

THE STATE OF HARYANA AND ORS.

A

v.

RAM KUMAR MANN

FEBRUARY 20, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD. JJ.]

B

*Service Law :*

*Resignation—Withdrawal of—Respondent resigned from service to contest Assembly elections—Resignation accepted—After defeat in elections respondent filed an application withdrawing his resignation—Request declined—On writ petition, High Court directed the State Government to reinstate the respondent with all consequential benefits, as in similar cases State had earlier allowed three employees to withdraw their resignations—Held High Court erred in directing reinstatement of the respondent.*

C

*Constitution of India, 1950 :*

D

*Article 14—Doctrine of discrimination—Held, is founded upon existence of an enforceable right—Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf—A wrong decision by Government does not give a right to enforce the wrong order and claim parity or equality—Respondent has no right and cannot be given the relief given wrongly to other employees.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 27 of 1985.

F

From the Judgment and Order dated 10.8.84 of the Punjab & Haryana High Court in C.W.P. No. 1154 of 1984.

Jasbir Malik for Prem Malhotra for the Appellants.

G

Ms. Urmila Sirur for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the Division Bench of the Punjab & Haryana High Court, made on 10.8.1984 in CWP

H

A No. 1154/84.

B The admitted facts are that the respondent, while working as a Small Pox Supervisor in the Health Department, had tendered his resignation on April 32, 1982 to contest the election as a Member of the State Legislative Assembly. His resignation was accepted on May 18, 1982. He contested the election but was defeated. Thereafter, he filed an application on May 21, 1982 withdrawing his resignation. That was dismissed. Consequently, the respondent filed the aforesaid writ petition in the High Court. The High Court observed that since three similarly situated persons, viz., Gurbajan Singh, Daryao Singh and Smt. Sumitra Devi were allowed to withdraw their resignation were appointed in the respective posts held by them, the failure to extend similar benefit to the respondent would be violative of Article 14. Therefore, it directed the appellant to reinstate him into service with consequential benefits.

D The question, therefore, is : whether the view taken by the High Court is correct in law? It is seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on May 18, 1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on May 18, 1982. It may be that Government for their own reasons, given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is found upon existence of an enforceable right.

F He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into service. Can a similar circumstanced person claim equality under Section 14 for reinstatement?

H Answer is obviously 'No'. In a converse case, in the first instances, one may

be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a *mandamus* with all consequential benefits. A B

The appeal is accordingly allowed. But in the circumstances without costs.

R.P.

Appeal allowed. C