

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

WRIT PETITION NO. 1854 OF 2020

- 1) Dhanaji Naik Shikshan Prasarak Mandal,
Sneh Nagar, Gajanan Maharaj Mandir
Road, Chandrapur, through its Secretary-
Tukaram Pawar.
- 2) Ghamabai Madhyamik Niwasi Ashram
School, Baranj Tanda, Tahsil-Bhadravati,
District – Chandrapur, through its
Headmaster-Pandit Pawar.

.... **PETITIONERS**

VERSUS

- 1) Mrs. Krupala d/o Manoharrao Punwatkar,
Aged about 50 years,
Occupation – Don't know,
R/o C/o Siddharta Fulzele, Quarter No.11,
Type-4, Sector-5, O.F. Chanda, Bhadravati,
District – Chandrapur.
- 2) Special District Social Welfare Officer,
Chandrapur.

.... **RESPONDENTS**

Mr. F.T. Mirza, Counsel for the petitioners,
Mr. P.P. Thakare, Counsel for respondent 1,
Mr. T.H. Khan, A.G.P. for respondent 2.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT : **20-04-2022**
DATE OF PRONOUNCEMENT OF THE JUDGMENT : **26-04-2022**

JUDGMENT :

Petitioner 1 is a society registered under the provisions of the Societies Registration Act, 1860 and manages petitioner 2-school (petitioners shall be collectively referred to as the 'management').

2. Respondent 1-Mrs. Krupala Punwatar (she shall be referred to as the 'teacher') was appointed as Assistant Teacher on probation on 07-11-2007. Her services were approved by the Special District Social Welfare Officer, Chandrapur.

3. The management contends that in terms of the conditions of the appointment, the teacher was obligated to reside at the Headquarter, which she failed to do despite several cautionary memos issued. Her response was that due the ill-health of her husband, she was not residing at the Headquarter. The management contends that the teacher put forth another reason not to reside at the Headquarter, to-wit her safety. The explanations were not found convincing and she was issued show cause notice dated 21-8-2010 asking her to show cause why departmental enquiry should not be initiated. The teacher was not inclined to face the enquiry and voluntarily tendered resignation on 13-10-2010 and forwarded copy thereof to the Headmaster and the Special District Social Welfare Officer, Chandrapur, is the case of the

management. It is further contended that the resignation dated 13-10-2010 was accepted by the management in the meeting held on 21-10-2010 and the society and the Headmaster informed the teacher by letters dated 21-10-2010 and 26-10-2010 of the acceptance of the resignation.

4. According to the management, the teacher issued communication dated 25-10-2010 that she is withdrawing her resignation dated 13-10-2010. However, since the resignation was already accepted, the management did not consider the letter of withdrawal of resignation. The teacher preferred Appeal (STC) 3/2012 before the School Tribunal (Tribunal) alleging that her services were terminated orally with effect from 02-8-2010. In the appeal, the teacher preferred an application to amend the memo of appeal incorporating the plea that her resignation was forcibly obtained on 13-10-2010. The management resisted the appeal on the premise that resignation was tendered voluntarily and that the services of the teacher were not terminated, orally or otherwise.

5. The Tribunal allowed the appeal vide judgment dated 31-1-2015 and directed the management to reinstate the teacher. The judgment of the Tribunal dated 31-1-2015 was assailed in Writ Petition 2092/2015

which was partly allowed and the matter was remitted to the Tribunal for fresh decision. On remand, the Tribunal again allowed the appeal on the ground that the provisions of Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Act) and Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (Rules) were not complied with and that the acceptance of resignation was not communicated to the teacher prior to her letter of withdrawal of resignation.

6. Dissatisfied with the judgment of the Tribunal, the management is invoking writ and supervisory jurisdiction.

7. The learned Counsel for the management Mr. F.T. Mirza would argue that the provisions of Section 7 of the Act and Rule 40 of the Rules are directly and have been substantially complied with. It is emphasized that the copy of the resignation letter was forwarded by the teacher to the Headmaster and the Special District Social Welfare Officer, Chandrapur and that there was no question of the teacher withdrawing the resignation which was already accepted. Mr. F.T. Mirza would submit that the Tribunal erred in not appreciating that the resignation was tendered voluntarily. Mr. F.T. Mirza would argue that

the fact that the teacher initially alleged oral termination with effect from 02-8-2010 and then questioned the acceptance of the resignation letter is an important circumstance to show that the teacher had tendered her resignation voluntarily. Mr. F.T. Mirza would further assail the judgment of the Tribunal on the ground that the Tribunal could not have directed reinstatement since the teacher was guilty of repeatedly ignoring the cautionary memos which reminded her of the duty to reside at the Headquarter.

8. In rebuttal, the learned Counsel for the teacher Mr. P.P. Thakare would submit that the teacher had successfully completed her probation period on 15-11-2009 after discharging duties impeccably. Mr. P.P. Thakare would emphasize that the ill-health of the teacher's husband did not permit her to reside at the Headquarter and in any event, she was residing within a distance of 5 km. from the school and the Hostel Superintendent was residing at the residential school to look after the students. Mr. P.P. Thakare would submit that the breach of the statutory provisions cannot be a matter of debate since the resignation letter was not in the handwriting of the teacher. The resignation letter was got typed by the Secretary of the society, is the submission. Mr. P.P. Thakare would emphasize the sequence of events, which are that the resignation was obtained on 13-10-2010 and on the very next day the management

claims to have issued notice of convening executive committee meeting on 21-10-2010. While the management claims that the resignation was accepted in the meeting held on 21-10-2010 unanimously, the resolution is not signed by the Members and is signed only by the Secretary and the Chairman, who is the son of the Secretary. Mr. P.P. Thakare would submit that in any event, the provisions of Section 7 of the Act and Rule 40 of the Rules are held mandatory, the alleged acceptance of resignation pales into insignificance.

9. Mr. F.T. Mirza and Mr. P.P. Thakare have invited my attention to certain decisions, which shall be considered at a later stage, to the extent relevant.

10. The Tribunal has considered the crucial issue in paragraphs 33 to 41. A finding of fact is recorded that the resignation was not voluntary, and in any event, the provisions of Section 7 of the Act and Rule 40 of the Rules were not complied with. The Tribunal noted several circumstances which indicated that the employee was pressurised to submit the resignation and that there was no material to show that the acceptance of the resignation was, as a fact, communicated to the teacher before withdrawal of the resignation.

11. Section 7 of the Act provides that if any employee intends to resign his post in any private school, he shall draw up a letter of resignation in duplicate, sign both the copies and put the date thereon and may then forward one copy to the management by Registered Post and retain the other copy.

Rule 40 of the Rules reads thus :

“40. Resignation.

(1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month's notice. The management may, however, allow an employee to leave service earlier on payment of pay (excluding allowance) for three months, or as the case may be, one month in lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay or the period by which the notice period falls short.

(2) If any Management allows an employee to leave service earlier either without due notice or without making payment of pay in lieu of notice as specified in sub-rule (1), a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned.

(3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year.”

12. Mr. F.T. Mirza invites my attention to the decision of a learned Single Judge in *Sayyed Maksood Ali Sayyed Roshid Ali vs. Uruj-E-Urdu Education Society, Kalamb, 2011(4) Mh.L.J. 952*. While considering the

argument that the resignation is typewritten and not handwritten, the learned Single Judge observes thus :

“11. Now to deal with the argument that the resignation in question is typewritten and not handwritten, which is in breach of the mandatory requirement of Section 7 of the MEPS Act, rendering the resignation as illegal and involuntary, Section 7 of the said Act needs to be seen and the same is reproduced below :

Section 7. Procedure for resignation by employees of Private Schools -

"If an employee intends to resign his post in any private school, at any time after the appointed date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him."

The provision is in two parts. The first part contains three-fold requirements, viz. (i) drawing up a letter of resignation in duplicate, (ii) signing both the copies of that letter, and (iii) putting the date thereon. The second part deals with the forwarding of one copy of resignation to the Management by registered post and keeping the other copy by an employee with him. The first part deals with the execution and authenticity of the resignation, and the second part deals with the mode of delivery of the resignation. The requirement of drawing up of a letter of resignation has been held to be in the handwriting of an employee in the decision, which I have delivered in Bahujan Vikas Mandal's case, cited supra. The three-fold requirements of first part have also been held to be mandatory. If the resignation produced by the employer is found to be in violation or breach of three-fold requirements of first part, then the resignation will be rendered illegal and involuntary.

12. The provision of Section 7 of the MEPS Act is incorporated for the benefit of an employee. It deals the procedure to be followed in tendering resignation. It is

intended to provide protection or safeguard to an employee against an unscrupulous act of the Management calling an employee, exerting pressure or force on him or to give him any kind of inducement or incentive to obtain the signatures on blank papers, which may be used for preparing resignation of a suitable date subsequently, to get rid of an employee by adopting circuitous way. Hence an employee has to scrupulously follow it in tendering resignation. If an employee fails to follow the procedure or admits to have executed a typewritten or printed letter of resignation and further admits to have tendered or delivered such resignation personally or through someone to the Management, the employee loses the protection provided therein. In such a situation, Section 7 of the MEPS Act is not at all attracted and the employee cannot claim protection of Section 7, to declare the resignation in breach of the provision to be illegal and involuntary.”

13. Mr. FT, Mirza heavily relies on the observations of the learned Single Judge in paragraph 12 supra, which are to the effect that if an employee fails to follow the procedure or admits to have executed a typewritten or printed letter of resignation and further admits to have tendered or delivered such resignation personally or through someone to the management, the employee is not entitled to the protective umbrella of Section 7 of the Act.

14. In my considered view, the decision in *Sayyed Maksood Ali Sayyed Roshid Ali vs. Uruj-E-Urdu Education Society, Kalamb* supra is of no assistance to the management. In paragraph 11, the first part of Section 7 of the Act, which contains the threefold requirements of

drawing up a letter of resignation in duplicate, signing both the copies and putting the date thereon, is held mandatory. I need not delve deeper in the observation of the learned Single Judge in the subsequent paragraph that in certain circumstances, the employee shall not be protected, since in the present case there is nothing on record to demonstrate that the teacher voluntarily tendered or delivered the typewritten or printed letter of resignation personally or through someone to the management. The resignation letter is admittedly typewritten. It is further admitted that the resignation letter was not sent by Registered Post. The teacher claimed that the Secretary of the society summoned her at his residence on the pretext of discussing the issue of unpaid salary, and then the Secretary dictated the letter of resignation and sent the teacher to have the letter typed and then forced her to sign thereon. The teacher lodged complaint with the Social Welfare Officer, Chandrapur and then addressed the letter of withdrawal of resignation. In response, the management claimed that the teacher voluntarily resigned. The management denied that the teacher was summoned at the residence of the Secretary. In the absence of any further oral or documentary evidence on record, the case is of word against word. In such a situation, the fact that the provisions of Section 7 of the Act are admittedly not complied with, would be extremely significant. The mandatory nature of the provisions

apart, if the resignation letter is *prima facie* not executed or delivered in accordance with the statutory scheme, it shall be undoubtedly for the management to show that the resignation was voluntary. The burden would be that the management, and indeed may be onerous depending on the facts and circumstances of the case. I am satisfied, that the management has not discharged the burden of demonstrating the voluntary nature of the resignation, and to that extent, the finding recorded by the Tribunal suffers from no infirmity.

15. Mr. P.P. Thakare relies on a relatively recent decision of the Division Bench in ***Sanjay Annaji Pohokar vs. Shriramchandra Samaj Seva Samiti Bramhanwada (Kasba) and Others, 2022(2) Mh.L.J. 41.*** The Division Bench has taken a resume of several decisions, and while holding the typewritten resignations invalid, concluded thus :

“29. ----- . We have no reason to take a view different from the one taken in the judgments (cited supra) on the point of the mandate of mandatory requirements of section 7 of the Act of 1977. We reiterate that any act proved to have been done contrary to the mandate of section 7 of the Act of 1977 needs to be declared as void-ab-initio and illegal.”

16. In view of the articulation of the Division Bench by which I am respectfully bound, I do not consider it necessary to discuss the other decisions of learned Single Judges to which my attention is invited.

17. In my considered view, the typewritten resignation, is not shown by the management to be voluntary, and further the finding of the Tribunal that the resignation, if at all valid, was withdrawn, is also unexceptionable.

18. The petition is sans merit, and is dismissed, with no order as to costs.

JUDGE

Later on :

The learned Counsel for the petitioners is seeking stay to the judgment. This Court has upheld the judgment of the Tribunal which has held acceptance of resignation illegal and void. It was indicated to the learned Counsel for the petitioners that prayer to stay to reinstatement may be considered, if back wages are deposited. The learned Counsel requested that the judgment be pronounced in the second session to enable the learned Counsel to seek necessary instructions.

2. When the matter is called out in second session, there is no appearance on behalf of the petitioners. Request for stay is rejected.

JUDGE

adgokar

Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 04.05.2022 17:56