

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5863/2014

Lions Education Society,
 through its President R.G. Badjatia,
 Civil Lines, Washim, Tq. and
 Distt. Washim.

..Petitioner.

..Vs..

1. Presiding Officer,
 School Tribunal, Amravati.
2. Sau. Nilima Suresh Chepe,
 aged 54 Yrs., Occu. Service,
 R/o Plot No.46, Gupta Layout,
 I.U.D.P. Colony, Near Mahakali
 Mandir Road, Washim.
3. Education Officer (Primary),
 Zilla Parishad, Washim, Distt.
 Washim.

..Respondents.

 Shri A.S. Kilor, Advocate for the petitioner.
 Shri Bhagwan M. Lonare, A.G.P. for respondent No.1.
 Shri P.R. Agrawal, Advocate for respondent No.2.

CORAM : Z.A.HAQ, J.

DATE : 5.5.2017.

C.A.W. NO.494/2017.

For the reasons stated in the application, the prayer for early hearing is granted. The petition is taken up for hearing. The civil application is **allowed** accordingly. No costs.

ORAL JUDGMENT

1. Heard Shri A.S. Kilor, Advocate for the petitioner, Shri Bhagwan M. Lonare, A.G.P. for the respondent No.1 and Shri P.R. Agrawal, Advocate for the

respondent No.2. None for the respondent No.3 though served.

2. Undisputedly, the respondent No.2 worked in the school administered by the petitioner - Society since 1984 as an approved Teacher. In 2012 when disciplinary proceedings were initiated against her she was working as in-charge Headmistress of the school.

Admittedly, the respondent No.2 had submitted an application on 15th January, 2013 proposing to retire voluntarily w.e.f. 15th April, 2013. Admittedly, on receipt of this application the enquiry proceedings initiated against the respondent No.2 were dropped, a resolution was passed by the Management on 4th February, 2013 to accept the proposal of respondent No.2 for voluntary retirement and the respondent No.2 was informed on 2nd May, 2013 that her request for voluntary retirement was accepted.

It appears that the petitioner and the respondent No.2 had amicably decided that if the respondent No.2 opts for voluntary retirement, the disciplinary proceedings initiated against her would be dropped and the respondent No.2 would be entitled for all the benefits including pension. It appears that subsequently a dispute arose between the petitioner and the respondent No.2 and the respondent No.2 filed an appeal before the School Tribunal challenging the resolution passed by the Management accepting her request for voluntary retirement. The substantive ground of challenge was that there is no provision under the Maharashtra Employees of Private Schools

(Conditions of Service) Regulation Act, 1977 (for short “Act of 1977”) and the Rules framed under it which enables the Management to permit an employee to retire voluntarily. The School Tribunal has upheld the challenge of the respondent No.2 and has allowed the appeal by the impugned order. The Tribunal has relied on the judgment given in the case of *Sukanya Apte and another V/s. State of Maharashtra and others* reported in **2007 (4) Mh.L.J. 318** to hold that the resolution passed by the Management is unsustainable as there is no provision under the Act of 1977 or the Rules framed under it which enables the Management to permit the respondent No.2 to retire voluntarily.

3. Before this Court, the petitioner - Society has placed on the record copy of circular dated 3rd March, 1987 issued by the Government of Maharashtra by which it is clarified that the provisions of Maharashtra Civil Services (Pension) Rules, 1982 will be applicable to the employees working in the recognized and aided schools. Relying on this circular it is argued that it was permissible for the respondent No.2 to seek voluntary retirement and accordingly she submitted an application which is considered and accepted by the Management and the respondent No.2 was informed about it and it was acted upon and it cannot be said that the decision and the action of the Management is illegal and unsustainable. It is submitted that the judgments given in the case of *Sukanya Apte and another V/s. State of Maharashtra and others (supra)* and in the case of *Ramchandra Keshavrao Deo V/s. Presiding*

Officer, School Tribunal, Nagpur and others reported in **2006 (2) Mh.L.J.862** are not relevant for considering the point which arises in the present matter as in those cases the decision of the Management to retire the employee compulsorily was under scrutiny and it was found that there is no provision under the Act of 1977 and the Rules framed under it and the Management cannot retire the employee compulsorily. It is submitted that the case of voluntary retirement stands on completely different footing than the case of compulsory retirement. It is argued that in case of compulsory retirement it is a unilateral decision of the Management but in the case of voluntary retirement the employee proposes to accept retirement and then it is up to the Management either to accept or reject the proposal of the employee and in case of voluntary retirement it cannot be said that the decision of the Management is adverse to the employee.

4. After hearing the learned Advocates for the respective parties and the learned A.G.P., I find that the circular dated 3rd March, 1987 makes the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 applicable to the employees of recognized and aided non-government schools. Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 entitles the employee to opt for voluntary retirement and if the employee has completed the qualifying service he is entitled for the pensionary benefits also. The right of the employee to opt for voluntary retirement is upheld by the Division Bench of

this Court in the judgment given in the case of *Anandrao Dhondiba Kandalkar V/s. State of Maharashtra and others* reported in **1995 (1) Mh.L.J. 335**. The circular dated 3rd March, 1987 was not referred or relied upon before the School Tribunal and, therefore, the learned Presiding Officer had no occasion to examine the controversy in the light of the above referred circular. But the Tribunal has committed an error in relying on the judgment given in the case of *Sukanya Apte and another V/s. State of Maharashtra and others (cites supra)*. As recorded earlier, in the case of *Sukanya Apte and another V/s. State of Maharashtra and others (cites supra)* this Court held that the Management has no right to retire an employee compulsorily as there is no such provision either in the Act of 1977 or the Rules framed under it and this view is apparently taken as decision of the Management to retire an employee compulsorily is against the wishes of the employee and would be detrimental to the employee but in the case of voluntary retirement, the situation is totally different and the move is initiated by the employee himself.

In the present case, admittedly the respondent No.2 had submitted an application proposing to retire voluntarily, the Management passed a resolution and legality of the resolution is not disputed and the Management informed the employee about acceptance of her application for voluntary retirement.

5. In view of the circular dated 3rd March, 2017 the employee is

entitled to exercise the right seeking voluntary retirement and as it appears from the record that the respondent No.2 had completed qualifying service, she would be entitled for the pension and other benefits. The respondent No.3 - Education Officer had not opposed the claim of the respondent No.2 before the Tribunal regarding her entitlement for pension and other benefits. The respondent No.3 - Education Officer is not represented before this Court. There is no legal impediment in granting these benefits to the respondent No.2.

In view of the above, I conclude that the impugned order is unsustainable and has to be set aside.

6. Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The appeal filed by the respondent No.2 before the Tribunal is dismissed.
- (iii) It is clarified that the decision of the Management to retire the respondent No.2 on her request for voluntary retirement is legal and valid and in view of the circular dated 3rd March, 1987 and the fact that the respondent No.2 had completed qualifying service, she is entitled for pension and other benefits.
- (iv) The petitioner - Society is directed to monitor that the Headmaster / Headmistress of the school sends the case of the respondent No.2 for finalization of pension and other benefits within two months.

(v) The respondent No.3 - Education Officer shall finalize the case within two months from the date of receipt of the papers.

Rule made absolute in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE