.K. Srivastava, Joint Secretary in the Education Department of State of U.P., vide letter dated 17.01.1994 had communicated to the Principal an order of the Chairman, Board of Governors whereby the letter of resignation of Shri Upadhyay was accepted. Later on, Shri L.N. Paliwal (new Principal of the College), vide registered letter dated 29.01.1994 informed Shri L. M. Upadhyay that his resignation dated 06.09.1993 had been accepted by the Chairman, Board of Governors, KEC.

Shri L.M. Upadhyay impugned the order dated 21.01.1994 in CMWP No. 10058/1994 filed before the High Court of Allahabad inter alia on the ground that he had withdrawn the resignation before its acceptance, therefore, the order of acceptance by the authority was illegal and he be treated as continued in service. A Division Bench of the High Court vide impugned order dated 2.11.1999 allowed the writ petition and held as under:-

"In our opinion, the Principal had no authority or jurisdiction to accept the petitioner's resignation as the petitioner's Appointing Authority is the Board of Governors and hence only the Board of Governors can accept his resignation. In fact the Principal has recognized this legal position as he forwarded the papers

to the Board, but there was no acceptance by the Board of Governors and instead it was the State Government which accepted the resignation on 17.1.1994 i.e. long after the petitioner had withdrawn his resignation.

Hence, we set aside the impugned order dated 27.01.1994 and hold that the petitioner validly withdrew his resignation. The petitioner will be reinstated in service within six weeks from the date of production of a certified copy of this order before the Authority concerned and shall be treated in continuous service as if his service had never come to an end. He will get seniority and all consequential benefits and also arrears within three months from the date of production of a certified copy of this order. No order as to costs."

Now, the Secretary, Technical Education, State of U.P., the Principal, KEC, and the Chairman (Chief Secretary), Board of Governors, KEC filed this joint appeal by special leave, challenging the correctness and validity of the order of the High Court.

Having heard Ms. Niranjana Singh, learned counsel for the appellants and Mr. Dinesh Dwivedi, learned senior Advocate assisted by Mr. Nikhil Majithia, Advocate, and having perused in detail the entire material on record, we are of the view that the impugned order of the High Court is erroneous and cannot sustain in law.

The undisputed facts are that Shri L. M. Upadhyay-respondent No.1 on selection as a Lecturer in Mathematics, joined his duty on 21.10.1991 in KEC, Dwarahat, District Almora. He was initially appointed on probation for a period of two years. Dr. M. C. Srivastava was the Principal of the College. On 18.03.1993, Ms. Geetanjali Gupta, a student of B.E. 2nd Year (1992-93 batch), fell seriously ill in the campus of the College. She had to be taken to the Civil Hospital, Ranikhet, for medical treatment. The Principal of the College deputed respondent No.1, Ms. Nidhi Choudhary, a classmate of Geetanjali and Ms. Hema Punetha, a Library Clerk in the College, to take Ms. Geetanjali to Civil Hospital, Ranikhet. Ms. Geetanjali was admitted in the Hospital where respondent No.1 along with Ms. Nidhi and Ms. Hema Punetha was attending her.

It is the case of the appellants that when Ms. Geetanjali after recovery joined the College, her classmates and teachers noticed Geetanjali's behaviour abnormal and she looked quite upset. On 04.09.1993 Ms. Geetanjali filed a complaint to the Principal of the College levelling various instances of indecent and objectionable behaviour of Shri L. M. Upadhyay with her during her stay in the hospital as an indoor patient. The Principal of the College considering the seriousness of the complaint vide letter dated 06.09.1993, asked the DSW of the College to hold inquiry in camera in regard to the correctness and truthfulness of the allegations of a girl student. DSW in her Report dated 06.09.1993 (Annexure P-1) stated that she called and asked Ms. Geetanjali, her classmates Ms. Nidhi Choudhary, Ms. Yasha Bhardwaj and Ms. Richa Aggarwal, about the entire matter. All the girls narrated the incidents in tears. Ms. Geetanjali stated: "I stopped the hands of Upadhyay Sir with a jerk but he did massaging (hips) forcibly.

In spite of my protestation, he pressed my legs. He picked up my blanket at the time of doctor's visit, and in spite of the utterance of Nidhi, "Stop, Stop". Since I wore nighty, which was raised under the blanket, I did not like his behaviour. I remained in mental tension for many days/months. Whenever I think about this incident, I felt uncomfortable and hated myself. Whenever my mother used to admire him, I was excited with anger. I am unable to bear this mental tension". Ms. Nidhi also repeated the incident. Besides she stated, "Since Geetanjali was in M.C. period when she was admitted in the hospital, she requested Shri Upadhyay Sir that it was not good to massage her hips but he kept on doing so by saying that he knew everything that I felt bad". She also stated that Upadhyay Sir asked to open the hooks of Geetanjali's bra many times. The first day he directed Hema Punetha to go to her home and she need not remain there. She was accompanying us for our protection. Ms. Yasha and Richa were not present in the hospital, but they stated that Ms. Nidhi after coming back from the hospital had narrated the entire incident to them. These students stated before the DSW that quite often Geetanjali used to weep continuously and sometimes she said that it would be better for her to die. They faced a lot of problems to console Geetanjali. When the DSW asked these girls as to why they took sufficient time to make the complaint, the students said: "the marks of Maths in four Semesters are in the hands of Upadhyay Sir. That is why we did not tell anyone". When Ms. Geetanjali was further asked by the DSW whether she narrated the incident to her mother or not, Geetanjali replied: "No, I did not inform my mother because I had a terror that she would stop my study".

It appears from the record that on receipt of the Report of the DSW, the Principal of the College summoned Shri L. M. Upadhyay and apprised him about the complaint made against him by Ms. Geetanjali and as also about the Report submitted by the DSW. The respondent No. 1, just to save himself from any consequential disciplinary action likely to be taken against him by the Principal or the authority of the College and also to avoid his condemnation by the members of the staff, teachers and the students of the College, submitted a letter of resignation to the Principal on 06.09.1993 and insisted for its acceptance immediately. He left the College thereafter in haste with his father. Shri L. M. Upadhyay in his letter of resignation indicated his unequivocal intention to resign with immediate effect and the letter having been communicated to the Principal and received by him on 06.09.1993, he observed: "Resignation letter accepted with immediate effect as per his request." Sd/- 06.09.1993. The Principal further stated:-
"Although usually one month's notice is required to be given by the employee while resigning, it is upto the Board of Governors to accept the resignation with immediate effect and to waive the notice period."

On 10.09.1993, Shri L. M. Upadhyay submitted a representation/complaint (Annexure P-3) to the Governor, the Chief Secretary and the Secretary, Technical Education, in which some allegations were levelled against the hostile conduct and behaviour of the Principal towards him. He also stated that the letter of resignation dated 06.09.1993 was written by him under the pressure and coercion of the Principal. He requested the authorities to hold proper inquiry in the incident narrated by the girl students to the Principal as

also the allegations made by him against the Principal of the College.

As noticed above, the State Government appointed Shri Narayan Lal Kachhera, Director, KNIT, Sultanpur, to hold independent inquiry on the subject of factual analysis and comments on the complaints made by employees and students of KEC. Shri Narayan Lal Kachhera, Director conducted detailed inquiry on eleven issues including Issue No.6 in regard to the objectionable behaviour of Shri L. M. Upadhyay, Lecturer, with Ms. Geetanjali in Ranikhet Hospital. The Director in the Report dated 10.10.1993 (Annexure - P8) stated that when Ms. Geetanjali was admitted in the Civil Hospital, Ranikhet, she felt pain on her hips. She was given injections by the medical staff and was advised to use pain reliever ointment. Ms. Nidhi Choudhary had applied the prescribed ointment on the hips of Geetanjali, but Shri L. M. Upadhyay on his own started massage on her hips in spite of strong objection raised and opposition of Geetanjali. The Report stated that Shri L. M. Upadhyay shifted Ms. Geetanjali from one bed to another bed against her wishes and in the process, Ms. Geetanjali had been harassed mentally by the misbehaviour of Shri L. M. Upadhyay. The Director had taken into consideration the reply of Shri L.M. Upadhyay in which he admitted that on the night of 18.03.93 he asked Ms. Hema Punetha, Library Clerk not to stay in the Hospital and she was allowed to go to home. The Director observed that after going through the photocopies of the diary maintained by Ms. Geetanjali, her complaint was believed to be true and the behaviour of Shri L. M. Upadhyay with a girl student was quite objectionable with evil designs as a result thereof Ms. Geetanjali remained in mental tension and frustration. The Director stated that in the absence of any eyewitness, Shri L.M. Upadhyay could not prove that he was forced or pressurized by the Principal to submit his letter of resignation. The Director concluded that the statement of Shri L. M. Upadhyay that he had been harassed and tormented by the Principal and his wife Smt. M. Srivastava could not be believed because he himself admitted that he always had good relations with all the officers. Dr. N. N. Khan, Lecturer in Chemistry, during inquiry made a statement that on the request of Shri Upadhyay, he took his letter of resignation to the residence of the Principal. The Principal was aware of the fact that Shri Upadhyay had called his father from Ranikhet as Shri Upadhyay wanted to leave the College on the same day with his father. The Director observed that it was just probable that the Principal might have asked Upadhyay to give his resignation and leave the College for maintaining discipline and fair environment at the College campus. We have gone through the communication dated 05.10.1993 (Annexure P-4) submitted by Dr. N. N. Khan to the Director, KNIT, Sultanpur. The document would reveal that Dr. N. N. Khan handed over the letter of resignation written by Shri L. M. Upadhyay to the Principal. Dr. N. N. Khan also stated before the Director that Shri L. M. Upadhyay was repeatedly saying that he did not want to stay in the College.

It appears from the record that the District Magistrate, Almora, had appointed Sub-Divisional Magistrate as an Inquiry Officer for conducting inquiry on three points raised by Shri L. M. Upadhyay in his complaint against the Principal. The Magisterial Inquiry was got conducted by the District Magistrate in compliance to the letter dated 11/12.10.1993 addressed by the Secretary Technical Education Department to the District Magistrate.

Shri Rajneesh Gupta, S.D.M./Inquiry Officer, Ranikhet,

in his report dated 12.12.1993 submitted to the District Magistrate, stated that on 18.03.1993 Shri L. M. Upadhyay took Ms. Geetanjali along with other students to the Civil Hospital, Ranikhet. He spent one night in the hospital ward with patient Ms. Geetanjali. Shri Upadhyay also accepted that when Ms. Geetanjali was feeling severe pain, he applied medicine on her private organs with his hands and he shifted her from one bed to another bed despite her protest and objection. He asked Ms. Hema Punetha, Library Clerk, to leave the hospital during night time. The report would reveal that serious allegations of misbehaviour and misdeeds of Shri Upadhyay towards Ms. Geetanjali were proved by the evidence of four other girls. The allegation of Shri L. M. Upadhyay that the Principal hatched a conspiracy against him and got the letter of resignation forcibly written from him, was not found true by the Sub-Divisional Magistrate. The S.D.M. stated that when he discussed the entire matter with the students and took their written statements, he came to know that Shri L. M. Upadhyay could not dare to face the students and the teachers in the College, therefore, he on his own submitted the resignation and requested the Principal to accept the same immediately so that he could quietly leave the College campus before his misdeeds would come to be known to the majority of the students and other teachers of the College. The S.D.M. observed that the Principal of the College was an incapable Administrator and was not competent to run the administration of the College smoothly. The Report (Annexure P-9) of the S.D.M. was submitted by Shri R. K. Singh, District Magistrate, Almora, vide letter dated 15.12.1993 to Shri R. K. Sharma, Secretary, U.P. Government, Technical Education Department. The contents of the letter reveal that Shri R. K. Singh, District Magistrate, requested the Secretary that it would be in the best interest of the Institute if Dr. M. C. Srivastava, the Principal, should be shifted from the College so that the ongoing agitation of the students and the employees since September 1993 could be stopped. We find on record letter of Dr. N.N. Khan, Lecturer in Chemistry, dated 24.11.1993 (Annexure P-5) written to the S.D.M., Ranikhet, stating that Shri L.M. Upadhyay had resigned on his own and the said letter of resignation was handed over to him to be delivered to the Principal of KEC. The record also shows that Shri S. K. Srivastava, Joint Secretary to the Government of U. P., vide registered letter dated 17.01.1994 (Annexure P-6) conveyed to the Principal the order of the Chairman, Board of Governors whereby the letter of resignation of Shri Upadhyay dated 06.09.1993 was accepted. Similarly, Shri L. N. Paliwal, who by that time had resumed the charge of the Principal of KEC vide registered letter dated 29.01.1994 (Annexure P-7) informed Shri L. M. Upadhyay through Dr. U. C. Upadhyay, Central School, Ranikhet, that the Chairman, Board of Governors, KEC, had accepted his letter of resignation. The general principle is that a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, gives up his service/or office normally the tender of resignation becomes effective and his service/or office tenure gets terminated when it is accepted by the competent authority. Thus, having regard to the letter of resignation (Annexure P-2), in the present case, there can be no doubt that Shri. L. M. Upadhyay had in his letter dated 06.09.1993, indicated his unequivocal intention to resign in the clearest possible terms with immediate effect. The resignation was tendered by Shri. Upadhyay voluntarily without any pressure or coercion from the Principal of the College as recorded by all the Inquiry

Officers in their respective fact finding reports and the counter allegation of Shri. Upadhyay against the Principal was found unwarranted and unfounded. The Principal in fact, had protected the reputation, saved the future career and unnecessary humiliation and embellishment of Shri.

Upadhyay from the students, staff members and teachers of the College by permitting him to leave the College immediately before his letter of resignation was forwarded to the competent authority for its acceptance.

We have carefully gone through the representation/complaint dated 10.09.1993 (Annexure P-3) submitted by Shri L. M. Upadhyay to the Governor, the Chief Secretary and the Secretary, Technical Education. There is no whisper in the said representation that he intended to withdraw his letter of resignation dated 06.09.1993. Thus, finding of the High Court that Shri L. M. Upadhyay had withdrawn his letter of resignation dated 06.09.1993 by a subsequent letter dated 10.09.1993 was not born out from the record. Similarly, the High Court is not right in holding that the letter of resignation dated 06.09.1993 submitted by Shri L. M. Upadhyay was accepted by the State Government and not by the Board of Governors is not tenable. As noticed above, the letter of resignation tendered by Shri L.M. Upadhyay to the Principal was forwarded by the Principal on the same day to the Board of Governors for its acceptance with immediate effect with a request to waive the period of notice of one month required to be given by the employee before tendering his resignation. The documents marked as Annexures P-6 and P-7 would clearly and plainly establish that the letter of resignation tendered by Shri L. M. Upadhyay was accepted by the competent authority after receipt of the inquiry reports of the inquiry officers. It is not in dispute that the Chief Secretary was the Chairman of the Board of Governors of the College and the Joint Secretary of the Department of Technical Education, State of U. P., had only conveyed the decision of the acceptance of the resignation taken by the Chairman, Board of Governors, to the Principal of the College. In that view of the matter, it cannot be held that the letter of resignation of Shri L. M. Upadhyay was accepted by the Principal of the KEC or by the State Government as submitted by respondent No. 1.

There cannot be any quarrel on the settled principle of law that an employee is entitled to withdraw his resignation before its acceptance by the competent authority. We have gone through the decisions of this Court in M/s J. K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur v. State of U. P. & Ors. [AIR 1990 SC 1808] and Union of India & Ors. v. Gopal Chandra Misra & Ors. [(1978) 2 SCC 301] relied upon by the learned senior counsel for respondent No.1. He contended that before terminating the services of the respondent No.1 on the basis of the complaint of the girl student and subsequent inquiry reports of the Inquiry Officers, it was obligatory upon the Authority to hold regular departmental inquiry for the alleged misconduct and then to proceed against respondent No. 1 in accordance with relevant Rules. We are afraid to accept this submission. Admittedly, Shri L. M. Upadhyay was on probation and the Authority was empowered to judge his fitness for work or suitability to the post of teacher at the time of acceptance of his resignation. In our view, the services of Shri L.M. Upadhyay during probation period could have been terminated by the Authority, but the Principal and the Board of Governors had adopted a reasonable and fair mode of accepting his pending letter of resignation instead of terminating his services for unsuitability. For the above-said reasons, this appeal deserves to be

accepted and it is, accordingly, allowed. The impugned order dated 02.11.1999 of the High Court of Judicature at Allahabad passed in CMWP No.10058 of 1994 is not legal and justified. It is set aside accordingly. We leave the parties to bear their own costs.

JUDIS