

Sonali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3822 OF 2022

The State of Maharashtra and Ors. ...Petitioners
Versus

Smt. Manisha Chandrakant Gosavi & Anr. ...Respondents

Mr. S. K. Nair, Special Counsel a/w Mr. N. K. Rajpurohit, AGP
a/w Ms. Reshma Kurlle for the petitioners/State.

Mr. Sumant Deshpande i/b Mr. Pritesh K. Bohade for
respondent no.1.

Mr. Vicky Nagrani a/w Ms. Kimaya Godbole, newly appointed
Advocate for respondent no.1.

**CORAM: DIPANKAR DATTA, CJ &
MADHAV J. JAMDAR, J.**

**RESERVED ON : 9th NOVEMBER, 2022
PRONOUNCED ON: 2nd December, 2022**

Madhav J. Jamdar, J.

1. The petitioners, original respondent nos. 1 to 3 before the learned Maharashtra Administrative Tribunal, Mumbai (hereafter "Tribunal" for short), by the present writ petition are challenging the legality and validity of judgment and order dated 5th February 2021 in Review Application No.2 to 2020, order dated 10th December 2019 in Miscellaneous Application No.329 of 2019 and judgment and order dated 18th February 2019 in Original Application no.434 of 2014, all passed by the Tribunal.

2. The respondent no.1 was appointed on contractual basis for 11 months as Craft Instructor at Yavatmal. She was thereafter appointed for further 11 months on contractual

basis at Industrial Training Institute (hereafter "ITI", for short) Dongri, District Thane by an appointment letter dated 2nd March 2010. Respondent no.1 applied under the regular selection process and after qualifying in the said selection process, she was appointed on regular basis as a Craft Instructor (Craft Instructor Electrician) at ITI, Vikramgad, Thane by an appointment letter dated 3rd September 2010.

3. Respondent no.1 submitted her resignation on 6th December 2012 and the said resignation was accepted by the Government of Maharashtra vide order dated 10th January 2013. On 9th May 2014, by filing Original Application No. 434 of 2014 before the Tribunal, the respondent no.1 *inter alia* challenged the said order dated 10th January 2013 by which her resignation was accepted. It was prayed by her that she be allowed to join the service on the post of Craft Instructor (Craft Instructor Electrician) as per her original appointment letter dated 3rd September 2010 with continuity of service with effect from the date of her original appointment and further relief was sought to direct the original respondents to grant all consequential service benefits including back wages with interest for the period of her leave by giving legal effect to the said leave period as an extraordinary leave period.

4. By the impugned order dated 18th February 2019, the said original application was allowed by holding that the resignation submitted by the respondent no.1 being qualified and conditional, it was not liable to be accepted and, therefore, the respondent no.1 shall be entitled to the relief of reinstatement with full back wages. The Tribunal further directed that departmental inquiry be conducted under the

Vishakha Guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 relating to sexual harassment. The petitioners were also directed to decide the respondent no.1's period of leave.

5. The petitioner no.1 filed Miscellaneous Application No.326 of 2019 before the Tribunal contending that as the contentions raised by the State of Maharashtra were not considered properly, the said original application be reheard. The said miscellaneous application was dismissed by order dated 10th December 2019 on the ground that the same is not maintainable.

6. The petitioner no.1 thereafter filed Review Application No.2 of 2020. The said review application was dismissed by the Tribunal by judgment and order dated 5th February 2021.

7. The reasons recorded by the Tribunal in the judgment and order dated 18th February 2019 can be gathered from paragraphs 16 and 17 thereof. The said paragraphs read as under:

"16. If the facts, namely: -

- i. *The Applicant claims that she has suffered sexual harassment;*
- ii. *The Applicant has filed the complaint to the Director;*
- iii. *An enquiry was initiated but not completed or no findings are declared to the Applicant;*
- iv. *Applicant was required to undergo leave for high risk pregnancy and she was required to take leave and had submitted leave application;*
- v. *Applicant's medical leave has remained undecided. Applicant was not referred to medical examination as regards her claim as regards high risk pregnancy; and*

vi. *Applicant was charge sheeted and she submitted resignation, she has also submitted a detailed complaint/representation dated 22.12.2012;*

vii. *All facts called and described in foregoing text taken together would demonstrate that her resignation was not voluntary, but under duress.*

17. The resignation made by Applicant and even notice pay remitted by the Applicant cannot be believed to be totally voluntary act as those acts are propelled due to the duress which has operated due to the circumstances mentioned in foregoing paras."

8. We heard Mr. S. K. Naik, Special Counsel for the petitioners and Mr. Sumant Deshpande, learned counsel for respondent no.1. We permitted Mr. Vicky Nagrani, learned counsel to file written submissions on behalf of the respondent no.1, for the reasons which are more particularly set out in our order dated 9th November 2022.

9. Mr. Nair submitted that the respondent no.1 gave unconditional resignation dated 6th December 2012 and deposited one month's salary on 21st December 2012 to cover notice period vide a challan and below the challan she had given a handwritten note addressed to the Principal, ITI, Vikramgad, once again giving intimation of her resignation and for that purpose, one month's salary was deposited. He submitted that on 10th January 2013, the respondent no.1's resignation letter was accepted by the Appropriate Authority and by office order dated 10th January 2013, the Principal, ITI, Vikramgad issued office order relieving the respondent no.1 from service due to her resignation. Accordingly, on 24th January 2013, the respondent no.1 handed over the charge to the Group Instructor in the presence of the Principal.

10. It is submitted that in catena of judgments of the Supreme Court, it is held that where a public servant has invited by letter of resignation, determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the Appropriate Authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the Appropriate Authority. To substantiate his contentions, Mr. Nair relied on the following decisions of Supreme Court:

- (a) **M/s J. K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur vs. State of U. P. & Ors.**, reported in AIR 1990 SC 1808;
- (b) **Raj Kumar vs. Union of India**, reported in AIR 1969 SC 180;
- (c) **Chand Mal Chayal vs. State of Rajasthan**, reported in (2006) 10 SCC 258;
- (d) **Gyanendra Sahay vs. Tata Iron & Steel Co. Ltd.**, reported in (2006) 5 SCC 759; and
- (e) **P. Lal vs. Union of India & Ors.**, reported in (2003) 3 SCC 393.

11. On the other hand, Mr. Sumant Deshpande, learned counsel appearing on behalf of the respondent no.1 submitted that resignation tendered by the respondent no.1 cannot be construed as voluntary but the respondent no.1 was forced to submit the same due to circumstances amounting to duress. He submitted that the respondent no.1 had made complaint of sexual harassment against the respondent no.2 on 6th May 2011; however, no action was taken against him. He submitted that under the influence of the respondent no.2,

the petitioners have issued charge-sheet dated 3rd December 2012 alleging unauthorized absence despite the respondent no.1 having applied for maternity leave. Thus, under duress she was compelled to tender resignation. He submitted that about four months after the resignation was accepted, the inquiry into her complaint of sexual harassment against the respondent no.1 was directed to be carried out. The Women Redressal Committee which inquired the complaint has found substance in her complaint. Despite the fact that charges are held to be proved, no penalty is imposed on the respondent no.2.

12. Mr. Deshpande relied on the decision of the Supreme Court in **Dr. Prabha Atri vs. State of U. P. & Ors.**, reported in (2003) 1 SCC 701.

13. As set out earlier by our order dated 9th November 2022, we also permitted Mr. Vicky Nagrani to file written submissions on behalf of the respondent no.1. In the said written submissions, most of the points argued by Mr. Deshpande were reiterated. In the written submissions relying on sub-rule (4) of rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereafter "the said Rules" for short), it has been urged that the said provision empowers the authority to take the respective person back in service in the public interest on certain conditions and the said power should have been exercised by the State Government. In the written submissions, reliance was placed on the decision of the Supreme Court in **X vs. Registrar General, High Court of Madhya Pradesh & Anr.**, reported in (2022) SCC OnLine 171.

14. Before considering the rival submissions, it is necessary to set out the factual position regarding the resignation in question and actions taken by both the parties pursuant to the said resignation.

i. The resignation in question was submitted by the respondent no.1 on 6th December 2012. The said resignation letter is in Marathi and translation of the same as furnished by the petitioners, reads as under:

“To
The Joint Director Vocational Education & Training Office,
Bandra (E)
Subject: Regarding tendering resignation.
Sir,
In connection with the above noted subject, I would like to respectfully inform you that, as I am **not keeping well and as I am not able to make long journey and as none of the applications submitted by me earlier have not been considered** in any manner whatsoever, it has become impossible for me to do the job. Hence I am tendering resignation from my post of C.I. Electrician of I.T. Institute, Vikramgad.
Respectfully submitted for your information and further action”

(Emphasis added)

ii. On 21st December 2012, respondent no.1 deposited one month's salary in lieu of notice.

iii. On 2nd January 2013, challan for receipt of one month's salary was issued, wherein there is a handwritten noting of the respondent no.1. The translation of the same reads as under:

Manisha C. Gosavi
F-103, Shanti Niketan
Society, Sector 8/8A,
Kharghar, Navi Mumbai-
410210.

Date:21.12.12

To,

The Principal I.T. Institute, Vikramgad,
Dist. Thane.

Subject: Depositing one month pay to office regarding.

Sir,

With reference to the above subject, I would like to inform you that, I was working on the post of Craft Instructor Electrician on 30/09/2010. **As I have resigned from my post of this Institute, I am giving Rs.22146/- as one month salary to** Shri Pansare D. H. to deposit it to Government. Submitted for your kind information.

Yours faithfully,

s/d.

M. C. Gosavi

(Emphasis added)

iv. The said resignation letter was accepted by the Appropriate Authority vide order dated 10th January 2013, which reads as under:

"Resignation of Smt. Manisha Chandrakant Gosavi, Craft Instructor (Electrician), Industrial Training Institute, Vikramgad, given by her application dated 6/12/2012, of her post is accepted as per the provisions of the Government Resolution referred to at no.1 herein above.

(Emphasis added)

v. By office order dated 10th January 2013 of Principal, ITI, Vikramgad respondent no.1 was relieved from service due to her resignation, which reads as under:

"In pursuance of the aforesaid reference, as the resignation given by Smt. Manisha Chandrakant Gosavi, Craft Instructor, Electrician, I.T. Institute, Vikramgad, by her application dated 06/12/2012 resigned from her post, which has been sanctioned by the Joint Director, Vocational Education and Training, Regional Office, Mumbai 51, by his letter bearing No.ROM/Estt./Resignation/D-1(B)/197, dt. 10/01/2013 and therefore she is relieved from her service on the date 10/01/2013 afternoon on the condition of giving Government dues of the Institute Establishment and handing over the charge."

(Emphasis added)

vi. On 24th January 2013, respondent no.1 handed over her charge to Mr. S. M. Bari, Group Inspector, in the presence of the Principal. At the time of handing over the charge, it was noticed that there were shortage of material. List of shortage of Consumable Register of Rs.55,552/- and shortage of Goods Inventory of Rs.1,39,452/- which have been signed and accepted by respondent no.1, wherein she had stated as follows: -

"It is certified that the Dead Stock Register No.1 and No.2 and Consumable Register as per the list of electrical trade machinery, tools and equipments are found shortage and I am ready to pay for the same."

(Emphasis added)

vii. On 15th March 2013, the respondent no.1 made application seeking letter of acceptance of resignation and receipt of payment of salary.

viii. Letter dated 15th March 2013 was sent to the respondent no.1 to take away the remaining amount and copy of challan from the petitioners' office. The relevant portion of said letter reads as under:

"With reference to the above subject, you are informed that, you after resigning from the post of Craft Instructor Electrician have deposited Rs.22146/- in the office on 21.12.2012. However, Rs.14940/- (Rupees Fourteen Thousand Nine Hundred Forty Only) deposited to government through chalan. So balance amount and copy of chalan you should collect from this office."

ix. On 12th April 2013, letter was sent by respondent no.1 requesting the petitioners not to sanction her resignation letter.

x. On 13th May 2013, communication was made by the petitioners regarding acceptance of resignation of respondent no.1, wherein it was mentioned that a letter dated 15th March 2013 was sent to the respondent no.1 to take away the remaining amount and copy of challan from the petitioners' office.

15. Above documentary evidence on record establishes the following aspects:

A) Respondent no.1 submitted resignation dated 6th December 2022 by specifically mentioning the following reasons:

- Not keeping well
- Not able to make long journey.
- None of the applications submitted earlier by her were considered.

B) On 21st December 2012, the respondent no.1 deposited one month's salary in lieu of notice and on 2nd January 2013, the challan for the receipt of one month's salary was issued. Respondent no.1 reiterated by making noting on the said challan that she has resigned from the said post and, therefore, made payment of one month's salary.

C) The said resignation was accepted by the Appropriate Authority on 10th January 2013 and pursuant thereto, the respondent no.1 was relieved.

D) On 24th January 2013, the respondent no.1 handed over her charge to Mr. S. M. Bari, Group Instructor.

E) On 15th March 2013, the respondent no.1 sought letter of acceptance of resignation and receipt of payment of salary.

16. Thus, all the above factual aspects, established on the basis of documentary evidence on record, clearly show that the contentions raised that the resignation of the respondent no.1 is not voluntary and is under duress is incorrect. It is significant to note that the respondent no.1 has given two specific reasons apart from another reason for tendering resignation, i.e., she is not keeping well and not able to make long journey. Thus, the findings of the Tribunal that resignation of the respondent no.1 is not voluntary and under duress as she suffered sexual harassment, her medical leave application remained undecided and instead she was charge-sheeted are not supported by the reasons mentioned in the resignation letter. The Tribunal has completely overlooked

these reasons set out in the resignation letter. The findings recorded that her resignation cannot be considered as voluntary and under duress are the findings recorded without considering the above factors.

17. Mr. Deshpande appearing for the respondent no.1 very heavily relied on decision of the Supreme Court in **Dr. Prabha Atri** (supra). He submitted that the said judgment is squarely applicable to the present case. In that case, the appellant was working as an anesthetist in Kamla Nehru Memorial Hospital, Allahabad since 10th May 1978. On 5th January 1999, she left the work as she was not feeling well and the allegation was that she left the work on that day without informing the In-charge Doctor. On 8th January 1999, she was placed under the suspension with immediate effect and issued memo. On 9th January 1999, she replied clarifying the position that due to her sickness she left early and at the fag-end of the letter added the following remark:

“Your letter is uncalled for and should be withdrawn. I have been working in this hospital since 10-5-1978 and have always worked in the best interest of the patients. It is tragic, instead of taking a lenient view of my sickness you have opted to punish me.

If the foregoing is not acceptable to you then I have no option left but to tender my resignation with immediate effect.”

18. Immediately on 9th January 1999, on the pretext that the said letter is a resignation letter, the appellant's resignation was accepted. On 14th January 1999, she submitted a letter stating that she never resigned and unnecessarily something has been read between the lines.

Reiterating her stand that she had not resigned but shown only intention to resign, the appellant requested for rectifying the mistaken understanding of her earlier letter by taking necessary steps in the correct perspective. The Secretary of the Hospital by his communication dated 16th January 1999 reiterated the correctness of the action taken and declined to reconsider the matter.

19. Immediately thereafter, the appellant filed Civil Miscellaneous Writ Petition No.13186 of 199 before the High Court of Allahabad. However, the said challenge was rejected. The appellant challenged the same by approaching the Supreme Court. In this background, the Supreme Court held as follows:

“10. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but **whether the letter dated 9-1-1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a “resignation”, it must be unconditional and with an intention to operate as such.** At best, as observed by this Court in the decision in *P.K. Ramachandra Iyer* it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the Hospital, that she was placed under suspension and

exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9-1-1999 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so-called resignation. The words 'with immediate effect' in the said letter could not be given undue importance dehors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the Hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9-1-1999. Consequently, it appears to be reasonable to view that as in the case reported in *P.K. Ramachandra Iyer* the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9-1-1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the Writ Petition."

(Emphasis added)

20. The factual position in the said case of **Dr. Prabha Atri** (supra) is totally different from the present case. In that case, the letter dated 9th January 1999 considered as resignation letter by the authorities was not the resignation letter but only a desire was expressed to resign if certain actions are not taken. Ambiguity, if any, in the said letter dated 9th January 1999 was immediately clarified by the appellant by letter dated 14th January 1999. In the present case the petitioner submitted resignation on 6th December 2012. On 21st December 2012, she deposited one month's salary in lieu of notice. On 2nd January 2013, on challan she made noting in her own handwriting reiterating about her resignation. Her

resignation was accepted by the Appropriate Authority on 10th January 2013. Thereafter, she handed over charge on 24th January 2013. Thus, these factual aspects on record clearly show that the petitioner took conscious decision to resign and the same is voluntary. The said material on record clearly show that after tendering resignation on 6th December 2012, she took steps in furtherance of said decision on 21st December 2012, 2nd January 2013 and on 24th January 2013. All these aspects clearly show that her resignation was voluntary. Thus, reliance placed on behalf of the respondent no.1 on the said decision in the case of **Dr. Prabha Atri** (supra) is totally misconceived.

21. The learned Tribunal has completely overlooked the above aspects on record and therefore, the impugned order passed suffers from non-application of mind. The impugned order is perverse as very significant aspects of the matter are completely ignored.

22. By contending that the respondent no.1 has remained unauthorisedly absent from 20th June 2011 without giving any prior intimation to the Head of the institute, charge-sheet was issued to the respondent no.1 on 3rd December 2012 and thereafter without facing the inquiry the respondent no.1 submitted resignation on 6th December 2012.

23. The factual position on record reveals following:

i. 3rd September 2010- Respondent no.1. was appointed on regular basis as a Craft Instructor (Craft Instructor Electrician) at ITI, Vikramgad, Thane.

- ii. 6th May 2011- Respondent no.1 lodged complaint regarding sexual harassment against respondent no.2.
- iii. 2nd July 2011- Respondent no.1 submitted resignation letter.
- iv. 25th July 2011- Respondent no.1 submitted application for withdrawal of resignation letter.
- v. 25th July 2011- Respondent no.1 submitted application to the Principal of the college for medical leave along with medical certificate dated 14th June 2011.

It is significant to note the contents of medical certificate dated 14th June 2011, which reads as follows:

"This is to certify that Mrs. Manisha Chandrakant Gosavi age 30 years (Thirty Years) old, she is suffering from high risk early pregnancy and clinically should needs strict bed rest. **She is advised strict bed rest for 2 & ½ months w.e.f.14.6.2011."**

(Emphasis added)

It is also significant to note that although the medical certificate is dated 14th June 2011, the respondent no.1 applied for leave on the basis of said medical certificate for the first time on 25th July 2011.

- vi. 25th July 2011- Respondent no.1 submitted application to the Director seeking temporary transfer from ITI, Vikramgad to any other institute at Mumbai or Thane City or Navi Mumbai.
- vii. On the above background it is significant to note that said application seeking temporary transfer was given by the

respondent no.1, although as per medical certificate dated 14th June 2011 she was advised complete bed-rest for 2 & ½ months.

viii. 1st September 2011- Respondent no.1 submitted application seeking extraordinary medical leave along with medical certificate.

ix. 19th December 2011- Respondent no.1 applied for maternity leave of 180 days with effect from 17th November 2011 i.e. till about 19th May 2012.

x. 31st December 2011- Respondent no.2 against whom respondent no.1 made complaint of sexual harassment was transferred.

xi. 19th May 2012- Maternity leave of the respondent no.1 completed.

xii. 17th May 2012- Respondent no.1 submitted application seeking extraordinary medical leave to the Joint Director along with medical certificate.

xiii. 3rd December 2012- Charge-sheet was issued to respondent no.1 for unauthorised absence.

xiv. 6th December 2012- Respondent no.1 resigned from service.

24. In the backdrop of the above factual position, it is necessary to see the contention raised by the respondent no.1 in paragraph 6.20 of the original application, which reads as under:

“6.20. The Applicant states that **before and after tendering her resignation on 2nd occasion i.e. on**

6/12/12 the applicant was attending the duties in the College but she was deliberately refused to sign on the muster. Moreover the applicant has also requested many occasion not only orally but also by writing an application to withdraw her resignation application vide letter dt 6-12-2012 but the Principal Respondent No.4 herein with a malafide intentions refused to accept the said request of the applicant and also refused to accept any such letter of withdrawal of resignation from the applicant which clearly shows malafide action of the respondents to deny the employment opportunity to the applicant. The said action or conduct of the applicant to make such request immediately after tendering her resignation clearly indicate that the decision of the applicant to tender the resignation was a sudden action due to loss of patience to endure her high scale of mental and sexual harassment caused to her by the respondent no.4 and other office bearers and also because of not taking any steps on her complaint."

(Emphasis added)

25. The petitioner has made allegations against the respondent no.4 in the original application, i.e., present respondent no.2 Mr. M. P. Sonawane. It is significant to note that at that particular time, i.e., in December 2012, respondent no.2 was not the Principal of the concerned institution. He was transferred on 31st December 2011 and therefore, for entire year 2012, he was not the Principal. In spite of this factual position, the respondent no.1 has made allegation that on 6th December 2012, the respondent no.2 refused to accept her request to withdraw the resignation and refused to accept such letter. The said allegation is completely false.

26. The petitioners have given particulars of name of Principal and their duration in the affidavit in reply filed in original application in paragraph 20, which reads as under:

“20. With reference to para No.6.17, I say and submit that the Respondent no.4 i.e. Shri. M. P. Sonawane, the then Principal I.T.I. Vikramgad, Dist. Thane, was transferred to I.T.I. Nasik on 31.12.2011 afternoon. Thereafter Shri. Kawale took over the charge of Principal I.T.I. Vikramgad, Dist. Thane on 01.01.2012 (Table mentioned below is the list of the Principals who have taken charge at I.T.I. Vikramgad, Dist. Thane).

Sr. No.	Name of Principal	Duration of charge
1.	Shri. M. P. Sonawane	16.01.2009 to 31.12.2011
2.	Shri. D. S. Kawale	01.01.2012 to 26.07.2012
3.	Shri. B. B. Kharade	28.07.2012 to till date”

27. Thus, it is clear that abovereferred baseless allegations as contained in paragraph 6.20 are made against the respondent no.2. It is clear that the respondent no.1 did not approach the Tribunal with clean hands and in fact the contention raised in said paragraph 6.20 of original application establishes that the resignation was voluntary and for *mala fide* purpose the allegations are made.

28. In this background, it is significant to note that in the written submissions dated 14th November 2022, a specific contention is raised that the respondent no.1 was never informed that the respondent no.2 is transferred. It is indicated that if the respondent no.1 would have come to know about the transfer of the respondent no.2, then she would have resumed the service. The said written argument is not only signed by the Advocate V. A. Nagrani but also signed

by the respondent no.1. This completely establishes that respondent no.1 has made totally baseless and false allegations against the respondent no.2 as set out in said paragraph 6.20 of the original application.

29. The above circumstances on record clearly show that there are substantial reasons to believe that at least after completion of maternity leave, i.e., after May 2011, the respondent no.1 could have joined the duty but failed to do so on one pretext or another. The factual position on record also indicate that perhaps the respondent no.1 wanted posting at Mumbai, Thane City or Navi Mumbai and, therefore, was not attending her duties at Vikramgad, Thane. This is clear from the fact that although medical certificate dated 14th June, 2011 specifically states that the respondent no.1 was advised complete bed-rest for 2 and ½ months, on 25th July, 2011 she sought transfer from Vikramgad to Mumbai, Thane city or Navi Mumbai. However, we are not going into said aspects in detail and have only indicated the same as the learned Tribunal has recorded finding that the resignation of the respondent no.1 is not voluntary and under duress due to sexual harassment committed by the respondent no.2. However, it is to be noted that the respondent no.2 was transferred on 31st December 2011 and the respondent no.1 tendered resignation on 6th December 2012, i.e., after almost one year. Therefore, there is no nexus between the said alleged sexual harassment by the respondent no.2 and the resignation tendered by the respondent no.1. It is significant to note that charge-sheet dated 3rd December, 2012 was issued to the respondent no.1 for unauthorised absence and

she immediately tendered resignation on 6th December, 2012. Thus, it is clear that, the respondent no.1 tendered resignation to avoid the departmental inquiry.

30. In any case, the factual aspects set out hereinabove clearly show that the resignation submitted by the respondent no.1 is voluntary and not under duress and the learned Tribunal has completely overlooked many significant aspects including that the false and baseless allegations are made against the respondent no.2 in paragraph 6.20. Thus, this is not a case where the respondent no.1 is entitled for the relief which has been granted by the learned Tribunal.

31. On behalf of the respondent no.1 reliance is placed on the decision of the Supreme Court in **X** (supra). The factual position in that case is totally different from the factual position in the present case. We have already discussed in detail how in the present case resignation was voluntary. In the case of **X** (supra), Supreme Court has found that the resignation of the petitioner in that case was not voluntary. Therefore, reliance on said judgment does not advance the case of the respondent no.1.

32. In the said case of **X** (supra), the Supreme Court has found that the petitioner was compelled to tender her resignation. In the peculiar facts and circumstances of the case it was held that the petitioner's resignation dated 15th July 2014 could not be construed to be voluntary. In that case, immediately in a fortnight, on 1st August 2014, the petitioner had made a representation to Hon'ble the President of India as well as to Hon'ble the Chief Justice of India for

reconsideration of the circumstances under which the petitioner was left with no option but to resign. The Supreme Court held that, it may not be possible to observe that the petitioner was forced to resign, however, the circumstances reveal that they were such, that out of frustration, the petitioner was left without no other alternative.

33. In the present case, the main ground of the respondent no.1 to substantiate her contention that resignation was not voluntary is that the respondent no.2 was subjected her to sexual harassment. The respondent no.2 was transferred to Nashik and relieved from Vikramgad on 31st December 2011 whereas, the respondent no.1 tendered her resignation on 6th December 2012 i.e., almost about one year later after the respondent no.2 was transferred. Hence, there is no connection between the resignation of respondent no.1 and the said alleged sexual harassment by respondent no.2 of respondent no.1. Apart from this aspect in the case before the Supreme Court, within 15 days representation was filed seeking to bring on record the circumstances in which the petitioner was constrained to submit resignation, whereas in the present case on more than one occasion the respondent no.1 reiterated that she has tendered resignation. Thus, the said judgment of Supreme Court in case of **X** (supra) is not at all applicable to the present case.

34. It is one of the contentions raised by the respondent no.1 that the acceptance of resignation by letter dated 10th January 2013 was not communicated to her. In fact, the conduct of the respondent no.1 clearly shows that she has got complete knowledge of the said letter dated 10th January

2013 accepting her resignation. Pursuant to said letter, on 24th January 2013, she had handed over her charge. On 15th March 2013, the respondent no.1 sought copy of acceptance of resignation letter and receipt of payment of salary which she paid in lieu of notice period. In addition to said circumstance, Mr. Nair has also relied on Government Resolution dated 2nd December 1997 of the State of Maharashtra which enumerates the procedure in acceptance of resignation of the Government Officer/Servant. The relevant clause No.2(A)(4) reads as under:

"2.(A) General Instructions for accepting resignation of Government officer/Servant:-

(1)....

(2)...

(3)...

(4) The authority competent to accept the resignation should preferentially take action on the resignation application and should communicate to the concerned Government Officer/Servant the final decision of accepting/non-accepting the resignation within a period of one month from the date of his tendering the resignation. The responsibility to scrupulously observe the said time limit shall lie on the authority competent to accept the resignation.

If the competent authority to accept the resignation fails to communicate with the concerned Government Officer/Servant anything about the final decision of accepting/non accepting the resignation within a month from the date of receipt of his resignation letter, then in such event after the expiry off the above referred one month period, the resignation of the concern Government Officer/Servant shall be deemed to have been accepted by the Competent Authority."

(Emphasis added)

35. Thus, even assuming that the said acceptance of resignation by letter dated 10th January 2013 was not communicated to the respondent no.1 then also as per above Government Resolution even no decision is communicated within one month from the date of receipt of resignation then, resignation of the concerned Government Officer/Servant shall be deemed to have been accepted by the Competent Authority. Thus, there is no substance in the contention raised by the respondent no.1 that she was not communicated about the acceptance of the resignation and till that time, she could withdraw the resignation.

36. The respondent no.1 has very heavily relied on Rule 46 (4) of the said Rules. The said sub-Rule 4 of Rule 46 reads as under:

"46. Forfeiture of service on resignation

(4) The appointing authority may consider the request of a person who had earlier resigned his post under Government **to take him back in service in the public interest on the following conditions, namely:-**

(a) that the **resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct** and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation.

(b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(c) that **the period of absence from duty between the date on which the resignation became**

effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety day;

(d) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, available."

(Emphasis added)

37. In this particular case, on 3rd December 2012 chargesheet was issued to the respondent no.1 for unauthorized absence and thereafter immediately she resigned from service on 6th December 2012. Thus, it is apparent that the respondent no.1 resigned from the service as she wanted to avoid the departmental inquiry.

38. Rule 46(4)(a) contemplates that the resignation tendered by the Government servant was for some compelling reasons which *inter alia* did not involve any reflection on his integrity, efficiency or conduct. It is also apparent that the request of respondent no.1 to take her back in service is to be considered in the public interest. This is a case where the respondent no.1 had tendered resignation to avoid the departmental inquiry. There is material to show that she wanted transfer to Mumbai or Thane City or Navi Mumbai and therefore, avoiding duty. It is not even the contention of the respondent no.1 that the said post is still vacant. Therefore, said Rule 46 of the said Rules will have no application to the facts of the present case.

39. Mr. Nair, Special Counsel appearing for the petitioners relied on the decision of Supreme Court in **M/s. J. K. Cotton**

Spg. & Wvg (supra). In the said decision, it has been held that if an employee makes his intention to resign his job known to the employer and the latter accepts the resignation, the contract of employment comes to an end and with it stands severed the employer-employee relationship. Under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation but once the resignation is accepted the contract comes to an end and the relationship of master and servant stands snapped. In this case the resignation was accepted on 10th January 2013. As per said Government Resolution dated 2nd December 1997 there is deemed acceptance. Thus, ratio of said decision is applicable to the present case.

40. Mr. Nair also relied on the decision of Supreme Court in **Raj Kumar** (supra). In the said decision, it has been held that no rule has been framed under Art. 309 of the Constitution of India which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.

41. Mr. Nair also relied on the decision of Supreme Court in **Chand Mal Chayal** (supra). In the said decision, it has been held that once resignation of the Government employee is accepted, such employee cannot claim as a matter of right to be re-employed. No writ of mandamus can be issued directing the re-employment of the employee.

42. Mr. Nair relied on decision of Supreme Court in **P. Lal** (supra). In the said decision, it has been held that the

requirement of communication of acceptance would only arise in cases where, even after giving of a notice of voluntary retirement the member continues to work/perform his duties. In such cases the member would need to know from what date he can stop attending office. In cases where the member has by his own conduct abandoned service the severance of the relationship of master and servant takes place immediately on acceptance of notice.

43. In the present case, the respondent no.1 after resignation deposited salary in lieu of notice period, reiterated about the resignation on more than one occasion in writing and handed over charge. Thus, the ratio of the said decisions is squarely applicable to the present case.

44. The petitioners have also impugned the order dated 10th December 2019 passed in Miscellaneous Application No.326 of 2019. The said application was filed by the petitioner seeking that the said original application be re-heard as contention raised by the State of Maharashtra were not considered properly. The said application was dismissed by order dated 10th December 2019 on the ground that the same is not maintainable. Mr. Nair, learned Special Counsel has not pointed out any provision under which the said Miscellaneous Application was filed. Therefore, we find no illegality in the order dated 10th December 2019 passed by the learned Tribunal. Another impugned order is order dated 5th February 2021 passed by the learned Tribunal by which review application No.2 of 2020 was dismissed. As by this judgment we are quashing and setting aside impugned order dated 18th February 2019, the review petition has become redundant.

Therefore, we are also quashing said order dated 5th February 2021 passed by the learned Tribunal in review petition and disposing of the same as the same has become infructuous.

45. For the above reasons, we are setting aside the direction of the learned Tribunal by which respondent no.1 was directed to be reinstated with full back-wages.

46. However, there is one aspect where certain directions are required to be issued. This is a case where the respondent no.1 has submitted detailed complaint alleging sexual harassment against the respondent no.2 on 6th May 2011. The petitioners failed to take any action with respect to said complaint despite the Director on 23rd May 2011 directing the Joint Director to conduct investigation into the said complaint. On 22nd December 2012, the respondent no.1 again submitted representation to the Director of Vocational Education and Training complaining about the conduct of the respondent no.2 and thereafter, the Complaint Redressal Committee was constituted which submitted its report on 9th July 2013. However, no further concrete action is taken against the respondent no.2 and some action taken is cancelled subsequently. Therefore, we are issuing directions to the concerned authorities of the petitioners to take appropriate action in accordance with law within a period of four months.

47. For the above reasons, we pass the following order:

ORDER

- i. We quash and set aside judgment and order dated 18th February 2019 passed by the Maharashtra Administrative Tribunal, Mumbai in Original Application

No.434 of 2014 as well as order dated 5th February 2021 passed in Review Application No.2 of 2020.

ii. Consequent to the above, Original Application No.434 of 2014 filed by the respondent no.1 stands dismissed.

iii. We direct the concerned authorities of the petitioners to take appropriate action in accordance with law against the respondent no. 2 within a period of four months with respect to the complaint dated 6th May, 2011 filed by the respondent no.1.

48. The writ petition is disposed of in the above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

DIPANKAR DATTA, CJ.:

1. I have read the judgment prepared by my learned brother, Justice Jamdar. While I entirely agree with the findings and conclusions recorded by His Lordship for setting aside the impugned order of the Tribunal and to allow the writ petition, I wish to add a few words.

2. The facts and circumstances leading to tender of resignation by the respondent no.1 are not such that the Court would be persuaded to hold that such resignation was tendered only because of duress and not for any

other consideration. Respondent No.1 was facing disciplinary proceedings. That apart, she was not given a posting of her choice. It could be so that the respondent no.1 was not entirely satisfied with the way she was treated by the petitioners. However, such dissatisfaction by itself could not have provided ground to voluntarily tender resignation by raising grounds of ill-health and long journey to be undertaken, without, however specifying which of her earlier applications were not considered leaving her aggrieved and driving her to take the extreme step of tendering resignation. Additionally, the incidents subsequent to tender of resignation, i.e., returning a month's salary as well as the handwritten note which has been referred to by His Lordship, unmistakably leads me to the conclusion that the respondent no.1 took a conscious decision not to continue her service under the State. The complaint of the respondent no.1, as canvassed before the Court, that the respondent no.2 was sexually harassing her and that was the real reason which drove her to tender resignation is not, in my opinion, the real cause. For the last one year of her service, the respondent no.1 was not under the administrative control of the respondent no.2.

3. Be that as it may, considering that public employment is scarce and that the respondent no.1 may have tendered resignation without being properly advised, we had called upon Mr. Nair to obtain

instructions from the Government as to whether the respondent no.1 could be taken back in service without she being entitled to claim any service benefits for the period she was out of service. Mr. Nair, upon obtaining instructions, regretted that such a course of action would not be permissible after the relationship between the employer-employee has been finally determined. In such view of the matter, even the last ray of hope for the respondent no.1 stands obliterated.

4. For the foregoing reasons as well as the reasons assigned by His Lordship, the original application filed by the respondent no.1 before the Tribunal shall stand dismissed.

(CHIEF JUSTICE)

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