

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7970 OF 2019

Rotary Medical and Community Trust & ...Petitioners
Anr.

Versus

Mangesh Ashok Vaidya & Anr. ...Respondents

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Mr. S. V. Dixit, Advocate for the Petitioners.

Mr. Shaikh Masjit Sardar, Advocate for Respondent No. 1

Mr. S. S. Deshmukh, for the Respondent No. 2.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 01-07-2019.

PER COURT :

01. I have heard the learned Advocates for the petitioner-management and respondent No. 1-original appellant. The representatives of the management as well as the appellant are present in the Court.

02. After considering the entire submissions of the litigating sides, I find that the School Tribunal has touched the issue of resignation without framing an issue to that effect. It has allowed the appeal concluding that the oral termination of the appellant dated 27.12.2016 was bad in law.

03. The appellant had approached the School Tribunal vide Appeal No. 02/2017 filed on 25.1.2017 taking a stand that he was orally terminated from employment on 27.12.2016. Thereafter, the litigating sides had an occasion to be before the Shrirampur City Police Station, Tq. Shrirampur, in view of the appellant having approached the Police Inspector vide his letter dated 24.1.2017. The parties were again before the Police Inspector and on 2.2.2017 the appellant tendered a statement wherein he submits that he would be resigning from employment and he has received an amount of Rs. 2,60,000/- from the management as full and final settlement of his legal dues. He, accordingly has written down a resignation on 2.2.2017 in his handwriting and submitted to the Secretary of the Educational Institution. The institution passed a resolution on 22.2.2017 accepting the purported resignation of the employee.

04. The learned Advocate for the appellant has strenuously contended that the MEPS Act and the rules framed thereunder do not permit the filing of a resignation. The tendering of a resignation in this fashion does not permit the management to accept the resignation instantly and relieve the employee.

05. The petitioner had tendered its written statement opposing the appeal on 28.11.2018.

06. I find from the proceedings that on the one hand the appellant had specifically approached the School Tribunal alleging oral termination w. e. f. 27.12.2016. The management has come up with a specific case that the appellant had resigned on 2.2.2017 and his resignation was accepted on 22.2.2017 after 20 days and an amount of Rs. 2,60,000/-, as full and final legal dues, was also paid to him. The case, therefore rests on a face-off as to whether the appellant was orally terminated or whether his resignation accepted on 22.2.2017 amounts to forcible resignation.

07. The School Tribunal did not frame any issue to this effect and as such this issue was not addressed to the Court in the literal sense.

08. The learned Advocate for the management submits on instructions that if the said issue is cast after the appellant amends his appeal, the petitioner is agreeable to advance oral final submissions before the Tribunal on or before 31.7.2019. The learned Advocate for the appellant submits on instructions that the appellant is agreeable to amend his appeal within 10 days and would

address the Court on all issues including the additional issue framed.

09. Considering the above and for the reasons recorded, the petition is partly allowed and the impugned Judgment dated 22.4.2019 is set aside only for the reason that a decisive issue was not framed by the Tribunal. The appeal No. 2/2017 is remitted to the School Tribunal, Solapur with the following directions :

- a) The litigating sides would appear before the School Tribunal on 15.7.2019.
- b) The appellant would amend the appeal by adding the contentions with regard to the issue of resignation and would add a prayer accordingly. A freshly typed copy of the amended appeal would be tendered on the same date.
- c) If felt necessary, the respondent management before the Tribunal would submit an additional reply to meet the contentions of the appellant in the amended appeal, on or before 19.7.2019 and shall not seek extension of time.
- d) All the litigating sides would advance

their oral submissions before the School Tribunal on 30.7.2019 and 31.7.2019.

e) The Tribunal shall frame an issue regarding the resignation of the Appellant.

f) The School Tribunal would decide all the issues in the appeal on its own merits on or before 31.8.2019.

g) This Court has been cautious in avoiding any observation on the contentions of the parties and therefore, there is no reason for the School Tribunal to be influenced by any observation appearing in this Order.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-