

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10149 OF 2013

1. Shri Guru Buddhiswami Mahavidyalaya,
Purna (Jn.) Tq.Purna, Dist.Parbhani,
Through its Secretary,
Amarutraj Bhujangrao Kadam,
Age-24 years, Occu-Secretary,
R/o Shivaji Nagar, Near Mahadev
Temple, Purna, Dist.Parbhani,
2. Shri Guru Buddhiswami Mahavidyalaya,
Purna (Jn.) Tq.Purna, Dist.Parbhani,
Through its Principala,
Dr.Ramrao Nagoba Gangasagare,
Age-57 years, Occu-Service,
R/o Shri Guru Buddhiswami
Mahavidyalaya, Purna, Tq. Purna,
Dist.Parbhani

– PETITIONERS

VERSUS

1. Naresh S/o Vishnu Kotarwar,
Age-51 years, Occu-Teacher,
R/o Baba Nagar, Nanded,
Tq. And Dist. Nanded,
2. District Vocational Education and
Training Centre, Parbhani,
Dist.Parbhani,
3. Deputy Director of Vocational
Education and Training Regional Office,
Aurangabad, Dist.Aurangabad,
4. Rajesh S/o Gangabhishan Baheti,
Age-45 years, Occu-Service,
R/o Mahavir Nagar, Purna,
Tq.Purna, Dist.Parbhani

– RESPONDENTS

Mr.U.B.Bilolikar, Advocate for the petitioners.
Mr.P.N.Kutti, AGP for the respondent/State.
Mr.S.S.Bora, Advocate for respondent No.4.
Mr.R.B.Narwade, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 19/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner/Management is aggrieved by the judgment and order dated 06/12/2013 delivered by the School Tribunal, Latur by which Appeal No.1/2013 filed by respondent No.1 herein has been partly allowed and the acceptance of his voluntary retirement application dated 07/07/2005 by the petitioner/Management has been held to be illegal and therefore set aside.
3. For the sake of brevity, the petitioner employer is referred to as the Management, respondent No.1 original appellant is referred to as the employee and respondent No.4 who is the newly appointed person is referred to as respondent No.4 in this judgment
4. Respondent No.1 / employee has been granted reinstatement

with continuity of service without back wages. A further direction is given by the Tribunal that if its judgment is not complied with, non salary grants of the Management would be withheld by respondent Nos. 2 and 3 herein.

4. Learned Advocate for the petitioners submits as under :-

- [a] Respondent No.1/employee had joined services with the petitioner/Management as an “Instructor” on 24/08/1993 in the Marketing and Salesmanship subject.
- [b] He was confirmed in employment on 15/06/1996
- [c] On 16/02/2005, the Principal of the College received a communication from the Branch Manager of the State Bank of India, Purna Branch, stating therein that the employee has obtained a personal loan on the undertaking given by the Management and that the monthly installments are not being regularly deposited with the Bank.
- [d] The Management, therefore, issued a letter dated 03/03/2005 to the employee calling upon him to explain about his conduct of affixing the signature of the Principal on the concerned form and as to why disciplinary action should not be initiated against him.
- [e] On 07/03/2005, the employee submitted his explanation contending that his father was suffering from a heart ailment and as such, since he could not get the signature of the Principal on his loan application form, he affixed the signature of the Principal so as to rescue his father from the heart ailment and provide for his medical assistance.

- [f] The Management decided to conduct a preliminary enquiry and as such a Committee was formed so as to conduct a preliminary investigation.
- [g] The meeting of such Committee was posted on 01/05/2005 and the employee was present in the said meeting.
- [h] In the preliminary enquiry, the employee was asked whether he had affixed the signature of the Principal and obtained loan of Rs.1,00,000/-. He answered in the affirmative.
- [i] He also admitted that he had prepared a stamp of the Principal and the College by getting it manufactured at Nanded and had used the said stamp.
- [j] In the proceedings held on 04/05/2005, the Enquiry Committee concluded that it appeared prima facie that the employee had committed a serious misconduct.
- [k] On 07/07/2005, the employee tendered his resignation in his own handwriting and mentioned that his resignation may be accepted as being effective from 07/07/2005 itself.
- [l] The employee was served with a letter dated 07/07/2005 informing him that his request for accepting the resignation from the same date, has been accepted and he stands relieved.
- [m] The Management applied to the appropriate authority for filling in the said post from the Open Category as per the roster.
- [n] By communication dated 01/12/2006, respondent No.3 permitted the Management to fill in the post from the Open Category after considering the reservation roster.
- [o] Respondent No.4 herein has been therefore appointed in place of the respondent No.1/employee.
- [p] By communication dated 06/05/2007, the employee paid his one month wages for an amount of Rs.10,613/- so as to

complete the formality.

- [q] By communication dated 11/07/2007, respondent No.3 authority sanctioned the interim payment of Rs.1,09,152/- towards the Provident Fund benefits for being paid to the employee.
- [r] The said amount has been handed over to respondent No.1/ employee and he has received the same.
- [s] The employee preferred WP No.2249/2009 before the learned Division Bench of this Court.
- [t] By order dated 11/07/2011, the petition was dismissed as withdrawn as the employee preferred to approach the appropriate forum.
- [u] In 2013, the employee preferred Appeal No.1/2013.
- [v] The School Tribunal condoned the delay.
- [w] The petitioner preferred WP No.807/2013 for challenging the condonation of delay.
- [x] By order dated 20/01/2014, the petition was disposed of by this Court considering that the School Tribunal had already delivered the impugned judgment on 06/12/2013 thereby partly allowing the appeal of the employee.
- [y] Respondent No.4 herein has preferred CA No.7912/2015 in WP No.807/2013 praying for recalling of the order dated 20/01/2014 and for hearing WP No.807/2013 on its merits.
- [z] The impugned judgment of the School Tribunal is perverse and erroneous as it has concluded that because Rule 66 of the Maharashtra Civil Services (Pension) Rules has not been complied with and since the employee had not completed 20 years of service so as to be entitled for voluntary retirement, his resignation cannot be accepted.

5. Mr.Narwade, learned Advocate appearing on behalf of respondent No.1/employee, who is the original appellant before the School Tribunal, submits as under :-

- [a] He has not voluntarily submitted his resignation dated 07/07/2005.
- [b] He had lodged a police complaint on 03/08/2005 seeking police protection and contending that the Management was likely to register a false case against him.
- [c] He has put in only 12 years in service and has no reason to resign since he could continue in service till his superannuation.
- [d] All the signatures appearing on the documents relied upon by the Management were obtained on blank papers.
- [e] The Tribunal has rightly concluded that his application cannot be treated as a voluntary retirement application.
- [f] It is rightly concluded that Rule 66 entitles an employee to resign after completing 20 years of qualifying service and therefore his resignation was not legal and was illegally accepted.
- [g] The notice period of 3 months was not waived by the employee and his resignation could not be accepted immediately.
- [h] The employee has tendered the voluntary retirement application under pressure and therefore has lodged a complaint on 06/01/2006 with the Management making a request for reporting for duties.
- [i] The employee belongs to ST category and the post occupied by him was reserved for ST category and hence respondent No.4 could not have been appointed in his place.

- [j] He again made an application on 10/09/2008 praying for reinstatement since he would not get any retiral benefits as he had not completed 20 years of qualifying service.
- [k] The delay in the matter was rightly explained before the Tribunal and hence the delay was condoned.
- [l] The Management has specifically stated in its written statement that his application was for voluntary retirement and after it was accepted, there was no reason to respond to his further applications praying for reinstatement.
- [m] He had also filed an application dated 05/10/2005 under U.C.P. to the Management contending that he should be reinstated in service.
- [n] An affidavit in reply has been filed by the employee and the contentions set out herein have been reiterated. The employee relies upon the said affidavit in reply in support of his case and submits that the impugned judgment delivered by the School Tribunal is fair and proper and calls for no interference.

6. The learned AGP appearing on behalf of respondent Nos. 2 and 3 submits that the dispute is between the Management and respondent No.1/employee.

7. Mr.Bora, learned Advocate appearing on behalf of respondent No.4 has adopted the submissions of the petitioner and submits that he was legally appointed as an “Instructor” in the said Institution. After respondent No.1 initiated the litigation belatedly, the petitioner/

management has asked for the undertaking from respondent No.4 that his continuance would be subject to the result of the litigation between the Management and the respondent No.1/employee.

8. I have considered the submissions of the learned Advocates and have gone through the record available and the petition paper book with their assistance.

9. The entire issue turns upon the purported act of forgery committed by the employee and the subsequent resignation said to have been submitted by him.

10. The employee has stated that his signatures appearing on all documents on which the Management has placed reliance, were obtained on blank papers and were misused so as to cause prejudice to the employee. There is no contention that there was animosity or strained relations or enmity in between the Management and the employee.

11. In order to test this bold statement made by the employee, I have considered the memo of the appeal preferred by the employee before the School Tribunal. Though the memo of the appeal runs

into 7 pages, I did not find a single statement made by the employee that several documents have been created by the Management or that his signatures have been obtained on blank papers so as to be misused. The employee is unable to state as to when did the Management obtain his signatures on blank papers. It is noteworthy that the employee has been peacefully working from 24/08/1993 with the Management and was confirmed in service on 15/06/1996.

12. In this backdrop, I am of the view that the employee has taken the stand of signatures purportedly obtained on blank papers only to mislead this Court. Had that been the case, it was expected that the employee would have promptly lodged some complaint either with the Management or respondent Nos. 2 and 3 making his grievance that his signatures were obtained on blank papers. Even in the memo of the appeal, this has not been the case of the employee and hence, it appears that for the first time, the employee has created this story in paragraph No.7 in the affidavit in reply filed in this court apparently to mislead the Court. Judicial note of this conduct of the employee deserves to be taken keeping in view the judgment of the Hon'ble Supreme Court in the matter of Dalip Singh Vs. State of U.P. (2010) 2 SCC 114 and in the matter of Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398.

13. Notwithstanding the above, the employee has not disputed that he had obtained loan from the State Bank of India by submitting a declaration form bearing the signature of the Principal. Though Mr.Narwade has tried to canvass that he had only submitted the form to the office of the Principal and is not aware as to who signed on the same, this contention can be rejected outright owing to the fact that he submitted an explanation on 07/03/2005 to the Principal admitting that he had affixed the signature of the Principal since he wanted to obtain loan desperately in order to be utilized for the medical treatment of his father.

14. So also, the employee has not disputed in his memo of the appeal that a preliminary enquiry was conducted and his statement was recorded on 01/05/2005 wherein he has given certain admissions and has signed on the said questions and answers recorded. It is tried to be canvassed that he was not in a proper frame of mind when he faced the preliminary enquiry and the same suffers from non-observance of the principles of natural justice. I am not convinced by the said submissions for the reason that it was purely a preliminary enquiry and cannot be said to be a regular enquiry as is understood in law and especially under Rule 36 and 37

of the MEPS Rules, 1981.

15. In the backdrop of the above facts, the issue of resignation of the employee needs to be considered. It cannot be ruled out that the employee may have decided to resign from his service so as to avoid an unceremonious removal from service since the Management had decided that they would initiate disciplinary action against the employee for the act of forgery said to have been committed by him. Neither in the memo of the appeal nor in any earlier communications, does the employee state that the resignation is not in his own handwriting. It appears from the said resignation dated 07/07/2005 that the employee has declared that he does not desire to continue in service and his resignation be accepted from 07/07/2005. He has in fact stated that it should be presumed that he has quit his job from 07/07/2005.

16. Rule 66 which has been relied upon by the employee and the School Tribunal which reads as under :-

“66. Retirement of completion of 20 years qualifying service.

- (1) At any time after a Government servant completed twenty years qualifying service, he may, by giving notice of [.....] three months in writing to the appointing authority, retire from service.*
- (2) The notice of voluntary retirement given under sub-rule (1) shall*

require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

[(3).....]

- (4) (a) [A Government servant referred to in sub-rule (1) may make a] request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;*
- (b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will no cause any administrative inconvenience, the appointing authority, with the concurrence of the Finance Department, may relax the requirement of notice of three months on the condition that the Government Servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.*
- (5) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :
Provided that the request for withdrawal shall be made before the intended date of his retirement.*
- (6) The pension and [retirement gratuity] of the Government servant*

retiring under this rule shall be based on the pay as defined under rules 60 and 61 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purpose of calculating pension and gratuity.

(7) *This rule shall not apply to a Government servant who -*

(a) retires when he is declared surplus,

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

17. It is apparent that Rule 66 pertains to retirement of an employee on completion of 20 years qualifying service. The rule is self explanatory that a Government employee, who has completed 20 years of qualifying service, may give a 3 months notice seeking voluntary retirement.

18. I find from the record available that the confusion has been created by the use of the term voluntary retirement. This confusion has percolated upto the School Tribunal as is evident from the impugned judgment. The School Tribunal has concluded that since the Management has stated in the written statement that the application of the employee was for voluntary retirement and since he had not completed 20 years of qualifying service and as 3 months notice period was not given, the retirement was unsustainable.

19. I find the said conclusion to be perverse and erroneous for reasons more than one. Firstly, because the resignation of the employee could have been entertained under Rule 66, had he completed 20 years of qualifying service. If the said period of service was not completed, notwithstanding whether it was a voluntary retirement application or was not, the said application would not fetch the employee the retiral benefits since he had not completed 20 years of service.

20. In the above backdrop, the said voluntary resignation will have to be construed to be a simple resignation since it is not the case of the employee in that application that if he is not entitled for voluntary retirement, his resignation would stand withdrawn.

21. Secondly, the contention of the employee can be rejected since the resignation indicates that he wanted to quit his service forthwith. It is the employee who has to give a notice period to the employer for resigning or else agree to pay the amount equivalent to the salary for 3 months period. If the employee has given the notice for resigning, the employer could not have accepted the resignation forthwith unless the employee agreed for waiving of the notice period. In the

instant case, considering the backdrop of the alleged misconduct committed by the employee, it appears that he desired to quit his job forthwith before the Management could initiate disciplinary proceedings against him since the Management could not initiate such proceedings after he had quit his employment. It appears that this element of urgency may have prompted the employee to resign forthwith so as to avoid a stigmatic and uncereemonious removal from service.

22. It is settled law that in case of forceful resignation, attending circumstances are of paramount importance since they would be indicators of factors like duress or force or coercion.

23. Though the employee has relied upon his police complaint dated 03/08/2005, the said police complaint is with regard to a possibility of the Management filing false police cases against the employee on the basis of false allegations. The said complaint is signed by the employee as well as his wife. However, the first application seeking reemployment and declaring that he is not agreeable for resigning from employment, is dated 06/01/2006. By the said application, the employee approached the Management for the first time stating that he is without any earnings and he is willing

to report for duties and his application for reinstatement may be considered sympathetically.

24. Though he submits that the resignation was accepted forcibly, it cannot be ignored that the employee did not approach the School Tribunal u/s 9 of the MEPS Act, 1977 for alleging forceful resignation amounting to illegal termination from service. He has approached this Court by filing a writ petition in 2009 after 4 years and which was heard on 11/07/2011. Same was dismissed as being withdrawn by giving the employee the liberty to approach the School Tribunal. Despite the same, the employee has approached the School Tribunal in December 2012 when the appeal was lodged after one year and 5 months from the date of the dismissal of his writ petition.

25. It also cannot be ignored that on 06/05/2007, the employee submitted an application to the Management seeking liberty to deposit one month's wages of Rs.10,613/- so as to pay for the notice period. The amount has also been deposited. As an after thought, the employee now contends that every document cited by the Management bearing his signature, is a document created on a blank paper on which his signatures were obtained. Considering the above, I do not find that the said contention can be said to be truthful. So

also, an amount of Rs.1,09,152/- was paid as an advance amount towards the Provident Fund accumulations of the employee which he has accepted. This is reflected from the statutory document of respondent No.3 dated 11/07/2011. There is no denial that this amount was not delivered to the employee.

26. In the above backdrop, it is apparent that the employee has been taking shifting stands. Once he complains on 06/01/2006 that the resignation is accepted forcefully. Thereafter he deposits one month's wages on 06/05/2007. Thereafter, he receives his PF accumulations and it is only in 2009 that he lodges his writ petition with this Court. These attending factors, therefore, disprove the theory of forceful resignation. These factors have been totally ignored by the School Tribunal while delivering the impugned judgment.

27. The Hon'ble Supreme court in the matter of Gyanendra Sahay Vs. Tata Iron and Steel Co. Ltd., [(2006) 5 SCC 759], while dealing with suspicion and exertion of pressure for obtaining a resignation, has concluded in paragraph No.14 as under :-

“14. We have also perused the memo of appeal and other representation made by the appellant. The appellant has made a vague allegation that he was forced to take retirement. Neither has he made it specific nor had given the name of any officer who compelled

him to write the letter dated 1-4-1995 or exercised undue and excessive pressure to sign the letter of premature/voluntary retirement. Though the Labour Court has come to the conclusion that the appellant was compelled to submit the letter of resignation, the same is not supported by any acceptable evidence. It is settled law that suspicion and doubt cannot take the place of evidence. No finding of fact can be given on mere doubt and suspicion or on the basis of baseless allegations. The appellant having written a letter of voluntary retirement and after having accepted the retiral benefits without any protest cannot now turn round and say that he was compelled to submit his premature/voluntary retirement. The appeal has absolutely no merits and we, therefore, have no hesitation to dismiss the same and to affirm the order passed by the learned Judges of the Division Bench of the High Court. No order as to costs."

28. Similarly, it cannot be ignored that the employee was informed about the acceptance of his resignation. Had he really not resigned from employment, he would have taken urgent steps for raising a grievance about his being relieved from service and would have litigated for his reinstatement.

29. In the light of the above, the impugned judgment delivered by the School Tribunal, which has completely lost sight of the above factors, is rendered perverse. This petition is, therefore, allowed. The impugned judgment is quashed and set aside and Appeal No.1/2013 stands dismissed. Rule is made absolute in the above terms.

30. Since this petition itself has been decided, I find no reason to entertain the Civil Application No.7912/2015 filed by respondent No.4 herein seeking recalling of the order dated 20/01/2014, by which WP No.807/2013 was disposed of by this Court. Civil application, therefore, is disposed of.

(RAVINDRA V. GHUGE, J.)