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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10569 OF 2017

Nutan Maharashtra Vidya Prasarak Mandal ... Petitioner
 vs.
 Shri Jeevan Shankar Patil & Ors. ... Respondents

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Mr. Shubhash Langote a/w. Mr. V. A. Madane a/w. Ms. Asher Hansa M. for
 Petitioner.
 Mr. N. V. Bandiwadekar a/w. Mr. Sagar Ashok Mane for Respondent no. 1.
 Ms. Vaishali Nimbalkar, AGP for the State – Respondent no. 2 to 4.

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CORAM : A.K. MENON, J.
DATE : 19th MARCH, 2018

P.C.

1. By this Writ Petition the petitioner challenges the judgment and order dated 9th February, 2017 passed by the School Tribunal, Pune by which an order of termination of services of respondent dated 3rd July, 2014 was set aside and the petitioner-management was directed to reinstate the respondent with full back wages and consequential benefits.

The facts leading to the impugned order are as follows :

2. The petitioner is a Polytechnic Institute at Talegaon Dabhade. The respondent was appointed as Principal of the institute on 1st August, 2009 and issued an appointment order as on 9th March, 2010. His appointment was on a

permanent basis and after following due process of law. The respondent was believed to have been working satisfactorily from 1st August, 2009 right upto 3rd July, 2014 on which date a letter was issued to him terminating his services with effect from 3rd July, 2014 and offering one month salary in lieu of notice. In an appeal filed under section 9(1) of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and MEPS Rules, 1981 the respondent alleged that the order of termination was arbitrary, improper, illegal and liable to be set aside. He claimed to be working as Principal of the Polytechnic Institute since 2009 as a permanent employee and the petitioner- management had no right to terminate his services.

3. According to the petitioner, the respondent had prior to his joining the institute served in different educational institutions in the post of lecturer and being a local person he was acquainted with the petitioner. Since the previous Principal's term was coming to an end, the office bearers of the petitioner in good faith believed that the respondent was a suitable candidate and upon his applying for the post he came to be appointed on 9th March, 2010. Mr. Langote, the learned counsel for the petitioner contended that after some months the respondents performance standards dropped and on or about 29th November, 2012 a confidential letter was issued to the respondent by the petitioner pointing out unsatisfactory performance and lapses and calling upon the respondent to improve his performance. It is contended by the petitioner that respondent submitted his resignation letter dated 8th October, 2013 addressing it to the Secretary of the Institute.

4. Mr. Langote, learned counsel for the petitioner submitted that since October, 2013 by way of mutual arrangement the respondent was to look out for employment elsewhere and he developed contact with one Engineering college at Kamshet, but Respondent no.1 continued to work at the petitioner's institute. Learned counsel for the petitioner contended that in May or June, 2014 the respondent was interviewed by one Suman Ramesh Charitable Trust (the said Trust) for the post of Assistant Professor in Mechanical Engineering and on 16th June, 2014 the said trust issued appointment letter in favour of the respondent appointing him as an Assistant Professor in Mechanical Engineering department. On 21st June, 2014 the petitioner accepted resignation of respondent no. 1 by passing a resolution by the Management and on 3rd July, 2014 the respondent was relieved by relieving order.

5. Thus it is submitted that respondent had left the services of the petitioner on his own accord without any compulsion and voluntarily. The learned Advocate for the petitioner submitted that since no other Principal had been appointed in the interregnum by mutual arrangement the respondent continued to serve the petitioner institute and thus was paid his salary till the termination of the services. He submitted that there was no substance in the appeal filed by the respondent. It was submitted that the order of the School Tribunal was perverse. He contended that miscarriage of justice was apparent since there was no explanation as to why the resignation could not be treated as bonafide resignation, especially given the fact that in June, 2014 respondent had been appointed by the said Trust as

Assistant professor. Learned counsel for the petitioner further contended that the respondent was in the habit of changing employment and was not comfortable in the petitioner's institute. That the resignation was pre meditated, because he had submitted an application for employment on 27th March, 2014 to the said Trust. He appeared there for an interview in May/ June, 2014 and accepted appointment letter. Mr. Langote submitted that conduct of the respondent was such that resignation was tendered in the usual course of events and acceptance thereof was a natural consequence given the fact that there was consensual extension of his services. According to the learned counsel for the petitioner the respondent had agreed to render services till joining the other institute. He therefore submitted that the impugned order is perverse and deserves to be set aside.

6. It is pointed out by the learned counsel for the respondent Mr. Bandiwadekar that the order of the Tribunal cannot be faulted. The petitioner had sought to twist and suppress material facts. That the petitioner was a permanent employee whose appointment was duly approved by the competent authority. It is material to note that the termination of the appointment was an arbitrary act without holding any statutory mandate. The letter of resignation was only in the nature of complaint about the way in which institute had been functioning. By the said letter the respondent had informed the management of the irregularities of the institute, deficiencies in the staff facilities and falling standard of education. It is for this reason that he had sought to resign. However, the resignation was never accepted and at the request of the petitioner he continued in service. Mr. Bandiwadekar

submitted that there is no evidence of resignation having been accepted and no resolution was passed at the material time. He submitted that the contention of the petitioner that respondent had taken up alternate employment is also misconceived inasmuch as the respondent had received an offer from the said Trust but the post offered to him was that of Assistant Professor in Mechanical Engineering department which was not acceptable to him since he was already officiating as Principal in the petitioner's institute. In the circumstances there was no occasion for him to join the said Trust.

7. Mr. Bandiwadekar relied upon contents of affidavit in reply and pointed out from paragraph 10 that the respondent was a highly qualified person and could not be expected to be unemployed during the pendency of the Appeal. He was offered the post of Assistant Professor but since he was already working as Principal in a permanent basis he was not inclined to accept lower post which was purely temporary basis upto 30th June, 2015. Whereas he was drawing a substantial salary while working with the petitioner's institute, while the said Trust was offering only Rs. 80,000/- per month and hence he did not accept the offer when the appointment letter was issued on 16th June, 2014. However later on 3rd July, 2014 upon termination of services, he was compelled to join the said Trust on 5th August, 2014. Thus the case of the petitioner that he had taken up alternative employment during his term as principal is entirely misconceived.

8. Learned AGP relied upon an affidavit in reply of one Dr. Dilip Ramkrishna Nandanwar in which it is admitted that the petitioner is a permanently unaided

Polytechnic Institute and no grant-in-aid is being given. All matters of administration and finance including appointment of staff, payment of pay and allowances, service matters of staff regarding termination etc. are under the purview of the petitioner alone.

9. Having heard the learned counsel for the parties, I enquired with the learned Advocate for the petitioner as to why the resignation was not promptly accepted and why he was allowed to continue in services to which the petitioner Advocate submitted that due to good relations between parties the respondent was asked to continue in service and in the course of this mutually agreed arrangement., when the respondent found alternative employment, he was relieved. This contention of the petitioner is not well founded since it is evident that there was no record of acceptance of the resignation. A resolution passed accepting the so called resignation is also conspicuous by its absence. In the course of the argument learned Advocate for the petitioner Mr. Langote relied upon an additional compilation of documents. This compilation contains two advertisements published by Siddhant College of Engineering on 22nd December, 2016 calling for applications for various posts including in the subject of Mechanical Engineering, one appointment letter dated 6th January, 2017 appointing respondent as Associate Professor in Siddhant College of Engineering along with acceptance of terms and conditions of appointment dated 16th January, 2017 and salary slip for the month of May, 2017. Furthermore the selection committee report confirming appointment of the respondent is also annexed as is order of appointment and

joining report. Even in this additional compilation there is no reference to the resolution. Although the learned counsel for the petitioner submitted that the resolution had been passed as set out in affidavit in rejoinder of one Mr. Santosh Dattatraya Khandge, it is pertinent to note that petition makes no mention of resolution accepting resignation. The reference to the resolution was made for the first time in the affidavit in rejoinder in view of the contention of the respondent that letter of resignation was never acted upon and was rendered ineffective by the respondent being continued in services of the petitioner. The mention of the resolution is made for the first time in the rejoinder by contending that the resolution dated 21st June, 2014 was not called for by the respondent no. 1 before the School Tribunal. Furthermore in paragraph 26 the deponent states as follows :

“As regards the contents of para 15, the contentions of the Respondent no. 1 regarding his Resignation Letter dated 8-10-2013 are misconceived. I say that in view of the discussions between the Members of the Managing Committee of the Petitioner Institution and the Respondent no. 1, in October, 2013, the question of accepting or acting upon the resignation letter and relieving the Respondent no. 1 from employment of the Petitioner in October, 2013 itself had not arisen. Therefore, the question of there being any communication of the Respondent no. 1 in that context does not arise. It is denied that the Resignation of the Respondent no. 1 was to be effective only from 8-10-2013. It is denied that the Office bearers of the Management had approached the Respondent no. 1 and had requested him to continue in service. It is denied that the Respondent no. 1 was informed that his resignation cannot be accepted and he cannot be relieved. It is denied that in any such background, the Respondent no. 1 came to be allowed to work as a Principal till the order dated 3-7-2014. It

is denied that any inference can be drawn as has been suggested by the Respondent no. 1 in last sentence of para 15.

10. From the above averment it is clear that the resignation had not been accepted at the material time. Perusal of the impugned order also reveals that in paragraph 19 the School Tribunal recorded that no resolution accepting the resignation was brought on record, on the contrary letter dated 3rd July, 2014 reveal that the management brought the services of the respondent to an end by giving him one months salary. It is pertinent to note here that despite specific finding that the resolution was not brought on record, the petitioner makes no effort to disclose any such resolution accepting resignation. The fact is that the respondent continued to act as the Principal with the approval of petitioner and despite the allegations of unsatisfactory performance. Perusal of the impugned order reveals that all relevant facts have been dealt with and reasons for arriving at the decision cannot be faulted. Nothing has been shown to me that is perverse. I do not find any reason to interfere with the impugned order in the Writ Jurisdiction of this Court. In the result the petition fails. Accordingly, I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)