

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.305 OF 2010.

IN

WRIT PETITION NO. 2796 OF 2006

Sanjay Annaji Pohokar,
Aged about 45 years,
Occupation – Service,
R/o Belora, Tq: Chandur Bazar,
Dist: Amravati.

..... APPELLANT

...V E R S U S...

1. Shriramchandra Samaj Seva Samiti,
Bramhanwada [Kasba]
Post. Talegaon, Tq: Morshi,
Dist: Amravati,
Through its Secretary.
2. The Headmaster,
Dnyandeep Vidyalaya,
Bramhanwada [Kasba]
Post: Talegaon, Tq: Morshi
Dist: Amravati,
3. The Education Officer [Secondary]
Zilla Parishad, Amravati,
Tq : & Dist: Amravati
4. Shri R.L. Loharkar,
Assistant Teacher in
Dnyandeep Vidyalaya,
Bramhanwada [Kasba]
Post: Talegaon, Tq: Morshi,
Dist:Amravati

...RESPONDENTS

Shri V. A. Kothale, Advocate for appellant
Shri S. Sarda, Advocate h/f. Shri R. M. Bhangde, Advocate for
respondent No.1
Shri D. P. Thakare, AGP for respondent No.3/State.
Shri P. S. Patil, Advocate for respondent No.4

WITH
LETTERS PATENT APPEAL NO.418 OF 2010.
IN
WRIT PETITION NO. 5232 OF 2006

Sunita Madhavrao Mohod
Aged about 44 years,
Occupation:- Service
R/o c/o Shri. S.A. Pohokar,
R/o Belora, Tq. Chandur Bazar,
District:- Amravati

..... **APPELLANT**

...VERSUS...

1. Shriramchandra Samaj Seva Samiti,
Bramhanwada [Kasba]
Post. Talegaon, Tq: Morshi,
Dist: Amravati,
Through its Secretary
2. The Headmaster,
Dnyandeep Vidyalaya,
Bramhanwada [Kasba]
Post: Talegaon, Tq: Morshi
Dist: Amravati.
3. The Education Officer [Secondary]
Zilla Parishad, Amravati,
Tq : & Dist: Amravati
4. Ku. Madhuri Dandele,
Assistant Teacher in
Dnyandeep Vidyalaya,
Bramhanwada [Kasba]
Post: Talegaon, Tq: Morshi,
Dist: Amravati

... **RESPONDENTS**

Shri V. A. Kothale, Advocate for appellant
Shri S. Sarda, Advocate h/f. Shri. R. M. Bhangde, Advocate for
respondent No.1
Shri D. P. Thakare, AGP for respondent No.3/State.
Shri P. S. Patil, Advocate for respondent No.4

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATED : 17.08.2021

ORAL JUDGMENT (Per : G. A. Sanap, J.)

The appellants have challenged the identical judgment dated 02.03.2010, passed by the learned single Judge, in Writ Petition No. 2796 of 2006 and Writ Petition No. 5232 of 2006. The appellant in Letters Patent Appeal No. 305 of 2010 is the husband while the appellant in Letters Patent Appeal No. 418 of 2010 is the wife. In the writ petitions they had challenged the judgment dated 12.04.2006 delivered by the learned Presiding Officer of the School Tribunal, Amravati in Appeal No. 23 of 2000 and Appeal No. 22 of 2000, whereby their appeals were dismissed. The learned single Judge dismissed both the writ petitions and confirmed the judgment delivered on 12.04.2006, passed by the learned Presiding Officer of the School Tribunal, Amravati.

2] The brief facts of the case are as follows:

In the appeals before the learned Presiding Officer of the School Tribunal, Amravati the appellants sought the

declaration that the communication dated 22.01.2000 shown to have been 'Resignation Letters' addressed to the respondent Nos. 1 and 2 is null and void and consequently, prayed for setting aside the communication dated 29.04.2000 issued by the respondent No.2 in terms of the so called acceptance of their resignations and consequently, prayed for their reinstatement. It is the case of the appellants that they are qualified to be appointed as an Assistant Teacher. The appellant- Smt. Sunita Mohod was appointed as 'Assistant Teacher' in the year 1990 and Shri Sanjay Pohokar was appointed as Assistant Teacher in the year 1992 in respondent No.1- School. The appellant- husband was eligible to be promoted as Headmaster. However, incharge Headmaster Shri. S. V. Tekade pressurized them to abandon the claim against post of Headmaster.

3] There was a dispute between the appellants and the respondent Nos. 1 and 2. The husband- Sanjay Pohokar and wife- Sunita Mohod were not allowed to join their duty with effect from 31.08.1999 and 30.07.1999 respectively. They challenged their termination before the School Tribunal, Amravati. The School

Tribunal set aside their termination and thereafter, they joined their duty.

4] It is the case of the appellants that respondent Nos. 1 and 2 have obtained their signatures on blank papers to be used for drafting their resignation letters etc. in future. The respondent Nos.1 and 2 had also obtained the signatures of the other employees of the school on the blank papers. The appellants were shocked to receive the communication dated 29.04.2000 informing them that their resignation letters were received and accepted. According to them, the respondent Nos. 1 and 2 misused the blank signed papers. They never sent any resignation to the respondent Nos.1 and 2. The order dated 29.04.2000 relieving them from the service is illegal and bad in law. The appellants had an apprehension that the blank papers with their signatures would be misused and therefore, they made complaints to the various authorities. According to them they never resigned from the service. These blank papers with their signatures have been misused by the Management of respondent Nos. 1 and 2 for

typing their resignation letters. On these averments, they prayed for declaration.

5] The respondent Nos. 1 and 2 filed their reply and opposed the case of the appellants. The respondent Nos. 1 and 2 in some and substance denied the material facts pleaded by the appellants. It is denied that they were terminated in the year 1999. According to the respondent Nos. 1 and 2, the appellants on their own remained absent from duties. On receipt of the orders from the School Tribunal, Amravati they were allowed to join their duties. It is further contended that the appellant-husband for some time worked as Headmaster, however, he abandoned his claim in writing.

6] According to the respondents, the appellants forwarded their resignation letters to the respondents by registered post acknowledgment due. On receipt of the resignation letters, duly signed by the appellants, the same were placed before the Committee. In the meeting, the Committee accepted the resignations. The intimation of acceptance of the

resignation was duly sent to the appellants on 02.02.2000. It is contended that the appellants voluntarily resigned from service. They were relieved after expiry of period of three months on 29.04.2000. It is contended that in order to stake a false claim the present dispute has been raised.

7] The appellants challenged the communication with regard to the acceptance of resignations and relieving them from the service. The learned Presiding Officer of the School Tribunal, Amravati dismissed their appeals. The writ petitions filed by them challenging the orders passed by the learned Presiding Officer of the School Tribunal, Amravati were also dismissed holding that they voluntarily resigned from their respective posts.

8] Being aggrieved by the common judgment passed by the learned single Judge in Writ Petition No. 2796 of 2006 and Writ Petition No. 5232 of 2006 dated 02.03.2010 the appellants have come before this Court in appeal. The grounds of challenge to the impugned order have been set out in Memo of Appeals. It is contended that the learned single Judge has failed to appreciate

the evidence on record and came to the wrong conclusion. It is their case that the relevant material has not been taken into consideration while deciding the writ petitions.

9] We have heard the learned Advocates for the parties. Perused the record and proceedings.

10] The learned Advocate Shri V. A. Kothale for the appellants submitted that there is cogent and concrete evidence on record to prove that the appellants never intended to resign from the service. The learned Advocate pointed out that the resignation letters of the appellants relied upon by the respondent Nos. 1 and 2 are false and fabricated. The learned Advocate submitted that the appellants have no source of livelihood and therefore, there was no question of their tendering the resignations. As per the submission of learned Advocate, the so called resignations, therefore, are the outcome of the fabrication of resignation letters and the mischief played with the appellants. The learned Advocate submitted that in this case there was no compliance of the mandatory provisions of Section 7 of the

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (For short 'Act of 1977') and Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (For short 'Rules of 1981'). The learned Advocate submitted that the conduct of the Management and the respondent No.2 is inconsistent with the documentary evidence placed on record and based on the same a serious doubt is created about their bonfides. The learned Advocate submitted that the respondent Nos. 1 and 2 did not communicate the acceptance of resignations by them vide letter dated 02.02.2000, as contended by them. The learned Advocate submitted that this fact was not known to the appellants and if this fact had been brought to their notice they would have either withdrawn the so called resignations or taken appropriate action. The learned Advocate submitted that this fact was intentionally suppressed from them till 27.04.2000 when they were informed for the first time about the acceptance of their resignations. The learned Advocate submitted that considering the history of litigation between the appellants and the respondent Nos. 1 & 2 and various complaints,

about the harassment, mis-management and the mis-conduct of the respondent Nos. 1 and 2, made by the appellants, makes the case of the appellants probable that in order to get rid of the appellants resignation letters have been fabricated by the respondent Nos. 1 and 2. The learned Advocate submitted that the appellants made complaints to the Education Officer, Amravati, the incharge of the Police Station Shirkhod and to other authorities about taking their signatures on blank papers and likelihood of misuse of those blank papers for drafting or creating the resignations of the appellants. The learned Advocate submitted that neither the School Tribunal nor the learned single Judge has taken the entire evidence on record into consideration. The learned Advocate pointed out that when the respondent Nos. 1 and 2 specifically contended in the reply that the decision of the Management accepting the resignations of the appellants was duly communicated to them by letter dated 02.02.2000, in the appeals before the School Tribunal the appellants' advocate made application at Exh. 13 in the Appeal No. 23 of 2000 and Exh. 15 in Appeal No. 22 of 2000 seeking directions to the respondents for

production of the acknowledgment receipt of the appellants regarding the communication dated 02.02.2000 referred in reply. The learned Advocate for the appellants pointed out from the record that the respondent Nos. 1 and 2 filed reply to this application dated 25.09.2000 and in para No. 8 categorically stated that it is not necessary to call the said documents, in as much as, the respondents would prove that there was a valid resignations by the appellants. The learned Advocate submitted that this documentary evidence has not been taken into consideration either by the learned Presiding Officer of the School Tribunal, Amravati or by the learned Single Judge. The learned Advocate submitted that, therefore, the finding of fact recorded by the learned Presiding Officer of the School Tribunal, Nagpur and up held by the learned Single Judge cannot be sustained.

11] The learned Advocate for the appellants in support of his submissions placed reliance on following decisions:

a) *Bahujan Vikas Mandal, Akola and Another .v/s. Manda Vithalrao Parsutkar and another* reported in 2011 (2) Mh.L.J. 203

b) *Shri Sant Sawatamali Shikshan Prasarak Mandal, Tembhurni .v/s. State of Maharashtra and Oths.* reported in 2008 (6) Mh.L.J. 529

c) *Sayyed Maksood Ali Sayyed Roshid Ali .v/s. Uruj-E-Urdu Education Society, Kalamb and Anr.* reported in 2011(4) Mh.L.J.952

12] The learned Advocate for the respondent Nos. 1 and 2 submitted that the resignations tendered by the appellants were voluntary. The learned Advocate submitted that there is no iota of evidence to accept the case of the appellants that either the Management of the respondent No.1 or the respondent No.2 obtained the signatures of appellants on blank papers and those blank papers were used for fabricating the resignation of the appellants. The learned Advocate further submitted that the appellants voluntarily resigned from the service. The learned Advocate submitted that the committee accepted the resignations tendered by the appellants and the decision of the committee was communicated to the appellants vide letter dated 02.02.2000. The learned Advocate submitted that the appellants kept mum till 29.04.2000 from the date of the receipt of the communication dated 02.02.2000. The learned Advocate submitted that

resignations tendered by the appellants were voluntary and therefore, strictly in consonance with the provisions of the Section 7 of the Act of 1977 and the Rules of 1981. The learned Advocate further submitted that the learned Presiding Officer of the School Tribunal, Amravati and the learned Single Judge of this Court recorded a concurrent finding of fact that the resignations tendered by the appellants were voluntary. The learned Advocate submitted that there is no iota of evidence to accept the case of the appellants. The learned Advocate submitted that initial burden was on the appellants to prove that they did not voluntarily resign from the service. The learned Advocate submitted that they have not adduced the evidence to discharge this onus. The learned Advocate in short submitted that the well reasoned judgment of the learned single Judge does not warrant interference. The learned Advocate for the respondent No.1 in support of his submissions placed reliance on a decision in the case of *Gyanendra Sahay .v/s. Tata Iron & Steel Co. Ltd.* reported in (2006) 5 SCC 759 .

13] In order to appreciate the rival submissions we have minutely perused the record and proceedings. We have also gone through the order passed by the learned Single Judge as well as the Presiding Officer of the School Tribunal, Amravati. The appellants had in the writ petitions filed by them prayed for issuance of writ of certiorari while challenging the judgment of the School Tribunal. Articles 226 and 227 of the Constitution of India were invoked. It is well settled that findings of fact recorded by the Tribunal cannot be re-opened nor can the evidence on record be re-appreciated. The limited scope available, while considering as to whether the writ of certiorari can be issued, is that if the judgment under challenge suffers from an error of law which is apparent on the face of the record, the same would be open for correction. Where the conclusion recorded by the Tribunal is without considering relevant material on record & as a result of which a wrong conclusion in law has been arrived at, the same would be open to correction by a writ of certiorari. Further if the impugned order results in causing manifest injustice the same can also be interfered with. As held in *Syed Yakoob .v/s. K. S.*

Radhakrishnan and other reported in *AIR 1964 SC 477* whether or not an impugned error is an error of law would depend upon the facts and circumstances of each case and upon the nature and scope of the legal provisions, which are alleged to have been misconstrued or contravened. The limited reference to the material on record is for assessing the contention that relevant material/aspects have been excluded in the decision making process. With the aforesaid aspects in mind we propose to consider the challenges raised in these appeals.

14] In these appeals grievance has been made about the non compliance of provisions of Section 7 of the Act of 1977 and Rule 40 of the Rules of 1981. The learned Single Judge in the case of *Bahujan Vikas Mandal, Akola and Another .v/s. Manda Vithalrao Parsutkar and another* reported in *2011 (2) Mh.L.J. 203* has considered the provisions of Section 7 of the Act of 1977. In this case, it is held that 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. It is further held that the first step in the

process is, to draw up a letter of resignation in duplicate. The phrased verb “draw up” used in Section 7 connotes the process of handwriting as against the process of typing or printing. The next requirement in the process of resignation, is to sign both the copies of letter of resignation. The requirement of putting signature and the date on the letter of resignation by an employee in his own handwriting, has to be held as mandatory requirement.

15] In the case of *Sayyed Maksood Ali Sayyed Roshid Ali .v/s. Uruj-E-Urdu Education Society, Kalamb and Anr.* reported in 2011(4) Mh.L.J.952, the learned single Judge has considered the mandate of Section 7. It is held that the section 7 is in two parts namely execution and mode of dispatch or delivery. It is held that the first part contains 3 requirements namely (i) drawing up a letter of resignation in duplicate; (ii) signing both the copies of that letter; and (iii) putting the date thereon. It is held that these requirements of Section 7 are mandatory and its non compliance would render the resignation illegal and involuntary.

16] In the case of *Shri Sant Sawatamali Shikshan Prasarak Mandal, Tembhurni .v/s. State of Maharashtra and Oths.* reported in 2008 (6) Mh.L.J. 529, it is held that unless and until it is proved that the resignation is voluntary the same cannot be acted upon.

17] In the case of *Gyanendra Sahay .v/s. Tata Iron & Steel Co. Ltd.* reported in (2006) 5 SCC 759 relied upon by the learned Advocate for the respondent, the question was whether the resignation was voluntary or as a result of the exercise of undue or excessive pressure to sign the letter. In this case the Hon'ble Supreme Court in the backdrop of the evidence found that the resignation was voluntary and therefore, there was no need to interfere in the decision of the High Court which upheld the voluntary nature of the resignation.

18] It is pertinent to note at the outset that the parties have not adduced oral evidence before the School Tribunal, Amravati. The parties have placed on record the documentary evidence and therefore, the vital question raised in these two appeals are required to be decided keeping in mind the attending

circumstances, the documentary evidence placed on record by the parties and conduct of the parties throughout. The main question that needs to be addressed at the outset is whether the resignations tendered by the appellant were voluntary or not. The appellants have stated that they never resigned from the service. It is their case that the blank signed papers obtained from them by the respondent Nos. 1 and 2 were misused for fabricating their resignation letters. The respondents have categorically stated that the appellants voluntarily tendered their resignations and on acceptance of resignations they were duly communicated about the same vide letter dated 02.02.2000. In our view, the entire controversy revolves around this important aspect. If it is found that the decision taken by the Management accepting the resignations of the appellants was not duly communicated to the appellants as stated by the respondents then it would reflect upon the conduct and bonafides of the respondents. In order to substantiate the contention on this point the respondent Nos. 1 and 2 have stated that in the reply they have specifically pleaded that this decision was duly communicated to the appellants. The

learned Presiding Officer of the School Tribunal, Amravati as well as the learned Single Judge held that the appellants had an opportunity to rebut this contention either by filing an affidavit or by bringing on record some material, but they did not do it. Therefore, adverse inference was drawn against the appellants. In our view, this inference was not at all justified in the facts, circumstances and evidence on record.

19] The appellants joined the service in 1992. There is ample documentary evidence on record to show that the dispute started between them in the year 1997. The husband was promoted as Headmaster. He worked as Headmaster for two years. After two years he abandoned that post. It is the contention of the appellants that he was forced to abandon the post of Headmaster because the Management wanted to accommodate the respondent No.2. The wife abandoned her claim to the post of Headmaster. Till 1997 appellants had put in six years service. It seems that thereafter, the dispute between the appellants on one hand and the respondent Nos. 1 and 2 on the other hand got escalated. The appellants were not allowed to join

their duty in July-August 1999. They filed the proceedings before the School Tribunal, Amravati for setting aside their termination. They also made representation to the Education Officer. It is a matter of record that in September 1999, they resumed their duties. It is therefore apparent on the face of record that the appellants and the Management and the respondent No.2 were literally at loggerheads. The appellants till the year 2000 had put in eight years of service. The service was the sole source of their livelihood. While appreciating the contention of the parties on the point of voluntary nature of the resignation, all the above facts cannot be brushed aside. The facts, considered in totality would show that the appellants and the respondents were at loggerheads. While deciding the probability of the case of the parties this circumstance would assume great significance.

20] Before proceeding to deal with other circumstances at this stage, it would be necessary to find out whether the appellants were communicated the decision of the Management accepting their resignations. It is pertinent to note that in the appeals filed before the School Tribunal the material facts have

been pleaded. The reference has been made to the complaints made by the appellants to the authorities. In the complaints the appellants have made allegation of obtaining their signatures on the blank papers. There is no pleading in the appeal memo about the receipt of communication of acceptance of the resignations vide letter dated 02.02.2000. In our view, this would clearly indicate that they were not at all aware of this fact and therefore, this fact was not pleaded. This finding can get support from other material on record. The respondents in para No.2 of the reply categorically stated that the decision of acceptance of their resignation was communicated to them vide letter dated 02.02.2000. But despite receipt of the same they have not made any grievance till 29.04.2000. It is pertinent to note that in this paragraph the mode of communication has not been mentioned. It is not mentioned whether the decision was communicated by registered post acknowledgment due or under certificate of posting or by personal service. It is true that in the backdrop of this pleading the appellants were required to deal with the same. They could have filed the affidavit denying the same. They did

not file the affidavit. However, in order to justify their bonafides their Advocate made an application at Exh. 13 in Appeal No. 23 of 2000 and Exh. 15 in Appeal No. 22 of 2000 on 10.07.2002 and prayed before the learned Presiding Officer of the School Tribunal, Amravati to issue directions to the respondent Nos. 1 and 2 to produce the resolution of the School Committee and the acknowledgment of the appellants regarding service of the communication dated 02.02.2000. This fact would clearly indicate that the appellants did not accept the case pleaded in the written statement with regard to the communication of the decision by the Management to them. The respondents in view of this prayer were supposed either to produce the documents or offer justifiable explanation for non production. They filed reply to this application and in para No. 8 raised a specific contention about these two documents. It is stated that as far as these documents are concerned the respondent Nos. 1 and 2 would prove their case that there was valid resignation and therefore, it is not necessary to call the same documents. It is seen that this reply is vague and evasive and as such creates doubt about the bonafides of the

respondents. It can indicate the skilful attempt to suppress the material fact from the Court. The respondents took the burden on their shoulder to prove that the resignations were valid. In our view, this is the crux of the matter. The learned Single Judge has observed that the appellants have not denied the fact pleaded in the written statement about this communication. In our opinion this observation seems to be without adverting to these documents and facts pleaded in reply to deny production of vital documents.

21] One can gather that, at the stage of reply, the respondents were not serious about the production of documents. The question is whether the documents in this regard have been produced on record by them or not. We have minutely perused the record and proceedings and particularly the documents produced by the respondents. It is seen that except these documents which they were called upon to produce by the appellants, remaining all documents have been produced. It is pertinent to note that vide communication dated 27.04.2000 appellants were informed that they would be relieved from the service with effect from 29.04.2000. This communication was

sent to respondents by under certificate of posting as well as by registered post acknowledgment due. The under certificate of posting receipt is produced on record. The acknowledgment of the receipt of this Communication on 17.05.2000 is also on record. It is therefore seen that one or two days prior to 29.04.2000 appellants were communicated about this decision and the documents of service of this communication have been placed on record. But the documents with regard to the acknowledgment or service of the decision vide letter dated 02.02.2000 have not been placed on record. The explanation has been placed on record in the reply filed to the application for production of documents. Perusal of the explanation would show that it is nothing but an attempt to hide and suppress the material facts. In the backdrop of this, the other documentary evidence placed on record by the appellants and the attending circumstances need appreciation.

22] In the appeals filed before School Tribunal, Amravati the appellants have specifically mentioned that they have made various complaints to the authorities about the likely misuse of the blank papers with their signatures. Reliance has been placed on

various complaints/letters produced on record as per the list. They made a representation dated 17.05.2000 to the Education Officer and placed on record the grievance about the misuse of the blank signed papers by the respondents. This complaint was made after relieving them from service. It would be necessary to see whether complaints were made before 27th or 29th of April 2000. The first complaint made to the respondent No.2 is dated 01.01.2000. In this complaint, the appellants and two more teachers Shri Kankale and Shri Raut made a grievance that the respondent Nos. 1 and 2 have obtained their signatures on blank papers and the same are likely to be misused. By this communication they informed the respondent No.2 that copy of this letter/complaint was forwarded to the Education Officer and therefore, unless and until they submit any resignation or documents relating to the School through Education Officer they would not agree to any resignation purported to have been attributed to them. Perusal of this document would show that this complaint was made 22 days before the so called resignation of the appellants dated 22.01.2000. The appellants made complaint

to the incharge of the Shirkhod Police Station on the 22.03.2000. In the said complaint they reiterated the allegations made in the complaint dated 01.01.2000. In this complaint, they categorically stated that the complaint/letter dated 01.01.2000 was sent to Education Officer, Amravati. It is pertinent to note that this complaint was signed by the appellants as well as Shri Raut and Shri Kankade. One more complaint made to the Education Officer is dated 24.02.2000. In this complaint, the appellants and the remaining two teachers made multiple grievances and stated that they would undertake fast unto death due to harassment by respondents. This complaint is after 22.01.2000. The appellants, as can be seen from this complaint, were fighting for their rights. If they had resigned and received the communication of acceptance of same, then they would not have made such a grievance.

23] The next complaint is dated 02.04.2000 made against the respondent Nos. 1 and 2 to the Education Officer. In this complaint also the appellants and the remaining two teachers have reiterated the allegations with regard to the obtaining their

signatures on blank papers and hand written envelopes. It is seen that the copies of all the complaints were forwarded to the President of respondent No. 1. The respondents have not specifically denied the receipt of the complaints/letters sent to the respondent Nos.1 and 2. The learned Single Judge has considered these complaints in para 9 of the Judgment. The learned Single Judge on going through these documents and particularly the complaint dated 01.01.2000 observed that in this connection the appellants did not make a complaint against the Management about obtaining their signatures on blank papers. In the complaint/representation dated 01.01.2000 there has been categorical statement that the respondents have obtained their signatures on blank papers. It is therefore seen that till the date of actual communication of the acceptance of their resignation on 27.04.2000 and thereafter, in the month of May 2000, they consistently made the allegations against the respondents about obtaining their signatures on blank papers and the likely misuse of the same for drafting their resignation letters. In our view, if this documentary evidence is appreciated in the context of the

chronology of events, it would show that before the date of the resignation and after the date of resignation till 27.04.2000 the appellants consistently made a grievance that their signatures were obtained on blank papers by the respondent Nos.1 & 2 and those papers can be used for forging their resignation letters. This fact corroborates the contention of the appellants that they were not at all communicated the decision of the committee of acceptance of their resignations vide letter dated 02.02.2000. If the appellants had voluntarily resigned, as stated by the respondents, then in the ordinary course of nature they would not have complained to the authorities about obtaining their signatures on the blank papers and likely misuse of the same at the hands of the respondents.

24] It is pertinent to note that considering the dispute between the appellants and the Management, the Management would have taken care, provided their intention was not malafide. The respondent Nos. 1 and 2 were expected to act in a transparent manner. The respondent Nos. 1 and 2 in the factual

situation ought to have insisted the appellants to submit their handwritten resignation. It was necessary because serious allegations had been made against them by the appellants and two more employees. The respondent Nos. 1 and 2 ought to have displayed the transparency and insisted them to tender their resignations in writing. The respondents ought to have acted in reasonable and fair manner. The decision to resign obviously would have been of the appellants. The respondent Nos. 1 and 2 were not supposed to have any apprehension about the change of the mind or decision by the appellants to resign from the service. At the most, the appellants would have expressed their unwillingness to resign. However, dispensing with this fundamental requirement, in factual situation the respondents have chosen not to do it. In our opinion, this would reflect upon the malafides of the respondents. Similarly, this would reflect upon the voluntary nature of the resignations. If the above facts are considered in a *juxta-position* with the case of the appellants, the documents relied upon by the appellants and the fact that there is no concrete evidence about the service of the

communication dated 02.02.2000, it would show that the action of the respondent Nos. 1 and 2 smacks of malafides.

25] It would be necessary to peruse the so called resignation letters. These resignation letters are typed. The manner of typing the resignation letters itself creates a doubt. The resignation letters contain so many un-necessary details which would not have been mentioned by the employee who has been fed up with the Management and took the decision to resign. There are number of paragraphs in the letters. The spacing left between the lines, paragraphs and at the end of the letters clearly indicate that in order to cover the entire paper upto signature this matter was typed. The learned Advocate for the appellants on inquiry made by us submitted that till date the appellants have not joined service elsewhere. The learned Advocate for the respondent Nos. 1 and 2 has not controverted this statement made across the bar. It would be necessary in this context to see the reasons for resignation. It is undisputed that the appellants joined the service in 1992 and till 2000 they had put in about eight and

half years of service. Whether they were eligible by that time to get the employment elsewhere would also be a million dollar question.

26] Coming back to the contents of resignation letters it appears that, this is a creation of the draftsman of the letters. It is stated that at a larger city they would get an employment as well as more facilities and benefits. In the ordinary course of nature a person of ordinary prudence, placed in the position of appellants, would not leave the secured job before joining the service at new place. There was no problem as such for the appellants while doing the service with the respondent Nos. 1 and 2. A person of ordinary prudence would not resign the secured job without first getting the new job and joining there. It is further pertinent to note that considering the continuous dispute between the appellants and the respondent Nos. 1 and 2 for years together, if the appellants had been fed up with them then in the resignation letters they would have simply stated that they do not want to do the service with the respondent Nos. 1 and 2 and would have

tendered their resignations. The narration of un-necessary and improbable matter in the resignation letters could not be said to be the requirement and as such clearly pointed a needle of suspicion towards the respondent Nos. 1 and 2. This also creates a doubt about it. The perusal of the resignation letters *prima facie* indicates that to adjust the typed matter upto the signature, number of paragraphs were typed and un-neccessary spaces was left. This in our opinion creates a doubt about the actual author of the letters. This doubt is further fortified because immediately after acceptance of the resignation letters, the appellants were not informed about it. They were kept in dark till 27.04.000. The reasonable judicial inference, therefore, can be drawn that if the respondent Nos.1 and 2 had communicated the decision taken on the basis of these resignations, the appellants would have made a grievance and initiated the proceedings against the respondent Nos. 1 and 2. Similarly, they would have withdrawn the so called resignations. It is therefore apparent that the respondent Nos. 1 and 2 took abundant care and caution and ensured that their purpose does not get frustrated by early communication of

decision of the acceptance of the resignations. In the ordinary course of nature considering the fact that the appellants and the respondent Nos. 1 and 2 were literally at loggerheads and fought the litigation in the Court of law, the respondent Nos. 1 and 2 were expected to communicate this decision to them. It is pertinent to note that the resignations were to become effective from 29.04.2000. The appellants, therefore, must be attending the school. This communication could have been made personally when they attended the school. In our opinion, this aspect creates a doubt about the intention of the respondents.

27] It is further pertinent to note that when the complaints were made against the respondents by the appellants to the authorities in the month of February-March 2000, the respondents ought to have informed the authorities in writing about this development. The secrecy maintained by the respondent Nos. 1 and 2 was with the purpose to get rid of the appellants and therefore, one or two days before 29.04.2000 this fact was communicated to them. In our opinion, this is not

consistent with the conduct of the man of ordinary prudence and facts and circumstances placed on record.

28] At this stage, it is necessary to mention that alongwith the appellants two more teachers had also made similar complaint against the respondent Nos. 1 and 2. The parties have not adduced the oral evidence. In the backdrop of the above stated evidence, facts and circumstances the respondents ought to have filed the affidavit of those teachers who had joined the appellants in making the complaint. It is not the case of the respondents that those teachers are not serving with the respondents. In the facts and circumstances, the respondents ought to have filed the affidavit of these two employees in support of their contentions.

29] On consideration of the documentary evidence on record we are fully convinced that the resignation sought to be relied upon by the respondent Nos. 1 and 2 being the voluntary resignation of the appellants cannot be accepted. The documentary evidence discussed above does not permit us to

accept the case of the respondent Nos. 1 and 2 and reject the case of the appellants. The learned Presiding Officer of the School Tribunal, Amravati as well as the learned Single Judge failed to take note of relevant material which has vital bearing on the core issue and crux of the case of the appellants. We are conscious that the concurrent finding of fact should not normally be interfered with. Before setting aside concurrent findings by two forums it must be demonstrated that such findings have been arrived at by ignoring vital evidence or improper application of the provisions of law and which is not possible based on such material. In this case we have come across that the material relevant circumstances and documents were not considered in the proper prospective. In our humble opinion if the orders are allowed to stand then the same would result in manifest injustice and irreparable loss to the appellants. We are satisfied that the impugned orders suffer from an error apparent on the face of record on account of non-consideration of the requirements of Section 7 of the Act of 1977 as laid down by this Court in the decisions referred to herein above. As a result of non-consideration of relevant material and

mis-interpretation of the provisions of Section 7 of the Act of 1977 the impugned orders were liable to be set aside in exercise of certiorari jurisdiction. In our view, the law laid down in the above cited judgments is consistent with the mandate of Section 7 of the Act of 1977 and Rule 40 of the Rules of 1981. On consideration of the evidence and circumstances brought on record, we have no semblance of doubt to conclude that the resignation letters relied upon by the respondents were not voluntary resignation letters of the appellants. The facts and evidence make it clear beyond doubt that the case of the appellants is probable and as such acceptable. We have no reason to take a view different from the one taken in the judgments (cited supra) on the point of the mandate of mandatory requirements of Section 7 of the Act of 1977. We reiterate that any act proved to have been done contrary to the mandate of Section 7 of Act of 1977 needs to be declared as *void-ab-initio* and illegal. We are therefore, inclined to set aside both the orders. Once the order passed by the learned single Judge in Writ Petitions is set aside consequently, the order passed by the learned

Presiding Officer of the School Tribunal, Amravati would have to be set aside. In view of setting aside both the orders, the appeals filed by the appellants namely Appeal No. 22 of 2000 and Appeal No. 23 of 2000 would have to be allowed. In the event of granting the relief as prayed for by the appellants before the School Tribunal they would be entitled to reinstatement. Perusal of the title of the appeals filed by the husband and wife before the School Tribunal, Amravati would show that in the year 2000 the husband was 36 years old and the wife was 34 years old. It is therefore, crystal clear that they have not attained the age of superannuation.

30] Since the appellants are found entitled for reinstatement, the question of back wages from the date of reinstatement will have to be considered. The learned Advocate for the appellants, to a pointed query from this Court stated that after 29.04.2000, namely the date of the retirement, they have not joined service anywhere. The learned advocate for the respondent Nos. 1 and 2 did not counter this submission. It is therefore crystal clear that due to the high handed and malafide

action on the part of the respondent Nos. 1 and 2 the appellants have been made to face this situation. They have led their life without service for 20 years. In the facts and circumstances one can imagine and visualize the plight and sufferings of the appellants. Considering the period when the appellants were out of employment, in our view the appellants are entitled to be granted 50 % back wages from the date of their otherwise termination namely with effect from 30.04.2000 and the same would meet the ends of justice. The Management of the respondent No.1 will be required to pay the back wages and consequential benefits in view of their reinstatement. Therefore, we proceed to pass the following order:

ORDER

- i] The Letters Patent Appeal Nos. 305 of 2010 and 418 of 2010 are allowed.
- ii] The orders passed in Appeal No. 22 of 2000 and Appeal No. 23 of 2000 passed by the learned Presiding Officer of School Tribunal, Amravati and the order passed by the learned Single Judge in Writ Petition Nos.2796 of 2006 and 5232 of 2006 is hereby set aside.
- iii] The Appeal No. 22 of 2000 and Appeal No.23 of 2000 filed by the appellants are allowed in

terms of prayer clause (i) only. It is declared that their resignations were not voluntary and as such null and void. The appellants shall be reinstated with effect from 30.04.2000.

- iv] The appellants shall be entitled to get the 50 % of back wages from 30.04.2000 till their reinstatement alongwith other consequential benefits as well as continuity of service. The back wages be paid within a period of three months from today, failing which that amount would carry interest @ 5 % p.a. from the date of judgment till realisation.
- v] The prayer clause i (a) of the Appeal No. 23 of 2000 is rejected.

Both Letters Patent Appeal No. 305 of 2010 and 418 of 2010 are allowed in aforesaid terms with no order as to costs.

JUDGE

JUDGE