

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3154 OF 2012

Sachin S/o Shripat Pawar
Age: 32 Yrs, Occu: Nil,
R/o: Plot No.79-B,
Vrindavan Nagar, Malegaon Road,
Taluka: Chalisgaon District: Jalgaon

... Petitioner
(Orig. Appellant)

Versus

1. President,
Universal Education Academy,
40, Vir Nariman Road,
Hashmi Building, First Floor,
In front of Akbar Lodge,
Fort Mumbai – 23.
2. Secretary,
Universal Education Academy,
N-7, Gruha Swapna Housing Society,
Gulmohar cross Road No.-4,
Juhu, Near Andheri Station,
Mumbai – 49.
3. Universal Education Academy
Mumbai through Nalande Vidyalaya,
(Junior College) Chalisgaon,
District Jalgaon.
4. Head Master
Nalanda Vidyalaya,
Chalisgaon, District Jalgaon.
5. Nitin Prakash Pawar
Nalanda Vidyalaya,
Taluka: Chalisgaon, District Jalgaon.
6. Sandeep Giridhar Pawar
Librarian, Shivaji Madhyamik
Vidyalaya, Takli Para De,
Taluka: Chalisgaon District: Jalgaon.
7. Education Officer (Secondary)
Zilla Parishad, Jalgaon.

8. Deepika W/o Arun Balsane
Age: 38 yrs, Occu: Service,
R/o: Anil Nagar, Chalisgaon,
District: Jalgaon

... Respondents

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Mr. R.J. Goldbole, Advocate for the Petitioners
Mr. A.B. Chate, AGP for Respondent No.7-State
Mr. P.R. Patil, Advocate for Respondent Nos.1 to 3
Mr. R.B. Temak, Advocate for Respondent Nos.4 to 6
Mr. P.S. Paranjape, Advocate for Respondent No.8

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CORAM : V. K. JADHAV, J.
RESERVED ON : 28.11.2019
PRONOUNCED ON : 27.04.2020

JUDGMENT:-

1. Heard finally with consent of the parties at admission stage.

2. Being aggrieved by the judgment and order dated 03.03.2012 passed by the Presiding Officer, School Tribunal, Nashik thereby dismissing an appeal bearing Appeal No.11 of 2010, the petitioner – original appellant has preferred this writ petition.

3. Brief facts giving rise to the present writ petition are as follows:

(a) The petitioner is BSc., B.Ed and belongs to SC category. Respondent Nos.1 and 2 run the Education Institution. There are two Schools run by respondent nos.1 & 2/Institution. Respondent No.2/Secretary of the Institution, vide notification dated 26.10.2009, had advertised two posts of "Shikshan Sevak" in Dainik

'Janshakti'. Out of two advertised posts of "Shikshan Sevak", one was reserved for 'SC category' and another was for 'Open category'. The petitioner being eligible applied to the post of "Shikshan Sevak" from SC category. After following due process, the petitioner was selected and appointed as a "Shikshan Sevak" by the appointment order dated 03.11.2009. The petitioner had, accordingly submitted the joining report on the same date and started performing his duty as a "Shikshan Sevak" in the School of respondent no.3 & 4 run by respondent nos.1 & 2. It is a case of the petitioner that though the respondent/management was under statutory obligation to forward his proposal for approval but instead of forwarding his proposal for approval, has forwarded the proposal of Mr. Sachin Suresh Patil, who came to be selected from open category. According to the petitioner, the roster was verified on 23.12.2009 and it was found that two posts of SC, one post of OBC and one of SBC category posts backlog were not filled in. It is also the case of the petitioner that his post was properly filled in. However, the said Sachin's post was wrongly filled in. According to the petitioner, the approval, for the reason best known to the Education Officer, granted to the said Sachin Patil on 24.12.2009 by ignoring the roster. It is the further case of the petitioner that the respondents in collusion with the said Sachin Patil decided to remove the petitioner from the service and accordingly, hatched a conspiracy. It is the further case of the petitioner that he had been to the School on 28.01.2010 and by extending threats and by using muscular power, the respondents compelled him to tender resignation. The petitioner had

no option but to tender resignation under pressure and due to coercion, he had tendered the resignation. On 02.02.2010, the petitioner had lodged a complaint to the Education Officer and explained that, the resignation has been forcibly taken from him. The petitioner was also filed the complaint to the various authorities including police and he had left with no other choice but to prefer an appeal before the School Tribunal. The respondents had also appeared in the said appeal and according to them, the petitioner and his father were given understanding that from June, 2010 onwards, there will be a vacancy of full time Shikshan Sevak, due to retirement of one Teacher and therefore, the proposal for approval was not forwarded. The petitioner was appointed as a part time Shikshan Sevak and therefore, there was no question of forwarding his approval. The said Sachin Patil was senior to the present petitioner and naturally, his approval for full time Teacher was duly forwarded. According to the respondents, the petitioner had voluntarily submitted his resignation, as he was not ready to work as part time teacher.

(b) Learned Presiding Officer of the School Tribunal, by impugned judgment and order dated 03.03.2012, dismissed the appeal. Hence this writ petition.

4. Learned counsel for the petitioner submits that the main contention raised by the petitioner – original appellant before the School Tribunal was to the effect that the respondent/management induced the petitioner to write and

sign a resignation from the post of Assistant Teacher and the said resignation was obtained forcefully and without free consent of the petitioner. Learned counsel submits that the disputed resignation obtained by the respondent/management was not in accordance with the provisions of Section 7 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (hereinafter referred to as "M.E.P.S (CS) Act") r/w Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "M.E.P.S. (CS) Rules"). Learned counsel submits that admittedly, so called resignation has not been forwarded by R.P.A.D. The petitioner has disputed voluntary nature of execution of the document i.e. resignation. Learned counsel submits that as per terms of Rule 40 of M.E.P.S. (CS) Rules, no advance notice of one month was given. After the said resignation, the complaint was immediately lodged to the Education, B.C. Cell authority and to the police station. Learned counsel submits that the Presiding Officer of School Tribunal ought to have considered genuineness of resignation and its validity in terms of the requirement of Section 7 of M.E.P.S. (CS) Act r/w Rule 40 of M.E.P.S. (CS) Rules. The Presiding Officer of the School Tribunal ought to have considered the fact that the letter of resignation was tendered under coercion, duress or pressure.

Learned counsel submits that the Presiding Officer had failed to take a note of the fact that the respondent/management had advertised two posts and due to backlog, the candidate was selected along with appellant as Shikshan Sevak belongs to open category and as per roster, the post was not available to accommodate and to obtain an approval in favour of open category candidate and in case, if the petitioner gets the approval, then the chances of getting approval to the said Sachin Patil (who belongs to open category) as full time Shikshan Sevak was very less. Learned Presiding Officer of the School Tribunal had failed to take into consideration that respondent no.4/Head Master and respondent nos.5 to 6 belongs to open category, had pressurized the appellant to tender the resignation for the above stated purpose. They all are belonging to open category. Learned counsel submits that it is also material circumstances that respondent no.4/Head Master had intentionally forwarded Sachin Patil's proposal as a full time Shikshan Sevak and failed to forward petitioner's proposal for approval as a Shikshan Sevak. Furthermore, the subsequent letter of the Education Officer cancelling the approval granted in favor of Sachin Patil also supports theory put forth by the petitioner. Learned counsel submits that the Presiding Officer has incorrectly held that the petitioner was appointed as a part time Shikshan Sevak. As a matter of fact,

the resolution of the Management nowhere mentions that the appellant was appointed as a part time Shikshan Sevak but only with a view to protect the said Sachin Patil and with a view to deprive the petitioner from claiming full time post of Assistant Teacher, it has been subsequently stated so in the appointment order.

5. Learned counsel submits that it is well settled that the employee must express his intention to resign in the manner prescribed and as such, the compliance of Section 7 r/w Rule 40 of M.E.P.S. (CS) Rules, is necessary. The notice of resignation given in breach of prohibition under sub-rule (3) of Rule 40 would make resignation invalid. Learned counsel submits that the notice of duration of three months as required under Rule 40 is mandatory. Learned counsel submits that if there is a serious dispute about the voluntary nature of resignation, then surrounding circumstances would assume significance and the fact that the resignation was not submitted in the mode which has been statutorily prescribed would be a material consideration.

6. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the following cases:

(i) **Bahujan Vikas Mandas, Akola & Anr. Vs. Manda Vithalrao Parsutkar & Anr.** reported in 2011 (2) Mh.L.J. 203

(ii) **J.B. Shaikh Vs. N.Z. Kulange & Ors. (Division Bench of High Court) MEC 2026/1992 (1) CLR 414**

(iii) **Shri. Sant Sawtamali Shikshan Prasarak Mandal Vs. State of Maharashtra & Ors. reported in 2008 (6) Mh.L.J. 529**

(iv) **Neminth Jain Bhramhacharya Ashram & Ors. Vs. Rajendra Sitaram Nikam & Ors. reported in 2004 Mh.L.J. 151**

7. Learned counsel Mr. P.R. Patil for respondent nos.1 to 3 submits that as per staff approval given by the Education Officer, Zilla Parishad, Jalgaon, in the academic year 2008 – 2009, there were 15 posts approved for teaching staff. However, for the next academic year i.e. 2009-2010 there was reduction of half post and only 14 ½ posts were approved. Learned counsel submits that the petitioner was appointed as part time Shikshan Sevak. However within a period of less than three months, the petitioner had submitted resignation from the said post in the presence of his father, the Chairman, Mr.Ramchandra Yashwant Jadhav, Education Committee, Municipal Council, Chalisgaon and Jairam Kautik Patil, Chairman of School Committee, Takli. The petitioner had informed that he do not want to work on part time post. Learned counsel submits that the petitioner and his father were explained that due to the retirement of one teacher, namely, Mr. Rakhunde his post will be converted into full time post. However, the petitioner had insisted on acceptance of his

resignation. Respondent No.2/Secretary then asked the petitioner to write the resignation letter that he would not claim any right in respect of his appointment. Accordingly, the petitioner voluntarily wrote in his own handwriting the resignation letter. Learned counsel submits that it is admitted that the resignation letter is written in the handwriting of the petitioner and it is also signed by him. Learned counsel submits that the petitioner has never made any allegations against the President, Secretary or any persons of the Management in respect of his resignation. On the other hand, the petitioner has made allegations only against other employees of the School. It is nowhere explained as to why these employees were interested in his resignation. Learned counsel submits that it is interesting to note that respondent No.6 viz. Sandip Pawar against whom the allegations have been made, was working at some other School as a part time Librarian. Learned counsel submits that the allegations about the discrimination on the ground of caste are also not sustainable as the founder Chairman of Institution, Mr. M.A. Wagh himself belongs to category of the petitioner. Learned counsel submits that in terms of affidavits filed by one Mr. Ramchandra Jadhav and Mr. Jairam Kautik Patil, it is clear that the petitioner was explained about likely hood of the permanent vacancy in the School by June, 2010. However, the

petitioner, who was present along with his father and one of his relative, insisted of acceptance of his resignation. The petitioner's subsequent conduct of lodging of police complaint after a period of 25 days is self-speaking that he had voluntarily resigned from the post of part time Shiskhan Sevak. Learned counsel submits that the School Tribunal has, therefore, rightly dismissed the appeal.

8. Learned counsel submits that once an employee signs the letter expressing his intention to resign and voluntarily submits a copy thereof to the Management, such an act would be substantial compliance of Section 7 and Rule 40 of M.E.P.S. (CS) Act and Rules. Learned counsel submits that the acceptance of resignation tendered by the teacher with immediate effect cannot be withdrawn subsequently. Learned counsel submits that the learned Presiding Officer, School Tribunal has considered the evidence and the entire aspect of the case and correctly held that the resignation tendered by the petitioner was not obtained by force. There is no perversity in the finding and tribunal has taken possible view.

9. Learned counsel Mr. P.R. Patil for respondent Nos.1 to 3, in order to substantiate his contention, placed reliance on the following cases:

(i) **Balaleshwar Shikshan Mandal and Ors. Vs. Jaywant Bhaguji Gadekar and Others** reported in 2003 (4) ALL MR 108

(ii) **Atul Nathuram Naiknawada Vs. Secretary Bhagiratibai Late High School** reported in 2015 (5) ALL MR 359

(iii) **Anandilal Ganesh Podar Society Vs. Mrs. Chakravarti** reported in 2005 (1) Mh.L.J. 480

(iv) **Ashok Balaji Biradar Vs. Mahesh Shikshan Prasarak Mandal, Udgir and Others** reported in All MR 2010 Supp. 773

10. Learned AGP for respondent no.7 submits that the respondent/management had advertised two posts of Shikshan Sevak on 26.10.2009, one post of SC category and another for open category. The petitioner was selected and appointed as Shikshan Sevak and joined on 3.11.2009 in respondent's School as Shikshan Sevak. In addition to this, the Management has also appointed Shri. Sachin Suresh Patil, who belongs to open category and in the academic category 2008-2009, 15 posts were sanctioned in staffing scheduled. So far as the academic year 2009-2010 is concerned, half post of Shikshan Sevak was reduced. The Education Officer has verified the roster as on 29.12.2009 and at that time, the Assistant Commissioner (B.C. Cell) has pointed out that there is backlog of two posts from SC category, one post of OBC and one post of SBC category. But despite that respondent/management has selected Shri.Sachin Suresh Patil

who belongs to open category as a Shikshan Sevak. The Education Officer (Secondary), Zilla Parishad, Jalgaon has cancelled the approval of said Sachin Suresh Patil on 12.03.2010.

11. Learned AGP submits that however the petitioner was not willing to work as part time Shikshan Sevak and tendered his resignation to the General Secretary, Universal Education Academy, Mumbai-23 on 28.01.2010, which was accepted by the Management. Since the appeal preferred by the petitioner was dismissed by the School Tribunal, then the Education Officer (Secondary), Zilla Parishad, Jalgaon gave continuation to Sachin Suresh Patil. Learned AGP submits that considering all the aspects of the case, the resignation tendered by the petitioner was willful. There is no substance in this writ petition and the same is liable to be disposed of.

12. Learned counsel appearing for respondent nos.4 to 6 and 8 adopted the submissions made on behalf of respondent nos.1 to 3.

13. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the appeal memo, annexures, thereto and the reply filed by the respondents.

14. The main contention raised by the petitioner that the respondent/management had obtained his resignation forcefully and it was not voluntarily tendered by the petitioner. The respondent/management has denied the same. It is the contention of the respondent/management that even though the understanding was given to the petitioner that he would likely to get a full time job in the month of June itself. Even then, the petitioner voluntarily tendered his resignation in his own handwriting contending therein that he do not want to work as a part-time Teacher. In view of these rival submissions, it is necessary to consider pre and post-resignation conduct of the Management vis-a-vis the petitioner.

15. Pre-resignation conduct:

(i) The respondent/management had given advertisement on 26.10.2009 for filling of two posts of Shikshan Sevak out of which one was reserved for SC category and another one for open category. It is not mentioned in the advertisement that the advertised post particularly from SC category is a part time post.

(ii) It is a case of the petitioner that as per resolution no.3, the respondent/management has resolved to appoint the petitioner as a Shikshan Sevak for a period of three years. The respondent/management has not specifically denied the same.

(iii) It is a part of record that as per roster, one and half posts were vacant and one was reserved for SC category and another half post for open category candidate. However, the appointment order has been given to the petitioner stating therein that the petitioner has been appointed as a part time Teacher.

(iv) In terms of appointment order, the petitioner had joined the School at Nalanda Vidayala, Chalisgaon on 03.11.2009. It is the case of the respondent/management that the petitioner was given understanding that the said post will be made full time in the month of June.

(v) It is the further case of the respondent/management that though the respondent/management has tried best to convince the petitioner and his father that the post is likely to be made full time, even then, the petitioner declined to continue on the said post and submitted resignation voluntarily. It is very unlikely on the part of the petitioner to submit his resignation voluntarily when he was assured by the management that the said post will be made full time in the month of June.

(vi) It is the case of the petitioner that he was forced to give resignation in order to accommodate the candidate from open category. On perusal of the resignation letter dated 28.01.2010, though it is not disputed that the same is in the handwriting of the petitioner, however, the last sentence of the said resignation creates doubts about his voluntariness. As

per the said last sentence of resignation, the petitioner has relinquishes right in respect of his appointment as a Shikshan Sevak.

16. Post-resignation conduct:

(i) On 02.02.2010, i.e. five days of the so called resignation, the petitioner has filed the complaint in writing to the Education Officer (Secondary) Zilla Parishad, Jalgaon contending therein that the Management had obtained his resignation forcefully and further restrained him from entering into the school. It is also contended in the said complaint that to accommodate the Shikshan Sevak appointed in open category a proposal for his approval alone was submitted to the Education Department however petitioner's proposal for approval was not sent.

(ii) On 15.02.2010, the petitioner has approached the Commissioner Backward Class Welfare Cell, Divisional Office, Nashik and filed his written complaint.

(iii) On 19.02.2020, the petitioner has submitted his complaint to Deputy Superintendent of Police, Chalisgaon alleging therein about the force used against him for obtaining resignation.

(iv) According to the respondent/State there are backlog two posts from SC category, one post for OBC and one post for SBC category. But despite that the respondent/management selected Sachin Suresh Patil (who belongs to open category) as a Shikshan Sevak.

(v) The Education Officer (Secondary) Zilla Parishad, Jalgaon had cancelled the approval of Sachin Patil on 12.03.2010.

(vi) After dismissal of appeal of the petitioner, again the Education Officer (Secondary) Zilla Parishad, Jalgaon gave continuation to Sachin Suresh Patil by order dated 27.01.2014.

17. In a case of Neminath Jain Bhramhacharya Ashram (Jain Gurukul) and Ors. Vs. Rajendra Sitaram Nikam and Ors. (Supra) relied upon by the learned counsel for the petitioner, this Court (Coram: D.Y. Chandrachud, J.) in Paragraph No.4 of the judgment has made the following observations:

“4. My attention has been drawn to a judgment of my Learned Brother Mr. Justice A.M. Khanwilkar in Balaleshwar Shikshan Mandal v. Jaywant Bhaguji Gadekar (Writ Petition 6046 of 2002 decided on 10th June, 2003). That was a case where an Assistant Teacher who had been appointed in a private school resigned voluntarily on 16th August, 1998 and which resignation was placed before the Managing Committee in a meeting held on 29th November, 1998 when it was accepted. A communication in that regard was sent to the Petitioner on 9th December, 1998. The fact that the Petitioner had submitted a resignation on 16th August, 1998 was not disputed, nor was the fact that the resignation was handed over to the Chairman and that it had been accepted. In these circumstances, Khanwilkar, J. held that once the resignation was accepted, the matter stood finally concluded. The Tribunal had proceeded on the basis that the resignation had not been accepted by the Management and had been ignored which was contrary to the

record. On these facts, the learned Judge held that merely because a copy of the letter had not been forwarded by registered post would not render the resignation void. The learned Court held that on a plain reading of Section 7 it would appear that once an employee signs a letter expressing his intention to resign and voluntarily submits a copy thereof to the Management this would constitute substantial compliance with Section 7. Therefore, that was a case where on all accounts there was no dispute about the fact that the resignation had been voluntarily submitted by the teacher and the only grievance of the teacher was that the Management had in fact not accepted the resignation and had ignored it. On the contrary, the judgment of the learned Single Judge would seem to indicate that where as in the present case, there is a serious dispute about the voluntary nature of the resignation, the surrounding circumstances would assume significance and the fact that the resignation was not submitted in the mode which has been statutorily prescribed would be a material consideration. One need not go as far as to hold that a resignation which is not forwarded by registered post must on that ground be regarded as invalid in every case irrespective of the surrounding circumstances. An extreme position is not warranted on the language of Section 7. What must be emphasized is that where an employee seeks to contend that his resignation was not voluntary, the Tribunal must decide that question on the basis of the evidence before it. The fact that the resignation has not been submitted by the mode of registered post is one factor to be considered though that in itself is not conclusive. In the present case the Tribunal has held on the basis of the evidence before it that the resignation was not voluntarily submitted. That finding is not shown to be perverse.

. In the instant case, in the backdrop of pre-resignation and post-resignation conduct, the learned Presiding Officer of the School Tribunal should have decided the question with some sound reasoning and should have given due weightage to the fact that the resignation in the present case has not been submitted by the mode of registered post.

18. In a case of Bahujan Vikas Mandal, Akola & Anr. Vs. Manda Vithalrao Parsutkar and Anr. (Supra), relied upon by the learned counsel for the petitioner, this Court (Coram: R.K. Deshpande, J.) in paragraph Nos. 12 and 13 has made the following observations:

“12. In none of the aforesaid judgments, the question whether, the process of drawing up of resignation in duplicate, signing both the copies and putting of date therein, contemplated by section 7 of the M.E.PS. Act, should mandatorily be in the handwriting of an employee intending to resign from his post, has been considered. In order to consider this question section 7 of the said Act will have to be seen and the same is, therefore, reproduced below;

7. Procedure for resignation by employees of private schools.

If any employee intends to resign his post in any private school, at any time after the appointed date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy

with him.

In terms of section 7 reproduced above, an intention to tender resignation has to be made clear by,

- (i) drawing up a letter of resignation in duplicate;
- (ii) signing both the copies of that letter; and
- (iii) putting the date thereon.

The further requirement is of forwarding one copy of it to the Management by registered post and keeping the other copy by an employee, intending to tender his resignation.

13. “To resign” means an act by which an employee voluntarily gives up his job. It is the voluntary cessation of relationship of employer and employee or master and servant, by an employee. Section 7, reproduced above, prescribes the process by which an employee should express his intention to resign from the post and therefore, the expression of such intention has to be in the manner prescribed. The first step in the process is, “to draw up a letter of resignation in duplicate”. “To draw up” is a phrasal verb and it means “to prepare”, to compose”, “to write out paper”. As given in Oxford Thesaurus. The advanced Law of Lexicon, by Shri. Justice Y.V. Chandrachud, defines it as, “to write in due form”. It defines “drawing up” means “drafting in due form”, “writing out”. The Oxford Dictionary defines, “drawing”, as a “picture or diagram made with pencil or pen”. Black’s Law Dictionary defines the verb “draw” as “to create and sign” (a draft). Thus, the phrasal verb “draw Up” used in section 7 above, connotes the process of handwriting as against the process of typing or printing. The object of section 7 is to express an intention to voluntarily resign from the post, and such an intention can be made clear by preparing, composing, creating or writing out such letter of resignation by an employee in his own handwriting. To hold that such a letter of resignation can be typed written or printed

would defeat or frustrate the very object of section 7 of the said Act. The use of word “shall” preceding the phrasal verb “draw up” in section 7, indicates the process of preparing a letter of resignation in his own handwriting, to be mandatory.

. In the instant case, I do not find any specific intention on the part of the petitioner to resign in the manner prescribed. On the other hand, in the given set of facts, it is rather difficult to believe the stand taken by the Management that despite the Management’s persuasion, the petitioner has tendered his resignation.

19. In a case of Shri. Sant Sawtamali Shikshan Prasarak Mandal Vs. State of Maharashtra (Supra) relied upon by the learned counsel for the petitioner, this Court (Coram: P.B. Majmudar, J.) in paragraph nos. 9, 10 and 11 has made the following observations:

“9. Reference is required to be made to Section 7 of the Act which reads as under:

7. Procedure for resignation by employees of private school: If any employee intends to resign his post in any private school, at any time after the appointed date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him.”

10. Rule 40 of the Rules reads as under:

“40. Resignation: (1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month’s notice. The Management may, however, allow

an employee to leave service earlier on payment of pay (excluding allowances) for three months, or as the case may be, one month lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay or the period by which the notice period falls short.

(2) If any Management allows an employee to leave service earlier either without due notice or without making payment of pay in lieu of notice as specified in subrule (1), a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned.

(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year.

11. So far as the aforesaid provision is concerned, the statute provides that a management cannot take undue advantage by compelling a teacher to give resignation either by force or by giving any type of inducement. There is safeguard provided in the Act and with an object to see that in a given case the management may not pressurize the teacher to give resignation and as to whether in a given case the so called resignation is misused by the Management and for that purpose safeguards have been provided in the statute in the case of resignation. It is not in dispute that in the present case, the resignation has not been given as prescribed under Section 7 of the act read with Rule 40 of the Rules. This aspect has also been considered by the Tribunal in detail. At this stage, the learned counsel Mr. Joshi has relied upon the judgment delivered by the learned single Judge in the case of Talini Imadaddiah (supra). It is true that the learned single Judge has found that a resignation can be tendered in person and if resignation is not sent by registered post cannot be said to be an illegal resignation. In the said matter resignation was tendered by a teacher which was to take effect from the future date that was the intervening vacation. The single Judge has found that merely because notice covers part of the vacation, it would not vitiate the resignation itself as the vacation period was intended to be excluded from being included in the notice period. It is not in dispute in that case the notice period covered three months. The learned Judge observed in para 7 as under:

“Mr. Kudle, learned counsel for the respondent, further submitted that the resignation is contrary to Rule 48, subrule (3), which reads as follows:

(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year.

According to the learned counsel, since a vacation intervened between 18.12.1990 and the resignation was intended to be effective from June 1991, the notice of resignation covered a part of the vacation and is, therefore, illegal. It is obvious that Rule 40 is intended for the benefit of the management as has been held by this Court in N.J.B. Ashram vs. Rajendra, 2004 (2) Mh.L.J. 909. I am in agreement with that view. Moreover, sub-rule (3) is intended to avoid curtailing the notice period. It is intended to exclude the vacation period from being included in the notice period. Rule 40 itself provides for the consequence that would follow if the notice period is shorter than three months. I am of view that merely because the notice covers a part of the vacation, it would not vitiate the resignation itself in a case such as the present one. In the present case, it makes no difference”.

In the instant case, it is the case of the petitioner that he has never tendered his resignation and so called resignation was obtained forcibly by the persons of the Management.

20. In a case of Balaleshwar Shikshan Mandal and Others Vs. Jaywant Bhaguji Gadekar and Others (Supra) relied upon by the learned counsel for respondent/management, this Court (Coram: A.M. Khanwilkar, J.) in Paragraph No.8 of the judgment has made the following observations:

“8. The Tribunal has, however, held that there is noncompliance of Section 7 of the Act. It will, therefore, be appropriate to refer to Section 7 of the Act which reads thus:

“Section 7. If any employee intends to resign his post in any private school, at any time after the appointment date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post

and keep the other copy with him.”

On plain reading of this Section, it would appear that once an employee signs the letter expressing his intention to resign and voluntarily submits a copy thereof to the Management, such an act would be substantial compliance of Section 7 of the Act. In the present case, it is not in dispute that the letter dated 16.8.1998 clearly expresses Respondent’s intention to resign and the letter is dated and duly signed by the Respondent No.1 and that the said letter was made over directly to the Management. Merely because a copy of the letter has not been forwarded by registered post cannot make the resignation void as has been found by the Tribunal. The mode of dispatch would be relevant in cases where the employee disputes the execution of document. But in the present case, the Respondent No.1 has neither disputed execution of the document nor the delivery thereof to the management. In such a case, in my view, there is substantial compliance of the procedure for tendering resignation. The Tribunal has further found that there is infraction of Rule 40 of the Rules. Rule 40 reads thus:

“40. Resignation: (1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month’s notice. The management, however, may allow an employee to leave service earlier on payment of pay (excluding allowances) for three months, or as the case may be, one month in lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay for the period falls short.

(2) If any Management allows an employee to leave services earlier either without due notice or without making payment of pay in lieu of notice as specified in sub-rule (1), a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned.

(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year.”

21. However, this case has been distinguished in two cases cited and relied upon by the learned counsel for the

petitioner i.e. (i) Neminath Jain Bhramhacharya Ashram & Ors. Vs. Rajendra Sitaram Nikam & Ors. (ii) Bahujan Vikas Mandal, Akola & Anr. Vs. Manda Vithalrao Parsutkar & Anr. In view of the same, in the facts and circumstances of the present case, the ratio laid down in the case cited above, cannot be made applicable.

22. In a case of Atul Nathuram Naiknawada Vs. Secretary Bhagiratibai Late High School (Supra) relied upon by the learned counsel for respondent, in the facts of the said case, this Court (Coram: Ravindra V. Ghuge, J.) relied upon the ratio laid down in the Balaleshwar's case held that once an employee signs the letter expressing his intention to resign and voluntarily submits a copy thereof to the Management, such an act would be substantial compliance of Section 7 of the Act. However, it is also observed that the mode of despatch would be relevant in cases where the employee disputes the execution of document.

In the instant case, it is the consistent case of the petitioner that the resignation was forcibly obtained by the Management and within few days, he has filed the complaint before the concerned Education Officer and so also to the various authorities including complaint to the police.

23. In a case of Anandilal Ganesh Podar Society Vs. Mrs. Chakravarti (Supra) relied upon by the learned counsel

for the respondent, the issues altogether different, the resignation of employee was with immediate effect and was accepted by the Management and in the facts of case is held that it could not be withdrawn. In the facts of the case, there was no evidence of physical duress and no circumstance that would indicate that the Will of the first respondent or her capacity to make a free and voluntary decision had been overborne.

In the instant case, there is a sufficient evidence of physical duress so also pre and post-resignation conduct on the part of the Management vis-a-vis the petitioner to conclude that the petitioner has not tendered the resignation freely and voluntarily.

24. In a case of Ashok Balaji Biradar Vs .Mahesh Shikshan Prasarak Mandal, Udgir and Others (Supra) relied upon by the learned counsel for the respondents, in the facts of the case this Court has held that the School Tribunal has taken a possible view in the matter on the basis of contentions raised of the parties and therefore, there is no reason to upset that view. There is also no reason to interfere in the judgment and order of the School Tribunal merely because another view is possible.

. In the instant case, the learned Presiding Officer of the School Tribunal has not considered cumulative effect of pre

and post-resignation conduct of the parties and in the backdrop of the same, failed to give due weightage to non-compliance of Section 7 r/w Rule 40 of M.E.P.S Act and Rules. The judgment and order impugned thus suffers from perversity. In view of discussion above, I am inclined to allow this writ petition and setting aside the impugned order passed by the Presiding Officer, School Tribunal, Nashik.

25. So far as the question of back wages is concerned, in absence of any evidence from both the parties about gainful employment or otherwise, if any, it would be just and appropriate, if the respondents is directed to reinstate the petitioner as a 'Shikshan Sevak' with 50% of back-wages with effect from 28.01.2010. Hence, I proceed to pass the following order:

ORDER

(I) The writ petition is hereby allowed in terms of prayer clauses 'B' and 'C' except back-wages.

(II) The respondents are directed to pay to the petitioner the back-wages to the extent of 50% w.e.f. 28.01.2010.

(III) The writ petition is, accordingly, disposed of.

26. Learned counsel for respondent nos. 1 to 3 submits that the effect of this order may be stayed for a certain period so as to enable the respondents to approach the Supreme

Court. However, this is a service matter pertaining to the submission of resignation which is held to be invalid. In view of the same, I am not inclined to stay the effect of this order. Request refused.

(V. K. JADHAV, J.)

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