

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD**

WRIT PETITION NO. 4654 OF 2012

Petitioner Shri. Sunilkumar S/o Laxmichand Jain
Age: 62 years, Occu: Nil,
R/o: C/o. Jain Hospital,
Akot Road, Shegaon,
Dist. Buldhana – 444203

Versus

Respondents

1. The Chairman,
Shri. Shivaji Vidya Prasarak Sanstha,
Deopur, District: Dhule.
2. The Principal,
B.S. Deore College of Engineering, Deopur,
District: Dhule.
3. S.V. Deodhar, (The Then Principal)
Through, B.S. Deore College of Engineering
Deopur, District: Dhule.
4. The Registrar,
North Maharashtra University,
Umavi Nagar,
District: Jalgaon.
5. The Member Secretary,
The All India Council of Technical
Education,
Indira Gandhi Sports Complex
Indra-Prastha Estate,
New Delhi, 110002.

Mr. Mahesh Swami, Advocate for the Petitioner
Mr. Mukul S. Kulkarni, Advocate for Respondent Nos.1 & 2
Mr. A.B. Girase, Advocate for the Respondent No.4
Mr. C.V. Dharurkar h/f Mr. S.V. Adwant, Advocate for Respondent
No.5

CORAM : AVINASH G. GHAROTE, J.

JUDGMENT RESERVED ON : 03/07/2021

JUDGMENT PRONOUNCED ON : 23/07/2021

JUDGMENT :

. Rule. Rule made returnable forthwith.

2. The petition challenges the judgment dated 24/11/2010, passed by the Presiding Officer, Dr. Babasaheb Ambedkar Marahtwada University Tribunal, Aurangabad in Appeal No.NMU-01/2005.

3. Mr. Swami, learned counsel for the petitioner, contends, that the petitioner, was forced to give his resignation on 18/02/2005. Immediately on the next day, i.e. 19/02/2005, a communication was addressed to the Chairman of the respondent No.1 and other persons that the petitioner, was compelled to tender the resignation, by the then

Principal/respondent No.3 and other persons under threats administered to him. It was submitted, that the petitioner, was confined to the room and was not permitted to go out unless he tendered the resignation, leaving with him no option to do so, under the threats administered to him. A complaint that it was a forced resignation, was also immediately submitted to the Station I/c Deopur Police Station, Dhule and other authorities on 21/02/2005, in which, his statement was recorded on 23/02/2005. Since no heed was taken, an appeal under Section 59 of the Maharashtra Universities Act, 1994 (hereinafter referred to as “the Act”), was filed before the University and College Tribunal, which has passed the impugned judgment on 24/11/2010, without considering the position of law. It is submitted, that the Principal, who is claimed to have accepted the resignation, was not a person legally authorized to do so. It is further submitted, that there have been inimical relations between the petitioner on the one hand, and the Principal and Management on the other, on account of the petitioner, not toeing the line, which is indicated by the fact, that the petitioner had made complaint, to the grievance committee of the

University, on 02/08/2004, bringing to its notice, various false allegations made against petitioner and seeking redress. A complaint was also made by the petitioner, on 31/12/2004, in respect of the exams, held in November, 2004 regarding change of the marks, by Professor Devdhar respondent No.3 in respect of certain examinees in pursuance to which an enquiry was already initiated by the University, by appointing an Inquiry Committee. He further submits, that because of these actions, on part of the petitioner, the Principal carried a grudge against him, and so also, the Management, which stood behind him, all of which resulted in incarcerating the plaintiff, by the Principal and his cronies in a room on 18/02/2005, and by administering threats had forced him to write the resignation. He further invites my attention to the inquiry report dated 28/03/2005, which had rendered a finding that the project term work assessment, in respect of certain students, whose roll numbers, were mentioned therein, was done, only with an intention, to increase the marks and therefore was cancelled. The Committee had also held, that the then Assistant Professor Mr. Polegavande, was liable for the same, to a substantial extent and had recommended to

reprimand him, which according to him, substantiated the contention, that the Principal and the Management had harboured a grudge against him which led to the above action. He further contends, that since the appointing authority of the petitioner under statute 411 of the Pune University, clause (2) was the Management of the Institution, as defined in clause (9), the Principal, could not have accepted the resignation of the petitioner, as is evident from the document at Exhibit-F/62. He further relies upon statute 429 which mandates, that a Teacher shall not leave the service of the University/College/Institution, without giving three months notice, if he is confirmed, or one months notice, if he is on probation or in lieu thereof pay to the governing body an amount equivalent to three months or one months salary, as the case may be. Under sub-clause (1) (d) of statute 429, it was permissible for the governing body to waive the notice period, in part or in full, however there is nothing on record to indicate that this was done and therefore, the acceptance of the resignation dated 18/02/2005, could not have been termed to be legal. He further submits, that the resignation has been accepted on the same day and on the same day itself

the petitioner has been relieved, which relieving order finds place at Page – 63 of the record. He submits, that there is no statute, framed by the University, delineating the duties, power and authorities of the Director, nor anything has been placed on record that the Director in absence of the Managing Committee, could have individually accepted the resignation or for that matter waived off the requirement of the three months notice as contemplated by statute 429. He further submits, that the relieving order is of the same date, which is accepted by the Principal Mr. Devdhar, who also acted as a Director, substantiates this position. He further submits, that upon complaint of the petitioner, a one man Committee of Mr. R. D. Waykole was constituted who had submitted his report on 02/04/2005 (Pages- 46 & 47), in which, a finding has been rendered, that the resignation dated, 18/02/2005, of the petitioner, was forcefully obtained by the Principal Mr. Devdhar, who had admitted the same before the one man Committee.

4. Mr. Swami learned counsel for the petitioner has placed reliance on **Prasad Bhalchandrarao Vaidya Vs. The**

Principal, Terna Engineering College & Ors., WP No.4518/1999 and Le Meridien Vs. Ms. Pramila, Laws (KAR) 2005–10– 62.

5. Mr. Mukund Kulkarni, learned counsel for the respondent Nos.1 and 2 submits, that the resignation, has been voluntarily tendered by the petitioner, which is substantiated from the endorsement on the relieving order, which mentions the word “Thank You”. He further submits, that there was a farewell function organized by the Management, in which, a speech was delivered by the petitioner. The Professors and Lecturers, who were present in this farewell function, have filed their affidavit on record, which is noted by the learned Tribunal in Paragraphs No. 43 to 48 of the judgment. There were variances in the complaint of the petitioner, dated 19/02/2005 and 23/02/2005. He further submits, that the present petition has been dismissed against respondent No.3, by an order dated 07/12/2018, against whom, the allegations have been made, that he was instrumental in obtaining the forced resignation of the petitioner and therefore, the petition cannot be now prosecuted, as there would be contradictory orders, one against the respondent No.3 and the other against the remaining respondents. It is further submitted,

that the petitioner has accepted the gratuity and provident fund during the pendency of the petition without any protest and therefore, is estopped from seeking reinstatement. It is further submitted, that the petitioner is appointed under the signature of the Principal of the College and therefore, he was appointing authority who had accepted the resignation, which could not be faulted with. Even otherwise, the resignation was accepted by the Director, who was the Head of Institute and therefore, was legal. It is submitted, that the resignation was placed before the Chairman, who had directed the Director of the Institute to accept the same and therefore, was legal. He submits, that there is no merit in the petition and the same is to be dismissed. He placed reliance upon **Audumber Narayan Wadadekar & Ors. Vs. State of Maharashtra, Through the Department of Co-operation and Textiles & Ors., (2021) 2 Mah.LJ 712**

6. Mr. Girase, learned counsel for the respondent No.4/ University has placed on record, the statute of the Pune University and invites my attention to statute No.411(2), statute 411(9), 429 and so also, Section 2 (13) defining 'Director' and

Section 2(17) defining 'Institution' under the Act and submits, that it would be the Management as defined, in statute 411 (9), in conjunction with the provisions of statute 429, who would be empowered to accept the resignation and the 'Director', as defined in Section 2 (13) of the Act, has no application *vis-a-vis*, the respondent No.1. He further submits, that in view of the provisions as enumerated above, appropriate decision may be taken.

7. Mr. Dharurkar h/f Adwant, learned counsel for the respondent No.5 submits, that the respondent No.5 has no role to play in the matter and appropriate order be passed.

8. It is not disputed, that the petitioner, initially came to the appointed with respondent No.1/Institution, in June-1990, as a Professor, upon being selected by the duly constituted University Selection Committee and had been working in the respondent No.2/College as Professor in the Department of Electronics.

9. The record reveals, that the petitioner, being the only Professor was working as the Head of Department. On

13/06/1995, the then Principal, had instructed one Shri. P. G. Polgawanole, Assistant Professor of Electronic Engineering Department to hold the charge of the Head of Department from the petitioner. The petitioner being aggrieved made a grievance before the Grievance Committee on 26/09/1995 which was pleased to hold, vide order dated 26/7/1996, that taking away of the charge of Head of Department of Electronics was unjust and directed the Principal to restore the position of the petitioner, as Head of Department, which was not complied with by the Principal, in spite of the reminder dated 01/10/1996. The University, thereafter, on 09/10/1996 declined to accord approval to the appointment of the petitioner as Professor, as a result of which, the order appointing the petitioner as a Professor in the Electronic Engineering Department came to be cancelled on 26/01/96, which came to be challenged by him before the University and College Tribunal in Appeal No. NMU-28/96, which was allowed by the Judgment dated 27/03/1998. Thereafter, certain complaints were made against the petitioner, to the Principal, which were replied to by him. The discord between the Management and the petitioner, is clearly spelt out,

from a perusal of the complaint dated 02/08/2004, made by the petitioner, to the Grievance Committee, North Maharashtra University, Jalgaon. Complaints of harassment by the Principal (Director) Shri. S. V. Devdhar were made by the petitioner on 07/05/2004 and 18/06/2004. The petitioner had also lodged complaint, on 31/12/2004, indicating, that the results, of certain examinees, were manipulated, to show that they had secured more marks. The University, therefore, had appointed an enquiry committee, of Dr. P. P. Patil, whose report dated 28/03/2005, strongly indicted the Assistant Professor Shri. Polgavande holding him responsible for the increase in the marks of certain examinees, in respect of project term work assessment. The report also directed initiation of administrative action against Professor Polegavande. The report also directed reprimanding the Principal, for dereliction of duty. From the above, it is clearly apparent, that the relations between the petitioner and the respondent No.1, were constrained.

10. It is in light of the above back ground that the resignation dated 18/05/2005, tendered by the petitioner has to be viewed. It is not disputed by Mr. Swami, learned counsel for

the petitioner, that the resignation was in the handwriting of the petitioner and bore his signature. The contention is, that it was forced. At the outset, it would be material to note, that at the relevant time, the petitioner had about 4 years service left. There does not appear to be any reason which would have prevailed upon the petitioner to tender his resignation. The petitioner was hale and hearty and the record does not disclose that there was any medical ground for the resignation. It also does not disclose that the petitioner was having any better offer so as to resign. The immediate proximity of the resignation, its acceptance by the Principal and the relieving order all of which are of the same day, also create a great doubt about it being voluntary. That it was not voluntary is further indicated by the communication dated 19/02/2005, the day immediately next to the date of resignation which categorically in clear and express terms states that the resignation of the previous day was forced and was tendered under threats by the Principal and others, who had not permitted the petitioner to go out of the room without giving the resignation. It is further indicated by the complaint made to the Police Station Deopur dated 19/02/2005, received by the Police

Station on 21/02/2005 as is indicated by the endorsement made thereupon (Page-64).

11. What is further worthy to be noted is that the resignation is dated 18/05/2005, and is addressed to the Principal of the College, upon which, there is an endorsement of an inward No.211 dated 18/02/2005 with the seal of the College. It also bears the endorsement of the Head Department of Electronics, of forwarding the same, for N.A. (illegible) on 18/02/2005 and further endorsement of “accepted, he should be relieved today only”, which is made by Mr. Devdhar (Principal/Director) (Respondent No.3). The relieving order is also dated 18/02/2005 which indicates, that the Director / Principal has accepted the resignation, and directed the petitioner to be relieved on 18/02/2005 itself after office hours. It also bears the endorsement of the petitioner of having received with thanks dated 18/02/2005. It is as if, with lightening speed, everything has happened, on the same day, for which, there apparently does not appear to be any reason whatsoever.

12. This has to be also looked into, in reference to the requirement of the statute in this regard. The relevant statute, of the Pune, University in this regard are quoted hereunder for the sake of ready reference.

Statute 429:-

(1) (a) The teacher shall not leave the service of the University/College/Recognised Institution without giving to the University/Governing Body three months notice, if he is confirmed, or one month's notice if he is on probation or in lieu thereof pay to the University/Governing Body an amount equivalent to three month's or one month's salary, as the case may be.

(d) The University/Governing Body, at its discretion may waive the above notice period in part or in full."

13. A bare perusal, of statute 429 (1)(a) would demonstrate, that before leaving service, it is necessary, to give a notice of three months, if he is a confirmed teacher. In the case of the petitioner, it is not in dispute, that the petitioner was a confirmed teacher. In case, a notice is not to be given, then the statute contemplates, payment to the Governing Body an amount equivalent to three month's salary. Statute 429 (1) (d) further provides, that the Governing Body at its discretion may waive the above notice period.

14. It is thus apparent, that either, there had to be a three month's notice by the petitioner expressing his intention to resign or there had to be a resolution by the Governing Body, waiving the notice period. There is admittedly, no notice in existence, in terms of the requirement of statute 429 (1)(a), nor is there any document placed on record, to indicate the waiver of the notice period, by the Governing Body, as contemplated by statute 429 (1)(d). Thus, in the instant case, neither of them is present, which indicates, non compliance with the requirement of statute 429 (1) (a) and (d). There is absolutely nothing on record to indicate, the extreme urgency, for non compliance with the requirement of statute 429 (1)(a) or (d).

15. It is further material to note, that statute 429 (2) contemplates, that before leaving service, a teacher shall hand over his charge, of his post to a duly authorized person in the manner and of the things as contemplated therein and failure to do so, made him liable for recovery of such amount from his salary, which was not payable to him unless the Head of Department/Principal/Head of Institution, issued a clearance certificate in that regard. There is absolutely nothing on record

to show, that there has been any compliance, with the requirement of statute 429 (2).

16. Statute 429 (3) also contemplates, the issuance of a discharge certificate, to be issued to the teacher who leaves service, within a period of 15 days of his application, by the Registrar/Principal/Head of the recognized institution. The record does not indicate, that anything of this nature, has been done.

17. It is thus apparent, that the resignation dated 18/02/2005, runs contrary to the requirement of statutes 429 (1)(a), (d) and 429 (2).

18. The appointment order dated 25/05/1999, of the petitioner, in term No.6(b), also requires, that the member of the staff who desires to leave the services of the institute, shall give to the authorities one calendar month's notice even if he is on probation, provided always in case the member does not give the required notice, the institute authorities may claim from him an amount equal to the salary for the period of notice.

19. It is true, that appointment order dated 29/05/1990, has been signed by the Principal of the respondent No.1/institution, however it is also undisputed, that appointment of the petitioner was upon being selected by the duly constituted University Selection Committee and therefore, the employment of the petitioner, would be governed by the provisions of the Pune University Act, 1974 and various statute framed thereunder. In this regard, statutes 411 (2) & (9) being material, are reproduced as under:

"Statute 411:-

(2) "Appointing Authority" means the authority competent to make appointment to the different posts specified therein. The Appointing Authority for the University/Colleges and Institutions conducted by the University shall be the Executive Council. The Appointing Authority for the Affiliated College/Recognised Institution, shall be the Management of the College/Recognised Institution or the authority constituted by the Management as per its constitution.

(9) "Management" means a Body or a Society or an Institution which has applied for starting/running of a college or recognised institution and which has been duly started/recognised as such; and includes the Governing Body or the Managing Committee or any other body by whatever name it is designated which actually conducts."

20. It is thus apparent, that under statute 411 (2), the Appointing Authority, in respect of the respondent No.1 would be the Management of the College and in view of statute 411 (9), the Management would mean the Body or a Society of the institution, which had applied for starting/running the college and includes the Governing Body or the Managing Committee. It is thus apparent, that the management is not a single individual, but is a body, which comprises of several persons, who are in the Governing Body or the Managing Committee. Thus statute 429 (1)(a) r/w statute 411 (9), would indicate, that the notice of resignation, has to be given to the Governing Body/Managing Committee of the institution and not to an individual. It also follows, that the decision to waive the notice period, is also to be of the Governing Body/Managing Committee and not of an individual person, even if such person, would have been a member of the Governing Body/Managing Committee. As already stated, no such resolution/document has been placed on record, indicating, the acceptance of the notice of resignation/resignation by the Governing Body/Managing

Committee or waiver of the requirement of the notice, by the Governing Body/Managing Committee.

21. As rightly pointed out by Mr. Girase, learned counsel for the respondent No.4, that word “Director” as defined in Section 2 (13) of the Maharashtra Universities Act, means head of an institution including a centre, or a school of the University as designated by the Management Council and Section 2 (17) defines “Institution” to mean an academic institution of Higher Learning, not being a College associated with an admitted to the privileges of the University. This clearly indicates, that word “Director” as defined in Section 2(13) of the Act, has no concern or relation with word “Director”, as occurring in the relieving order dated 18/02/2005. This is further substantiated in view of the fact, that Section 2 (20) of the Maharashtra Universities Act defines Management and Section 2 (25) defines Principal separately. It would thus be apparent, that the order of termination has been passed by the Principal and not by Management. In view of the provisions of Section 59 of Maharashtra Universities Act, which confers right of appeal, the order of termination has to be passed by the Management, which

has not been done in this case, on which ground also, the order of termination cannot be sustained.

22. It is further necessary to note, that the Waykole Committee, appointed by the University, has directly indicted, the Principal (Professor Mr. Devdhar)/respondent No.3 in being instrumental, in obtaining the resignation of the petitioner by force and the said Principal had also admitted, that he as well as the Management were aware, that due to the forced resignation, the petitioner, would file complaint and also approach the Court. The report of the Waykole Committee, is clearly telling and casts severe aspersions upon the bonafides of the Managing Committee. In the face of the report of the Waykole Committee, it was incumbent upon the respondent Nos.1 & 2 to take appropriate corrective measures, vis-a-vis the petitioner, which however was not done. That such an action by the Principal cannot be done on his own, without the support of the institution, cannot be disputed. That this is the position, is clearly apparent from the fact, that the respondent No.1/Institution is supporting the action of the Principal, and is also defending the same. What also needs to be noted is that neither the Waykole

Committee Report nor the findings as rendered therein were in any manner challenged by the respondent Nos.1 & 2.

23. It would thus be apparent, that the resignation of the petitioner, was clearly forced apart from which, it was also contrary, to the requirement of statute 429 (a) & (d).

24. The contention of Mr. Kulkarni, learned counsel for the respondent Nos.1 & 2, that there was a word 'With Thanks recd' written by the petitioner, on the relieving order dated 18/02/2005, which indicated that it was voluntary, or that the affidavit of the persons also indicated so, do not hold any water, in view of the fact, that these persons, who are claimed to have given the affidavits, have not been put to the test of cross-examination, as is indicated from Paras-41 to 46, of the impugned judgment. It is also necessary to note, that the persons who had sworn the affidavit, were also in the employment of the respondent No.1 and much could be said regarding the swearing of these affidavits. The variances complained of by Mr. Kulkarni in the communication dated 19/02/2005 and 30/02/2005, are not of such a magnitude, so as

to discredit the claim made by the petitioner. Merely because the petition stands dismissed against the respondent No.3, in view of the order dated 07/12/2018, for non initiation of steps to serve the unserved respondent, would not come in the way of the petitioner, as the respondent No.1 is the institution against whom, the relief is being sought and is adequately represented. No relief has been claimed against the respondent No.3 and therefore, dismissal of the petition on the above ground against the respondent No.3, would not adversely affect, the maintainability of the present petition. The contention of Mr. Kulkarni learned counsel for the respondent Nos.1 & 2 in this regard, that there would be two contrary orders, is therefore clearly misconceived. **Audumber Narayan Wadadekar (Supra)** on which reliance has been placed by Mr. Kulkarni learned counsel for the respondent No.1, is of no help to him as in that case, it has been held that the resignation was not required to be accepted either under law or under the bye-laws and therefore was a unilateral act and not bilateral (as explained in **Prakash Mahadeo Khot & Ors. Vs Maruti Dadu Khot And Ors., 2005 SCC online Bom. 432**). In the instant case, by virtue of statute 429, a

prior notice of three months or salary in lieu thereof was required to be paid, the waiver of which was to be accepted by the Governing Body, which admittedly is absent. Thus the matter would stand covered by the dictum of the Hon'ble Apex Court in **Moti Ram Vs Param Dev and Anr, AIR 1993 SC 1662**, which held that in cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish.

25. The impugned order by the Tribunal, merely relies upon the affidavits, of the employees of the respondent No.1, which as noted above, have not been put to the test of cross-examination as appears from the impugned judgment and therefore, could not have been relied upon by the learned Tribunal. It is also apparent, that the learned Tribunal, has neither considered the background facts, indicating the discord between the petitioner and Principal/Management, nor the report of the Waykole Committee. Similarly, the learned Tribunal, has not considered the statutory provisions, as

contained in the Maharashtra Universities Act enumerated above, nor the provisions of the statute as applicable in this regard, in view of which, the impugned judgment cannot be sustained.

26. The date of birth of the petitioner, as per his bio-data placed at record Page-26, is 06/02/1949 and the petitioner has already crossed the age of superannuation, which was 60 years, in the year 2009 itself, and thus, even if the impugned judgment, is being quashed and set aside, on account of it, being bad in law, I am not inclined to grant the relief of reinstatement. Considering the length of service remaining of the petitioner, which is about 4 years, and the fact, that the petitioner, has not rendered his services for the said period, though it was at the fault of the respondent No.1, I am of the opinion, that compensation at 50% of the gross salary payable, to the petitioner for the period of four (4) years, for which, he would have continued in employment, would be in the interest of justice. In addition to this amount, the respondent No.1, shall also pay an amount of Rs.50,000/-, to the petitioner, as cost of litigation.

27. The petition is, therefore, partly allowed. The judgment of the University and College Tribunal dated 24/11/2010, is hereby quashed and set aside. It is also held that the resignation of the petitioner dated 18/02/2005 was not only forced but was also contrary to the provisions of the statutes applicable as discussed above.

28. The prayer for reinstatement with back wages and continuity of service, is not granted in the facts and circumstances narrated above, however the respondent No.1/Management shall pay compensation to the petitioner, to the extent of 50% of the gross salary payable to the petitioner, for the period, which the petitioner would have continued in employment, but for his termination, which is in addition to the cost of Rs.50,000/- to be paid by the respondent No.1 to the petitioner. The above amount of compensation shall be paid by the respondent No.1 to the petitioner within a period of four weeks from today. Rule is made absolute in the above terms.

(AVINASH G. GHAROTE, J.)