

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5617 OF 2014

1. Bahirji Smarak Vidyalaya
Shikshan Sanstha Vapati,
Tq. Vasmatnagar, Dist. Hingoli,
Through its Secretary,
Panditrao Ramrao Deshmukh,
Age 75 years, Occ. Agriculture
R/o Vasmatnagar, Dist. Hingoli.

2. The Principal,
Bahirji Smarak College,
Vasmatnagar, Dist. Hingoli.

..Petitioners

Versus

1. Avinash Ramkishanrao Bhosale
Age 31 years, Occ. Agriculture,
R/o Amba, Tq. Vasmatnagar,
District Hingoli.

2. The Registrar,
Swami Ramanand Tirth University,
Nanded.

3. The Joint Director of Education,
Nanded Division, Nanded.

..Respondents

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Advocate for Petitioners : Shri Salunke V.D.
Advocate for Respondent 1 : Shri Pawar Vikas S.
Advocate for Respondent 2 : Shri Latange V.P.
AGP for Respondent 3 : Shri Korde D.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 09, 2016

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner / management is aggrieved by the judgment and order 13.3.2014, delivered by the University and College Tribunal ("Tribunal"), in Appeal No. SRTMU/01/2014, by which, the appeal was allowed and respondent No.1 / employee was granted reinstatement with continuity in service and regular salary from the date of the order of the Tribunal.

5. Shri Salunke, learned Advocate for the petitioners submits that the first respondent was appointed on 5.9.2006 as a Peon in the Class IV category. On 30.9.2011, he submitted a letter in his own handwriting expressing his intention to resign from service. On 4.1.2012, he submitted his resignation letter in his own handwriting. Same was accepted by passing a resolution in the meeting of the Governing Body on 7.1.2012. By communication dated 12.1.2012, the management informed the Headmaster to convey the acceptance of the resignation. Accordingly, by communication dated 13.1.2012, which is an order relieving the first respondent from service, the employee was informed that his resignation is accepted and he is being relieved on 13.1.2012.

6. Shri Salunke, learned Advocate submits that the employee

approached the Tribunal by filing an Appeal and alleged that the letter dated 30.9.2011 was extracted from the employee on 4.1.2012 along with the resignation. He had withdrawn his resignation by a communication dated 9.1.2012, which was served upon the petitioners. It was also alleged that the signatures of the employees were obtained on blank papers and which were used against him.

7. He further submits that the management submitted its reply / written statement and specifically contended that the allegations of the employee were baseless. In paragraph Nos.4 to 6, it was brought on record that the employer had also executed an affidavit on a Rs.100/- non-judicial stamp paper indicating his intention to resign and hence the appeal be dismissed.

8. It is further submitted that the letter dated 30.9.2011 was in fact, a notice of resignation given by the employee and the management did not act on the said letter since the employee had not filed his resignation. After it was tendered on 4.1.2012, the management called for a meeting of the Governing body and accepted the resignation on 7.1.2012. Even thereafter, the management did not act in undue haste and communicated the acceptance on 13.1.2012. It is, therefore, submitted that there was no merit in the contention of the employee.

9. Shri Salunke has severely criticized the impugned judgment for the

reason that the Tribunal has lost sight of the fact that the resignation was accepted and after its acceptance, the employee had no right to withdraw the resignation. Shri Salunke has relied upon the judgment of the Honourable Apex Court in the matter of Union of India Vs. Gopal Chandra Misra and others [AIR 1978 SC 694] and North Zone Cultural Center Vs. Vedpathi Dineshkumar [2003 AIR SC 2719]. It is, therefore, prayed that this petition be allowed and the impugned judgment of the Tribunal be quashed and set aside.

10. The learned Advocate for respondent No.1 employee submits that he has not voluntarily tendered any document. There was a dispute between the management and the father of the employee with regard to a piece of land, which was initially given by the father of the employee to the respondent No.3 / School. Since the father of the employee has taken back the land from the management, it developed animosity towards the employee and on 4.1.2012, he was made to write a letter which was dated 30.9.2011 and tendered a resignation on the same date, which is 4.1.2012.

11. It is further submitted that the management compelled the employee to sign on a bond paper. The material on the said bond paper was typed by the management and it was made to believe that he was resigning voluntarily. Sections 199 and 200 of the Indian Penal Code were also quoted in the said affidavit. The employee being a Class IV Peon, had no knowledge about the law, much less about the provisions of the Indian

Penal Code. He was forced to sign on the documents.

12. Learned Advocate for the employee further submits that he immediately tendered a letter on 9.1.2012 withdrawing his purported resignation and which has been received by the management. There is no dispute that the said letter was received by the management on the same date. Till then, the management had not conveyed any decision to the employee. Even on 9.1.2012, the management did not say anything to the employee. It was only on 13.1.2012, that the employee was informed about the acceptance of his resignation and was relieved from employment.

13. It is further submitted that the University Tribunal has rightly considered the pleadings of the parties and the documents placed before it and has allowed the appeal. He relies upon the judgment of the Karnataka High Court in the matter of Managing Director, Campco Limited Versus B. Vishnu Murthy [2012 LLR 370].

14. I have considered the submissions of the learned Advocates.

15. There is no dispute as regards the affidavit being executed by the employee on 4.1.2012 and the resignation dated 4.1.2012. There is also no dispute that the employee withdrew his resignation by communication dated 9.1.2012 and after 4 days the management conveyed to him, vide letter dated 13.1.2012 that his resignation was accepted on 7.1.2012 and he

is being relieved from service with retrospective effect on 4.1.2012.

16. The contention of the employee is that he had never issued any letter on 30.9.2011. The said letter was extracted from him on 4.1.2012. An affidavit is said to have been executed on the same date 4.1.2012, by which, the employee is said to have supported his resignation.

17. The issue, therefore, is as to whether the letter dated 30.9.2011 can be termed to be a notice of resignation and whether the acceptance of the resignation by resolution dated 7.1.2012, with retrospective effect from 4.1.2012 could be sustained in law. So also, the issue would be as to whether the communication of acceptance of resignation would be construed to mean that the employee is being relieved from service from the date of the communication.

18. Rule 51 of the Maharashtra Non-agricultural Universities and Affiliated Colleges Standard Code Rules, 1984 ("Rules of 1984"), applicable to the non-teaching employees of the Non-agricultural Universities and Affiliated Colleges reads as under:-

" 51. Discontinuation and Termination. - (1) The employee shall not have or discontinue his service in the University or the College without having a prior notice in writing to the Registrar or the Principal of the College, as the case may be of his intention to leave or discontinue the service. The period of notice shall be, --

(a) three calendar months in the case of employee in Class I, Class II and Class III.

(b) one calendar month in the case of employee in Class IV,

(c) in case of breach of these provisions, the employee shall pay to the University or the College an amount equal to his pay for the notice period required to be given by him. In case he fails to pay the amount, it shall be recovered from the dues payable to him.”

19. Rule 51(1) mandates that an employee shall not leave or discontinue his service in the University or the College without giving one calendar month's notice in so far as Class IV employees are concerned. There is no other provision in the said Rules with regard to the resignation or termination or discontinuation of the service of a permanent employee. Needless to state, the same provision would apply to the management as well.

20. In the face of a specific contention by the employee that the letter dated 30.9.2011, which is termed as a notice of resignation, having not been issued by him on the said date and the same having been extracted from him on 4.1.2012, deepens the mystery in this matter. Considering the contention of the employee and the management, if the letter dated 30.9.2011 was a notice of resignation as is contended by the management, the said notice expires on 30.12.2011. The management should have, therefore, relieved the employee w.e.f. 31.12.2011. It is apparent that the

management has not taken any decision on the purported notice of resignation till the resignation dated 4.1.2012 was purportedly tendered by the employee. This, therefore, indicates by the principles of probabilities that the management had no intention to act upon the letter dated 30.9.2011 even if it is assumed that the same was tendered on the said date.

21. The last sentence of the communication dated 30.9.2011 is aimed at indicating that the employee would tender his resignation in January 2012. The management contends that in this backdrop, the resignation was accepted when the employee tendered it on 4.1.2012. Thus, it is established that unless the employee tendered his resignation, the management was precluded from acting on the letter dated 30.9.2011. It is trite law that a resignation must contain a notice period and there cannot be two separate documents, one for expressing the desire to resign and another for actually resigning.

22. Even if the above controversy is ignored, the fact remains that by the letter dated 13.1.2012, the management relieved the employee with retrospective effect from 4.1.2012. It is trite law that an employee continues to be in employment until his resignation is accepted. Merely because in the present case the date of resignation is 4.1.2012, would not mean that the management could accept it any time thereafter and relieve the employee with retrospective effect from the date posted on the

resignation letter.

23. The learned Division Bench of this Court in the matter of Asaram Raibhan Dhage Vs. Executive Engineer (1987 II CLR 331), has concluded that termination of service of any employee, be it a temporary, permanent or a daily wager, cannot be effected with retrospective effect.

24. The petitioner / management has relied upon the judgment of the Honourable Apex Court in the case of Union of India (supra). Reliance is placed upon paragraph No.51 of the judgment, which reads as under:-

“51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resigner. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in presentia, the resignation terminates his office-tenure forthwith,

and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing chooses to resign from a future date, the act resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.”

25. The Honourable Supreme Court has thus concluded that a resignation can be withdrawn at any time, before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignation. It is further concluded that the resignation would become effective after it is accepted and shall then result in the termination of the employee. It is further held that if the said employee prays that his resignation will become effective immediately, the acceptance would then have an immediate effect.

26. Considering the facts of the case before the Honourable Supreme Court in Union of India (supra), I find that, even if it is assumed that the letter dated 30.9.2011 and resignation dated 4.1.2012 are tendered voluntarily, there is no request in the resignation letter that it should be accepted with immediate effect. In these circumstances, the reliance placed by the petitioner / management on the Union of India's case (supra), is misplaced.

27. The Honourable Apex Court has dealt with a similar case in the

matter of Shambhu Murari Sinha Vs. Project and Development India and another [2000 AIR SCW 2577]. In the said case, the employee had submitted an application for voluntary retirement on 18.10.1995. The offer was accepted by the management by their communication dated 30.7.1997. The employee, however, was continued in service and was relieved from service officially on 26.9.1997. Prior thereto, he submitted a letter to the management dated 7.8.1997, withdrawing his voluntary retirement application. The request was turned down by the management on the ground that his application was accepted on 30.7.1997. In the light of these facts, the learned Single Judge as well as the learned Division Bench of the Patna High Court rejected the challenge posed by the employee. However, the Honourable Supreme Court allowed the Civil Appeal of the employee, concluding that as he was not officially relieved from service till the date when he filed his application withdrawing the resignation, it, therefore, amounts to withdrawal of resignation before he being relieved from service. The Apex Court concluded, in the light of catena of judgments, that inspite of its acceptance, the employee could withdraw his resignation prior to the effective date.

28. The conclusions of the Honourable Supreme Court in paragraph No.5 of Shambhu Murari's judgment read as under:-

“5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent-

management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta v. Union of India and Anr. : (1987) ILLJ 541 SC ; J. N. Srivastava v. Union of India and Anr. : (1999) ILLJ 546 SC and Power Finance Corporation Ltd. v. Pramod Kumar Bhatia : (1997) ILLJ 819 SC, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

29. The petitioner has placed reliance upon the judgment of the Honourable Supreme Court in the case of North Zone Cultural Centre (supra). Contention is that the Apex Court has ruled that the non-communication of acceptance does not make the resignation inoperative if the acceptance is before the withdrawal. However, in so far as the facts of the case in the North Zone Cultural judgment are concerned, the departmental guidelines made applicable indicated that the resignation would take effect the moment it has been accepted. In the instant case,

there are no such guidelines with regard to the immediate effect of the resignation.

30. In the light of the above, Rule 51 assumes significance. Rule 51 of the 1984 Rules mandates one month's notice for discontinuing the services of employee falling in Class IV category. If the contention of the management that the letter dated 30.9.2011 is a notice period of resignation, I do not find any statement in the said letter that it was the resignation of the employee which was scheduled to take effect from a particular date. The said letter only indicates that the employee would be submitting a resignation letter in January 2012. In the light of the law referred to herein above, the letter dated 30.9.2011, would therefore, not amount to a resignation to be made effective from a particular date. It is undisputed that no resignation letter has been tendered by the employee any time before 4.1.2012. As such, Rule 51 of the 1984 Rules, mandated the employer to accept the resignation dated 4.1.2012 only after one month of its submission, on or after 4.2.2012.

31. The fact remains that the College Tribunal has concluded that the letter dated 13.1.2012 was the only communication of acceptance of the resignation and which was served on the employee on the very same date. I, therefore, find that the Tribunal has not committed any error in concluding that the letter of acceptance is issued only after receiving the withdrawal of resignation from the respondent / employee and as such, the

withdrawal of resignation was required to be considered by the petitioner / management.

32. In the light of the above, I do not find that the impugned judgment of the Tribunal could be termed as being perverse or erroneous. This petition is devoid of merits and is, therefore, dismissed.

33. Rule stands discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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