

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**MAT 1316 of 2021
With
CAN 1 of 2021
Asis Kumar Sinha
Vs
The State of West Bengal and others**

Mr. Soumya Majumdar, Mr. Amitabrata Roy.	 for the Appellant
Mr. Pinaki Dhole, Ms. Kakali Samajpaty	 for the Respondent nos. 1,2,5 and 6
Ms. Koyeli Bhattacharyya.	for the Respondent nos. 3 and 4
Mr. Ranajit Chatterjee, Mr. Sk. Intiajuddin	for the Respondent nos. 7 and 8

Heard On : 07.02.2022

Judgment on : 25.02.2022

Rabindranath Samanta, J:-

1. Challenge in this appeal is against the order dated 6th December, 2021 passed by a Learned Single Bench in WPA 15940 of 2021 whereby the writ petition filed by the appellant Asis Kumar Sinha was dismissed.

2. The appellant preferred the aforesaid writ petition seeking the following reliefs:
 - a) A writ in the nature of mandamus be issued directing the respondent no.3, the President, West Bengal Board of Secondary Education, to withdraw the Memo No. DA/584/1/21 dated 10.09.2021 along with setting aside the order dated 17.08.2021 passed by the respondent no. 3.
 - b) A writ in the nature of mandamus directing the respondent authorities to allow the petitioner to act as the Headmaster of Singur Mahamaya High School (H.S).
3. The Learned Single Bench by the order as impugned dismissed the writ application on the reasons that as the resignation letter dated 13.08.2020 of the petitioner was accepted by the managing committee of the school on 05.10.2020, his letter of withdrawal dated 15.10.2020 was not acceptable.
4. The seminal question involved in this appeal is whether the order dated 17.08.2021 passed by the President, West Bengal Board of Secondary Education accepting the resignation letter dated 13.08.2020 of the appellant is sustainable.
5. The background facts which led the filing of the aforesaid writ petition may be adumbrated as under:

The appellant was appointed as the Headmaster of Singur Mahamaya High School(HS), Singur,

Hooghly in July, 2014. After taking over the charge as the Headmaster of the school he had been working sincerely. As an ex-student of the school he tried to protect the heritage of the school. But, after working for some time, he noticed some irregularities and illegalities in running the administration of the school. By a letter dated June 19, 2020 addressed to the President of the school the appellant raised several issues including lack of co-operation from some teachers and staff in running the school, improper preparation of class routine, not taking allotted classes by some teachers and leaving school by some staff and teachers before the school hours. Not getting any response to the letter from the President for a considerable time the appellant felt humiliated and he submitted his resignation letter dated 13th August, 2020 to the school authority. The President, without giving any consideration to the letter of complaint dated 19.06.2020 made by him and without supplying any copy of the decision of the meeting held on 16.09.2020, he sent a proposal to the appellant to withdraw his resignation by September 30, 2020. By a letter dated 22.09.2020 the appellant sought for copies of the decision of the meeting held on 16.09.2020, but to no effect. However, the appellant, withdrew his resignation by sending a letter dated 15th October, 2020.

The school authority by taking a decision in a meeting held on 05.10.2020 sent proposal to the West Bengal Board of Secondary Education for accepting the resignation submitted by the appellant. By a notice dated 09.08.2021 the disciplinary authority of the West Bengal Board of Secondary Education (hereinafter be referred to as the Board) asked the appellant to appear before the President of the Board on 17.08.2021 with all the relevant papers. The appellant, accordingly, appeared before the President of the Board. Ultimately, the President of the Board accepted the resignation letter dated 13.08.2020 submitted by the appellant, but without paying any heed to the letter of withdrawal of resignation submitted by him on 15.10.2020.

6. Learned Counsel appearing for the appellant submits that the appellant was disgruntled at the inaction on the part of the President of the school to address the allegations made by him in his letter of complaint dated 19.06.2020 raising various illegalities and irregularities in the functioning of the school. Even thereafter the grievances raised by him in the last part of July, 2020 relating to the process of admission of the students of class XI for the academic year 2020-21 were also not adverted to by the President. Under such circumstances, the appellant out of emotive frustration was compelled

to submit his resignation letter dated 13.08.2020. However, after his well wishers persuaded him, he being cooled down, withdrew his resignation by sending a letter dated 15.10.2020. Learned counsel points out that the school authority forwarded the proposal for accepting the resignation to the Board on 17.10.2020, but it did not consider the letter of withdrawal of the resignation made by the appellant prior to 17.10.2020. This, according to learned counsel, exhibits the malice on the part of the school authority.

7. Learned counsel appearing for the respondent nos. 7 and 8 submits that the Board has rightly accepted the resignation letter dated 13.08.2020 submitted by the appellant on the proposal made by the school authority. Learned counsel argues that as the resignation letter speaks of resignation with immediate effect and the appellant in fact absented himself after putting in the resignation, the proposal of the school authority to accept the resignation letter dated 13.08.2020 and acceptance of the same by the Board are quite justified. To buttress his argument learned counsel has cited a catena of decisions which are as under:

i) *Union of India and Ors-Vs-Gopal Chandra Misra and Ors* reported in (1978) 2 SCC 301

ii) Moti Ram-Vs-Param dev and Anr
reported in **(1993) 2 SCC 725**

iii) Raj Kumar-Vs-Union of India reported
in **AIR 1969 SC 180**

and

**Air India Express Limited and Ors-Vs-
Captain Gurdarshan Kaur Sandhu**
reported in **(2019) 17 SCC 129.**

8. Learned counsel appearing for the respondent nos. 1, 2, 5 and 6 and learned counsel appearing for the respondent nos.3 and 4 adopt the submission as advanced by learned counsel appearing for the respondent nos. 7 and 8
9. Before adverting to the submissions advanced by learned counsels appearing for the parties we feel that some factual aspects emanating from the documents on record may be delineated as under :
10. By the complaint dated 19.06.2020 addressed to the President, Singur Mahamaya High School, the appellant complained, amongst others, that teaching and non-teaching staff used to leave school before school hours. The works which were assigned to the clerks were to be done by him. No audit of the incomplete books of account was conducted since long. Owing to non-cooperation from some teachers the school could not avail of various scholarship schemes. Because of the doldrums in the administration of the school a few guardians of

students trespassed into his house and he was heckled and humiliated by them in presence of his widowed mother aged 72 years.

11. Not getting any redressal of the grievances ventilated by him vide the letter dated 19.06.2020 and again being humiliated in the last part of July, 2020 during the process of admission of students in class XI for the year 2020-21, he out of intense mental distress submitted the resignation letter.
12. However, the appellant, after being persuaded by his well wishers, withdrew his resignation letter by sending a letter dated 15.10.2020 to the President of the school.
13. It is not in dispute that the school authority forwarded the proposal on accepting his resignation on 17.10.2020 to the District Inspector of Schools after the appellant withdrew his resignation on 15.10.2020.
14. According to Rule 3 (1) of the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-teaching Staff) Rules, 2018, the Board, subject to any rule, order or direction of the Government or the commissioner, shall have the following powers and duties:

“ a) to appoint Headmaster or Headmistress and Assistant Teachers and non-teaching staff including Librarian in any institution.

- b) to issue confirmation order in respect of service of Headmaster or Headmistress or Assistant Teachers or non-teaching staff including Librarian who has completed 2(two) years of satisfactory and continuous service under probation upon recommendation of the committee. The Head of Institution shall forward the prayer of confirmation with recommendation of the committee to the Board through the District Inspector of Schools or Additional District Inspector of Schools of the concerned Sub-Division, as the case may be;*
- c) to give effect to the recommendation of transfer of Headmaster or Headmistress or Assistant Headmaster or Headmistress or Assistant Teachers or non-teaching staff including Librarian in accordance with the provision of the West Bengal School Service Commission Act, 1997;*
- d) to take disciplinary action against misconduct of teachers or non-teaching staff;*
- e) To collect vacancy report from the Commissioner in respect of sanctioned vacancies of teacher and nonteaching posts in the State in order to fill up such vacant posts of teacher or non-teaching staff including Librarian in an institution upon*

recommendation of the West Bengal School Service Commission;

f) To maintain, as the appointing authority, reservation rosters of posts as per law in respect of teacher or non-teaching staff including Librarian.”

15. In the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-teaching Staffs) Rules, 2018, we do not find any provision prescribing the procedure as to submission of resignation by a Headmaster or an Assistant Teacher and the mode of acceptance of the same. But, the rules as quoted above clearly mandate that it is the Board which is now the competent authority to appoint a Headmaster or a teacher and initiate disciplinary proceeding against him/her. This implies that the Board being the appointing authority may accept resignation of a Headmaster or an Assistant Teacher.

16. In this context some relevant excerpts of the order dated 17.08.2021 passed by the President of the Board round which the bone of contention hovers may be quoted as follows:

“ Sub: Resignation of Sri Asis Kumar Sinha from the post of Headmaster of Singur Mahamaya High School.

Backdrop of the case:

Sri Asis Kumar Sinha, Headmaster of Singur Mahamaya High School, Hooghly had submitted his letter of resignation dated 13.08.20 from the post of Headmaster before the President of the managing committee of the school and started being absent in the school from the said date. The managing committee in its letter dated 16.09.20 had requested Sri Asis Kumar Sinha to withdraw the said letter and resume his duty within 30.09.20. But Sri Sinha did not resume his duty. So, in a meeting dated 05.10.20 the m.c. resolved to accept the resignation of Sri Asish Kumar Sinha.

But in a letter dated 15.10.20 Sri Asis Kumar Sinha, informed the m.c. about his desire to withdraw the resignation and to join the duty.

The President of the school managing committee in his letter dated 17.10.20 sent the matter to the Board for necessary action.

The WBBSE in its letter dated DA/407/20, dated 26.11.20 has requested the concerned DIS/SE to conduct an enquiry in the present matter and submit a report to the Board.

The concerned DIS/SE submitted a report dated 09.02.21 where he only put forward the chronology of the above mentioned events and requested the Board to take a decision in this regard.

The matter was placed before me, the President, WBBSE and I decide to take a hearing on the matter on 17.08.21.

Findings:

On the basis of the submission made in the hearing, I am of the opinion that the managing committee of Singur Mahamaya High School has requested Sri Asis Kumar Sinha several times to withdraw his resignation and has given him ample opportunities to join the school in his earlier post i.e., the Headmaster of the school. But Sri Asis Kumar Sinha did not oblige the school authority.

During the hearing, Sri Asis Kumar Sinha accepted the fact that he sent a letter dated 15.10.20 to the school authority expressing his desire to withdraw the resignation but also mentioned that he did so in persuasiojn of the concerned DIS/SE. Moreover, he stated in the hearing that the reasons which were instrumental behind his

decision of resignation are still persisting in the concerned institution.

Hence, after careful consideration of the facts and circumstances and after taking into account the relevant papers and documents and the submission made by the concerned parties at the time of hearing, I, President, West Bengal Board of Secondary Education approve the proposal of the managing committee of Singur Mahamaya High School dated 05.10.20 regarding the acceptance of the resignation letter of Sri Asis Kumar Sinha, the Headmaster of the school.”

17. From the facts as depicted hereinabove it is axiomatic that the appellant under some compelling circumstances submitted his resignation on 13.08.2020, but, he by a letter dated 15.10.2020 withdrew the resignation. Ultimately, the President of the Board, accepted his resignation on 17.08.2021. It is spelt in the order that the appellant who was present during hearing before the President submitted that by a letter dated 15.10.2020 he withdrew the resignation. But the order is silent about consideration or non-consideration of the letter of withdrawal of the resignation. As the aforesaid rules impliedly

indicate, the Board is the competent authority to accept or not to accept any resignation letter of a Headmaster or a teacher.

18. Now, we are to consider whether the decision arrived at by the President on acceptance of the resignation letter is justifiable.
19. In the absence of any statutory provision prescribing the procedure on acceptance of a resignation letter by a Headmaster or a teacher we are to look at the legal principles as enunciated in the decisions cited at the Bar.
20. In the decision in the case of ***Union of India and Ors-Vs- Gopal Chandra Misra and Ors*** reported in ***(1978) 2 SCC 301*** the Hon'ble Apex Court has held that in the absence of any provision in the Constitution pertaining to withdrawal of resignation or prohibition against withdrawal of resignation, the resignation once submitted by a Hon'ble Judge of a High Court shall be treated to be final. In the decision in the case of ***Moti Ram-Vs- Param Dev and Anr*** reported in ***(1993) 2 SCC 725*** the Hon'ble Apex Court has held that resignation submitted by a Chairman of Himachal Pradesh Khadi and Village Industries Board shall take effect immediately if the desire of the resignation is not prospective. But, his resignation as a member of the Board will take effect from the date when it is notified in the gazette. In the decision in the case of ***Raj Kumar-***

Vs- Union of India reported in ***AIR 1969 SC 180*** the Hon'ble Supreme Court has laid down the principle that a member of Indian Administrative Service is not entitled to withdraw his resignation letter once it has been accepted by the authority concerned.

21. In the decision in the case of ***Air India Express Limited and Ors-Vs- Captain Gurdarshan Kaur Sandhu*** reported in ***(2019) 17 SCC 129*** it has been held by the Hon'ble Supreme Court that in the absence of any rule governing the acceptance of resignation, "prospective resignation" can be withdrawn at any time before it becomes effective.
22. So far as the decision in ***(1978) 2 SCC 301*** is concerned, the procedure of acceptance of resignation by a Hon'ble Judge of a High Court is stipulated in the constitution and so far the decision in ***(1993) 2 SCC 725*** is concerned the procedure of resignation of a chairman or member of Himachal Pradesh Khadi and Village Industries Board is prescribed in the relevant statutory rules.
23. However, it has been postulated by the Hon'ble Apex Court in the decisions reported in ***AIR 1969 SC 180*** and ***(2019) 17 SCC 129*** supra that in the absence of any rule the resignation put in by an employee may be withdrawn before it is accepted by the authority concerned.

24. In a recent decision in the case of ***X-Vs-Registrar General, High Court of Madhya Pradesh*** rendered by the Hon'ble Apex Court on 10.02.2022 it has been held that the resignation tendered by a lady judicial officer under a compelling circumstances would not be treated as a voluntary resignation and as such the same is not acceptable. Accordingly, the Hon'ble Apex Court by setting aside the order of the Hon'ble Madhya Pradesh High Court on accepting the resignation of the officer directed the High Court Administration to reinstate her.
25. In the case on hand we find that under some peculiar and compelling circumstances as narrated above, the appellant submitted his resignation on 13.08.2020. After being persuaded by his well wishers, he withdrew the resignation by sending a letter dated 15.10.2020. What it is evident from the documents on record, the appellant communicated both the resignation letter as well as the letter of the withdrawal of the resignation to the District Inspector of School as well as to the President of the Board.
26. As the rules governing the field under the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018 postulate, the President of the West Bengal Board of Secondary Education is the

competent authority who may or may not accept the resignation of the appellant. In the absence of any rule to the contrary, the resignation of a Headmaster or a teacher of a school shall be prospective in nature as the resignation becomes effective from the date when the authority accepts it. The resignation involves many ramifications such as grant of pensionary or other monetary benefits to the person who put in resignation after acceptance of the resignation.

27. As the circumstances emerge, the appellant out of severe frustration submitted the letter of resignation dated 13.08.2020. We feel that such resignation was not his voluntary act. The appellant communicated the letter of withdrawal of his resignation not only to the President of the school, but also to the District Inspector of schools as well as to the President of the Board. It appears that in the order dated 17.08.2021 the President of the Board noted the letter of withdrawal of the resignation made by the appellant, but, he did not apply his judicial mind to it. In the light of the legal principles as enunciated above, the resignation put in by the appellant could be withdrawn before it was accepted by the authority concerned. That being so, the President of the Board ought to have accepted the letter of withdrawal of resignation submitted by the Appellant.

28. In his order dated 17.08.2021 the President of the Board has observed that the managing committee Singur Mahamaya High School requested the appellant Asis Kumar Sinha several times to withdraw his resignation and has given him ample opportunities to join the school in his earlier post i.e. the Headmaster of the school. But Sri Sinha did not oblige the school authority. From a letter dated 16.09.2020 made by the President, Singur Mahamaya High School it appears that the President of the school for once requested the appellant to withdraw his resignation by 30.09.2020. In such backdrop, the aforesaid observation as made by the President of the Board is factually incorrect.

29. The Learned Trial Judge in the impugned order has observed that the appellant submitted the letter of withdrawal of resignation on 15.10.2020 after the President of the school accepted the resignation on 05.10.2020. It is trite to say in view of the present legal scenario the President of the school has no authority either to accept or reject a resignation letter of a teacher. However, what we find, the President of the school authority in fact did not accept the resignation, but he forwarded a proposal on acceptance of the same to the Board for decision. Therefore, the observations made by the Learned Trial Judge are not sustainable.

30. It appears from a letter dated 09.08.2021 of the West Bengal Board of Secondary Education that the disciplinary authority intimated to the appellant that he would appear before the President of the Board in its chamber on 17.08.2021 at 1:30 P.M. A resignation letter cannot in any manner be termed as a disciplinary proceeding. So, the notice served upon the appellant from the disciplinary authority of the Board is not warranted by any statutory rule.
31. In view of the observations as above we hold that the order dated 17.08.2021 passed by the President of the Board accepting the resignation of the appellant is vitiated with illegalities and the same is liable to be quashed.
32. Accordingly, the question as raised for resolution is answered in the negative.
33. The impugned order passed by the Learned Single Bench suffers from infirmities and the order is liable to be set aside.
34. In the result, the appeal is allowed. The order dated 06.12.2021 passed by the Learned Single Bench in WPA 15940 of 2021 is hereby set aside. In consequence thereof the writ petition is allowed.
35. The order dated 17.08.2021 passed by the President, West Bengal Board of Secondary Education accepting the resignation letter dated 13.08.2020 of the appellant is hereby quashed. The concerned respondents authorities are directed to

allow the appellant to act as the Headmaster of Singur Mahamaya High School within fifteen days from date treating his service as continuing service as the Headmaster of the school. The concerned respondents authorities are further directed to release the salary of the appellant as due to him after regularising the period of his absence in accordance with Rules.

36. The connected application being CAN 1 of 2021 also stands disposed of.

37. No order as to costs.

38. Urgent certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

I agree.

(Rabindranath Samanta,J.)

(Harish Tandon, J.)

