

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8374 OF 2012

Atul Nathuram Naiknawade,
Age 32 years, Occ. Service,
R/o Savitribai Phule Society,
Bhimnagar, Tq. &
Dist. Osmanabad

..Petitioner

Versus

1. The Secretary,
Smt. Bhagiratibai Late High School,
Bombale Hanuman Chowk,
District Osmanabad.

2. The Education Officer (S),
Zilla Parishad, Osmanabad.

3. The Head Master,
Smt. Bhagiratibai Late High School,
Bombale Hanuman Chowk,
District Osmanabad.

..Respondents

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Advocate for Petitioner : Shri Naiknavare Ramesh V.
Advocate for Respondent 1 & 3 : Shri Rodge Pratap G.
AGP for Respondent 2 : Smt. Kshirsagar Y.M.
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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 01, 2015

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective sides.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is

taken up for final disposal.

4. The petitioner is aggrieved by the impugned judgment and order dated 24.7.2012, delivered by the School Tribunal in Appeal No. 8 of 2012, by which the petitioner's challenge to the alleged termination dated 3.11.2010 has been rejected.

5. The petitioner submits that though the resignation dated 3.11.2010 has been written in his own handwriting, no sanctity needs to be attached to the same as the relevant provisions under Section 7 of the the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("the MEPS Act" for short) and Rule 40 of the the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short) make it mandatory for the employer to accept a resignation only after the lapse of three months, which is the notice period. He further adds that a non-permanent employee may leave service after giving one calender month's notice.

6. He further submits that he had no knowledge whether his resignation was accepted or not since there was no communication by the employer. He, therefore, submits that the acceptance of the resignation amounts to a forceful termination, which has been lost sight of by the School Tribunal. He adds that the School Tribunal should have allowed the appeal and should have set aside the purported resignation

as an act of forceful termination at the best of the respondents.

7. Shri Rodge, learned Advocate appearing on behalf of the respondents / management Nos.1 and 2 submits that the petition is devoid of merits. The School Tribunal has rightly concluded that the petitioner has voluntarily resigned and therefore, the acceptance of his resignation cannot be termed as being unusual or illegal. He further submits that the petitioner was not a permanent employee, though he claims to have attained the deemed status of permanency for self serving purposes. He was temporarily appointed as an Assistant Teacher.

8. Shri Rodge submits that the petitioner had moved an application on 3.8.2010 seeking permission to enter the employment with the MSRT Corporation. He then submitted his resignation letter in his own handwriting, dated 3.11.2010, categorically stating that he has been appointed with the MSRTC and hence his resignation be accepted. He, therefore, submits that the petitioner cannot be permitted to withdraw his resignation once it has been accepted by a resolution passed by the management on 20.11.2010. He further adds that the petitioner attempted to withdraw his resignation by communication dated 16.12.2010.

9. In rebuttal, Shri Naiknaware submits that he may have erroneously stated in his resignation that he has been appointed in the

employment of MSRTC. In fact, he was called upon to participate in the interviews on 23.11.2010, which were conducted by the MSRTC. Subsequently, he was not selected to the post of Bus Conductor and therefore, he withdrew his resignation.

10. Section 7 of the said Act provides the manner in which an employee would draw up a letter of resignation and would submit the same by registered post to the management. Rule 40 of the said Rules lay down the conditions, which need to be followed while accepting a resignation. A permanent employee can give three months' notice before resigning and a non-permanent employee can give one month's notice. The management is permitted to allow an employee to leave service earlier on payment of pay, excluding allowance for three months or one month in lieu of notice period. The amount in lieu of notice is restricted to the pay for the period by which the notice falls short of the notice period.

11. Rule 40(2) of the said Rules, enables the management to allow an employee to leave service either without due notice or without making payment of pay in lieu of notice by making a proportionate deduction from the notice period.

12. This Court in the case of Balaleshwar Shikshan Mandal and another Vs. Jaywant Bhaguji Gadekar and others [2004 (1) BCR 429], has

concluded that once a resignation is accepted, the matter stands concluded finally. Once an employee resigns voluntarily by signing the letter clearly expressing his intention to resign and cease the employer and employee relationship, acceptance of the said resignation is a substantial compliance of Section 40. Paragraphs 7 to 9 of the Balaleshwar judgment (supra), read as under:-

“7. That takes me to the main contention as to the efficacy of the resignation tendered by the Respondent No. 1. The resignation letter is dated 16.8.1998. It is not in dispute that the said letter was made over to the chairman of the Petitioner Instituted by the Respondent. The record also clearly establishes that the said letter was placed for consideration in the Managing Committee meeting on 29.11.1998. The Managing Committee in that meeting has accepted the said resignation of the Respondent No. 1. Once the resignation is accepted, the matter stood finally concluded. There is nothing on record to indicate that before the Managing Committee of the Petitioner accepted the resignation, the Respondent No. 1 had ever attempted to recall the resignation or requested to treat the same as cancelled. If that is so, then it necessarily follows that the resignation tendered by the Respondent on 16.8.1998 became final with the acceptance thereof by the Managing Committee on 29.11.1998. The Tribunal has, however, proceeded on the premises that the resignation tendered by the Respondent No. 1 was ignored by the Management and treated as cancelled. There is no basis for recording that finding. On the other hand, the Managing Committee of the Petitioner Institute already accepted the resignation on 29.11.1998. In that situation, there was no occasion for any other officer to treat the said resignation as

cancelled at the subsequent point of time. Besides, it is not the case of the Respondent that he called upon the Management to treat the said resignation as cancelled. As mentioned earlier, except the observation of the Tribunal, there is nothing on record to suggest that the Management had treated the resignation as cancelled. Whereas, if the Management had treated the resignation as cancelled, obviously there was no reason for the Management not to permit the Respondent No. 1 to resume duties. The learned Counsel for the Respondent No. 1, however, submits that there is a letter on record which clearly indicates that the Management had treated the resignation as cancelled. However, no such specific letter has been adverted to by the Tribunal in its judgment nor that letter has been made available before this Court, although the Respondent No. 1 has filed reply affidavit opposing this writ petition. In the circumstances, it will have to be held that the resignation tendered by the Respondent No. 1 dated 16.8.1998 became final and came into effect with its acceptance by the Managing Committee on 29.11.1998.

8. *The Tribunal has, however, held that there is noncompliance of Section 7 of the Act. It will, therefore, be appropriate to refer to Section 7 of the Act which reads thus:*

"Section 7. If any employee intends to resign his post in any private school, at any time after the appointment date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him."

On plain reading of this Section, it would appear that once an employee signs the letter expressing his intention to resign and voluntarily submits a copy thereof to the Management, such an act would be substantial compliance of Section 7 of the Act. In the present case, it is not in dispute that the letter dated 16.8.1998 clearly expresses Respondent's intention to resign and the letter is dated and duly by the Respondent No. 1 and that the said letter was made over directly to the Management. Merely because a copy of the letter has not been forwarded by registered post cannot make the resignation void as has been found by the Tribunal. The mode of despatch would be relevant in cases where the employee disputes the execution of document. But in the present case, the Respondent No. 1 has neither disputed execution of the document nor the delivery thereof to the management. In such a case, in my view, there is substantial compliance of the procedure for tendering resignation. The Tribunal has further found that there is infraction of Rule 40 of the Rule. Rule 40 reads thus:

"40. Resignation: (1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month's notice. The management, however, allow an employee to leave service earlier on payment of pay (excluding allowances) for three months, or as the case may be, one month in lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay for the period falls short.

(2) If any Management allows an employee to leave service earlier either without due notice or

without making payment of pay in lieu of notice as specified in Sub-rule (1), a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned.

(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year.

9. *In the present case, it is seen that the Respondent No. 1 tendered resignation on 16.8.1998. Nevertheless, resignation was actually accepted by the Managing Committee on 29.11.1998. No doubt, one calendar month's notice was not given by the Respondent No. 1 who was a non-permanent employee at the relevant time. However, since resignation has been accepted after one month from its receipt, the requirement of deduction of one month pay in lieu of one month notice will not arise. So also the question of Management allowing the Respondent No. 1 to leave service earlier will not arise in the present case. Assuming that the Management has not complied its obligation under Rule 40, it does not make resignation and its acceptance invalid because Sub-rule (2) provides that in that situation, proportionate amount of pay in lieu of notice shall be deducted from the amounts due to the school concerned. Understood thus, the conclusion reached by the Tribunal that the resignation tendered by the Respondent No. 1 cannot be given effect to because of noncompliance of Section 7 of the Act or Rule 40 of the Rules does not commend to me. ”*

13. In the instant case, the sequence of events commence with the application of the petitioner dated 3.8.2010 seeking permission to join the employment with the MSRTC. In fact, the said letter is a notice of three months given to the respondent / management which is clearly stated in the subject of the application. The copy of the application tendered by the respondent management is taken on record and marked as Exhibit "X" for identification.

14. This three months' notice precedes the resignation letter dated 3.11.2010, given by the petitioner. The intention of the petitioner is, therefore, apparent that he had given three months' notice to leave the employment of the respondent and exactly after three months, he has tendered his resignation.

15. In a reversal of fortunes, for some reason, the petitioner seems to have lost employment as a Bus Conductor. He, therefore, returned to make an application, dated 16.12.2010, calling upon the management not to accept his resignation, which was already accepted on 20.11.2010.

16. The fact situation is evident as above. Same has been appreciated by the School Tribunal. I do not find any perversity in the conclusions of the School Tribunal.

17. This petition is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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