

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

WRIT PETITION NO. 8884 OF 2013

Shri Hemant Barghav Jadhav ... Petitioner

Vs

1. Maharashtra State Electricity
Distribution Co. Ltd. & Anr. ... Respondents

Mr. Sandeep Marne for the Petitioner.

Mr. Prashant Chavan with Mr. Nirav Shah & Mr. Ravindra Chile
i/b Little & Co. for the Respondent.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 02ND MARCH, 2017

P.C. :

1 By this writ petition under Article 226 of the
Constitution of India, the petitioner challenges a decision dated
26th July, 2012, of the second respondent.

2 The petitioner claims that while working on the post
of Junior Engineer in the Maharashtra State Electricity
Distribution Company Limited (first respondent to this writ

petition), his services have been abruptly brought to an end by the respondents.

3 The petitioner was initially appointed as Junior Engineer and in the erstwhile Maharashtra State Electricity Board in June, 1999. While working as a Junior Engineer at Vasai, District Thane, he came to be transferred to Beed and posted in the Flying Squad therein in June, 2010. He was not due for transfer. There was an unwarranted proposal of the Superintending Engineer who had a personal grudge against him. The petitioner claims that he obeyed the transfer order and joined at Beed in October, 2010. On account of this sudden transfer, he was disturbed and out of sheer frustration, he tendered his resignation. The decision to tender resignation was taken at the spur of the moment without understanding the implications of the same. The petitioner, therefore, submitted a letter dated 22nd February, 2011, to the competent authority and pointed out that it is only because of the injustice that such a letter was tendered. The petitioner states that he stopped attending duties from 23rd February, 2011. He submitted an application for leave. On 11th April, 2011, he exhibited his

willingness to deposit the salary for two months. However, the petitioner does not have any copy of a letter dated 11th April, 2011. The petitioner was issued a letter earlier on 2nd March, 2011, declining the leave requested by him. Then, the petitioner received a communication from the Superintending Engineer, Beed Circle, calling upon him to deposit a sum of Rs.71,813/-. The petitioner complied with this demand. He attended the office on two days on 18th and 19th April, 2011, and thereafter stopped attending duties hoping that he would be soon relieved from the same by accepting the resignation.

4 The petitioner states that instead of being served with such a communication, the Superintending Engineer at Vasai addressed a letter dated 29th March, 2011, which the petitioner received on 3rd May, 2011, seeking an explanation on the alleged misconduct on his part. The petitioner, in the meanwhile, changed his decision of resigning from the service. He decided to resume the duties for there was never any acceptance of his resignation. When the petitioner was hoping that he would be permitted to resume duties, he was communicated that his resignation once submitted cannot be withdrawn. He carried out

further correspondence but we are not concerned with the same.

5 The only contention raised before us by Mr. Marne appearing for the petitioner is that a copy of the letter dated 22nd February, 2011, at page 14 of the paper-book, if read in its entirety, would mean that the petitioner's resignation has to be accepted. Mr. Marne, relying upon the requirement in that behalf in the service rules, would submit that the petitioner was not communicated any such acceptance. On the other hand, the petitioner was called upon to deposit certain sums purportedly as amounts due during the notice period so also for the alleged loss to the respondents as he did not resume duties. Thus the argument is that if the petitioner's resignation does not require any acceptance and is presumed to be accepted the day it is tendered, then, there was no warrant for the further letters and correspondence. The petitioner was called upon to deposit two months' salary in advance. An explanation was also sought on the alleged misconduct on his part. This demonstrates as to how the petitioner was treated as having not resigned, but continuing in service. For these reasons, it is submitted by Mr. Marne that the impugned communication cannot be sustained. Mr. Marne

invited our attention to the communication and particularly that the petitioner informed the authorities on 12th June, 2012, may be after one year and some months, but he has expressly stated that his resignation was tendered. It was never accepted. Once it has not been accepted and a communication in that regard is not addressed to the petitioner, that would mean that he is taken to be in service. Therefore, formally an endorsement should have been made in the records to indicate that the petitioner has never tendered any resignation or his resignation has not been acted upon. Therefore, the relationship of master and servant is not snapped.

6 After having perused the writ petition and all annexures thereto, we do not find any merit in the contentions of Mr. Marne. Firstly, the petitioner knew that he has tendered a resignation on 22nd February, 2011, which is effective forthwith. The petitioner understood clearly that the relationship of master and servant would come to an end upon tendering the resignation. The tenor of his letter, a copy of which is Exhibit-A, would indicate that not once, but twice the petitioner says that he is resigning from the duties for further prospects. He says that

the requirement of one month's notice of resignation be waived. His claim be settled at the earliest. He addresses this letter to all the superior authorities which was received on that date itself. Then, the petitioner relies upon another letter dated 19th April, 2011, wherein the Superintending Engineer informs him that he has been remaining absent from duties from 23rd February, 2011. His leave has been disallowed and the request in that behalf is rejected. Yet, this communication expressly refers to the resignation which is tendered during the period of leave and availed of by the employee. The petitioner is informed that it is only after that leave period comes to an end that the period for notice of resignation commences. That is why he has been called upon to deposit the two months' salary. This letter does not indicate that the respondents proceeded on the assumption that the petitioner was an in-service candidate. If there was ever any doubt, the petitioner, by the communication at Exhibit-C page 17, would not have stated that he had tendered his resignation on 22nd February, 2011. Therein, he has mentioned about the notice period and sought a waiver. On 11th April, 2011, the Superintending Engineer addressed the above communication and equally on 19th April, 2011, he was called upon to pay the two

months' salary. In this letter of the petitioner he says that he had already tendered his resignation and requested that the notice period be treated as waived and in terms of his request. He, however, says that because of his personal reasons, he could not remain present and report for duties during the notice period. That is how he deposited by two cheques, the two months' salary. It is in these circumstances he once again reiterates his request that having complied with the demands and notice from the authorities, now at least, his resignation should be treated as being final and accepted. He should be relieved from duties. This sentence in the letter cannot be read in isolation but must be read together with the previous paras of this letter. So read, it is evident that there is nothing to assume that the relationship is not snapped. The petitioner also relies upon a letter dated 29th March, 2011, where the petitioner is called upon to furnish an explanation with regard to certain acts of omission and commission. This letter is issued on 29th March, 2011, but the petitioner receives it on 3rd May, 2011, at 11:00 a.m.

7 Pertinently, the petitioner does not reply to this letter, but says on 12th June, 2012, that it is on account of his transfer

from Vasai to Beed and because there are some superiors who bore a grudge against him that he tendered his resignation. He has made serious allegations of harassment against the superiors and equally his peers. However, he submits that he has no job, he has no means or source of livelihood. That is why he is virtually starving. He says that his resignation is still not accepted and that is why his request to permit him to resume duties be considered sympathetically. Now, the resignation should not be accepted.

8 It is on such a communication and that too addressed after one and half years of tendering of resignation that the respondents inform him that the acceptance of the resignation was formally not communicated to him, but both sides proceeded that the relationship as master-servant has snapped and the petitioner is no longer in the service of the respondents.

9 The petitioner may then go and complain to several authorities and lodge a protest at some forums, but what we have noted from the rules also is that they permit tendering of resignations. In the sense, barring what is set out in Regulation

17, no employee shall quit the services of the company unless he gives an advance notice in writing as prescribed in the Regulation or pay to the company the amount of salary in lieu of such notice and is permitted by the competent authority to quit the service. We are not ready to accept the argument based on a reading of this Regulation that the relationship as employer-employee subsists and continues between the petitioner and the respondent. All that this Regulation says is that except as provided in Regulation 17, which Regulation specifies the age of retirement, no person shall quit the service of the company unless he gives an advance notice in writing as prescribed therein or pays the company amount of salary in lieu of such notice. The resignation or quitting of service shall bring about an end to the contract of employment and it is well settled that it is open for both sides to put an end to it. It is only the quitting of service and as understood by the Regulation, namely, by an advance notice in writing or paying to the company, the amount of salary in lieu of such notice, that the quitting can take place. There is a permission contemplated of the competent authority to quit the service, but by that we are not prepared to hold that the petitioner understands and rightly that this means acceptance of

his resignation by the competent authority. In the affidavit-in-reply, the respondents have rightly emphasized the fact that after sending the letter of 22nd February, 2011, the petitioner has never joined the duties. The petitioner was issued the notice only to recover the two months' salary in lieu thereof. That is why he was called upon to deposit the salary for the period of two months. It is for the petitioner's benefit because he knew that unless this requirement is complied with, he could be proceeded against for recoveries. The petitioner was also issued a notice of 29th March, 2011, calling upon him to compensate for the loss caused to the respondent No.1. This letter clearly states that disciplinary action would be taken against him. The petitioner was also issued a chargesheet on 9th May, 2011. It is after receipt of all this and possibly capitalising on the same that the petitioner realised that this is a good opportunity to get back into service or to resume duties. By relying upon such communications from the respondents, the petitioner on 12th June, 2012, addressed the above referred communication. It is apparent, therefore, that after the employee has tendered his resignation, a notice for making payment of salary in lieu of the notice to quit is addressed to the employee and according to the notice, the petitioner he has

paid the sum of Rs.71,813/- as demanded. He had stopped reporting to the office. Hence the resignation was already effective and a formal letter reiterating the stance of the respondents was addressed after the petitioner purported to rejoin the services. Therefore, we do not think that there is any requirement of acceptance which can be read into the petitioner's acts and particularly emanating from the communications of the respondents. Once the petitioner decided voluntarily to tender his resignation and never disowned the contents of the letter dated 22nd February, 2011, but tried to explain and justify his contrary stand, then all the more we do not think that in writ jurisdiction any discretionary or equitable relief can be granted to him. The petitioner's conduct itself is enough to deny the relief. We do not think how the petitioner could have approached several authorities and particularly the Scheduled Castes and Scheduled Tribes Commission in Maharashtra. That was a clear attempt to pressurize the respondents to succumb to his demands. The petitioner was aware and accepted the fact that he has resigned from the service of the respondents. In such circumstances, writ jurisdiction is not available to parties like the petitioner.

10 The writ petition is entirely frivolous. It is, therefore, dismissed. We would have been justified in imposing heavy costs, but for the persuasion of Mr. Marne. There would, therefore, be no order as to costs.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.