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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3911 OF 2017

1. Norwegian Free Evangelical Mission
Dhanora,
Through its Chairman,
Shri Shashikant S/o Shamuvel Hiwale,
Age : 65 years, Occu.
R/o Norwegian free Evangelical
Mission House, Dhanora, Tq. Chopada,
Dist. Jalgaon

2. A.V. Mission School, Shalempur,
Dhanora, Tq. Chopda,
Dist. Jalgaon,
Through Its Head Master
Mrs Suman W/o Pramod Hiwale,
Age : 58 years, Occu. Service,
R/o As above

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department
Mantralaya, Mumbai – 32

2. The Education Officer (Primary),
Z.P. Jalgaon

3. Shri Tukaram Umrao Mahajan,
Age : 52 years, Occu. Service,
R/o Krushnjai Nagar, Plot No.12,
At post Adawad, Tq. Chopada,
Dist. Jalgaon

..RESPONDENTS

Miss. Surekha Mahajan, Advocate for petitioners;
Mrs M.A. Deshpande, A.G.P. for respondent no.1;
Mr N.B. Suryawanshi, Advocate for respondent no.2;
Mr P.B. Patil, Advocate for respondent no.3

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**CORAM : SHANTANU S. KEMKAR &
N. W. SAMBRE, JJ.**

**(Date of reserving the
order : 10th August, 2017**

**Date of pronouncing the
order : 7th November, 2017)**

JUDGMENT (PER N. W. SAMBRE, J.)

Petitioner no.1 is a minority institution as could be seen from the certificate dated 25th July, 2008, issued by the competent authority of the State Government certifying it to be a minority institution. Petitioner no.2 is a school run and managed by petitioner no.1. Respondent no.3 was appointed as Head Master of petitioner no.2 from 1st June, 2008, who claimed to have tendered resignation vide letter dated 11th January, 2017 from the post of Head Master, with effect from 20th January, 2017. Pursuant to the said resignation, respondent no.1 passed a resolution on 15th January, 2017 accepting the resignation of respondent no.3 from the post of Head Master and reverting him back to the post of Assistant Teacher and consequentially discharged him of the responsibilities of the said post of Head Master of petitioner no.2 school.

2. In the meeting of the management on 15th January, 2017, Smt. Suman Pramod Hiwale came to be appointed as Head Mistress in the place of respondent no.3 who was next in the seniority list.

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3. On 24th January, 2017, petitioner no.1 informed the Education Officer about such appointment of Smt. Suman Hiwale as a Head Mistress and sought approval thereto by submitting relevant documents along with the proposal.

4. After the proposal for grant of approval was received, respondent no.3 raised an objection to grant of approval, as according to him, while accepting his resignation of the post of Head Master, relevant provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "the Rules") were not followed. Respondent no.2 – Education Officer accordingly convened meeting and passed impugned order dated 7th March, 2017, by observing that while processing the resignation of respondent no.3 for the post of Head Master, the petitioners have not followed provisions of Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "the Act") and accordingly rejected the proposal for grant of approval. It is required to be noted that respondent no.3 has not denied tender of resignation but what is disputed by him is non-observance of the relevant procedure.

5. In the aforesaid background, while inviting attention of this Court to the judgment rendered by the Division Bench of this Court in the matter of **Shriram Swami Shikshan Sanstha vs. Education Officer, Zilla Parishad, Nagpur and another**; reported in **1984 Mh.L.J. 31**, the judgments rendered by learned Single Judge of this Court in the matters of

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Neminath Jain Bramhacharya Ashram (Jain Gurukul) and others vs. Rajendra Sitaram Nikam and others; reported in **2004 (2) Mh.L.J. 909** and **Karachi Education Society, Pune and others vs. Pruthviraj R. Merchant and another**; reported in **2005 (4) Mh.L.J. 1035**, Ms Mahajan, learned Counsel appearing on behalf of petitioners submits that the act of respondent No.2 Education Officer in going into the issue of deciding validity of resignation of respondent No.3 is without any authority. According to her, respondent No.3 has not come out with case of forged or bogus resignation, but what is disputed by him is, not following the provisions of the Act and the Rules framed thereunder. She would then urge that if that be so, then the remedy available to respondent No.3 is to approach the Tribunal, and the Act or the Rules, referred supra, do not confer any power upon respondent No.2 Education Officer to reject the approval to the appointment of Head Master/Mistress of petitioner No.2 School particularly when petitioner No.1 is a minority institution and has every right to appoint Head Master/Mistress of its choice.

6. Per contra, while relying upon the judgment rendered by learned Single Judge of this Court on 22nd December, 2010 in **Writ Petition No.5790 of 2007 (Bahujan Vikas Manda, Akola and another vs. Ku. Manda Vithalrao Parsutkar and another)**, Mr Patil, learned Counsel appearing on behalf of respondent No.3 would refer to provisions of Section 7 of the Act so as to canvass that respondent No.2 Education Officer has every authority to examine the issue of tendering of resignation by an employee of private school and its validity. He sought dismissal of

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petition on the ground that respondent No. 3 is the senior most teacher of petitioner No.2 School.

7. After considering the rival submissions, we find it appropriate to refer to the provisions of Section 7 of the Act, which read thus:-

“If any 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 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.”

8. This Court had an occasion to consider the very object of incorporation of Section 7 of the Act in the Statute Book with provisions of Rule 40 of the Rules. In the judgment of Neminath Jain (supra). In paragraphs 4 and 5 of the said judgment, the learned Single Judge has observed thus:-

“4. My attention has been drawn to a judgment of my Learned Brother Mr. Justice A. M. Khanwilkar in Balaleshwar Shikshan Mandal vs. Jaywant Bhaguji Gadekar (Writ Petition 6046 of 2002 decided on 10th June, 2003). That was a case where an assistant Teacher who had been appointed in a private school resigned voluntarily on 16th August, 1998 and which resignation was placed before the Managing Committee in a meeting held on 29th November, 1998 when it was accepted. A communication in that regard was sent to the petitioner on 9th December, 1998. The fact that the petitioner had submitted a resignation on 16th August, 1998 was not disputed, nor was the fact that the resignation was handed

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over to the Chairman and that it had been accepted. In these circumstances, Khanwilkar, J. held that once the resignation was accepted, the matter stood finally concluded. The Tribunal had proceeded on the basis that the resignation had not been accepted by the Management and had been ignored which was contrary to the record. On these facts, the learned Judge held that merely because a copy of the letter had not been forwarded by registered post would not render the resignation void. The learned Court held that on a plain reading of section 7 it would appear that once an employee signs a letter expressing his intention to resign and voluntarily submits a copy thereof to the Management this would constitute substantial compliance with section 7. Therefore, that was a case where on all accounts there was no dispute about the fact that the resignation had been voluntarily submitted by the teacher and the only grievance of the teacher was that the Management had in fact not accepted the resignation and had ignored it. On the contrary, the judgment of the learned Single Judge would seem to indicate that where as in the present case, there is a serious dispute about the voluntary nature of the resignation, the surrounding circumstances would assume significance and the fact that the resignation was not submitted in the mode which has been statutorily prescribed would be a material consideration. 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

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considered though that in itself is not conclusive. In the present case the Tribunal has held on the basis of the evidence before it that the resignation was not voluntarily submitted. That finding is not shown to be perverse.

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 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. ”

Thus, it has to be inferred that the provisions of Section 7 of the Act read with Rule 40 of the Rules are interpreted in favour of petitioner No.1 Management.

9. Apart from above, in the matter of Karachi Education Society (supra), the learned Single Judge of this Court has concurred with the view in the matter of Neminath (supra). In addition, it is required to be noted that in the matter of Shriram Swami Shikshan Sanstha (supra), the Division Bench of this Court has taken a view that if a case of forced resignation of a school teacher is pleaded, the same is covered by Section 9 of the Act and in that case it is School Tribunal which would have jurisdiction to entertain the same.

10. In the backdrop of above referred legal provisions, if the material that is brought on record is analyzed, the position that would emerge is respondent No.3 has never disputed tendering of resignation. What is disputed or objected to by him before respondent No.2 Education Officer is that he was forced to tender resignation. Such objection was taken by him for the first time on 24th February, 2017 despite he had tendered resignation almost more than 40 days before. Apart therefrom, the fact remains that his posting as an Assistant Teacher with petitioner No.2 School, after accepting his resignation, is not challenged by him under Section 9 of the Act before the Tribunal since the effect of acceptance of his resignation (which is claimed by respondent No.3 to be a forced resignation) is reduction in the rank that he was holding.

11. Whether the resignation of respondent No.3 was rightly accepted, particularly when he admits tendering of the same cannot be an issue which could be resolved by a stroke of an unreasoned order which is passed by respondent No.2 Education Officer when the Statute itself provides for an appropriate remedy of challenging such order before the competent authority i.e. School Tribunal.

12. In the aforesaid backdrop, in our opinion, the reliance placed by respondent No.3 on the judgment in the case of Bahujan Vikas Mandal (supra) will hardly be of any assistance to him, particularly when the factual matrix thereof differs from the one in the present case as respondent No.3 herein has not disputed the tendering of resignation.

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13. In view thereof, the order dated 7th March, 2017, passed by respondent No.2 refusing to accord approval to the appointment of new Head Mistress of petitioner no.2 school is not sustainable. Accordingly, the same is hereby quashed and set aside. Respondent No.2 is directed to accord approval to the appointment of Smt. Suman Pramod Hiwale as Head Mistress of petitioner No.2 School, pursuant to the proposal forwarded by petitioner No.1 on 24th January, 2017.

14. Writ Petition stands allowed in above terms. In the circumstances, there shall be no order as to costs.

(N. W. SAMBRE, J.)

(SHANTANU S. KEMKAR, J.)

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