

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5510 OF 2019

Sanjeev Bhamanlal Jamge

..Petitioner

V/s.

Shri. A.P.D.J. Pathshala

by their Chairman/Secretary and Ors.

..Respondents

Mr. C.G. Gavnekar for the Petitioner.

Mr. K.S. Bapat a/w S.R. Waghmare for Respondent Nos. 1 and 2.

Ms. M.S. Bane, AGP for Respondent No.4/State.

CORAM : C.V. BHADANG, J.

DATE : 13 SEPTEMBER 2022

P.C.

. Rule made returnable forthwith. The learned counsel for the Respondent waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the judgment and order dated 18.12.2018 passed by the Presiding Officer of the College Tribunal in Appeal No. 2 of 2017. By the impugned judgment, the learned Tribunal has dismissed the appeal.

3. I have heard the learned counsel for the parties. With the assistance of the learned counsel for the parties, I have gone through the record.

4. Mr. Gavnekar, the learned counsel for the Petitioner submitted that the resignation which was tendered by the Petitioner could not have been accepted by the Secretary. In the submission of the learned counsel as per the governing rules and the constitution of the Trust and the institution, the President was the appointing authority and the authority to dismiss an employee. He, therefore, submitted that it is the President who is authorised and competent to accept the resignation of an employee. He therefore, submitted that the acceptance by the Secretary would not have any legal effect of snapping of employer-employee relationship and therefore, the learned College Tribunal was in error in dismissing the Appeal. The learned counsel has placed reliance on clause (c) of Statute 204 of Shivaji University to which the institute is affiliated, in order to submit that resignation would not be effective unless accepted by the competent authority. The learned counsel has placed reliance on the decision of this Court in Writ Petition No. 4459 of 2017 *Jaywant Pratishtan through its Chairman and Anr. v/s. Prof. Govind Maruti Ambi and Ors.* decided on 21.07.2017. Except these, there are no other contentions raised.

5. The learned counsel for the Respondent has submitted that the only ground on which the College Tribunal was approached was that the resignation was obtained by coercion. It is submitted that the said contention has already been negated by the

College Tribunal. He submitted that now there is no challenge on that ground. He submitted that the ground based on the competence of the Secretary to accept the resignation was not raised before the College Tribunal and could not be allowed to be raised for the first time before this Court. He submitted that even otherwise the statute 204 does not contemplate any acceptance as it is a unilateral act of the employee to leave the service of the affiliated college/recognised institute.

6. I have considered the submissions made. It appears that the only ground on which the Petitioner had approached the College Tribunal was that the resignation was obtained by force/coercion, which ground has not been accepted by the Tribunal. It is necessary to note that before this Court, the said ground is given up, inasmuch as the learned counsel for the Petitioner, in all fairness submitted that the Petitioner is not pressing for the ground of resignation being obtained by coercion/force.

7. This takes me to the ground based on the competence of the Secretary to accept the resignation. The record discloses that the resignation dated 13.01.2017 was tendered by the Petitioner. The Secretary by a communication dated 31.01.2017 had intimated that the said resignation is accepted. It is further, undisputed that the Petitioner after putting in three months service after resignation, has been relieved from service on 29.06.2017 after office hours. It may be mentioned that the

ground about alleged incompetence of the Secretary was not raised before the College Tribunal and normally this court would be slow in considering a ground raised for the first time. However, as parties have addressed the Court on this ground also, I propose to briefly deal with the same.

8. The learned counsel for the Petitioner submitted that the resignation was given as contemplated under Statute 204 which reads thus:

S.204 : Seeking Release:

“a) No teacher shall leave the service of the affiliated College / Recognised Institution without giving to the Governing Body three months’ notice, if he is confirmed or one month’s notice if he is temporary or on probation or in lieu of notice, pay the Governing Body an amount equal to three months’ or one month’s pay as the case may be.

b) No Principal appointed in a College affiliated to the University / Head of the Recognised Institution shall leave the service without giving one month’s notice if on probation or three month’s notice, if confirmed, on in lieu of notice, pay one month’s pay, if on probation or three months’ pay if confirmed.

c) The Governing Body, as its discretion may waive the above notice period or notice pay in part or in full.”

It can thus be seen that under Statute 204, any teacher can leave the service of affiliated college / recognised institution after giving to the Governing Body three months’ notice, if he is confirmed or one month’s notice if he is temporary or on probation or in lieu of notice, pay the Governing Body an

amount equal to three months' or one month's pay as the case may be.

9. This Court in Jaywant Parishthan (supra) has held thus in para 19 of the Judgment.

19. In the light of the above principles, let us consider whether resignation tendered by the permanent teacher is required to be accepted by the management and whether the teacher can withdraw his resignation before acceptance of it by the management. It is settled principle of law that withdrawal of resignation is always linked with acceptance. Where no acceptance is required and the resignation has been made in accordance with the prescribed procedure, the process gets exhausted and the resignation becomes fait accompli. Clause (a) of Statute 204 gives the teacher a unilateral right to cut short his tenure by following the procedure prescribed therein, of his own volition. Such a resignation to be effective may not require acceptance by the management. Clause (a) does not give right to withdraw the resignation once given in accordance with the manner prescribed therein. If acceptance is required then the teacher cannot withdraw the resignation after it is accepted. If acceptance of the management is not required, the resignation tendered must be in conformity with Clause (a) of Statute 204. In order to terminate his tenure, the confirmed teacher has to-

- a. give three months' notice; or*
- b. in lieu of notice, pay the Governing Body, an amount equal to three months' pay."*

(Emphasis supplied)

It can thus clearly be seen that clause (a) of statute 204 gives the teacher unilateral right to cut short his tenure by following the procedure therein.

10. This Court has categorically held that such resignation may not require acceptance by the Management. Although the learned counsel for the Respondent submitted that general powers of Management of the institution were delegated and conferred upon the Secretary by the governing body. I do not find it necessary to dwell on the same as the act of the employee/teacher under Statute 204 is an unilateral act not requiring any formal acceptance.

11. In the circumstances, I do not find that the impugned judgment suffers from any infirmity, so as to require interference.

12. The petition is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.