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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 3566 OF 2002

1. Shri Shambhu Mahadev Devsthan Trust
At Post Phursungi, Taluka Haveli,
District Pune
Through its Secretary.
2. Head Master,
New English School,
At Post Phursungi, Taluka Haveli,
District – Pune. ... Petitioners.

V/s.

1. Mr. Vithal Maruti Burkul
Age 40 years, Occ. Service,
R/at Post Phursungi,
Taluka Havelil, District Pune.
2. The Education Officer,
Secondary Section, Zilla Parishad,
Pune.
3. The presiding Officer,
The School Tribunal,
Pune Region, Pune. ... Respondents.

Mr. Neel Helekar for the Petitioners.
Mr. Dilip Bodake for Respondent 1.
Ms. M.S. Bane 'B' Panel AGP for Respondent 2.

CORAM : N.M. JAMDAR, J.

DATE : 11 JANUARY, 2016.

ORAL JUDGMENT. :-

The Petitioner challenges the order passed by the School Tribunal, Pune dated 2 April 2002 allowing the Appeal filed by the Respondent No.1 and setting aside the termination of the Respondent No.1 and directing the Petitioner to reinstate the Respondent No.1 with back wages.

2. The Respondent No.1 (the Respoondent) was working as a Junior Clerk. The Respondent applied pursuant to the advertisement published in the year 1982 for the post of Junior Clerk. He accordingly joined the services of the Petitioner on 14 June 1982. Thereafter, he was promoted to the post of the Senior Clerk on 20 March 1996. A complaint was made by a girl student that the Respondent molested her. The Respondent was called by the Headmaster of the Petitioner – Institution in his office on 10 October 1996. At that time, the Sarpanch and Deputy Sarpach of the village were present. In their presence the Petitioner tendered his resignation written by hand. Copy of the resignation was forwarded by the Petitioner to the President of the Petitioner – Institution. The copy was received by the Petitioner – Institution on 11 October 1996 and on the next date the said resignation was

accepted and the Respondent's services were dispensed with.

3. The Respondent made a complaint to the Education Officer on 19 November 1996 about forcible resignation. He went to the Police Station on 31 October 1996. On 16 November 1996 he lodged a complaint to Loni Kalbhor Police Station stating that he was man-handled.

4. The Respondent filed an Appeal No. 13 of 1996 in the School Tribunal, Pune under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977. The Respondent contended that he was forced and coerced into tendering a resignation. He was threatened by the Petitioner with dire consequences and Sarpanch and Up-sarpanch, who were present, also pressurized him to tender his resignation. It was also contended that the resignation was not voluntary. He also contended that he was admitted in the Sassoon Hospital for treatment. He contended that on 11 October 1996 when he had gone to resume the duties, he was not allowed and in this manner the Petitioner illegally terminated his services. The Respondent filed an application for condonation of delay.

5. Reply was filed by the Petitioner. In the reply it was stated that the Respondent had molested one girl studying in the school and in that connection, the Sarpanch and Deputy Sarpanch had attended the office of the Headmaster on 9 October 1996.

The office bearers of the Petitioner – Institution and the members of Panchayat confronted the Respondent with the allegation of molestation to which the Respondent offered to resign to save himself from criminal prosecution and social stigma. It was contended that there was no man-handling and the grievances made by the Respondent to various authorities were an afterthought. The Petitioner accordingly sought dismissal of the Appeal.

6. The School Tribunal considered the evidence and arguments advanced by both the sides. The School Tribunal held if the resignation was given voluntarily, there was no reason for the Respondent to make any grievance to the various authorities. The School Tribunal held that earlier the Respondent was dismissed and thereafter, reinstated and the action of taking resignation in this fashion from the Respondent was an action of vendetta. The School Tribunal found that there was breach of Section 7 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rule 40 of the Maharashtra Employees of Private Schools Rules, 1981. The School Tribunal also held that a girl had not made any complaint to the Police and therefore, that aspect could not be taken into consideration. The School Tribunal accordingly came to the conclusion that the termination of the Respondent was not voluntary and proceeded to pass the impugned order directing reinstatement with back wages.

7. I have heard the learned Counsel for the parties.

8. Mr. Helekar, the learned Counsel for the Petitioner submitted that there are absolutely no details as to who pressurized the Respondent and in what manner he was coerced. He submitted that there is no reason given at all as to why the Petitioner – Management go to the extent of implicating the Respondent. He submitted that the factual position placed by the Petitioner as to why the Respondent resigned has not been considered by the Tribunal at all. He submitted that there is a substantial gap between the resignation tendered and the complaint made by the Respondent. It is submitted that there is no evidence produced on record regarding man-handling of the Respondent. The learned Counsel also submitted that no malafide intention was proved and that the resignation was admittedly given in the hand writing of the Respondent, for the reason explained by the Petitioner, the finding of the School Tribunal is perverse.

9. Mr. Bodake, the learned Counsel for the Respondent on the other hand submitted that the theory of the Respondent molesting the girl cannot be accepted as no police complaint was lodged. He submitted that as per Rule 40 of the Maharashtra Employees of Private Schools Rules, 1981, the resignation ought to be given by way of Registered Post. He submitted that the

Sarpanch and Deputy Sarpanch and the Petitioner had coerced the Respondent into tendering a resignation. He submitted that if the molestation of the girl was the ground, then enquiry ought to have been held on these and the other grounds. He supported the impugned order.

10. I have considered the submissions. The fact that the Respondent has submitted resignation in his own hand has not been disputed, the resignation letter is also placed on record that the resignation has been sent by R.P.A.D. According to the Respondent, the resignation was given by way of force and that he was man-handled by the Petitioner. In the Appeal Memo there is absolutely no particulars as to the coercion and man-handling. There is also no reason given as to why the Sarpanch and Deputy sarpanch would have any animosity against the Respondent. After the Respondent was reinstated, he had worked for period of two years and as per the Respondent's own showing, his work was satisfactory. In the circumstances, there is complete absence of pleading as to why the Petitioner, Sarpanch and Deputy Sarpanch would suddenly resort to man-handling the Respondent and seek his resignation. There is complete failure on the part of the Respondent to provide any cogent explanation as to this behaviour of the Petitioner, Sarpanch and Deputy Sarpanch.

11. On the other hand, the Petitioner had placed on record a reason as to why the Respondent tendered his resignation. This

reason unfortunately has been completely side stepped by the School Tribunal. It was alleged by the Petitioner that the Respondent outraged modesty of a girl named Sona Naiknavare who was studying in 8th standard. Her mother Gunabai filed an affidavit to that effect which was placed on record of the Tribunal. The Tribunal has trivialized this affidavit by stating that no complaint to the Police Station was filed. The School Tribunal has completely lost sight of the fact that, without any previous animosity or any other cogent reason, no mother would generally file a needless affidavit that the daughter was molested. The Respondent has also not denied that this girl is studying in the School. Once this position is established, the reason supplied by the Petitioner for resignation of the Respondent clearly falls place in view of two admitted events i.e. the complaint by the mother of the girl student that the Respondent outraged her modesty and that the villagers had gathered in the school to demand explanation from the Respondent. The Tribunal instead has gone in a completely different direction ignoring an affidavit of the mother of the girl student which supplied the reason as afore-stated. The Tribunal has instead drawn conclusions as to why would the Respondent make complaints if the resignation was not voluntary. The approach is totally perverse. It is the clear case of the Petitioner that after saving himself from the criminal prosecution and social stigma, the Respondent, after period of some time, by way of clear afterthought, made complaint to the Education Officer and the Police Authorities.

12. In this connection, the decision of the Division Bench of this Court in *Banda Navbharat Shikshan Prasarak Mandal and Ors. V/s. Raghunath Ganesh Manorikar and Ors.* reported in [(1993) 1 LLN 517] needs to be noted. In this decision the employee was working as an Assistant teacher in a school. There were allegations of moral turpitude against the teacher regarding molestation of student. The teacher had resigned with resignation on his own hand writing which was accepted. Before the Tribunal it was urged by the teacher that the resignation was forcible one with a threat of criminal prosecution and he was suddenly called by the management committee wherein he was confused and he tendered the resignation. The School Tribunal had accepted the contention of the teacher and had set aside the order of his acceptance of his resignation. The Division Bench did not approve of the approach of the Tribunal. The Division Bench held that such action would damage the reputation of the school in a small town. It observed that the teacher was fully aware as to what he had done. He was confronted with the consequences of the criminal prosecution and social stigma, and in his place any person would have adopted an easy way out by tendering the resignation. The Division Bench came to the conclusion that the resignation was tendered to save his skin and thereafter, by way of an afterthought, the complaints were made. Exactly, the same position arises in the present case as well.

13. The next issue on which the School Tribunal has held in favour of the Respondent is the breach of Section 7 of the Act of 1977 and Rule 40 of the Rules of 1981. Mr. Helekar has placed reliance on the decision of the learned Single Judge of this Court in *Anandilal Ganesh Podar Society and Anr. v/s. Mrs. V. Chakravarti and Anr.* [2005(1) Mh.L.J. 480]. The learned Single Judge has considered the earlier decisions and has observed that the mode of the registered post is not a mandatory requirement and at the most it is one of the factors to be considered in cases of dispute as to whether the resignation was voluntary or otherwise. As regard the requirement of three months' notice, the Court has held that the said requirement is for the benefit of the management and it can always be waived. Mr. Helekar pointed out that in the resignation letter the Respondent has stated that he is giving three months' notice as per the Rules. In any case the resignation letter states that it was sent by post. It was received next date and was accepted the day after.

14. The only question that arose before the Tribunal that whether the resignation tendered by the Respondent was voluntary or under coercion as it was admittedly given by the Respondent. The School Tribunal, that is the fact finding authority, will commits a legal error if it does not draw inference required in law from the facts established on record. As stated above, the complaint by the mother of a girl student who was molested, presence of Sarpanch and Deputy Sarpanch at the time

of tendering resignation and complete lack of pleading as to why would the Petitioner go to the extent of man-handling the Respondent to take his resignation, established the theory propounded by the Petitioner that the Respondent had tendered his resignation to avoid social stigma and criminal prosecution. This was further strengthened by the time gap between resignation letter and the grievance made. In spite of drawing this clear inference on the basis of the above mentioned established facts, the School Tribunal has drawn the conclusion merely on the basis that there was no reason for the Respondent to make complaints if the resignation was voluntary one. The Tribunal has oversimplified the position and in fact has recorded a perverse finding that the affidavit filed by the mother of the girl cannot be considered since she did not file any criminal complaint. There was no question of holding any disciplinary enquiry as argued by Mr. Bodake as the complaint by the mother of the girl student is not put forth as a ground of misconduct but to supply reason as to why the Respondent tendered his resignation.

15. It is informed that the Respondent has now reached the age of superannuation and the question is of back wages. However, since the Respondent has tendered his voluntary resignation in the circumstances as above, there is no question of payment of any back wages as there is no error in the action of the management in accepting the resignation of the Respondent.

16. The amount deposited by the Petitioner will be allowed to be withdrawn after period of six weeks from today with accrued interest. It is clarified that since the Respondent has resigned from services, after resignation if he is entitled to any benefits as per law, he will be entitled to the same.

17. In the circumstances, the order passed by the School Tribunal will have to be set aside. Accordingly, Rule is made absolute in terms of prayer clause (a). The order passed by the School Tribunal dated 2 April 2002 is quashed and set aside. No order as to costs.

(N.M. JAMDAR, J.)