

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11088 OF 2017

The President & Ors.

.. Petitioners

Vs.

Jaywant Baburao Patdar & Anr.

.. Respondents

Mr. Sarang S. Aradhye for the petitioners.

Mr. P. G. Lad for respondent no.1.

Ms. Vaishali Nimbalkar, AGP, for respondent no.2.

CORAM : A.K. MENON, J.

DATED : 7TH JANUARY, 2019.

P.C. :

1. This writ petition challenging the order dated 29th July, 2017 passed by the School Tribunal, Kolhapur, allowing an appeal filed by the first respondent, setting aside the termination of the services on 18th January, 2014 finding it illegal and improper and directing the petitioner nos.1 to 3 to reinstate the respondent. The impugned order rejects the claim for back wages and therefore partly allows the appeal.
2. It will be appropriate to mention that prior to the appeal against the impugned order, respondent no.1 had filed Misc. Appeal no.14 of 2014 in which he had contended that when he attended the petitioners school on 22nd January, 2014 the Head Master did not allow him to

sign the school muster and was not allowed to work. As a result, it was contended that there was oral termination of services. Although the delay was condoned, the petitioners contended that the respondent no.1 had resigned and in view of this contention, the appeal having been filed on the basis of oral termination, the appeal came to be rejected. Appeal no.65 of 2016 was then filed challenging the action of the petitioners in terminating services on the basis of the resignation which has been contested by the first respondent.

3. On behalf of the petitioner management Mr. Aradhya submitted that the impugned judgment framed two main issues; firstly whether the respondent no.1 had been appointed following due process of law as a peon on 5th June, 2002 and whether the letter of resignation relied upon by the petitioner was fabricated and that the termination on 18th January, 2014 was liable to be set aside. Both issues are answered in the affirmative. As a result, the appeal came to be partly allowed.
4. It is the case of the petitioners that the respondent no.1 had tendered his resignation vide a letter dated 19th October, 2013 copy of which appears at Exhibit B to the petition. It narrates that respondent no.1 was unable to continue in service of the school on account of some domestic issues and sought to be relieved of his duties. He submitted

that the request contained in the said resignation letter was considered by the management on 30th November, 2013 at its meeting held on that date and it was decided to relieve the respondent no.1 who had served the school for about 10-12 years. However, his resignation was to be placed for acceptance in the next meeting.

5. At the next meeting the resignation was stated to be accepted and in the presence of respondent no.1. In this respect, Mr. Aradhya relied upon a two extracts of the minutes of meeting dated 5th January, 2014 which were also produced before the tribunal in which the management decided to accept the resignation with effect from 10th January, 2014 in the presence of the respondent. This has, however, been contested by the respondent no.1.
6. It was further submitted that the tribunal has omitted to consider the fact of this resolution having been passed and has proceeded to allow the appeal mainly on the basis that the resignation was not sent by registered post and therefore, in paragraph 29 the tribunal holds that the letter of resignation was not voluntarily submitted and was not in non-compliance of Section 7 of the M.E.P.S. Act and Rule 40 of the M.E.P.S. Rules. Mr. Aradhya submitted that the finding to that effect is perverse in view of the fact that the letter of resignation was made out

by the respondent himself, signed by the respondent and handed over in person. He further submitted that it is not necessary that the resignation letter should have been sent by registered post.

7. In support of his contention, he relied upon the decision of this Court in *Progressive Education Society and another v/s. Mohammad Ali Gulam Dastagir Dafedar and others [2017(5) Mh. L.J. 242]* wherein the learned Judge had observed that it was not necessary to hold that the resignation which was not forwarded by registered post must be recorded as invalid and that such an extreme position is not warranted by the language of Section 7 of the Act. He pressed into service the said observations in support of his contention that the resignation was valid and merely because it was tendered in person and not sent by registered post, it could not be considered as invalid.
8. It is also contended that although the true copy of the resignation and the resolution dated 30th November, 2013 and 5th January, 2014 had been filed before the tribunal on 17th October, 2014, the tribunal has not considered the same. He submitted that the impugned order is also bad because it fails to consider this defence. The learned counsel for the petitioner therefore submitted that the impugned order must be set aside.

9. The petition is opposed by Mr. Lad who contended that the resignation was not tendered by the respondent who was entitled to continue employment. He supported the impugned order.

10. In the course of submissions of counsel, I called upon Mr. Aradhye to confirm whether the dues of the respondent no.1 had been paid at the time of acceptance of his resignation since according to the petitioners argument, the resignation was accepted at a meeting of the management when the respondent was present in person. To this, the answer was in the negative. It is therefore admitted that the amounts due to the respondent no.1 till he was relieved on 18th January, 2014 has not been paid. That apart, when one considers the order of the tribunal, I find that the tribunal has recorded findings of fact that the resignation letter which was admittedly not sent by registered post, would normally have been entered in an inward register.

11. In the facts at hand the resignation letter did not bear any inward number of the school. One would expect that even if letter does not bear an inward number, it would be entered in an inward register. In the case at hand resignation was not entered in the inward register or any other filing record. This observation of the tribunal was prompted

by the fact that the inward register could have been produced before the tribunal but was not. The tribunal therefore came to the conclusion that appropriate evidence had not been filed by the school. The tribunal proceeded on the basis that the contentions of the petitioner that the resignation was voluntary and that it was handed over in person cannot be believed.

12. In paragraph 19 and 26 of the impugned judgment, the tribunal has observed that if the resignation was given by the employee, an endorsement would have been made by the office which would show when the resignation was received. The school could have produced these records but they were not so produced. As a result, the tribunal concluded that the letter of resignation does not appear to be voluntary in addition it does not comply with Section 7 of the Act and Rule 40 of the Rules. That apart the decision in the case of Progressive Education Society (supra) takes into consideration the observations in the judgment in *Balaleshwar Shikshan Mandal v/s. Jaywant Bhaguji Gadekar in Writ Petition no.6049 of 2002* wherein this Court had occasion to observe that when an employee seeks to contend that his resignation was not voluntary, the tribunal must decide that question on the basis of evidence before it and the fact that resignation has not been submitted by registered post is one factor to be considered but

that alone is not conclusive.

13. In that case the tribunal held that on the basis of evidence the resignation was not voluntary. In the instant case as well the tribunal has in my view attempted to analyze the circumstances and called for the inward register to test the petitioner's case, but to no avail. The petitioners have admittedly not produced the inward register or any other record to show that the resignation was voluntary and was treated as such. It is not the contention of the petitioner before the tribunal that no register was maintained by the school. The fact remains that the school did not produce the register at the hearing of the appeal and despite enquiry in that behalf being made by the tribunal. In my view the judgment impugned in this petition does not demonstrate any perversity or illegality. It calls for no interference. Therefore I pass the following order:

(I) Writ Petition is dismissed.

(II) No orders as to costs.

(A.K.MENON,J.)