

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6237 OF 1999

Samaj Seva Mitra Mandal
C/o. Karmaveer Annasaheb
Jagtap Vidyalaya & Anr. .. Petitioners
vs.
Shri Vishwanath Bapu Salve & Ors. .. Respondents

Mr. K. Y. Mandlik for Petitioners.
Mr. V. K. Bodhare i/b. Mr. A. M. Joshi for Respondent No. 1.
Ms Vaishali Nimbalkar – AGP for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 05 MARCH 2015

P.C. :-

1] This petition challenges the judgment and order dated 4 November 1999 made by the Additional School Tribunal, Pune allowing the appeal instituted by the respondent no. 1, holding that the resignation tendered by the respondent no. 1 was not voluntary, setting aside termination of the respondent no. 1 w.e.f. 30 April 1994 and awarding him reinstatement with full back-wages.

2] There is no dispute that the respondent no. 1 did tender his resignation on 1 February 1994. In the letter of resignation, the respondent no. 1, *inter alia* stated that the letter be treated as three months notice and the respondent no. 1 be relieved w.e.f. 30 April 1994. On 30 April 1994 i.e. after a period of three months from the

date when the resignation letter was tendered, the petitioners informed the respondent no. 1 that the resignation had been accepted and the respondent no. 1 was to stand relieved w.e.f. 30 April 1994.

3] There is no record of any immediate reaction from the respondent no. 1, in the context of the case set out by the respondent no. 1 that such resignation was not voluntary but forced. The first such reaction, if at all, surfaces of 27 September 1994 when the respondent no. 1 made a representation to the Education Officer, Zilla Parishad. Thereafter, on 9 May 1995, i.e. after over a year since the date of being relieved from services, the respondent no. 1 instituted an appeal before the School Tribunal, complaining that this was a case of forced resignation.

4] The School Tribunal, in the impugned order has almost entirely placed reliance upon the provisions contained in Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("said Act") which provides for procedure of resignation by employees of private school. Said Section provides that if employee intends to resign his post in any private school, at any time after the appointed date, he shall draw up a letter of resignation in duplicate and sign both the copies

thereof and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him. In the present case, the respondent no. 1 had not forwarded the copy of resignation letter by registered post, but had personally delivered the same. The School Tribunal has held that there was breach of the provisions contained in Section 7 and resignation letter delivered personally, was not valid resignation letter which could have been acted upon.

5] In my judgment, the reasoning of the School Tribunal is not at all correct. The provisions of Section 7 cannot be interpreted to mean that where a resignation is personally delivered, the same, in all situations, would be invalid or be presumed to be a resignation which was tendered under force or coercion. The position that a resignation which is not forwarded by registered post must, on that ground, be regarded as invalid in every case, irrespective of the surrounding circumstances, is an extreme position, not warranted by the language of Section 7 of the said Act. In the present case, the School Tribunal has really not adverted to the surrounding circumstances. Such circumstances would indicate that the resignation in question was indeed voluntary. Otherwise, it is inconceivable that the respondent no. 1 reacts against the same only in the month of September 1994, when the resignation was

tendered on 1 February 1994. After the tender of the resignation, the services of the respondent no.1 were relieved on 30 April 1994. Even during this period, the respondent no. 1 made no complaint that the resignation had been forcibly obtained from him.

6] This Court, in the case of *Neminath Jain Bhramhacharya Ashram (Jain Gurukul) & Ors. vs. Rajendra Sitaram Nikam & Ors.*¹, in the context of Section 7 of the said Act has held as follows:

“.....One need not go as far as to hold that a resignation which is not forwarded by registered post must on that ground be regarded as invalid in every case irrespective of the surrounding circumstances. An extreme position is not warranted on the language of section 7. What must be emphasized is that where an employee seeks to contend that his resignation was not voluntary, the Tribunal must decide that question on the basis of the evidence before it. The fact that the resignation has not been submitted by the mode of registered post is one factor to be considered though that in itself is not conclusive.....”

7] In the present case, even though three months notice was given by the respondent no. 1 himself and the same was accepted by the petitioners, the School Tribunal has vaguely determined that there was breach of Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981

1 2004 (2) Mh.L.J. 909

(“said Rules”). Such finding is completely unsustainable. In the case of *Neminath* (supra), this Court, in the context of notice under Rule 40 of the said Rules, has held as follows:

“5. The Tribunal has also held that under Rule 40 of the Rules framed under the Act, three months notice has to be furnished. I am however not inclined to accept the view of the Tribunal that the failure to furnish three months' notice would invalidate the resignation for the simple reason that this rule has been inserted for the benefit of the Management and not to the employee. Rule 40 itself provides that if the notice of three months is not furnished the Management would be entitled to deduct a proportionate part of the wages payable for the period which falls short of the notice prescribed. Hence, on this aspect of the matter, I am not in agreement with the view expressed by the Tribunal.”

8] Besides, the Division Bench of this Court in the case of *Banda Navbharat Shikshan Prasarak Mandal & Ors. vs. Raghunath Ganesh Manorikar & Ors.*², in the context of resignation of a teacher and the acceptance thereof before the expiry of three months notice period has held that the period of three months was provided for the benefit of the Management so that substitute can be appointed and it was always open to the Management to give the advantage and accept the resignation forthwith by payment of salary of three months.

² 1992 II CLR 956

9] The reasoning of the School Tribunal that since the respondent no. 1 had no other source to maintain his parents and family and therefore it was not likely that the respondent no. 1 would voluntarily tender his resignation, is an inference not borne by any evidence on record. In fact the same is contrary to the weight of evidence on record. Such inference, is clearly in the nature of a surmise or conjecture. In any case, the emphasis of the School Tribunal has been upon a non compliance with the provisions contained in Section 7 of the said Act. As noted earlier, the said reasoning is unsustainable.

10] For all the aforesaid reasons, the impugned judgment and order dated 4 November 1999 made by the School Tribunal is set aside. Rule is made absolute in terms of prayer clause (c) of this petition. There shall be no order as to costs.

(M. S. SONAK, J.)