

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

WRIT PETITION NO.15573 OF 2019

Mangesh s/o Ashok Vaidya,
Age : 30 years, Occu: presently Nil,
R/o Kokamthan, Taluka Kopargaon,
District Ahmednagar

... PETITIONER

VERSUS

- 1) The Secretary,
Rotary Medical and Community Trust,
Sau. Nandini Purushottam Mule
R/o Thatte Ground, Shrirampur,
District Ahmednagar.
- 2) Head Mistress,
Kal. Anil Digambar Mule Primary School,
Sanjay Nagar, Taluka Shrirampur,
District Ahmednagar.
- 3) The Education Officer (Primary)
Zilla Parishad, Ahmednagar.

... RESPONDENTS

...
Advocate for Petitioner : Mr. Sachin S. Deshmukh
Advocate for Respondent Nos. 1 and 2 : Mr. S.V. Dixit
Advocate for respondent No.3 : Mr. V.M. Vibhute
...

CORAM : MANGESH S. PATIL, J.
Reserved on : 09.08.2021
Pronounced on : 20.08.2021

JUDGMENT :

Heard. Rule. The learned advocates for the respondents waive service. At their request and with the consent the matter is heard finally at the stage of admission.

2. The petitioner is an employee of the School of which the respondent No.1 is a Secretary and the respondent No.2 is the Headmistress. The respondent No. 3 is the Education Officer, (Primary) Zilla Parishad. The petitioner is impugning the judgment and order dated 27.08.2019 passed by the School Tribunal thereby dismissing his Appeal No.2/2017 filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (herein after the M.E.P.S. Act).

3. The brief history necessary to appreciate the matter in controversy is to the following effect:

- i) the petitioner was appointed as an Assistant Teacher on 02.02.2012. The respondent No. 3 had granted approval to his appointment on 13.12.2013. On 18.11.2016 and 05.12.2016 the respondent No.2 served him show cause notices complaining about absenteeism. He raised the issue with the respondent No.3 and also submitted his explanation/representation to the respondent No.2 on 27.12.2016 alleging that an illegal notice for recovery of amount of Rs.24,24,878/- was served to his paternal uncle by a credit society of which President of the Management was the Secretary, on 28.12.2016. He filed a police complaint on 24.01.2017 stating that he was being compelled to pay huge money to continue serving as a teacher. He was threatened of physical harm and was also threatened that he would not be allowed to discharge his duties.
- ii) Putting up a grievance that since 27.12.2016 he was not allowed to

discharge his duties which constituted otherwise termination, he presented the Appeal before the School Tribunal on 25.12.2017.

- iii) The respondent Nos.1 and 2 opposed the Appeal denying all the contentions. In addition they contended that pursuant to a compromise arrived at the Police Station, in order to settle the dispute, the petitioner volunteered to tender resignation by accepting a sum of Rs.2,60,000/- towards the full and final settlement. Accordingly he tendered a resignation on 02.02.2017 and the Management has accepted it in its meeting on 22.02.2017. In this manner, there was no question of any otherwise termination.
- iv) The Tribunal by the judgment and order dated 22.04.2019 allowed the Appeal and declared that petitioner's termination was illegal and directed reinstatement and consequential relief of back wages.
- v) The respondent Nos. 1 and 2 challenged the order of the School Tribunal by filing Writ Petition No.7970/2019. It was noticed that the two sides were coming with contradictory stands in as much as the petitioner was complaining about otherwise termination with effect from 27.12.2016 whereas the Management was coming with a case of tendering of resignation with effect from 02.02.2017, however, no specific issue touching the aspect of resignation was framed and decided. Therefore, this Court partly allowed the Writ Petition and issued *inter alia* following directions :

“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.”

vi) Pursuant to such directions the parties again went before the School Tribunal. The petitioner added paragraph No.7 by way of amendment in the Appeal Memo which is in vernacular but can be translated as under :

“A complaint was filed with the Shrirampur Police Station against the respondents for illegal demand of money, its acceptance and having removed from the employment by extending threats. He does not admit the resignation obtained by the respondent Nos. 1 and 2 before the Police Inspector, Shrirampur Police Station which was obtained by duress.”

vii) Conspicuously he merely added the aforementioned paragraph but did not alter the prayer seeking any declaration in respect of the resignation having been obtained under duress.

viii) The respondents submitted additional reply and repeated the averments including the one regarding voluntary submission of the resignation. It was also specifically contended that there were no clear pleadings in respect of tendering of resignation under duress.

ix) The respondent Nos. 1 and 2 by filing application (Exhibit – 43) sought to produce the disputed resignation, copy of the resolution, copy of the complaint filed by the petitioner before the police dated 13.02.2017 and the information received from the police about the Police Station having not received the complaint dated 13.02.2017 of the petitioner.

x) By the impugned judgment and order the Appeal has been dismissed.

4. The main thrust of the argument of the learned advocate Mr. Deshmukh for the petitioner is on the point that till the fag end the resignation and a copy of the resolution were not produced. No steps were taken by the respondent Nos. 1 and 2 to prove their contention regarding legal termination of employment by tendering of the resignation voluntarily. In spite of a specific objection having been raised by the petitioner the Tribunal allowed the documents to be brought on record and has accepted it to be true and correct. The burden was on the respondents to prove their contention but they miserably failed to do that in spite of an opportunity having been extended by this Court in the earlier round of litigation and the Tribunal has grossly erred in accepting it to be a genuine resignation.

5. The learned advocate Mr. Deshmukh then referred to the various decisions of this Court to point out the purport and scope of Section 7 of the M.E.P.S. Act and Rule 40 of the Rules framed thereunder which provide for procedure for resignation by employees of private schools and the manner in which it is to be put up and accepted. He would submit that

the whole purpose of providing this procedure is to obviate any opportunity for the Management which is in a dominant position to procure resignation from the employee under duress.

6. He would therefore submit that ignoring all these principles, the contention of the respondents regarding tendering of the resignation has been accepted illegally. He would refer to the decisions of this Court in the case of **J.B. Shaikh Vs. N.Z. Kulange and Ors.**; 1992 I CLR 414, **Shri Sant Sawtamali Shikshan Prasarak Mandal, Tembhurni Vs. State of Maharashtra and Ors.**; 2008 (6) Mh.L.J. 529, **Bahujan Vikas Mandal, Akola and Anr. Vs. Manda Vithalrao Parsutkar and Anr.**; 2011 (2) Mh.L.J. 203, **Sayyed Maksood Ali Sayyed Roshid Ali Vs. Uruj-E-Urdu Education Society, Kalamb** ; 2011(4) Mh.L.J. 952 and **Sachin S/o Shripat Pawar Vs. President, Universal Education Academy and Ors.**; WP No.3154/2012 dated 27.04.2020.

7. The learned advocate would therefore submit that ignoring the law and overlooking the facts the Tribunal has dismissed the Appeal. The judgment and order is perverse and arbitrary and this Court should intervene in exercise of the Writ Jurisdiction.

8. Per contra the learned advocate Mr. Dixit for the respondent Nos. 1 and 2 submitted that not only the respondents but even the appellant was given an opportunity to put up his case by way of amendment to the Appeal memo when this Court had permitted him to do so in the earlier round. In spite of such opportunity he failed to come out with necessary pleadings touching the aspect of tendering of the resignation and even failed

to amend the prayer clause in spite of the liberty granted to him. This was a specific contention raised in the additional reply filed by them after such amendment of the Appeal Memo. In spite of it he never bothered to rectify the error and continued with the hearing of the Appeal with such inherent defect. On this ground alone his Appeal was liable to be dismissed, even though the Tribunal has not entered into and discussed this vital aspect.

9. The learned advocate Mr. Dixit would also submit that the petitioner has been aware about the fact of tendering of the resignation and his specific stand that it was obtained under duress. In spite of that he never tried to establish it and to discharge the burden. The act of tendering of the resignation was preceded by a writing/statement recorded before the concerned Police Inspector of Shrirampur Police Station. However, he did not immediately raise any grievance and for the first time agitated about it by approaching police again and the respondent No.3 Education Officer with a complaint dated 13.02.2017. It is because of such state of affairs no exception can be taken to the conclusion drawn by the Tribunal that there was no question of exercising any influence or coercion in presence of a Police Officer. The conclusion has been drawn by correct appreciation of the facts and circumstances and the material on the record and should not be disturbed while exercising a Writ Jurisdiction.

10. The learned advocate for the respondent No.3 by referring to his affidavit-in-reply submitted that he had received the resignation along with copy of resolution and since according to the Management it was in the

handwriting of the petitioner it was a sufficient compliance with the provision of Section 7 and Rule 40. The condition of sending the resignation by R.P.A.D. is directory and not mandatory. He would submit that since such settlement was arrived at in the Police Station pursuant to a complaint filed by the petitioner himself, it was improbable and impossible that any resignation could have been obtained by use of force.

11. I have carefully considered the rival submissions, the decisions cited at the bar and the record. As can be appreciated, the whole dispute revolves around tendering of the resignation on 02.02.2017. There are number of decisions, apart from the decisions cited on behalf of the petitioner (supra) interpreting the scope and ambit of the wordings of Section 7 of the M.E.P.S. Act and the Rule 40. After taking a stock of the earlier decisions in the case of **Ballaleshwar Shikshan Mandal and Anr. Vs. Jaywant Bhaguji Gadekar and Ors; 2004(1) Bom.C.R 421, Barshi Education Society Vs. Ashok Ganesh Kulkarni and Ors.; 2004(5) Bom.C.R. 772 and Shri Sant Sawtamali Shikshan Prasarak Mandal, Tembhurni (supra)**, in the case of **Bahujan Vikas Mandal, Akola (supra)** the learned Judge has made following observations in paragraph No.12 :

“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.P.S. 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.” ...

It was concluded that going by the provisions of Section 7 and Rule 40 it was imperative that the resignation should be in the handwriting of the employee and should bear the date and his signature. It was thus concluded that taking a stock of all these decisions, compliance with the requirements of the Section 7 will have to be seen in totality, to find out whether a resignation was tendered voluntarily or otherwise and would depend upon all relevant facts and circumstances.

12. It is in the light of such succinct analysis of the law if one examines the matter in hand, true it is that the respondent Nos. 1 and 2 were remiss in bringing on record the resignation and the resolution accepting it and had waited till the fag end. However, going by the sequence of events mentioned at the inception, even the petitioner is equally remiss and has not even bothered to come out with specific pleadings attributing duress to the respondent Nos.1 and 2 and tendering of the resignation involuntarily. If they were not ready to produce it on the record, since it was pursuant to a direction of this Court in the earlier round that the matter was remanded and the parties were put to notice that the issue touching tendering of the resignation was to be framed and decided, it was equally important for the petitioner to have been more active. Since he was reluctant to come out with specific pleadings albeit the issue was framed and had not bothered to first call upon the respondents to produce the resignation and also failed to bring on record all the attending circumstances to create a doubt about its genuineness, he cannot be allowed to take benefit

the fact that the respondent Nos.1 and 2 were late in producing the documents.

13. Bearing in mind the scope and ambit of the powers being exercised by this Court, as laid down in the case of **Surya Dev Rai Vs. Ram Chander Rai; (2003) 6 SCC 675**, even if one undertakes some scrutiny of facts it is quite apparent that there are number of loopholes in the case of the petitioner. Admittedly, asserting that it was an otherwise termination, he had filed the present Appeal on 25.01.2017. Even before filing such Appeal he had put up a grievance with police, City Police Station, Shrirampur on 24.01.2017 regarding unlawful demand of money and extending of threats by the Management. If such was the state of affairs, it seems highly improbable, as has been even otherwise pointed out by the Tribunal that there could not have been any occasion for the Management to extend threats in presence of the Police Inspector that too in the Police Station. Pertinently it is not the case of the petitioner that even the concerned Police Inspector had played any role in exerting the pressure.

14. Besides when the petitioner had already filed the Appeal, one cannot comprehend as to why and how he chose to go to Police Station when the Management were not coming with any grievance against him having been raised with Police, which is nobodies case.

15. Again if at all the resignation was obtained under duress there is no explanation as to why the petitioner immediately did not raise any dispute and waited for 10 to 11 days. These facts and circumstances in my

considered view are clinching to refute the stand of the petitioner that the resignation was obtained under duress.

16. The resignation is in petitioner's handwriting, bears a date and his signature which is in confirmity with the provision of Section 7 and Rule 40. Apparently, it is after he accepted Rs.2,60,000/- that the settlement was apparently arrived at the Police Station. If such is the state of affairs, no exception can be taken to the observations and conclusions by the Tribunal in the impugned judgment and order holding that the resignation was tendered voluntarily.

17. As can be noticed, such were not the facts before this Court in none of the aforementioned decisions cited on behalf of the petitioner.

18. In the result, there is no merit in the petition which is liable to be dismissed and is accordingly dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)