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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 20218-19/2004

11th January, 2017

**THE MANAGING COMMITTEE OF RANI DUTTA ARYA
VIDYALAYA AND ANR.**

..... Petitioner

Through: Mr. G.Tushar Rao, Mr. Mayank
Sharma and Mr. Rajiv Trivedi,
Advocates.

versus

**THE DIRECTOR OF EDUCATION, GOVT. OF NATIONAL CAPITAL
TERRITORY OF DELHI AND ORS.**

..... Respondents

Through: Mr. Satyakam, Addl. Standing
counsel Govt. of NCT of Delhi and
Mr. Pradeep Kaushik, LA Zone,
XXVII, DOE, GNCTD for R-1 and 2.
Mr. Arvind Kr. Sharma, Adv. for R-
3.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner no.1-school/Rani Dutta Arya Vidyalaya (hereinafter referred to as petitioner-school) impugns the order of the Director of Education dated 15.12.2004 by which the Director of Education has refused to grant approval to the petitioner-school to the resignation of the

respondent no.3/Sh. Nand Kishore from the petitioner-school. Sh. Nand Kishore was working as a Head Clerk in the petitioner-school. The impugned order of the Director of Education dated 15.12.2004 reads as under:-

**“OFFICE OF THE EDUCATION OFFICER: ZONE XXVII:
DISTT.CENTRAL
SKV ZEENAT MAHAL SCHOOL BUILDING: KAMLA MARKET
NEW DELHI**

No.EO/Zone-27/2004/3062

Dated: 15/12/04

To
The Manager,
Rani Dutta Arya Vidyalaya,
Pataudi House, Darya Ganj,
New Delhi.

Sub: Approval on resignation tendered by Shri Nand Kishore, Head Clerk, Rani Dutta, Arya Vidyalaya, Pataudi House, Darya Ganj, New Delhi.

Sir,

I am directed by the competent authority to convey to you that taking a view in totality, the request of the managing committee to grant approval to resignation tendered by Shri Nand Kishore is set aside because the provision of the DSEA & R 1973 have not been followed and that management is directed to allow Shri Nand Kishore to join the duties as Head Clerk with immediate effect. The compliance report be sent within seven working days of the receipt of this letter.

Yours faithfully,

Sd/-
13/12/2004
(Dr. K.S.Yadav)
Education Officer
Zone-27

Copy to Shri Nand Kishore R/o 1/5618 Balbir Nagar Extn., Shahadara, Delhi 110032 for information.

(Dr. K.S.Yadav)
Education Officer
Zone-27

2. The issue before this Court is that whether in the facts of the present case the petitioner is justified in taking the factum of resignation of the respondent no.3 from the petitioner-school given by the respondent no.3 in terms of his letter dated 15.3.2003 to be final and binding and consequently of the impugned order dated 15.12.2004 for being held as illegal and hence not binding upon the petitioner.

3. The issue of resignation of an employee of a school is governed by Rule 114A of the Delhi School Education Rules, 1973, and this Rule 114A reads as under:-

“114A. Resignation- The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expire of the said period.”

4. Besides the aforesaid Rule 114A, Rule 96(9) of the Delhi School Education Rules would also be relevant because the said provision talks of relieving of the teacher after acceptance of resignation only after a period of three months. This Rule 96(9) reads as under:-

“Rule 96. Recruitment-

XXXXX

(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognised school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving:

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of:

- (i) three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and
- (ii) one month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given:

Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.”

5. On a plain reading of the language of Rule 114A of the Delhi School Education Rules one is left with no manner of doubt that the object of Rule 114A when it provides the period of 30 days for finalization of resignation the same is for the benefit of the employee i.e the employee is not forced to work beyond a period of 90 days from the date of submitting the letter of resignation. Rule 114A uses the expression “shall be accepted” i.e there is no option for a school not to accept the letter of resignation. The expression “within a period of 30 days from the date of receipt of resignation” does not in any manner cut down the strength of the expression “shall be accepted”. The reason for the resignation given by an employee of a school shall be compulsorily accepted becomes clear even from the Proviso of Rule 114A which provides that if the Director of Education does not give approval to the resignation within 30 days, there is deemed

approval of the resignation. The reason for such language of Rule 114A of mandatory acceptance of the resignation of the employee, taking that there is no dispute that an employee has in fact resigned, is for the reason that there cannot be forced labour i.e no one can be forced to work in an institution where he does not want to work because such an employee wants to resign from services. The issue of resignation is different from the issue of an employee seeking voluntary retirement, because, on account of voluntary retirement of an employee various monetary benefits would flow from services rendered till voluntary retirement, however the effect of resignation is that the entire service record of the employee is wiped out and such an employee receives much lesser monetary benefits as compared to an employee who is allowed a voluntary retirement. The spirit of why the requirement of acceptance of resignation is mandatory i.e a school is not entitled to force an employee to work with the school, is also found in Section 14(1)(b) and (d) of the Specific Relief Act, 1963. Therefore, there is no manner of doubt that resignation of an employee of a school either takes place within 30 days of the employee submitting resignation by its acceptance by the Managing Committee of the school with the approval of the Director of Education or in any case if there is no refusal of acceptance of resignation by the Director of Education within 30 days, resignation then is final on the expiry of the period of 30 days.

6. An issue which also comes to mind is that suppose an employee of a school wants to resign, the question is, can the Director of Education force him not to resign inasmuch as Rule 114A requires approval of the Director of Education for resignation. Ordinarily I do not think so. As already stated above, a contract of personal service cannot be specifically enforced as that would amount to effectively compulsorily seek performance of service, and which is not possible under law. Therefore, when the provision of Rule 114A requires approval of the Director of Education, obviously such an issue of declining of approval ordinarily only comes in if there is a doubt with respect to whether or not the resignation of an employee is or is not genuine because there may be cases in which it may be found that the resignation may be forced upon an employee. Save apart the issue with respect to any issue of resignation not being a voluntary resignation, there would be only a rare case where a Director of Education would possibly be entitled to refuse the resignation given by an employee from a school. Though we cannot visualize all cases where the Director of Education can refuse approval, ordinarily in view of the contract of service being a contract of personal service by an employee, with the aspect of entitlement of a person not to work for an organization, the Director of Education is thus ordinarily bound to give approval to the resignation of an employee from the school.

7. There is also another aspect which is to be noted and which arises from a conjoint reading of Rules 114A and Rule 96(9) of the Delhi School Education Rules, and which is that resignation becomes effective from the date of acceptance of the resignation or at the maximum on the 30th day of submitting the letter of resignation, but, the actual relieving of duty after acceptance of resignation is and can be from a prospective date and which in the view of Rule 96(9) at the very maximum can be three months from the date from which the employee gives his resignation to the school. Of course, the issue of three months notice period is for the benefit of the school and not for the employee because the object of the relieving period of three months is for the school to ensure that a substitute employee is available and the working of the school is not prejudicially affected. This aspect I have had an occasion to discuss and decide in the case of *Smt. Lavika Jain Vs. The Principal, Delhi Public School & Ors. 205 (2013) DLT 306* and the relevant paras of which judgment read as under:-

5. Whereas the petitioner contends that every teacher on giving notice of intimation to leave the school is entitled to three months' pay in terms of second proviso to Rule 96(9), the respondent-school relies upon the third proviso to state that if a substitute can be provided earlier than the period specified in the second proviso of three months, managing committee is entitled to relieve the teacher before the expiry of three months.

6. At the outset, I may state that there is no provision in the Rules except Rule 96(9) and as per which a permanent employee like the petitioner can seek three months salary after giving a notice of resignation. Resignation of an employee is in terms of Rule 114A of the Rules and as per which all that is required is that the managing committee must accept the resignation within 30

days. There is no issue in this case of the managing committee not having accepted the resignation within 30 days. What is argued before me on behalf of the petitioner is that even after acceptance of resignation, yet, the leaving employee will be entitled to work and get salary of three months in terms of second proviso to Rule 96(9).

7. In my opinion, the arguments which are urged on behalf of the petitioner by placing reliance upon the second proviso to Rule 96(9) are misconceived inasmuch as the second proviso to Rule 96(9) is not made for the benefit of the teacher but for the benefit of the school. This becomes clear from the third proviso which states that before expiry of the three months period if a school is able to provide a substitute for teacher who resigns, then, managing committee can relieve the teacher from his earlier duties. The earlier period means that period which commences when the substitute teacher would be available to the school. The object of law and which become clear on reading of second and third provisos together of Rule 96(9) is that the studies of the children in the school should not be affected by a teacher suddenly leaving the school. The period of three months is provided so that the school may get a substitute teacher. The expression 'substitute teacher' does not mean that there has to be necessarily a fresh appointment inasmuch as the school may have sufficient number of teachers to take the classes of that teacher who resigned from the school. If within the three months as provided under the first proviso to Rule 96(9) a substitute teacher is available then surely the school will be entitled to accept the resignation of an employee even before the three month period, and consequently bring an end to the services of such resigning teacher even prior to three months period.

8. Since in the present case respondent-school has stated that duties of the petitioner were given to Ms. Vandana Goswami after reopening of the summer vacation of the school, the school remaining closed from 16.5.2009 to 7.7.2009, in my opinion, it is not open to the petitioner to contend that petitioner was entitled to work and take salary for the period of three months under the second proviso to Rule 96(9) of the Rules. As already stated above, a combined reading of second and third provisos show that period of three months is for the benefit of the school and not for the teacher who is leaving the services of the school."

8. The difference between the final date of the acceptance of resignation and the fact that there may be relieving from a prospective future date is also duly clarified by the Supreme Court by making such observations with respect to the distinction between the date of acceptance

of resignation and the future/subsequent date of relieving, in the judgment in the case of *Modern School. Vs. Shashi Pal Sharma & Others (2007) 8 SCC 540* and the relevant para 17 of which judgment reads as under:-

“17. Once the resignation of the first respondent had validly been accepted, the question which would arise for consideration is as to whether the same could be done before 17-06-1997. It is not a case where acceptance of the resignation was made effective from a future date. Resignation of the first respondent having been accepted, only he was to be relieved from 17-06-1997. We have noticed hereinbefore the purport of Rule 114-A of the Rules, in terms whereof resignation was to be accepted within a period of 30 days. In view of the aforementioned statutory provision, in our opinion, only because the first respondent was to be relieved with effect from 17-06-1997 the same would not mean that even thereafter it was open to the first respondent to withdraw his resignation. In fact, if the aforementioned letter dated 18-03-1997 is excluded from consideration, he had not withdrawn his resignation at all”

9. In view of the above mentioned exposition of law as regards Rules 114A and Rule 96(9) of the Delhi School Education Rules, let us now turn to the facts of the present case. The following list of dates is relevant in the present case for determining the different issues which arise:-

- (i) 15.3.2003 — Respondent no.3 submits his hand written letter of resignation to the petitioner-school.
- (ii) 29.3.2003 — Resignation of the respondent no.3 from the petitioner-school is accepted by the petitioner-school as per the resolution of its Managing Committee which reads as under:-

“RANI DUTTA ARYA VIDYALAYA
(MANAGED BY ARYA ORPHANAGE AND RECOGNISED & AIDED BY
THE GOVT. OF NCT OF DELHI)
1488, PATAUDI HOUSE, DARYA GANJ, NEW DELHI-110002

TRUE COPY OF THE RESOLUTION PASSED BY THE MANAGING COMMITTEE OF RANI DUTTA ARYA VIDYALAYA IN ITS MEETING HELD ON 29.03.2003

“Item No.6: Acceptance of resignation of Shri Nand Kishore, Head Clerk, who is on probation and consequent decision in respect thereof”.

“Information is given that Shri Nand Kishore, Head Clerk, who is on probation, has, by its letter dated 15.3.2003 addressed to the Chairman of the Managing Committee of the School resigned from the post of Head Clerk and has asked that his resignation be accepted with immediate effect. After some discussion, the Managing Committee resolved unanimously to accept the resignation of Shri Nand Kishore and also decided that he might be asked to continue on his post till 30.6.2003 on which date his resignation would become effective.”

(iii) 2.4.2003 — Office note signed by the Principal of the petitioner-school in furtherance of the acceptance of resignation of respondent no.3 from the petitioner-school and which reads as under:-

**“RANI DUTTA ARYA VIDYALAYA
(MANAGED BY ARYA ORPHANAGE AND RECOGNISED & AIDED BY
THE GOVT. OF NCT OF DELHI)
1488, PATAUDI HOUSE, DARYA GANJ, NEW DELHI-110002**

OFFICE NOTE

Shri Nand Kishore, Head Clerk of the School, had submitted his resignation on 15.03.2003 and desired that the same be accepted with immediate effect. His resignation was put up for consideration in the meeting of the Managing Committee held on 29.03.2003. His resignation was accepted but it was decided that he might be asked to continue till 30th June 2003.

Shri Nand Kishore has been informed about the said decision and he has agreed to continue in the School till 30th June 2003. This is for your information.

To
Manager, R.D.A.V

Sd/-
Principal
02.04.2003

(iv) 8.5.2003 — Petitioner-school wrote to the Director of Education with respect to resignation of the respondent no.3 from the petitioner-school and sought permission to advertise the post of Head Clerk and which letter dated 8.5.2003 reads as under:-

“RANI DUTTA ARYA VIDYALAYA
(MANAGED BY ARYA ORPHANAGE AND RECOGNISED & AIDED BY
THE GOVT. OF NCT OF DELHI)
1488, PATAUDI HOUSE, DARYA GANJ, NEW DELHI-110002
08.05.2003

The Deputy Director of Education,
Central District, Zone 27,
Jhandewalan,
New Delhi

Sub: Resignation rendered by Sh. Nand Kishor, Head Clerk of our school.

Dear Madam,
Shri Nand Kishor, Head Clerk of our School who was on probation, submitted his resignation from his post. The Managing Committee of the School in its meeting held on 29th March, 2003 accepted the said resignation but asked Sh. Nand Kishor to continue to work on the said post till 30.06.2003. This is for your kind information and record. It is requested that the school be permitted to advertise the post of Head Clerk so that after selection, the same can be filled w.e.f. 01.07.2003.”

Thanking you,

Yours faithfully,
for Rani Dutta Arya Vidyalaya

Sd/-
(Achla Chaudhary)
Manager”

(v) 7.7.2003 — Respondent no.3 writes his letter to the petitioner-school withdrawing from resignation and stating that the resignation was not willingly given and was given under mental pressure.

(vi) 19.8.2003 — Reminder letter by the petitioner-school to the Director of Education with respect to the resignation of the respondent no.3 for grant of permission, and which letter reads as under:-

“RANI DUTTA ARYA VIDYALAYA
(MANAGED BY ARYA ORPHANAGE AND RECOGNISED & AIDED BY
THE GOVT. OF NCT OF DELHI)
1488, PATAUDI HOUSE, DARYA GANJ, NEW DELHI-110002

Dated: 19.08.2003

To
The Deputy Directorate of Education,
Zone 27, Central District,
Jhandewalan, New Delhi-110005

Subject: Clearance for the post of Head Clerk

Dear Madam,

Reference to our letter No. Nil dated 08.05.2003 regarding the acceptance of resignation of Sh. Nand Kishor. Head Clerk of our school by the school Managing Committee in its meeting held on 29.03.2003, I request you to kindly sanction your permission to fill this vacant post at your earliest.

Sh. Nand Kishor had resigned from his post on 15.03.2003 (Copy of resignation letter is being enclosed).

Kindly sanction your permission and clearance to fill the post through proper procedure, so that the school work is not hampered.

Thanking you,
Yours sincerely,
Sd/-
(Manager)

“R I O with the remarks that the school authority has not submitted the following documents for the approval for the resignation from the competent authority:

1. Original application submitted by the employee;
2. No due certificate
3. No court case pending certificate;
4. Service Book;
5. M.C. Resolution;
6. Total length of service;

7. EOL Certificate, if any.”

You are required should be submitted for the acceptance of resignation in r/o Shri Nand Kishore Head Clerk with recommendation urgently.

School Authority
1727/27
2/9/03

Sd/-
30/08/03
Sd/-
30/8/03

(vii) 11.12.2003 — Letter of the Director of Education to the petitioner-school asking the petitioner to talk to the concerned officer of the Director of Education, and which letter reads as under:-

**“OFFICE OF THE EDUCATION OFFICER:ZONE XXVII: DISTT.
CENTRAL SKV ZEENAT MAHAL SCHOOL BUILDING: KAMLA
MARKET**

No.

Dated:

MEMO

Reference to your application dated 10.11.2013 wherein mentioned that the resignation from the post of Head Clerk, from Rani Dutta Arya Anathalaya, Pataudi House pressurized by the Manager/Vice Principal of the school.

You are therefore directed to see the undersigned within seven days from the date of issuance of this letter otherwise it will be presumed that nothing to say in this regard and the action will be taken as per rule.

Sh. Nand Kishore
C.72, DLF, Bhopura
Ghaziabad

Education Officer
Zone 27

No. 1451

Dated: 11/12/03

Copy to: The Manager, Rani Dutta Arya Anathalaya, Daryaganj, New Delhi in response to letter dated 24.9.2003

Sd/-
10/12/03
Education Officer
Zone27

10. I may note that after the first letter of the Director of Education dated 11.12.2003 to the petitioner-school there are various other subsequent letters but such letters would have no bearing or consequences for determination of the issues in the present case as will be discussed hereinafter.

11. I may also at this stage note that there is an issue as regards whether or not respondent no. 3 was a confirmed employee of the petitioner-school inasmuch as petitioner-school denies the factum of the note allegedly signed by the Vice-Principal of the petitioner-school by which the Vice-Principal talks of confirmation of the respondent no. 3 in the petitioner-school in the meeting of the Managing Committee held on 21.9.2002 whereas the respondent no. 3 contends that respondent no. 3 was in fact confirmed after his probationary services to the status of a confirmed employee on 21.9.2002, however, for the purpose of this judgment I am proceeding on the basis that respondent no. 3 was a confirmed employee of the petitioner-school.

12. From a list of dates which is reproduced above, it is seen that respondent no. 3 did in fact give his hand written letter to the petitioner-school tendering his resignation, and which is not even disputed by respondent no. 3 that this letter was indeed given by the respondent no. 3.

Respondent no. 3 however only much subsequently on 7.7.2003 for the first time by his letter to the petitioner-school, with a copy to the Director of Education, contended that resignation was given under mental pressure and this resignation be withdrawn. This letter dated 7.7.2003 is given approximately after a period of 115 days from giving of the letter of resignation dated 15.3.2003 and well after 29.3.2003 when the Managing Committee had accepted the resignation. In other words the withdrawal of resignation by the respondent no.3 is neither within 30 days of giving of his resignation on 15.3.2003, nor within 30 days of the petitioner-school writing its letter dated 8.5.2003 to the Director of Education mentioning the factum of resignation of the respondent no.3 from the petitioner-school. Also, it is not disputed that the petitioner-school indeed has passed a resolution on 29.3.2003 accepting the resignation of the respondent no.3 from the petitioner-school and which resolution dated 29.3.2003 along with the subsequent office note of the Principal dated 2.4.2003 has already been reproduced above and in fact is duly referred to by the petitioner-school in its letter dated 8.5.2003 to the Director of Education.

13. (i) Therefore, since the withdrawal of resignation by respondent no.3 by his letter dated 7.7.2003 is neither within 30 days of submitting the letter of resignation dated 15.3.2003, nor within 30 days of the letter dated

8.5.2003 of the petitioner-school to the Director of Education, and is in fact after the acceptance of resignation by the Managing Committee of the school on 29.3.2003, therefore, there does not arise any issue in the present case of a legal entitlement remaining in the respondent no.3 to withdraw the resignation by his letter dated 7.7.2003 because there is no legal entitlement to withdraw from resignation after the period of 30 days under Rule 114A, or after 30 days of the letter dated 8.5.2003 sent by the petitioner-school to the Director of Education mentioning the factum of resignation or after the resolution dated 29.3.2003 of the Managing Committee of the petitioner-school accepting the resignation of the respondent no.3.

(ii) There was an issue raised by the respondents with respect to whether the resignation of the respondent no.3 stood accepted by the petitioner-school on 29.3.2003 or was the resignation only to be from 30.6.2003, however, in view of the language of Rule 114A of the Delhi School Education Rules, I would like to read the language of the resolution of the Managing Committee of the petitioner-school dated 29.3.2003 as that the resignation has not been accepted and that the resignation will be taken as accepted only from 30.6.2003 inasmuch as Rule 114A read with Rule 96(9) of the Delhi School Education Rules, talks of two separate dates and events being one of finalization of resignation and two of a possible future

relieving date. In fact, the three months period after 29.3.2003 ending on 30.6.2003 as stated in the Managing Committee resolution dated 29.3.2003 was in compliance with Rule 96(9) of the Delhi School Education Rules, as per which an employee can be asked to continue to work with the employer for the period of three months after submitting of his resignation. The expression “resignation would become effective” appearing in the resolution of the Managing Committee of the petitioner-school dated 29.3.2003 is only to clarify when the resignation would become effective for respondent no.3 being relieved of his duties i.e the duty of the respondent no.3 will continue till 30.6.2003. It is not as if by the Managing Committee resolution dated 29.3.2003 the resignation is not accepted with immediate effect especially because the earlier lines talk of the respondent no.3 requiring the resignation to be accepted with immediate effect and the subsequent lines are thus only with reference to that factual statement of requirement/consequence of Rule 96(9) of the Delhi School Education Rules which gives a period of three months for the resignation to become effective or operative i.e the date of relieving after resignation being submitted by an employee being three months after the date of submitting of the resignation.

14. Reliance placed on behalf of the respondent no.3 upon the judgments of this Court in the cases of *Ms. Urmil Sharma Vs. Director of*

Education 1996 III AD (DELHI) 48 and *Mrs. Mala Tandon Thukral Vs. Director of Education and Others 167 (2010) DLT 46* will not help the respondent no.3 because in the facts of those cases, the resignation by the employee was withdrawn prior to the period of 30 days of submitting of the resignation. In the case of *Ms. Urmil Sharma (supra)*, resignation was given on 21.10.1994 and was withdrawn by a letter dated 11.11.1994 and in the case of *Mrs. Mala Tandon (supra)* resignation was submitted on 5.12.2007 and withdrawal was on the very next date i.e 6.12.2007.

15. One argument which was urged on behalf of the respondents was that the petitioner-school by its letter dated 8.5.2003 sent to the respondent no.1/Director of Education only mentioned the factum of the resignation of respondent no.3, and that petitioner-school did not seek prior approval by this letter, however, in my opinion, the letter dated 8.5.2003 cannot be read legalistically because this letter also talks of petitioner-school asking the permission to be given for advertising the post of Head Clerk of the petitioner-school and to which post the respondent no.3 was working and which therefore should be read to mean that permission to advertise the post can only be given after acceptance is granted by the Director of Education to the resignation of the respondent no.3 and which factum has been mentioned in this letter dated 8.5.2003. I have already

reproduced the letter dated 8.5.2003 of the petitioner-school to the Director of Education above and if this letter is not to be read as the petitioner-school asking for approval to resignation then why at all this letter was written by the petitioner-school to the Director of Education and which was only because there was a requirement as such because of Rule 114A of the Delhi School Education Rules.

16. Learned counsel for the respondent no.3 placed reliance upon the judgment of the Supreme Court in the *Modern School's* case (*supra*) to argue that prior permission was required of the Director of Education or in any case acceptance of the resignation would only become final when the Director of Education would have given his approval, and the Director of Education has not given approval in this case and consequently it should be held that the resignation of the respondent no.3 is not legally valid but I cannot agree with this argument of the approval of the Director of Education having not been granted and that such argument is available to the respondents because approval issue as regards the Director of Education would only be for approval within 30 days of receipt of the letter of the petitioner-school dated 8.5.2003 written to the petitioner-school of refusing to grant permission for the resignation of the respondent no.3 from the petitioner-school and which is not the factual position in this case. Also

merely because certain notings are mentioned of the Director of Education on the letter dated 19.8.2003 of the petitioner-school to the Director of Education would not mean that within 30 days from 8.5.2003 Director of Education has refused permission for acceptance of the resignation of the respondent no.3 from the petitioner-school because refusal has to be by a specific communication to the school within 30 days and which is not done. Of course the letter dated 8.5.2003 by the petitioner-school is given after 30 days of the letter of the respondent no.3 dated 15.3.2003, and also 30 days after acceptance of the resignation by the Managing Committee of the petitioner-school on 29.3.2003, but, therefore we can take the period of 30 days for the Director of Education to give approval if not from 15.3.2003 then from 8.5.2003 (because the petitioner-school did not seek approval within 30 days from 15.3.2003) then even in that case the 30 days period of the knowledge of the Director of Education for declining the approval to the resignation of the respondent no.3 from the petitioner-school expired on 8.6.2003. Admittedly, neither till 8.6.2003, and in fact right till 11.12.2003, no communication whatsoever was addressed by the Director of Education to the petitioner-school, much less by refusing to grant of approval to the resignation of respondent no.3 from the petitioner-school. Further, I have already expounded the position of law above that there is no reason why Director of Education should not accept, save in a most rare case including

of actually there being no resignation, to deny the approval to the resignation of an employee of the school inasmuch as there cannot be forced upon an employee his services being performed to a school, and I have already discussed above that the present is not a case where the withdrawal or resignation of the respondent no.3 from the petitioner-school was legally valid inasmuch as it is discussed that it is given only on 7.7.2003 i.e well beyond the period of 30 days of submitting of the letter of resignation dated 15.3.2003 and also 30 days beyond 8.5.2003 when the petitioner-school informed the Director of Education with respect to resignation of the respondent no.3 from the petitioner-school. Also I note that the respondent no.3 is only conveniently stating that his resignation given by letter dated 15.3.2003 was given under pressure from the petitioner-school inasmuch as if really the resignation letter dated 15.3.2003 was given by the respondent no.3 on account of pressure put by the petitioner-school then there was no need for respondent no.3 to have waited from 15.3.2003 to 7.7.2003 i.e for a period of around 115 days. I also therefore reject the argument of the respondent no.3 that the resignation letter dated 15.3.2003 was given by the respondent no.3 on account of pressure put by the petitioner-school.

17. In view of the above discussion this writ petition is allowed and the impugned order of the Director of Education dated 15.12.2004 is

quashed and it is held that respondent no.3 has resigned from the petitioner-school by giving of his letter of resignation dated 15.3.2003 and which resignation will be effective from 30.6.2003 i.e the date of relieving of the respondent no.3 from the petitioner-school from 30.6.2003.

18. The writ petition is accordingly allowed and disposed of, leaving the parties to bear their own costs.

JANUARY 11, 2017
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VALMIKI J. MEHTA, J

