

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

WRIT PETITION NO. 8778 OF 2018

1. Gramin Vikas Samiti, Maharashtra, a Charitable Public Trust, having its Registration No. F-748, through its Secretary at Post Mul, Tahsil Mul, Tadala Road, District Chandrapur
2. Head Master, Asthivyang Niwasi Vidyalyaya, At Post Tadala, Tahsil Mul, District Chandrapur ...Petitioners

// VERSUS //

1. Ku. Vanita D/o Abaji Kaware,
Aged about 45 years, Occupation: Presently Nil,
Shri S.L.Chawatre, Ward No.14, At Post Tadala Road, Opp. Government Godown, Mul, Tahsil Mul, District Chandrapur
2. Social Welfare Officer (Gut-A),
Zilla Parishad, Chandrapur
3. Deputy Director (Regional), Social Welfare Department, New Administrative Building No.3, 3rd Floor, 'B' Wing, Civil Lines, Nagpur ... Respondents

Shri A.R.Patil, Advocate for the petitioner.

Shri R.M.Pande, Advocate for the respondent no. 1.

Shri H.D.Dubey, AGP for the respondent no.3/State.

CORAM : ANIL S. KILOR, J.

DATED : 2nd AUGUST, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The respondent no.1 was working as a care taker in a Handicap School and the issue in the present petition is whether she was orally terminated by the petitioners or she on her own resigned from the said post. The pleadings in the appeal memo more particularly in paragraph 6 shows that the resignation was challenged by the respondent no.1 on the ground that it was not submitted by the respondent no.1 voluntarily and not submitted by Registered Post A/d and it was not signed by her.

3. The respondent no.3 while dealing with the resignation has not considered the case of the Petitioner Society and in a cryptic manner observed that the resignation is doubtful and the procedure under the Special School Code for Schools for Handicapped, 1997 was not followed. No findings were recorded by the respondent no.3, how the resignation is doubtful and what exactly the procedure which was not followed.

4. This is significant for the reason that the Co-ordinate Bench of this Court in a case of *Awadbin Ahamad Vs. Presiding Officer, School Tribunal and others*¹ has held thus:

7. In the judgment reported at 2004(3) Mh.LJ. 587, in para 8, this Court has held that section 7 of the Act is providing for certain safeguards and the requirement that letter be forwarded by registered post is intended to ensure that the employee is not subjected to any kind of coercion or the risk. It is further observed that when the question as to whether the resignation was or was not voluntary is raised before the Tribunal, all relevant circumstances must be

¹ 2006(2) Mh.L.J. 215

considered and whether the resignation was or was not delivered by registered post was one of the relevant circumstances. Mere fact that the resignation was not forwarded by the registered post is not sufficient to invalidate the same. Though the abovementioned Division Bench judgment is not considered in this ruling, it appears that another Division Bench ruling in *Banda Navbharat Shikshan Prasarak Mandal v. Raghunath Ganesh Manorikar*, reported at 7992 (II) CLR 956 was looked into and there the provisions of Rule 40 of the Rules have been considered and the Division Bench held that period of three months' notice was provided for the benefit of management so that the management would not encounter any difficulty in appointing a substitute teacher.

5. If the respondent no.3 is of the view that the resignation was not sent through Registered Post as pleaded by the respondent no.1 in the appeal, this Court in the above referred judgment has held that mere fact that the resignation was not forwarded by the registered post is not sufficient to invalidate the same.

6. If according to the respondent no.3, three months notice was not given, this Court in the above referred judgment has held that period of three months notice was provided for the benefit of management so that the management would not encounter any difficulty in appointing a substitute teacher.

7. In the above referred backdrop, unless proper reasons are recorded for holding that the resignation was doubtful or invalid, the legality of it cannot be tested under the law.

8. In that view of the matter, I am of the considered view that the matter needs to be remanded back to the respondent no.3 to decide

afresh after hearing both the parties. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. The order dated 19th December, 2015 passed by respondent no.3-Regional Deputy Commissioner, Social Welfare Department, Nagpur in Appeal No. 10 of 2005 is hereby quashed and set aside;
- iii. The parties shall appear before the respondent no.3-Regional Deputy Commissioner, Social Welfare Department, Nagpur on **21st August, 2023** at 11 am.
- iv. The respondent no.3-Regional Deputy Commissioner, Social Welfare Department, Nagpur shall decide the appeal within three months from the date of appearance of the parties.

[ANIL S. KILOR, J.]

SACHIDANAND
KUTTAN NAIR

Digitally signed
by
SACHIDANAND
KUTTAN NAIR
Date:
2023.08.08
19:02:45 +0530