

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.24889 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner impugning the action of the 5th respondent-Correspondent, A.S. High School, Jagarlamudi, Prakasam District, in issuing the proceedings in R.C.No.7/ 98, dated 29.07.1998, accepting the resignation of the petitioner by ignoring his letter of withdrawal of resignation, dated 10.07.1998. The petitioner also challenged in this writ petition, the rejection of his appeals by respondents 2 and 3, vide their proceedings in Rc.No.3435/ VE-3)/ B2-3/ 2005, dated 26.09.2006, and Lr.Dis.No.3110/ A3/ 2001, dated 23.07.2005 by ignoring the detailed report submitted by the 4th respondent. The petitioner further sought consequential direction to the respondents to reinstate him into service with continuity of service and consequential benefits and pay the arrears of salary.

2. I have heard the submissions of *Sri M.Bala Bhaskar Rao*, learned counsel appearing for the petitioner, and of *Sri Aka Venkata Ramana*, learned Standing Counsel appearing for the 5th respondent. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was appointed as an Agricultural Craft Teacher, on 19.12.1988, on permanent basis in the 5th respondent's school. The school imparts education to both boys and girls. The petitioner was appointed in the aided post and the said posting was approved later by the competent authority. Later, on 01.01.1997, he was promoted as B.Ed Assistant (Social Studies) on permanent basis in the aided post. It was approved by the competent authority. The petitioner rendered services to the utmost satisfaction of his superiors. He worked sincerely and honestly and was having good reputation

in that school; and in fact, he was promoted within eight years as the management of the school was satisfied with his meritorious services. While he was at his native place, Ongole, during summer vacation, he noticed some changes in his health condition. He consulted a doctor. After examining him, the doctor diagnosed that he was suffering from Hypertension, Heart weakness and Vatha. The doctor advised the petitioner to take bed rest for at least four months. Hence, the petitioner applied for medical leave, by enclosing to his leave application a medical certificate that was issued by the doctor, on 10.06.1998. He applied for medical leave from that day and upto 12.10.1998, i.e., for 125 days as per the advice of the doctor and as there was no alternative remedy. The leave letter submitted to the 5th respondent, the Correspondent of the School, was forwarded to the Head Master of the School. The medical leave application was sent by registered post to the Correspondent and the Head Master of the School, vide R.L.No.5971 (H.M) and 5972 (Correspondent) respectively. After submission of the leave application by enclosing a medical certificate, the petitioner underwent treatment without any delay. During the period of treatment, he was not in touch with his routine school work and deemed that his leave shall be granted, as he was having (133) days of half pay leave and (18) days of Earned Leave to his credit, as per his Service Register. Hence, he assumed that the leave application is valid. After receiving the leave application, the 5th respondent issued a notice, dated 13.06.1998, directing the petitioner to come and meet him personally with prior information either by phone or by letter, as the students would suffer and be inconvenienced on account of the petitioner's absence on leave. It is also stated in that notice that medical leave will not be sanctioned if the petitioner fails to meet the 5th respondent. The petitioner has been suffering from continuous ill-health and was bed ridden. He was mentally upset and distressed by the time he received the notice from the 5th respondent. Therefore, he did not give any reply to the said notice. The 5th respondent

issued the said notice with an evil intention to harass the petitioner though he is having leave credit to his leave account. According to Government Memo No.16808/ 695/ F.R.1/ 65-I, dated 12.5.1965, leave should not normally be refused unless such refusal is absolutely necessary in the exigencies of service. For refusal of the leave, reasons should be recorded. Even though the petitioner is unwell and bed ridden, the 5th respondent blindly issued notice without any sympathy or humanitarian considerations and asked the petitioner to meet him personally. Such notice was issued for reasons best known to him. The said act of the 5th respondent is an intentional harassment of the petitioner. It was neither fair nor proper on the part of the 5th respondent to ask the petitioner to personally meet him despite knowing that the petitioner submitted medical leave and was under treatment. The petitioner did not recover from ill-health and was in a depressed state of mind and was suffering from severe headache. He also consulted a psychiatrist and received treatment from him. The 5th respondent issued a show-cause notice, dated 25.06.1998, stating that the leave application was kept in abeyance due to academic problems in the school and that the salary of the petitioner in the salary bill for the month of June was withheld for want of sanction order. The show-cause notice further directed the petitioner to report to duty on or before 06.07.1998 without fail and that disciplinary action would be initiated against the petitioner on failure to do so. Even by the date of receiving the show cause notice, the petitioner was suffering from depression. He was by then suffering from Palpitations, Sleeplessness, headache and fear for unknown reasons. He was unable to take any decision. It was improper on the part of the 5th respondent to keep the medical leave application in abeyance. If the 5th respondent thought it fit, he ought to have sanctioned the leave; or else, he ought to have rejected the leave after consulting the Medical Board. The 5th respondent, having failed to do so with a *mala fide* intention, has committed an offence. The show-cause notice was issued for the purpose of tormenting

the petitioner intentionally and to cause mental agony to him. His salary was withheld to make him starve. The writ petitioner being unable to take a decision could not give a reply to the show cause notice. The depressed state of mind and ill-health provoked the petitioner to tender his resignation on 03.07.1998 to the 5th respondent. The resignation was sent by registered post without assessing the future outcome of such action. The prevailing conditions at that time compelled the petitioner to submit resignation. Though the resignation is submitted wilfully, it is ostensible but not real. It was submitted under compulsion from the Correspondent of the School. However, on 10.07.1998, the petitioner submitted a letter of withdrawal to the Correspondent of the school by sending the same through registered post bearing No.2295. In the said letter, the petitioner informed the 5th respondent that after reviewing and reconsidering the decision, he is withdrawing his resignation and prayed for sanction of half pay leave from 15.06.1998 to 12.10.1998. Meanwhile, the 5th respondent issued another notice, dated 08.07.1998, and asked the petitioner to send his grievance within ten days, i.e., by 17.07.1998. The said letter was received on 17.07.1998. The petitioner did not send his grievances. It was further stated that if the petitioner fails to send any grievances, it will be deemed that the resignation of the petitioner is accepted on 04.07.1998. The petitioner submitted his resignation on 03.07.1998 and further submitted his withdrawal letter on 10.07.1998. The notice of the 5th respondent, dated 08.07.1998, was delivered to the petitioner on 17.07.1998, which was the last date for sending grievances. By that time, the petitioner has already submitted his letter of withdrawal of resignation and explained the reasons therein. Hence, he kept quiet without sending any reply to the notice, dated 08.07.1998 by assuming that his resignation will not be accepted in view of his letter withdrawing his resignation. While so, the 5th respondent suddenly and surprisingly issued proceedings, dated 29.07.1998, accepting the resignation by ignoring the letter

of withdrawal of resignation which was sent by the petitioner by registered post. The 5th respondent intentionally suppressed withdrawal letter of resignation and has taken hasty and nasty step in issuing the proceedings of acceptance of resignation. The 5th respondent started his strategy for filling up the vacancy on war-footing without obtaining prior permission from the competent authority. At the time of acceptance of the resignation of the petitioner, the 5th respondent is obligated to obtain prior permission from the competent authority and the competent authority is required to accord permission only after conducting a fair and proper enquiry and after giving reasonable opportunity to the petitioner. Neither an enquiry was conducted nor due process of law was followed. The District Educational Officer-4th respondent and the Regional Joint Director, Department of School Education-3rd respondent, who are the competent authorities acted in support of the 5th respondent and caused irreparable loss to the petitioner. As the petitioner is not in a position to file an appeal before the higher authorities and in view of the circumstances in which he is placed and his financial problems, medical expenses and family expenses, he was compelled to close the T.P.F and G.L.I.C accounts. After recovering from the illness, the petitioner filed an appeal before the 4th respondent on 19.01.2001. A copy of the same was submitted to the 3rd respondent for favour of information. The appeal was returned with a direction to re-present the same before the 3rd respondent, who is the competent authority. The appeal was thus returned by the 4th respondent after a lapse of five months. The 4th respondent suddenly issued orders permitting the Correspondent of the School for filling up the post which has fallen vacant on the acceptance of the resignation on 29.07.1998 and on giving promotion to qualified SGT. The vacant post was filled up and the selection was approved, vide proceedings in Rc.No.2418/ B2/ 98, dated 28.08.1998. There was an audit objection in the school audit of the year 1998-1999 with regard to appointment and promotions as there was no approval of the

competent authority and the management was directed to obtain ratification from the competent authority. The management then obtained orders from the 3rd respondent to avoid complications. The 3rd respondent issued ratification on the above two appointments/promotions without following the due process of law and on war-footing, vide proceedings, dated 24.01.2001, that too, even after receiving the appeal petition of the petitioner, a copy of which is marked to the 3rd respondent. The 5th respondent acted unilaterally; and, the 3rd and 4th respondents ratified the orders without following due process of law and by ignoring the appeal petition submitted by the petitioner, on 20.01.2001, and by keeping it pending. The petitioner then filed an appeal before the 3rd respondent on 26.05.2001. The appeal was kept pending till 23.07.2005, i.e., for 4 ½ years and the appeal was rejected on merits without giving an opportunity to submit the petitioner's grievances. The detailed remarks and report submitted by the 4th respondent in Rc.No.2132/ B2/ 2001, dated 28.02.2005, were also ignored. The 4th respondent in his report stated that the documents submitted by the petitioner are genuine. After receiving the reports from the Medical and Postal Departments, he specifically stated that the medical certificate and postal receipt are genuine. In the report of the 4th respondent, it is stated as follows:

“As per the Education Act 82 Rule 89 (Appeals) (a)(b) and explanation under this rule an appeal should prefer within 30 days from the date of receipt of impugned orders by the incumbent who is effected to Commissioner & Director of School Education/ Regional Joint Director of School Education concerned. But in this instant case the applicant under reference has kept quiet for a period of exceeds nearly 2 years (1998 to 2001). He submitted Medical Certificate in support of his appeal. It is submitted that it is for Regional Joint Director of School Education, Guntur to take decision of the clarification furnished by the Superintendent, A.P Vidya Vidhana Parishad, Ongole. Copy of Superintendent Letter is enclosed.

In view of the above I am of the opinion that the management of the School has issued notices to Sri P.V.Subbaiah who is on Medical Leave insisting him to report before the management/ report to duty without following the procedure prescribed for this purpose. And also the management informed to Deputy Educational Officer, Parchur with regard to receipt of Registered Letter No.2295 dated 10-07-1998 that it was not received by Correspondent is beyond truth as the postal authorities certified the booking of Registered letter.

In the circumstances explained above necessary orders may be issued on the appeal submitted by Sri P.V.Subbaiah, Ex-B.Ed Assistants (S.S), A.S High School, Jagarlamudi at an early date.”

In spite of such detailed report by the 4th respondent, the appeal was rejected blindly by the 3rd respondent. Challenging the order passed in the appeal by the 3rd respondent, the petitioner filed W.P.no.18654 of 2005. However, this Court disposed of the said writ petition directing the petitioner to avail alternative remedy under Sections 89 of the A.P. Educational Act, 1982. The appeal of the petitioner was filed before the 2nd respondent on 15.09.2005 by Express Parcel Service bearing No.32958. The appeal was numbered vide No.3435/VE2/ 2005, in the office of the Commissioner & Director of School Education, A.P., Hyderabad. Even after lapse of ten months, the 2nd respondent kept quiet without disposing of the said appeal. Hence, the petitioner filed W.P.No.15732 of 2005 by seeking an interim relief to dispose of the appeal. Having come to know of the writ proceedings, the 2nd respondent issued proceedings, dated 26.09.2005, rejecting the appeal. The 2nd respondent wrongly stated that the appeal was submitted on 01.12.2005 though the appeal was submitted on 15.09.2005. Though the petitioner submitted an appeal on 15.09.2005, the Superintendent concerned of the office of the 2nd respondent orally directed the petitioner to submit another copy of the appeal petition stating that the original appeal filed on 15.09.2005 was misplaced in the office. Therefore, the petitioner again submitted another copy of appeal along with the representation. That appeal copy was received on 01.12.2005. The 5th respondent has neither power to appoint nor terminate the services of the employees of the institution without having permission from the competent authority. He has no power to fill up any vacancies without obtaining permission from the competent authority. Appointments made without such permission are invalid. Even in the case of the petitioner, the 5th respondent is required to obtain permission from the competent authority, i.e., the Regional Joint Director of School Education, i.e., the 3rd respondent, before accepting

the resignation, by following due process of law. The management issued notice, on 08.07.1998, to submit grievances within ten days, i.e., 17.07.1998. The said notice was received on 17.07.1998. Meanwhile, on 10.07.1998, the withdrawal letter was submitted withdrawing the resignation. Hence, the writ petition may be allowed.

3.1 The learned counsel for the petitioner placed reliance on the following decisions: '(i) The decision in *M/s. Atlas Cycle (Haryana) Ltd. V. Kitab Singh*¹ was relied upon in support of the contention that when the findings of the Tribunal or Labour Court are perverse, this Court can interfere with such findings. There is no dispute with the said proposition. (ii) The decision in *Ajeet Seeds Limited v. Gopala Krishnaiah*² was relied upon in support of the contention that Section 27 of the General Clauses Act gives rise to a presumption of service of letter when it is sent to correct address by registered post. (iii) The decision in *Braja Gopal Ghosh v. Central Coalfields Limited*³ was relied upon in support of the proposition that when letters duly stamped and correctly addressed are posted, they shall be deemed to have been served upon the addressee. (iv) The decisions in *Adavala Sathaiah v. Special Dy. Collector, Land Acquisition Unit*⁴, *Indian Bank v. Datla Venkata Chinna Krishnam Raju*⁵ and *Shimla Development Authority v. Santosh Sharma*⁶ are relied upon in support of the proposition that the letter sent by registered post shall be deemed to have been served when the un-served envelope or the acknowledgment card is not received back. (v) The decision in *Ayisabeevi v. Aboobacker*⁷ is relied upon in support of the proposition that postal receipt in proof of dispatch of registered notice along with a copy of notice bearing correct address of the addressee raises a presumption that the notice reached

¹ AIR 2013 SUPREME COURT 1172

² 2014 (12) SCC 685

³ 2013 Law Suit (Jahar) 23

⁴ (1997) 1 Supreme Court Cases 130

⁵ AIR 1991 SUPREME COURT 908

⁶ (1997) 2 Supreme Court Cases 637

⁷ AIR 1971 KERALA 231 (V.58 C 51 (1))

the destination in the absence of return of the notice to the dead letter office.

(vi) The decision in *Man Singh v. Maruti Suzuki India Ltd.*⁸ was relied upon in support of the proposition that even if the benefits under voluntary retirement scheme are accepted, it is open to the employee to challenge the validity of the voluntary retirement on the ground of taking voluntary retirement under duress.

3.2 Further, the following decisions, viz., (i) *G.Priyanka v. The State of Andhra Pradesh*⁹ (ii) *Mala Tandon Thukral v. Director of Education*¹⁰ (iii) *Srikantha S.M v. Bharath Earth Movers Limited*¹¹ (iv) *Shambhu Murari Singh v. Project and Development India Ltd.*¹² (v) *V.S.Prasada Rao v. Commissioner of Sports and Vice-Chairman and Managing Director of Sports Authority of Andhra Pradesh*¹³ (vi) *Avinash Kumar Yadav v. Executive Director, ITI Limited, Naini*¹⁴ are relied upon in support of the proposition that a letter of resignation can be withdrawn before its acceptance by the employer and that it is always permissible for an employee to withdraw the resignation before its acceptance and that even when the resignation was accepted, it can be withdrawn before the employee is relieved.

3.3 I have carefully gone through the decisions cited.

4. Per contra, the case of the 5th respondent, in brief, is this:

The material allegations in the affidavit of the petitioner are false. The petitioner applied for medical leave, on 10.06.1998, for a period of 125 days is true. Immediately on receipt of the said letter, this respondent addressed a letter, dated 13.06.1998, informing the petitioner that the students would suffer and asked him to meet this respondent personally and that till such time

⁸ 2011 (14) SCC 662

⁹ 2016 (8) LAWS (APHC) 2 (2005) 8 Supreme Court Cases 314

¹⁰ 2010 Law Suit (Del) 125

¹¹ (2005) 8 Supreme Court Cases 314

¹² AIR 2002 SUPREME COURT 1341

¹³ 2000 (2) ALD 812

¹⁴ 2000 Law Suit (All) 678

leave application will be kept in abeyance. The said letter was received by the petitioner, on 15.06.1998. As there was no response from the petitioner, the 5th respondent addressed another letter, dated 25.06.1998, calling upon the petitioner to join duty, on 06.07.1998. In that letter, it was stated that necessary disciplinary action will be initiated against him on his failure to join duty. Thereafter, the petitioner submitted resignation letter dated 03.07.1998, for personal reasons and requested to accept his resignation. This respondent addressed a letter, dated 08.07.1998, directing the petitioner to explain his grievances within ten days to enable the 5th respondent to consider the request for his resignation. It is stated in the letter that on failure to explain the grievances, the resignation letter will be accepted. As there was no reply and as the petitioner failed to personally meet this respondent, this respondent was left with no option; hence, the proceedings, dated 29.07.1998, were issued accepting his resignation with effect from 04.07.1998, the date of receipt of letter of resignation. The allegation that the resignation was made under the compulsion of this respondent and that on 10.07.1998, the petitioner submitted a letter withdrawing his resignation and that the same was sent to this respondent's usual address by registered post vide receipt No.2295 is not true and correct. This respondent never received the so called letter, dated 10.07.1998. The petitioner addressed a letter, dated 16.09.1998 requesting to settle his TPF and GLIC benefits and also to pay dues to Syndicate Bank, Nagulapalem Branch and any other amounts due to the management and then credit the balance, if any, to his S.B. Account of Syndicate Bank, Nagulapalem. Basing on the said request, the management settled all his dues and closed TPF account and the same was communicated to the 4th respondent, vide letter dated 12.11.1998. By letter dated 15.12.1999, the petitioner requested to return his Service Register, last pay slip and other documents and the same were received by the petitioner, on 07.01.2000, under an acknowledgment. The petitioner having received all the service benefits and original SR and

qualification certificates without any protest cannot now challenge the action of the management in accepting his resignation. This respondent never received any letter of withdrawal of resignation and therefore, the question of suppressing any such letter of his resignation does not arise. There is no requirement of obtaining any prior permission from the competent authority before accepting the resignation of any employee working in private aided educational institution. In view of the work load and need, the post, which fell vacant consequent upon petitioner's resignation was filled up by obtaining the necessary permission from the competent authority and after following the due process of law prescribed in G.O.Ms.No.1, Education, dated 01.01.1994. The petitioner filed an appeal etcetera are not within the personal knowledge of this respondent. They are matters of record. The respondents 3 and 4 never acted in support of this respondent as alleged by the petitioner. Hence, the writ petition may be dismissed.

5. I have given detailed and thoughtful consideration to the facts. I have noted the submissions made in line with the pleadings of the parties.

6. The petitioner who formerly worked as B.Ed., Assistant (Social Studies) in the 5th respondent's school applied for medical leave from 10.06.1998 to 12.10.1998, i.e., for a period of (125) days. Considering the requirement of services of the petitioner, the 5th respondent, who is the Correspondent of the school, without sanctioning the medical leave as sought for by the petitioner, addressed a letter, dated 15.06.1998, and informed the petitioner that if leave is granted to the petitioner, the students of the school would suffer and, hence, directed the petitioner to meet the 5th respondent personally. In the said letter, it was further stated that till the petitioner meets the 5th respondent, leave application will be kept in abeyance. The said letter addressed by the 5th respondent was admittedly received by the petitioner on 15.06.1998. The petitioner did not give any reply and failed to meet the 5th

respondent. His case is that as he has got sufficient half pay leave of 133 days and (18) days of Earned Leave to the credit of his leave account, he assumed that leave would be granted. On such assumption, the petitioner never rejoined duty after he applied for medical leave from 10.06.1998. As there was no reply from the petitioner, the 5th respondent addressed another letter, dated 25.06.1998, calling upon the petitioner to report to duty on or before 06.07.1998 without fail and stating that disciplinary action would be initiated against the petitioner on his failure to do so. The petitioner failed to give a reply even to the said letter. On the other hand, he submitted a letter of resignation, dated 03.07.1998, as already noted. On receipt of the said letter, the 5th respondent once again addressed a letter, dated 08.07.1998, asking the petitioner to explain his grievances within ten days. According to the petitioner, he received the said letter after expiry of ten days, i.e., on 17.07.1998. However, he failed to give reply even to the said letter. By that time, the petitioner has already submitted his letter of withdrawal of resignation and explained the reasons therein. Hence, he kept quiet without sending any reply to the notice, dated 08.07.1998 by assuming that his resignation will not be accepted in view of his letter withdrawing his resignation. Eventually, the proceedings, dated 29.07.1998, were issued accepting the resignation of the petitioner with effect from 04.07.1998, i.e., from the date of receipt of letter of resignation. Thus, from 10.06.1998 till he submitted his letter of resignation on 03.07.1998 and till it was accepted by the proceedings, dated 29.07.1998, the petitioner stayed away from his duties without sanction of leave of any kind and thus, in one view of the matter, abandoned his services. Be that as it may.

6.1 Nonetheless, the case of the petitioner is that he sent his letter of withdrawal of resignation, dated 10.07.1998, by registered post, vide registered post receipt no.2295. However, the case of the 5th respondent is that no such letter of withdrawal was ever received by him. Though the

petitioner was served with the proceedings, dated 29.07.1998, accepting his resignation with effect from 04.07.1998, the petitioner had kept quiet without availing the legal remedy available to him. He only asserts that he sent a letter of withdrawal of resignation. Without raising any protest and without availing the legal remedy for assailing the order of acceptance of his resignation, the petitioner addressed a letter, dated 16.09.1998, requesting to settle his TPF and GLIC benefits and also to pay the dues to Syndicate Bank, Nagulapalem Branch, and also any other amounts due to the management and then credit the balance, if any, out of his said amounts to his S.B. Account of Syndicate Bank, Nagulapalem. Basing on the said letter, the management of the school settled all his dues and closed his TPF and GLIC accounts and sent a communication, dated 12.11.1998, to the District Educational Officer-4th respondent. The petitioner further addressed letter, dated 15.12.1999, requesting to return his Service Register, last pay slip and other documents and the same were received by the petitioner, on 07.01.2000, under an acknowledgment.

7. Be it noted that the 5th respondent by his letter, dated 29.07.1998, accepted the resignation of the petitioner with effect from 04.07.1998, the date of receipt of the letter of resignation of the petitioner. At the earliest opportunity, that is, immediately after receiving the letter, dated 29.07.1998, the petitioner had not advanced a contention that he has withdrawn his resignation, by letter, dated 10.07.1998, and that it was sent by registered post and that the same was suppressed by the 5th respondent. The petitioner did not even prefer an appeal assailing the proceedings, dated 29.07.1998, and kept quiet. On the other hand, he addressed a letter, dated 16.09.1998, requesting to settle his TPF and GLIC benefits and also pay from out of the said benefits the dues payable to Syndicate Bank, Nagulapalem branch, and also the dues, if any, payable to the management of the school and then credit the balance amount to his SB Account in Syndicate Bank, Nagulapalem. If really,

he had sent a letter, dated 10.07.1998, withdrawing his resignation by registered post and the same was ignored by the 5th respondent, the petitioner ought to have raised a protest at the earliest point of time or preferred an appeal or availed any remedy, which the law permitted. But, he did not do so. Though, it is his contention that the said letter was sent by registered post, vide postal receipt bearing No.2235, it remains unexplained as to why he sent it by registered post and not by registered post with acknowledgment due. It also remains unexplained as to why he had kept quiet when his alleged withdrawal letter was ignored by the 5th respondent. Coming to the report of the 4th respondent, wherein he stated that the petitioner sent a letter, dated 10.07.1998, by registered post and that there is a postal receipt evidencing the said fact, what is to be noted is that the said report of the 4th respondent was not accepted by the appellate authority after hearing the officers concerned and the petitioner. Further, after examining the record and after hearing the officers concerned and the petitioner, a finding of fact was recorded by the appellate authority that no such withdrawal letter was received by the 5th respondent and, therefore, the acceptance of resignation of the petitioner, by proceedings, dated 29.07.1998, is valid. The conduct of the petitioner in not raising a protest at the earliest point of time by stating that the letter of withdrawal of resignation was ignored coupled with his conduct in submitting a letter, dated 16.09.1998, for settlement of TPF and GLIC accounts etcetera, probalizes the contention of the 5th respondent.

8. A careful perusal of the material record including the impugned proceedings would show that after examination of the facts & circumstances and the relevant evidence, the officers concerned, who dealt with the appeals of the petitioner, arrived at concurrent conclusions that the acceptance of the resignation of the petitioner is valid. This Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the concurrent findings of facts arrived at by the

appellate authorities, namely, the District Educational Officer-4th respondent and the Regional Joint Director, Department of School Education-3rd respondent. When once the conclusions of the said authorities are found to be sustainable on facts and evidence and when such findings are based on some legal evidence, this Court will not normally substitute its subjective opinion in the place of the one concurrently arrived at by the said authorities. Further, the petitioner having kept quiet for a long time received his terminal benefits and discharged a part of his bank loan from out of such terminal benefits received by him and failed to prefer an appeal within a reasonable time assailing the proceedings whereby his resignation was accepted. After his belated appeal filed in the year 2001 was dismissed, he approached this Court by filing W.P.No.18654 of 2005; and, this Court disposed of the said writ petition directing the petitioner to avail alternative remedy under Sections 89 of the A.P. Educational Act, 1982. According to the petitioner, he filed the said appeal petition through parcel service on 15.09.2005. When that appeal was not disposed of, he filed W.P.No.15732 of 2005. After receiving notice in the said writ petition, the appellate authority having given an opportunity of hearing to the petitioner, dismissed the appeal, by orders dated 26.09.2005. Therefore, on the ground of laches also, the petitioner is disentitled to the relief claimed in the writ petition.

9. Be that as it may. There is one more facet of the matter, which requires examination. Admittedly, the resignation submitted by the petitioner was accepted, with effect from 04.07.1998, vide proceedings dated 29.07.1998. Thereafter, the petitioner, by his letter dated 16.09.1998, requested to settle his TPF and GLIC benefits and also pay from out of the said benefits the dues payable to Syndicate Bank, Nagulapalem branch and also the dues, if any, payable to the management of the school and then credit the balance amount to his SB Account in Syndicate Bank, Nagulapalem. Accordingly, his terminal benefits were settled. In view of the said conduct of the petitioner, the

learned Standing Counsel for the 5th respondent school contended that the petitioner is estopped from claiming the instant relief in this writ petition. However, learned counsel for the petitioner contended that out of necessity, the petitioner requested for settlement of his terminal benefits.

10. On this aspect, it is trite to refer to the following decisions:

(i) In the decision in *Gyanendra Sahay v. Tata Iron & Steel Co. Ltd.*¹⁵, the facts are as follows: 'A letter of request was submitted to the Company for his premature/voluntary retirement and the same was accepted by the management, on 01.04.1995, with immediate effect. In the acceptance letter, it is clearly stated that the appellant will be entitled to all the retrial benefits of the company, which would have been otherwise available to him at his superannuation. It is also stated that the appellant's request for ex gratia is being considered separately and the appellant was directed to get in touch with the General Manager (Finance and Accounts) for his full and final settlement. By letter dated 12.04.1995 addressed to the appellant, the management has decided to extend certain facilities on his premature retirement, viz., Retiring gratuity as per rules for the actual service rendered by him, Provident fund including Company's contribution in full, Superannuation fund, as per rules, payment of cash equivalent to the privilege and furlough leaves including proportionate leave due to him, free medical facilities as applicable to the retiring officers in the respective divisions and also an ex gratia payment. However, the appellant made a vague allegation that he was forced to take retirement and could not establish the said allegation.' The Supreme Court held that the appellant after 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 the letter for his premature/voluntary retirement and dismissed the appeal of the appellant.

¹⁵ (2006) 5 Supreme Court Cases 759

(ii) In *Bank of India v. O.P.Swarnakar*¹⁶, in a batch of civil appeals, the Supreme Court, while considering the scheme of voluntary retirement insofar as the State Bank of India and its employees is concerned, noted that the State Bank of India has not amended its scheme and that it even permitted withdrawal applications by 15.02.2001 and that a group of employees accepted ex gratia payment. Having regard to those facts, it was held that those who accepted ex gratia or any other benefit under the scheme could not have resiled there from and that the scheme is contractual in nature and that the contractual right derived by the employees concerned, therefore, could be waived and that the employees concerned having accepted part of the benefit could not be permitted to approbate and reprobate and cannot be permitted to resile from their earlier stand. In *Punjab & Sind Bank v. S.Ranveer Singh Bawa*¹⁷, the facts of the case are as follows: 'On 28.10.2000, in order to downsize the strength of its staff, the appellant floated the Voluntary Retirement Scheme. The Scheme was to commence with effect from 01.12.2000 and it was to remain in operation up to 31.12.2000. The 1st respondent opted for Voluntary Retirement on 06.12.2000. On, 22.12.2000, he requested that he be allowed to withdraw his option. On, 23.12.2000, the scheme stood modified. On, 30.12.2000, and, 17.01.2001, the said respondent wrote reminders and requested that he be permitted to withdraw his option. However, in view of clause 10.4 of the Scheme, the appellant did not permit him to opt out from VRS. Consequently, with effect from 29.01.2001, the 1st respondent was relieved from service. A learned Single Judge allowed the writ petition on the ground that he is entitled to withdraw his option before its acceptance by the Bank. A Division Bench dismissed the appeal. Therefore, the Bank approached the Supreme Court. One of the questions was whether the optees having accepted the payments/ benefits under the Scheme could be

¹⁶ (2003) 2 Supreme Court Cases 721

¹⁷ (2004) 4 Supreme Court Cases 484

permitted to resile there from. While answering the said question, the Supreme Court held that the said scheme was contractual in nature and that those employees who have accepted the payments/ benefits under the Scheme cannot approbate and reprobate nor can they be permitted to withdraw.

(iii) In the decision in Punjab National Bank v. Virender Kumar Goel¹⁸ rendered by a Bench of the Hon'ble the Acting Chief Justice and two Hon'ble Judges, of the Supreme Court the facts and the ratio are as follows: 'Under VRS scheme, certain of the employees of the Bank opted for Voluntary Retirement. Under the scheme, some of them have withdrawn their offers. However, the Bank contended that the applicants have accepted part of the benefit under Voluntary Retirement Scheme. While referring to a judgment earlier rendered in a case between the same parties, the Supreme Court directed that the appeals arising out from the High Court are dismissed except the cases, where the employees have accepted part of the benefit under the scheme. However, while seeking modification/ review or clarification of the said judgment, one of the applicants who applied for the benefit under the scheme, on 01.12.2000, and who had submitted application for withdrawal on 25.01.2000 for withdrawal of his offer for VRS contended that on 26.03.2001, the Bank deposited leave encashment in his account and that he did not operate the account thereafter and has neither withdrawn the amount nor utilized the amount deposited by the Bank in the account. He substantiated his said contention. Therefore, the Supreme Court made it clear that the sentence "accepted a part of the benefit under the scheme", would include the withdrawal of the benefit and utilization thereof and by no stretch of imagination, unilateral deposit of a part of benefit under the Scheme into the bank account, that too after withdrawal of the application, could be construed as an acceptance of a part of the benefit under the Scheme, when the same was neither withdrawn nor utilized by the employee concerned. The Supreme

¹⁸ (2004) 2 Supreme Court Cases 193

Court also held as follows: “Thus, the rule of estoppel would operate when the terminal benefits are paid and are accepted and utilized. Therefore, the said fact of payment and acceptance of terminal benefits is a bilateral act and is not a unilateral act to attract the principle enshrined in the doctrine of estoppel or waiver.”

11. The case of the petitioner herein is to be now examined in the light of the above enunciated legal position. The petitioner admittedly addressed a letter, dated 16.09.1998, requesting to settle his TPF and GLIC benefits and also by paying dues to Syndicate Bank, Nagulapalem Branch and any other amounts due to the managements and credit the balance, if any, to his S.B. Account of Syndicate Bank, Nagulapalem. Basing on the said request, the management settled all his dues and closed TPF account and the same was communicated to the 4th respondent, vide letter dated 12.11.1998. After the petitioner was made to retire from service with effect from 04.07.1998, part of the terminal benefits were utilized for discharge of the bank loan and the balance terminal benefits were credited to his bank account is not in dispute. The petitioner having received all the service benefits and original SR & qualification certificates without any protest cannot now challenge the action of the management in accepting his resignation. Therefore, the present case is a clear case, where the doctrine of estoppel would get attracted and operate. Therefore, applying the said legal position, this Court finds that the petitioner who has accepted the terminal benefits and utilized the same, and who had kept quiet for a long time from the date of absents from attending to service without any sanctioned leave is estopped from seeking the present relief. In view of the facts peculiar to the case and the reasons assigned supra, this Court is of the considered view that the decisions relied upon by the petitioner, which are already referred to supra in paragraph 3.1 and 3.2 are of no assistance to the petitioner.

12. Resultantly, the Writ Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

26th April, 2017
RAR

