

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

WRIT PETITION NO. 1976 OF 2019

1. Uktranti Mandal, Jarud, Tq. Warud,
District Amravati through its President

2. Vasantrao Naik High School, Jarud, Tq.
Warud, District Amravati, through its
Headmaster

Petitioners

Versus

1. Shriram Manohar Bande,
Aged Adult, Occ. Service, R/o Jarud,
Tq. Warud, District Amravati

2. The Education Officer (Secondary), Zilla
Parishad, Amravati, District Amravati

Respondents

3. The learned Presiding Officer,
School Tribunal, Amravati Division,
Amravati

Mrs. Radhika Raskar, Advocate for petitioners

Mr. R.D. Dharmadhikari, Advocate for respondent No.1

Mr. D.P. Thakare, Add.G.P. for respondent No.2

CORAM : MANISH PITALE, J.

RESERVED ON: 29/03/2022

PRONOUNCED ON: 02/05/2022

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. By this writ petition, the petitioners i.e. the Management and the School have challenged judgment and order dated 25/01/2019, passed by the School Tribunal, Amravati, whereby oral termination of service of respondent No.1 has been set aside and the petitioners have been directed to reinstate him with 50% back-wages, along with other consequential benefits.

3. In the present case, the respondent No.1 was working in the petitioner No.2-school as an Assistant Teacher. On 10/10/2017, the respondent submitted his resignation from the said post. It was the case of the respondent that subsequently on 25/10/2017, he withdrew his resignation by a letter, which he posted on 03/11/2017. He claimed that on 23/11/2017, he went to the school to resume his service when the Headmaster of the petitioner No.2 – school did not allow him to sign on the muster role and that subsequently on 27/11/2017, he received a letter stating that he was relieved from his service. It was the case of the respondent that since he had withdrawn his resignation, the petitioners could not have prevented him from joining his duties and since he was prevented from performing his duties, it was a case of the

otherwise termination of service or oral termination of his service.

4. The respondent filed appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules framed thereunder (hereinafter referred to as MEPS Act and Rules). In the appeal, the respondent stated the facts as noted hereinabove and after referring to the relevant provisions of the MEPS Act and Rules, he claimed that the communications issued by the petitioners illegally relieving him from service and all connected documents therewith were an afterthought and accordingly, his oral termination of service deserved to be set aside.

5. The petitioners filed their written statement before the Tribunal and stated that the School Committee had received the resignation letter of the respondent. In the context of the said resignation letter, the Executive Committee of the petitioner No.1 – management had resolved to accept the same, pursuant to which the School Committee also passed a resolution and accordingly, the resignation of the respondent was accepted. On this basis, it was submitted that the appeal deserved to be dismissed.

6. In the impugned judgment and order dated 25/01/2019, passed by the Tribunal, the pleadings and documents on record were considered. Upon an analysis of the

same, the Tribunal concluded that the respondent had lawfully withdrawn his resignation and that resolutions upon which the petitioners placed reliance were manufactured documents and that, therefore, the appeal deserved to be allowed. Accordingly, the appeal was allowed and the respondent was granted relief, as noted above.

7. Mrs. Radhika Raskar, learned counsel appearing for the petitioners submitted that in the present case, the Tribunal committed a grave error in appreciating the pleadings and documents on record. It was submitted that the Tribunal read the written statement filed on behalf of the petitioners in a truncated manner and if the same had been read in totality, the Tribunal would not have rendered adverse findings against the petitioners. It was submitted that the Tribunal erred in drawing adverse inferences against the petitioners because copies of resolutions of the management and the School Committee were not filed along with the written statement. Such documents were indeed placed before the Tribunal at the stage of recording evidence and, therefore, the findings rendered by the Tribunal were erroneous. In respect of the resignation letter submitted by the respondent No.1, attention of this Court was invited to Section 7 of the MEPS Act and Rule 40 of the MEPS Rules, which govern the procedure regarding resignation by employees of private schools. It was submitted that in the present case, the requirements of the MEPS Act and Rules were fully satisfied and the Management as well as the School Committee having

passed resolutions accepting the resignation letter, there was no question of the subsequent withdrawal of the resignation on the part of the respondent enuring to his benefit.

8. It was submitted that the respondent No.1 was not justified in claiming that in the present case only the School Committee had taken a decision on the resignation letter and that since the management had not resolved or taken a decision concerning the same, the withdrawal of resignation was correctly given full effect by the Tribunal in the impugned judgment and order. It was submitted that in the facts of the present case, the Management as well as the School Committee had resolved to accept the resignation and it was the School Committee, which communicated the same to the respondent No.1, which was in terms of the powers available with the School Committee, as per the MEPS Act and Rules, particularly Schedule 'A' to the said Rules. The learned counsel for the petitioners relied upon the judgment of this Court in the case of **Balaleshwar Shikshan Mandal Vs. Jay Want Bhaguji Gadekar** reported in 2003 4 AllMR 108. It was further submitted that the respondent No.1 was not justified in contending that the acceptance of resignation by the petitioners would come into effect only after communication of the same to the respondent No.1 and that the judgments of this Court relied upon in that context were distinguishable on facts. On this basis, it was submitted that the impugned judgment and order deserved to be set aside.

9. Mr. R.D. Dharmadhikari, learned counsel appearing for the contesting respondent No.1 submitted that in the present case, the Tribunal had correctly taken into consideration the pleadings and the documents on record to conclude in favour of the said respondent. It was submitted that in the written statement before the Tribunal, the petitioners themselves stated that the School Committee took the decision to accept the resignation and thereafter, the Management passed the resolution, which was in the teeth of the requirements of the MEPS Act and Rules. It was further submitted that even if the resolutions passed by the management and the School Committee were to be taken into consideration, so long as acceptance of resignation was not communicated to the respondent No.1, the resignation did not come into effect. It was further emphasized that before such acceptance was communicated, the respondent No.1 had already withdrawn his resignation, thereby showing that the Tribunal was justified in allowing the appeal filed by the respondent No.1. It was submitted that the School Committee under the MEPS Act and Rules had no power to accept the resignation submitted by respondent No.1 and this was correctly appreciated by the Tribunal. Reliance was placed on the judgment of the Division Bench of this Court in the case of **Sanjay Annaji Pohokar Vs. Shriramchandra Samaj Seva Samiti and Others** reported in 2022 (2) Mh.L.J. 41 and judgments of this Court in the cases of **Damodar Raut Vs. Education Officer, Zilla Parishad and Ors.** decided on 09/03/2004 in Writ Petition No.2292 of 1990 and

in the case of **Shramik Shikshan Mandal and Another Vs. State of Maharashtra and others** reported in 2017(5) Mh.L.J. 724. After conclusion of hearing the learned counsel for contesting respondent no.1 brought to the notice of this Court that the Supreme Court had set aside the aforesaid judgement of this Court in the case of **Balaleshwar Shikshan Mandal Vs. Jay Want Bhaguji Gadekar** (supra), which was relied upon by the petitioners. It was submitted that the said case was remanded to this Court and that therefore, reliance placed thereon was misplaced.

10. In the light of the contentions raised on behalf of the rival parties, the questions that arise for consideration are as to whether the petitioners are justified in claiming that the resignation of respondent No.1 stood accepted by the petitioners as per the provisions of the MEPS Act and Rules and whether non-communication of acceptance of resignation of respondent No.1 would prove fatal, on a proper reading of the requirements of the MEPS Act and Rules.

11. In the present case, the Tribunal considered the pleadings and the evidence on record. After referring to the contents of the written statement filed on behalf of the petitioners, the Tribunal concluded that the resolution dated 13/10/2017, of the Executive Committee of petitioner No.1 – Management was a manufactured document, mainly because the said document was not placed on record with the written

statement and it was subsequently produced at the time of recording of evidence. The Tribunal also held that although the resignation of respondent No.1 was voluntary, he had withdrawn the same subsequently and in view of the fact that acceptance of his resignation was not communicated to him, the petitioners could not have prevented him from joining his duties on 23/11/2017, for the reason that on 25/10/2017 itself, the respondent No.1 had signed the letter informing the Management about the withdrawal of his resignation, which was sent on 03/11/2017.

12. The documents on record show that in the written statement filed before the Tribunal, the petitioners clearly stated that after the resignation letter dated 10/10/2017, submitted by the respondent No.1 was received, the School Committee took a decision on the same, as the resignation letter was addressed to the School Committee. It was placed before the Management, which passed a resolution accepting the resignation and thereafter, the School Committee passed a resolution accepting the same.

13. The Tribunal placed much emphasis on only the first part of the contents of the written statement, wherein it was stated that the School Committee took a decision on the resignation letter, which was also approved by the management. But, the subsequent part of the written statement, wherein additional information was stated in paragraph No.10 about the

Management having passed the resolution and, thereafter, the School Committee passing its resolution, was ignored by the Tribunal. Adverse inference was also drawn against the petitioners for having failed to place on record resolution of the Management and School Committee along with the written statement. But, it is an admitted position that the said documents were indeed placed before the Tribunal at the stage of evidence. Yet, the Tribunal gave a strong finding against the Management that the resolution dated 13/10/2017, of the management resolving to accept the resignation of respondent No.1 was a “manufactured document”. There does not appear to be sufficient material or appropriate reasons for the Tribunal to have reached such a strong finding against the Management.

14. The written statement of the petitioners read in totality clearly indicates that according to the petitioners, the resignation letter addressed to the School Committee was placed before the Management, which resolved to accept the same and thereafter, the School Committee also resolved to accept the resignation of respondent No.1. The resolutions were indeed placed on record before the Tribunal at the stage of evidence and they were also marked. In this situation, the Tribunal was not justified in proceeding on the basis that the resolution of the management dated 13/10/2017, was a “manufactured document”.

15. Much emphasis was placed on behalf of respondent No.1 on the provisions of the MEPS Act and Rules to contend that it was only the Management that could have taken a decision on the resignation letter dated 10/10/2017, submitted by respondent No.1 and that the School Committee had no power to consider the same. In this regard, a perusal of the MEPS Act and Rules, particularly Schedule 'A' to the Rules, would show that the School Committee consists of four representatives of the Management, including the President of the Governing Body and one member from amongst the permanent teachers, with the head of the school being the ex-officio Secretary of the Committee. Clause 3 of Schedule 'A' to the Rules states the functions to be performed by the School Committee, which include appointment of employees, other than head of the school, as also reporting to the Management on matters relating to the school. Clause 3 of the Schedule 'A' of the MEPS Rules reads as follows:

“3. Functions of the School Committee shall be as follows, namely:

- (a) management and regulation of the finance of school, keeping of accounts and making investments of the funds of the school;
- (b) preparation of budget estimates;
- (c) appointment of employees (other than the Head of the School);
- (d) institution of new teaching courses;
- (e) confirmation, promotion of and minor punishment to the employees other than Head subject to the provisions of the Act and these rules;

(f) grant of leave other than casual leave, to the staff other than the Head of the school whose leave will be granted by the Management;

(g) reporting to the Management on matters relating to the school.”

16. A perusal of the aforesaid clause shows that the School Committee is indeed a body involved in the functioning of the school and it is an integral part of the manner in which the Management supervises various aspects of functioning of the school. It is significant that in the present case, the respondent No.1 himself addressed the resignation letter to the School Committee, which was correctly placed by the School Committee before the Management, upon which the Executive Committee of petitioner No.1 - Management passed resolution dated 13/10/2017, accepting the resignation. Subsequently, on 14/10/2017, the School Committee passed a resolution accepting the resignation letter submitted by the respondent No.1. Merely because the School Committee took steps in the matter would not justify reaching a conclusion that the Management in the present case was not at all involved in the process of considering and accepting the resignation letter submitted by respondent No.1. Therefore, even if the communication dated 16/10/2017, issued by the Head Master of petitioner No.2 - School to the respondent No.1 refers only to the resolution of the School Committee dated 14/10/2017 for acceptance of the resignation letter dated 10/10/2017 of respondent No.1, it cannot be said that the acceptance of

resignation was vitiated in terms of the provisions of the MEPS Act and Rules.

17. A perusal of Section 7 of the MEPS Act and Rule 40 of the MEPS Rules would show that in the present case, the statutory requirements were substantially satisfied as regards resignation of employees of the private schools. The learned counsel appearing for the petitioners relied upon judgment of this Court in the case of **Balaleshwar Shikshan Mandal Vs. Jay Want Bhaguji Gadekar** (supra), wherein it was held that even if it is to be assumed that there was some deficiency in the Management complying with the obligation under Rule 40, it would still not render acceptance of resignation invalid, because the aforesaid Rule itself provides that in such a situation a proportionate amount of pay in lieu of notice shall be deducted from the amounts due to the concerned school. Although the said judgement of this Court was set aside by the Supreme Court by judgement and order dated 30/07/2008 passed in Civil Appeal No. 472 of 2007 (Jaywant Bhaguji Gadekar Vs. Balaleshwar Shikshan Mandal and Ors.), a perusal of the judgement of the Supreme Court shows that it was set aside on facts. It was found that this Court had missed a document in the record of the School Tribunal, which demonstrated that the Management in that case had cancelled its earlier communication whereby the resignation of the employee had been accepted. Thus, on facts the Supreme Court differed with the view of this Court and sent the matter back to this Court for

reconsideration. There was no comment made on the interpretation of Rule 40 of the MEPS Rules given by this Court. Even otherwise, this Court is of the opinion that a plain reading of the aforesaid Rule shows that non-compliance with sub-Rule (1) thereof only leads to the consequence specified in sub-Rule (2) and that the resignation is not vitiated. Therefore, in the present case, the Tribunal erred in holding against the petitioners as regards satisfaction of the procedural requirements under the MEPS Act and Rules, concerning acceptance of resignation of respondent No.1.

18. The learned counsel appearing for respondent No.1 placed much emphasis on non-communication of acceptance of resignation and on that basis, it was submitted that since the said respondent admittedly communicated withdrawal of resignation, he could not have been prevented from performing his duties from 27/11/2017. According to the learned counsel for the respondent No.1, in the absence of communication of acceptance of resignation, the resignation letter dated 10/10/2017, did not come into effect and before such acceptance of resignation could be communicated, the respondent No.1 had already withdrawn his resignation. In this regard, as noted above, reliance was placed on the Division Bench judgment of this Court in the case of **Sanjay Annaji Pohokar Vs. Shriramchandra Samaj Seva Samiti and Others** and judgments of the learned Single Judges in the cases of **Damodar Vs.**

Education Officer, Zilla Parishad and Ors. and Shramik Shikshan Mandal and Another Vs. State of Maharashtra (Supra).

19. A perusal of the judgment of the Division Bench of this Court in the case of **Sanjay Annaji Pohokar Vs. Shriramchandra Samaj Seva Samiti and Others** (supra), would show that it was indeed observed that in the facts of that case, the Management had claimed that the decision of acceptance of resignation was communicated to the employees, but, the Management failed to prove actual service of such communication regarding acceptance of resignation. The aforesaid aspect had assumed great significance because the employees in the said case had approached the Court claiming that they had never voluntarily resigned from their posts and that the employer / Management had misused blank signed papers. Since the very case of the employees in the said matter was that the resignations were not voluntary, the aspect regarding communication of acceptance of resignation was commented upon by the Division Bench of this Court. The facts in the present case are clearly distinguishable, because the respondent No.1 voluntarily resigned. It was not even his case that he was coerced into submitting the resignation letter. In fact, the Tribunal in the impugned judgment and order has also rendered a finding of fact that the respondent No.1 had voluntarily resigned from his post.

20. Similarly, in the case of **Damodar Vs. Education Officer, Zilla Parishad and Ors.** (supra), this Court found on facts that the letter of resignation was not at all voluntary, but, it was tendered because of frustration and mental torture suffered by the employee. Even in the case of **Shramik Shikshan Mandal and Another Vs. State of Maharashtra** (Supra), the employees had come with a case that they had never submitted their resignations. This Court, on the basis of material on record, found that the purported resignation letters were identical and similarly typed out with the signatures of the employees at the bottom. It was in this backdrop that reference was made to the fact that no document was placed before the Tribunal to show acceptance of resignation and it being conveyed to the employees therein. In the present case, as noted above, the case of the respondent No.1 himself was that he indeed resigned voluntarily on 10/10/2017. Subsequent thereto, the material on record shows that the Executive Committee of the Management passed resolution on 13/10/2017, accepting the resignation, pursuant to which the School Committee passed its resolution on 14/10/2017, accepting the resignation. On 16/10/2017, the relieving letter was issued, but, the respondent No.1 claims that the same was never received.

21. The fact that the resignation of respondent No.1 was voluntary and this fact being accepted even by the Tribunal in the impugned judgment and order, clearly distinguishes the present case and it further shows that even if the present case is

to proceed on the basis that acceptance of resignation was not communicated to respondent No.1, it cannot be said that subsequent withdrawal of the resignation by letter dated 25/10/2017, would enure to the benefit of respondent No.1.

22. In the case of **North Zone Cultural Centre and another Vs. Vedpathi Dinesh Kumar** reported in (2003) 5 SCC 455, the Hon'ble Supreme Court held that resignation would be effective on its acceptance, even if the acceptance is not communicated as long as there is no Rule, which requires the acceptance of the resignation to be communicated, for the resignation to become effective. In the said case also, the resignation submitted by the employee was accepted, but, it was withdrawn before the acceptance could be communicated to the employee. Yet, the Hon'ble Supreme Court held that if the concerned Rules applicable to the organization did not specify that the resignation would become effective only after its acceptance was communicated to the employee, even if there is subsequent withdrawal of the resignation, it would be of no avail. Relevant portion of the said judgment reads as follows:

“14. No rejoinder was filed as against said reply nor the contents of the affidavits denied. Further from a perusal of the judgment of the learned Single Judge, it is seen that he also accepted the statement in the affidavit of the Director of the appellant Organisation that the resignation was accepted on 18.11.1988 but he held that because said acceptance was communicated only on 1.12.1988, and in the meanwhile the respondent had withdrawn the resignation the subsequent communication of acceptance had become

redundant. He further held that permitting the respondent to attend duty till 1.12.1988 also showed that the resignation had not taken effect thus the learned Single Judge gave two reasons for holding that the resignation had not become effective.

(i) The acceptance was not communicated till the withdrawal.

(ii) Respondent was permitted to attend duty even after the acceptance of resignation.

15. In our opinion, both these grounds are unsustainable in law. This Court in Raj Kumar's case (*supra*) held:

"When a public servant has invited by his letter of resignation the 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 statutory 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. Undue delay, in intimating to the public servant concerned the action taken on the letter of resignation, may justify an inference that the resignation had not been accepted."

16. Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal.

17. We will consider the effect of delayed communication of the acceptance of resignation separately hereinafter.

18. It is an admitted fact that so far as the appellant-Organisation is concerned, there is no rule which requires the acceptance of the resignation to be communicated before the resignation could become effective. But the Division Bench in appeal has

relied upon a consolidated guidelines and instructions issued by the Government of India vide letter of February 11, 1988 dealing with the subject of acceptance and withdrawal of resignation. We see that these guidelines state that in the case of a resignation which has been accepted by the appointing authority with effect from a future date and if in the meantime the concerned Government servant withdraws his resignation before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. In these guidelines, we do not see any requirement which states that even in cases where the resignation is accepted with immediate effect, the same can be withdrawn before such acceptance is communicated to the Government servant concerned. On the contrary, in our opinion, these guidelines also indicate that the resignation takes effect the moment the same is accepted.”

23. In the present case, as noted above, this Court has already concluded that the petitioners had placed on record before the Tribunal pleadings and material to show that the resignation submitted by the respondent No.1 was indeed accepted as per the resolutions passed by the Management and the School Committee and that there was substantial compliance with the statutory requirements under the MEPS Act and Rules. Therefore, non-communication of acceptance would not make the resignation inoperative, merely because subsequently the respondent No.1 had withdrawn the resignation. The MEPS Act and Rules do not stipulate that the resignation would come into effect only after its acceptance is communicated to the

employee. Therefore, the position of law laid down by the Hon'ble Supreme Court in the said judgment squarely applies to the facts of the present case, thereby indicating that the Tribunal was not justified in allowing the appeal filed by respondent No.1.

24. In view of the above, it is found that the impugned judgment and order passed by the Tribunal is unsustainable. Accordingly, the writ petition is allowed. The impugned judgment and order passed by the Tribunal is quashed and set aside and the appeal filed by the respondent No.1 is dismissed.

Rule is made absolute in above terms.

JUDGE