



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 16.05.2024
Judgment pronounced on: 29.05.2024

+ W.P.(C) 7240/2019 & C.M.APPL. 29394/2024

N. NAGARJUN RAO

..... Petitioner

versus

GOVT OF N.C.T, DELHI & ORS

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Padma Kumar S. and Mr. R.A. Sharma,
Advocates.

For the Respondents : Mr. Gaurav Dhingra and Mr. Shashank
Singh, Advocates for R-1, R-2 & R3.
Mr. Tadimalla Bhaskar Gowtham and
Mr. Raghav Kumar, Advocates for R-4 &5.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, seeking the following reliefs:-

“(a) Issue a writ of certiorari and quash and set aside Order dated 15.09.2018 and declare that the petitioner stands technically resigned from parent organization and is entitled to Pension with further direction to the respondents to release the Pension, gratuity and other retiral benefits from the date of absorption in NVS i.e. 01.07.1995 for the service rendered in the parent organization.

(b) Grant the Petitioner the interest on the arrears of pension and gratuity and other benefits and the cost of litigation as he has been



forced to approach this Hon'ble High Court for his pensionary benefits time and again.

(c) grant any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

2. The facts as narrated in the petition are as under:-

i) The petitioner was appointed as an Upper Division Clerk and joined the said post on 01.02.1977 at Smt. Durgabhai Deshmukh Memorial Senior Secondary School, New Delhi and the said school is an aided school under respondent no. 2/DoE, controlled and managed by Andhra Education Society, situated at New Delhi (hereinafter referred to as the "*Andhra School*"). It is stated by the petitioner that aided school employees of the respondent no. 1/GNCTD are entitled to pension and the petitioner, being a permanent employee of the aided school was also entitled to pension and other retirement benefits. It is also relevant to mention that pension is granted to the employees of the aided schools under the respondent no. 1/GNCTD who joined prior to 01.01.2004 under the Central Civil Service (Pension) Rules 1972 (hereinafter referred to as the "*Pension Rules*") which has been adopted and followed by the respondent no. 1/GNCTD for the teachers of Delhi Government and Aided Schools.

ii) The petitioner was selected by the Navodaya Vidyalaya Samiti (hereinafter referred to as the "*NVS School*") (Hyderabad Region), under the Ministry of Human Resource Development (DoE) on deputation to the post of Office Superintendent in NVS School in the pay scale of Rs. 1640-60-2600-EB-2900. NVS School issued the offer of appointment directly to the parent organization i.e., the Manager, Andhra Education Society *vide* letter dated 16.06.1990.



iii) It is the case of the petitioner that the offer of appointment was accompanied with certain terms and conditions regarding the appointment i.e. the deputation on transfer initially would be for a period of two years, subject to the conditions that petitioner's lien will be kept for a period of two years on the post held in the parent organization and would be repatriated/taken back on or before the expiry of the normal deputation period of two years. Additionally, the NVS School also reserved the right of accepting or rejecting retention of petitioners' services on permanent basis after or before the expiry of the deputation period.

iv) The petitioner was relieved of his duties in his parent department/Andhra School and joined NVS School on 31.07.1990.

v) It is the case of the petitioner that the Andhra School obtained the due sanction and approval from the respondent no. 2/DoE for the petitioner being sent on deputation to NVS School for a period of two years. The Andhra School kept the lien of the petitioner on the previous post for an initial period of two years. Subsequently, the Andhra School extended the lien of the petitioner from time to time on the specific request of NVS.

vi) It is stated that though the extended period of deputation had come to an end on 30.09.1994 and repatriation orders were initially issued on 17.03.1994, however upon the request of the petitioner for an extension of deputation by six months, the NVS School withdrew the repatriation order. Consequent upon such request of the petitioner, the NVS School requested the Manager, Andhra Education Society *vide* letter dated 28.03.1994 for the extension of the deputation period by another six months i.e. upto 30.09.1994.



Thereafter, from time to time, further extensions were sought by the NVS School and acceded to by the Andhra School till 11.10.1995. In the letter dated 11.10.1995, extension was sought alongwith the information that the petitioner was being considered for absorption.

vii) It is stated that *vide* letter dated 09.11.1995, the petitioner refused promotion to the post of Head Clerk in the Andhra School on the ground that he had given his consent for absorption in NVS School.

viii) NVS School issued memorandum dated 05.02.1996, seeking petitioner's willingness to be absorbed in NVS School and if so, to tender his technical resignation with effect from 30.06.1995. The proposal in the memorandum was to absorb the petitioner with effect from 01.07.1995.

ix) The petitioner submitted his technical resignation to NVS School which forwarded the same to the Andhra School *vide* letter dated 28.02.1996.

x) It is stated that the Andhra Education Society accepted the technical resignation of the petitioner w.e.f. 30.06.1995. The said acceptance of technical resignation of the petitioner was conveyed by the School Management to the Education Officer Zone XXVIII and the Accounts Officer of the respondent no. 2/DoE.

xi) It is the case of the petitioner that the Andhra School, which is a Linguistic Minority School, requires no prior approval for procedures involving appointment/termination of its employees and, had rightly informed the respondent no. 2/DoE about the acceptance of technical resignation of the petitioner.



xii) Consequent upon the acceptance of the technical resignation, NVS School permanently absorbed the petitioner *vide* Office Order dated 25.03.1996.

xiii) It is stated that in terms of the absorption, NVS School continued to remit the pension and leave salary contribution of the petitioner for the entire period of deputation to the parent organization all through.

xiv) Andhra School submitted all the documents related to the release of the pro-rata pension of the petitioner to DoE, *vide* their letter dated 14.06.2001.

xv) On 16.08.2001, the respondent no. 2/DoE sought certain information in connection with the release of the pension of the petitioner. The Andhra School, in response to the letter, submitted the requisite information *vide* their letters dated 04.01.2002, 03.03.2006 and 07.03.2006.

xvi) It is stated that knowing that the delay in sanction of the *pro rata* pension is on account of delay in acceptance of the technical resignation, the petitioner made a representation, after a series of personal requests, *vide* his letter dated 10.03.2006 to the Andhra School. Petitioner again made a request on 26.02.2007, this time to the respondent no. 2/DoE. Thereafter, the petitioner made various requests to various authorities *vide* letters dated 07.07.2009, 10.07.2009, 10.08.2010, undated and 24.03.2011.

xvii) The Andhra School wrote to the Education Officer *vide* their letter dated 28.09.2006 again seeking *ex post facto* sanction for the technical resignation submitted by the petitioner. Since nothing was being done about the release of *pro rata* pension, the petitioner made



a request for taking him back in the Andhra School with continuity in service as the petitioner had no break in service, *vide* the letter dated 23.04.2009.

xviii) The petitioner was due for retirement from NVS School without any pension as NVS School is a non-pensionary organization. In such situation, the petitioner was constrained to file a writ petition bearing W.P.(C) No. 5014/2011 before this Court seeking his retiral benefits. This Court *vide* order dated 09.03.2018 disposed of the writ petition by quashing the impugned orders/communications dated 23.11.2006 and 05.04.2011 therein, with the direction to the respondent no. 2/DoE to consider the grant of *ex post facto* approval to petitioner's technical resignation in light of Pension Rules within a period of twelve weeks and the petitioner be intimated about it within two weeks thereafter.

xix) In compliance of the directions contained in the judgement dated 09.03.2018, the respondent no. 2/DoE issued the impugned order dated 15.09.2018 rejecting the request for *post facto* approval of the technical resignation tendered by the petitioner and found him ineligible for *pro rata* pension.

xx) Hence, the present writ petition challenging the impugned order dated 15.09.2018 issued by the respondent no. 2/DoE is filed.

CONTENTIONS OF THE PETITIONER: -

3. Mr. Padma Kumar S., learned counsel for the petitioner at the outset submitted that the petitioner seeks *pro rata* pension for the period *w.e.f.*, 01.02.1977 to 01.07.1995 when the petitioner worked as a Teacher at the Durgabai Deshmukh Memorial Senior Secondary School, New Delhi run



and managed by the Andhra Education Society, Din Dayal Upadhyay Marg which is a government aided school and is admittedly a linguistic minority school. Learned counsel submits that the petitioner was selected and transferred by deputation to NVS School with the approval of the respondent no.2/ DoE on 16.06.1990.

4. Learned counsel submits that the petitioner's deputation period was being extended from time to time till 01.07.1995. Since the NVS School was keen on absorbing the petitioner, the petitioner tendered his technical resignation to the Andhra School on 28.02.1996 which was accepted by it on 30.06.1996. Learned counsel submits that the Andhra School further transmitted the said technical resignation to the Respondent no. 2/DoE *vide* letter dated March, 1996.

5. Learned counsel contends that once the deputation was sanctioned by the respondent no. 2/DoE and was extended by the Andhra School from time to time being the parent department and finally, the petitioner was absorbed by the NVS School according to the due procedure, there is no reason why the petitioner has been denied his entitlement to *pro rata* pension for the period of his service with the Andhra School w.e.f. 01.02.1977 to 01.07.1995 when he was absorbed by NVS School.

6. Learned counsel attacks the rejection of the prayer for *pro rata* pension by the respondent no. 2/DoE *vide* its impugned order dated 15.09.2018. He contends that the 1st ground of rejection is based on alleged unauthorized absence of the petitioner from 15.07.1992 onwards beyond the time of 2 years of sanctioned deputation and that it would amount to unauthorized absence from duty for a period exceeding 5 years. On that basis, the petitioner is stated to have deserted/resigned from his post in terms of Rule 12(2) of the CCS (Leave) Rules 1972 (hereafter referred to as



“the Leave Rules”) and thus not entitled to any pension at all. Learned counsel contends that the rigors of Rule 12(2) of the Leave Rules are not attracted to the present case since the petitioner never sought any leave of any kind and it was a sanctioned deputation. Moreover, he submits that the authorized extension was duly being sought by the NVS School and consequently, the Andhra School, being the parent department, was extending the same from time to time. Thus, the petitioner was never on any kind of leave for the Leave Rules to be invoked.

7. Learned counsel contends that the other ground of rejection in the impugned order stems from misapplication of Rule 114A of the Delhi Schools Education Rules, 1973 (hereinafter referred to as “the DSER”) which deals with resignation of an employee of a school. Learned counsel submits that the respondent no. 2/DoE has held that the resignation could be accepted and approved only by the respondent no. 2/DoE and such approval not having been granted, the technical resignation has to be treated as deemed resignation in terms of Rule 12(2) of the Leave Rules. As per the impugned order, in such a case, Rule 26 of Pension Rules would become applicable and the past service of the employee stands forfeited. Resultantly, the employee is neither eligible nor entitled to any pension. According to learned counsel, this ground is not available to the respondent no. 2/DoE for the reason that the initial deputation was sanctioned by the respondent no. 2/DoE in the year 1990 for a period of 2 years and was extended from time to time on the request of NVS School and his lien also kept extending *vide* the letters dated 28.03.1994 and 23.03.1995 till 30.10.1995. On that basis, he submits that the impugned order has been passed without considering the facts of this case.

8. Learned counsel submits that the resignation tendered by the



petitioner to the Andhra School was a technical one for the purposes of absorption with the NVS School and is not covered by Rule 114A of the DSER. He submits that even on a plain reading of that provision, it is clear that the same is not applicable to the present case. In any case, he submits that the prior approval of the respondent no.2/DoE is not mandatory which too is clear from reading the proviso. For the said purposes, he relies upon the judgement of the learned single Judge of this Court in ***Managing Committee of Rani Dutta Arya Vidyalaya & Anr, RDAV School vs. The Director Of Education, Govt. Of National Capital Territory Of Delhi & Ors***, reported as **2017 SCC OnLine Del 6521**

9. Insofar as applicability of Rule 26 of the Pension Rules is concerned, learned counsel contends that the provisions of such Rule are in favour of the petitioner. He submits that the petitioner had tendered technical resignation after the offer of absorption was extended to petitioner by NVS School through proper procedure and agreed to by the Andhra School. It was in those circumstances and on the basis of transfer on deputation from one aided School to another School functioning under the Government of India and final absorption by NVS School in terms of the DSER that the petitioner's technical resignation was accepted by the Andhra School. This action, according to the learned counsel, would not be violative of Rule 26 of the Pension Rules. Learned counsel reiterates the aforesaid submission by referring to letter dated 05.02.1996 regarding absorption and technical resignation issued by the NVS School to Andhra School, letter dated 28.02.1996 of NVS forwarding the technical resignation of the petitioner and resultant absorption to the Andhra School, letter dated 16.03.1996 of the Andhra School accepting the technical resignation of the petitioner and letter of the month of March, 1996 of the Andhra School informing the respondent no. 2/DoE about the acceptance of the technical resignation of



the petitioner and his absorption with the NVS School w.e.f. 01.07.1995.

10. Learned counsel also relied upon Office Order dated 25.03.1996 of the NVS School whereby the petitioner was requested to forward his pay particulars to the Accounts Department for pay fixation, post his absorption including the CPF nomination etc. Learned counsel also relied upon numerous documents showing deduction of petitioner's contribution towards pension during the period of service with the NVS School on deputation in support of the claim for *pro rata* pension. He also relied upon the letters dated 12.06.2001, 14.06.2001, 03.03.2006, 07.03.2006 issued by the Andhra School to the respondent no. 2/DoE forwarding the petitioner's papers for the purposes of *pro rata* pension including the Service Book. Mr. Padma Kumar, learned counsel also relied upon numerous letters/representations dated 10.03.2006, 07.07.2009, 10.07.2009, 10.08.2010, an undated letter and letter dated 24.03.2011 submitted by the petitioner both to the Andhra School and the respondent no. 2/DoE requesting release of his *pro rata* pension in accordance with rules, though in vain.

11. Learned counsel also referred to the rejection of the *ex post facto* approval of the technical resignation of the petitioner *vide* its letter dated 23.11.2006 on the ground that there was no approval of the Competent Authority to extend the lien beyond 15.07.1992. This letter was conveyed to the Andhra School by the respondent no. 2/DoE *vide* its letter dated 05.04.2011 which was challenged by the petitioner in W.P.(C) No.5014/2011 captioned "*Sh. N. Nagarjuna Rao vs. Govt. of NCT Delhi & Ors*" in this Court. By the order dated 09.03.2018, this Court had directed the respondent no. 2/DoE to dispose of the request with a speaking order after quashing letters dated 23.11.2006 and 05.04.2011. He submits that the



respondent no. 2/DoE complied with the said direction by passing the impugned order. Learned counsel relies upon the judgement of learned Division Bench of this Court in *Department of Telecommunication vs. Satya Prakash & Ors*, reported as **2016 SCC OnLine Del 3496**.

12. On the aforesaid basis learned counsel contends that the petitioner is entitled to the reliefs as sought.

CONTENTIONS OF RESPONDENT NO.1 to 3/DoE: -

13. Mr. Dhingra, learned counsel for the respondent nos.1 to 3/DoE at the outset submits that the Andhra School is a private recognized linguistic minority School receiving grant-in-aid from the DoE, GNCT of Delhi.

14. Learned counsel had two legal submissions based on the facts obtaining in the present case. Mr. Dhingra contends that the Andhra School in collusion with the petitioner accepted the petitioner's resignation without informing or obtaining the approval of the respondent no. 2/DoE violating the provisions of Rule 114A of the DSER. Since the resignation was not approved by the Competent Authority under the Rules, Rule 12(2) of the Leave Rules becomes applicable to the case of the petitioner. In that, according to the learned counsel, the unauthorized absence of the petitioner w.e.f. 15.02.1992 when the sanctioned deputation came to an end and the petitioner did not report back to Andhra School for joining its services after the deputation, culminated in the period of service on continued deputation with NVS School as unauthorized and exceeded 5 years. Once the leave period crossed the stipulated period of 5 years, then the continued leave shall be treated as deemed resignation from the government service. He submits that once the unauthorized absence is considered as deemed resignation, then the past service shall be forfeited as per Rules.

15. Learned counsel contends that Rule 26 of the Pension Rules deals

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with the effects of resignation. According to learned counsel, once Rule 12(2) of the Leave Rules treats the unauthorized absence of the petitioner from service as deemed resignation, provisions of Rule 26 of the Pension Rules would be attracted. According to learned counsel, sub rule (1) of Rule 26 of the Pension Rules makes it clear that once the employee resigns, unless it is allowed to be withdrawn in public interest, it shall result in forfeiture of past service. Learned counsel submits that in the present case, Rule 12(2) of Leave Rules coupled with Rule 26(1) of the Pension Rules squarely apply and the petitioner is not entitled to any pension at all, much less *pro rata* pension with his entire previous service with Andhra School being forfeited.

16. On facts, learned counsel vehemently refutes the claim that the petitioner or the Andhra School ever furnished any letter/communication in regard to the extension of deputation of the petitioner with the NVS School, or its approval by Andhra School. According to learned counsel, the approval for extension of deputation ought to have been sought from the respondent no. 2/DoE. That apart, even the approval of the technical resignation was never sought from the respondent no. 2/DoE despite a clear stipulation in Rule 114A of the DSER. He forcefully submits that no document establishing that the Andhra School had ever sought approval under Rule 114A has been placed on record. The respondent no. 2/DoE, according to Mr. Dhingra, was kept in the dark and the petitioner has colluded with the Andhra School to fabricate documents. Once the petitioner has neither established that the Andhra School ever obtained extension of deputation beyond 15.02.1992 from the respondent no. 2/DoE nor has he been able to prove that any approval under Rule 114A of the DSER was sought by Andhra School and granted by the respondent no.2/DoE, the burden of grant of *pro rata* pension cannot be fastened upon



the respondent no.2/DoE. He thus prays that the writ petition be dismissed with costs.

CONTENTIONS OF RESPONDENT NOS.4 and 5/ANDHRA SCHOOL : -

17. Mr. Bhaskar Tadimalla, learned counsel appears for the Andhra School. He reiterates the facts as narrated by the petitioner regarding the petitioner being transferred to NVS School firstly on deputation and subsequently being absorbed by the said school. He also reiterates and draws attention of this Court to the documents placed on record to submit that all the relevant documents regarding acceptance of the technical resignation of the petitioner were sent to the respondent no. 2/DoE in the month of March, 1996 itself. He thus submits that the respondent no. 2/DoE cannot today allege collusion.

18. That apart, learned counsel submits that the Andhra School is admittedly a linguistic minority government aided school. Learned counsel contends that once it is an admitted position that the Andhra School is a minority institution, the respondent no.2 /DoE cannot interfere in the matters of administration of its employees too. He submits that the Supreme Court in *G Valli Kumari vs Andhra Education Society and Ors.*, reported as (2010) 2 SCC 497 had held that section 8(2) of the Delhi Schools Education Act, 1973 (hereinafter referred to as the "DSEA") interferes with the right of the minorities and as such, is inapplicable to the private recognized aided and unaided minority educational institutions. On that basis, he submits that there was no necessity for the Andhra School to obtain any approval from the respondent no. 2/DoE under Rule 114A of the DSER.

19. That apart, learned counsel also relies upon sub-rule (3) of Rule 37

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of the Pension Rules to submit that when a government servant opts for permanent absorption in a Company or Body controlled or financed by the Central Government, he would be entitled to receive *pro rata* retirement benefits for the service rendered under the Central Government. He submits that if the said Pension Rule is applied to the case of the petitioner, there is no way the respondent no. 2/DoE can refuse *pro rata* pension. He also relies upon the OMs dated 29.08.1984 and 31.03.1987 in support of the said submission.

20. That apart, learned counsel also brings to notice of this Court a letter dated 07.06.1996 issued by the respondent no. 2/DoE conveying the approval of the Director to declare one of its employee namely, Sh A R Nandan, UDC as confirmed *w.e.f.* 01.07.1996. He also handed over the Bench another letter of the Andhra School dated 06.05.1996 regarding the said issue wherein the fact of the petitioner having tendered his technical resignation was stated clearly enclosing therewith the letter of appointment of petitioner with NVS School, Technical resignation of the petitioner and letter of absorption of the petitioner with NVS School.

21. On the aforesaid basis, learned counsel submits that the Andhra School followed the relevant Rules at all times and the allegation of collusion is untenable and contrary to the documents on record.

REJOINDER ON BEHALF OF THE PETITIONER: -

22. Mr. Padma Kumar S, learned counsel reiterates his arguments and further draws attention of this Court to FR -13, particularly to proviso (i) which stipulates that where any government servant has proceeded on immediate absorption basis to a post or service outside his cadre, such government servant does not retain the lien with the previous service, to submit that once absorbed in accordance with the Rules, the petitioner



cannot be stated to have been on leave, much less on unauthorized leave as alleged. Thus, this ground of rejection of petitioner's claim of *pro rata* pension is untenable.

ANALYSIS AND CONCLUSIONS:-

23. This Court has heard the arguments of Mr. Padma Kumar S, learned counsel for petitioner, Mr. Gaurav Dhingra, learned counsel for respondent nos. 1 to 3 and Mr. Bhaskar Tadimalla, learned counsel for respondent nos. 4 and 5, scrutinized the record and the relevant Rules.

24. It is not in dispute that the petitioner was an employee of the Andhra School *w.e.f.* 01.02.1977 as Upper Division Clerk till 01.07.1995 when the petitioner was absorbed by the NVS School as Office Superintendent. It is also not in dispute that the petitioner was transferred to NVS School by deputation from the Andhra School after retaining his lien for a period of two years from 15.07.1990 uptill 15.02.1992 which was sanctioned by the respondent no. 2/DOE. The petitioner is stated to have continued as a deputationist with the NVS School as Office Superintendent till 01.07.1995 when he was formally absorbed. Andhra School asserts that it kept extending the deputation of the petitioner with NVS School from time to time on the request of the NVS School. It is an admitted position that Andhra School is a private recognized linguistic minority government aided school. From the record, it appears that the NVS Schools are under the Navodaya Vidyalaya Samiti, an autonomous body under the Central Government and fully funded by the said government.

25. The controversy which has arisen is whether the service rendered by the petitioner during the period from 01.02.1977 to 01.07.1995, the date on which the petitioner was absorbed into the services of NVS School, would be a qualifying period for the purposes of *pro rata* pension.



26. Though Andhra School supported the case of the petitioner, however, the respondent no. 2/DoE opposed the said claim. As urged, it appears that the denial by the respondent no. 2/DoE is primarily on the following grounds:

- a. That the non sanctioning of the extension of the deputation of the petitioner by the respondent no. 2/DoE and extension of such deputation by the Andhra School unilaterally without its knowledge and service after absorption with NVS School, resulted in Rule 12(2) of the Leave Rules becoming applicable, leading to the service exceeding 5 years period post 15.02.1992 (date when the sanctioned deputation got over) as deemed resignation;
- b. That the approval under Rule 114A of the DSER having not been obtained from the respondent no. 2/DoE, the resignation from services of Andhra School would entail forfeiture of past services as per Rule 26 of the Pension Rules;
- c. That once Rule 26 of the Pension Rules is applicable, the previous service of the petitioner for the period w.e.f. 01.02.1977 to 01.07.1995 with the Andhra School gets forfeited and the claim for *pro rata* pension is untenable.

27. As observed above, there is no dispute regarding the petitioner being transferred on deputation from Andhra School to the NVS School from 01.07.1990 to 15.02.1992. That too, with the respondent no. 2/DoE sanctioning the same. The controversy regarding the subsequent period covered by the extension of deputation by the Andhra School on request of the NVS School till the date of absorption, i.e., 01.07.1995 needs to be addressed. The period of service of the petitioner with the Andhra School, it being a government aided school, undoubtedly is pensionable service and



has not been denied.

28. The respondent no. 2/DoE has opposed the extensions of deputation period as not having any sanction or approval by it. It has also questioned the acceptance of technical resignation of the petitioner by the Andhra School, terming it as collusion. So far as the approval of the respondent no. 2/DoE for the purposes of further extension of deputation period is concerned, there is nothing placed on record to show that the Andhra School was under any obligation to do so. No Rule, notification or any Circular of the respondent no. 2/ DoE has been placed alongwith the counter affidavit to support the said contention. In that view of the matter, it is well nigh impossible for this Court to agree to such contention. Moreover, the petitioner was a permanent employee of the Andhra School (aided school) and was sent on deputation to another autonomous body of the Central Government, fully funded by it too, after obtaining requisite approvals. Once the initial sanction was obtained, the grant of further extensions of the petitioner was well within the power and authority of the Andhra School to do so. Except to baldly contend that this is a result of collusion between the Andhra School and the petitioner, there is nothing to establish the same. The said contention is thus untenable and is rejected.

29. So far as the issue of acceptance of the technical resignation is concerned, it was vehemently opposed on the ground that no approval was obtained from the Competent Authority of the respondent no. 2/DoE as envisaged under Rule 114A of the DSER. It would be apposite to reproduce the said Rule hereunder:

“114A. Resignation

The resignation submitted by an employee of a recognized private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such



approval would be deemed to have been received after the expiry of the said period.

(emphasis supplied)

30. It is clear from the plain reading of the said Rule that resignation of the employee of the school shall be accepted within a period of thirty days from the date of the receipt of such resignation by the Managing Committee with the approval of the Director. It is trite that so far as recognized private schools are concerned, that too, the minority schools, the Competent Authority to accept resignation tendered by any of its employee, is the Managing Committee.

The proviso to Rule 114A of DSER aforesaid is significant and has to be considered too. The purport of the proviso is in the nature of a deeming clause. In that, in case there is no approval received from the Director within 30 days, then such approval would be deemed to have been received after the expiry of such period. It is trite that the deeming fiction in a statute ought to be extended to such facts which must be taken to exist without which the proviso would be rendered otiose. This is clear from the judgement of the Supreme Court in ***State of Bombay vs. Pandurang Vinayak Chaphalkar & Ors***, reported as 1953 SCC OnLine SC 47. Moreover, the deeming fiction extends to such approval having been received, if not received within 30 days. Meaning thereby, the approval is deemed to have been granted by the Director and received by the applicant-School in such eventuality. There cannot be any other interpretation to the proviso, without rendering the proviso otiose. Another way of considering why the legislature deemed it appropriate to insert the proviso containing the deeming clause could also be to ensure that an employee who seeks to tender his voluntary resignation for, maybe, better future prospects would not be unnecessarily stuck to the service. The flip side being that any



unscrupulous Management in a given case could misuse the proviso to retain the employee against his or her wishes. This could also mean that any School, in a given case, can enforce a contract which is otherwise, unenforceable in law. That, in the considered opinion of this Court, could not have been the purport or intention of the Legislature. Moreover, one cannot overlook the fact that the DSEA and DSER, 1973 were enforced to ensure that the teachers and other employees of a school are not exploited or harassed. This Court is fortified in its view by the judgement of this Court in *Managing Committee, Rani Dutta Arya Vidhyalaya (supra)* relied upon by the petitioner.

31. Having said that, this Court is unable to appreciate how Rule 114A of the DSER would at all be applicable in view of the above analysis. In the present case, the petitioner did not tender any voluntary resignation from the services of the Andhra School, rather had tendered his technical resignation in terms of the offer of absorption received from NVS School while on sanctioned deputation. In furtherance whereof, the Andhra School accepted such technical resignation. Acceptance of technical resignation by the parent body on absorption or request of absorption by the borrowing department is a well conceived notion of service jurisprudence. Merely because the Andhra School did not obtain any approval of the respondent no. 2/DoE before accepting the technical resignation of the petitioner does not render such acceptance illegal or contrary to rules. That apart, no rules were shown to this Court in support of such contention. Moreover, the Andhra School had, in the month of March, 1996, communicated to the respondent no. 2/DoE about the acceptance of his technical resignation. Regard be had to the letter of March, 1996, which is extracted hereunder:

“No. AESSSS/95-96/720

Dated ___ / 3/96



OFFICE ORDER

With reference to his resignation letter dated 13/02/96, (duly forwarded by Navodaya Vidyalaya Samiti Vide letter No:E.1-48/NVS (H/R)/96/6674 dated 28/02/96).

The Managing Committee of Andhra Education Society Smt Durgbai Deshmukh Memorial Senior Secondary School. No. 1, Deen Dayal Upadhyaya Marg, New Delhi, hereby accept the Resignation of Shri N.Nagarjuna Rao, U.D.C with effect from 30/06/1995 (A/N).

He is deemed to have been relinquished from services of this School, Directorate of Education, Govt. of N.C.T Delhi with effect from 01/07/1995 (f/N).

*Sd/-
(S. Eswar Prasad)
HONY.MANAGER*

- 1. The Deputy Director N.V.S.*
- 2. Shri N.Nagarjuna Rao, U.D.C*

Copy forwarded to :

- 1. The Education Officer Zone XXVII (Central Dist.)*
- 2. The Accounts Officer (Central Dist.)*
- 3. Personal File*

*Sd/-
HONY.MANAGER
(S. Eswar Prasad)"*

The aforesaid letter makes it apparent that the respondent no. 2/DoE was informed of the absorption of the petitioner with NVS School. Additionally, learned counsel for the Andhra School had handed over the bench two documents in this regard which would need consideration and are taken on record. One was a letter dated 07.06.1996 issued by the respondent no. 2/DoE conveying the approval of the Director to declare one of its employee namely, Sh A R Nandan, UDC as confirmed w.e.f. 01.07.1996 alongwith another letter of the Andhra School dated 06.05.1996 regarding the said issue wherein the fact of the petitioner having tendered his technical resignation was stated clearly enclosing therewith the letter of appointment of petitioner with NVS School, Technical resignation of the



petitioner and letter of absorption of the petitioner with NVS School. It is evident that the letter dated 07.06.1996 of the respondent no. 2/DoE is in response to the letter dated 06.05.1996 of the Andhra School. To bring more clarity, the letter dated 07.06.1996 of the respondent no. 2/DoE and letter dated 06.05.1996 of the Andhra School are extracted hereunder:

Letter Dated 07.06.1996

*“OFFICE OF THE EDUCATION OFFICER ZONE XXVII DISTT
CENTRAL BELA ROAD DARYA GANJ NEW DELHI.*

S.No.Zone XXVII/1754

Dated 7/6/96

To,

*The Manager
Andhra Education SocietySSS,
Rouse Avenue New Delhi.*

Sub:- Approval for confirmation of Sh A.R.Nandan Adhoc U.D.C.

Sir,

With reference to your letter No 765 dated 6-5-96, on the above cited subject I am directed to convey the approval of Director Of Education, Delhi to declare Sh A.R. Nandan U.D.C. of your school confirmed with effect from 1.7.95.

Your's faithfully

Sd/-

*Dy. Education Officer
Zone XXVII”*

Letter Dated 06.05.1996

*“ANDHRA EDUCATION SOCIETY
SMT. DURGABAI DESHMUKH MEMORIAL SENIOR SEC.
SCHOOL
1, DEEN DAYAL UPADHAYAYA MARG, NEW DELHI-110 002*

SSSS/12(11)/36-37/765

DATED 6/5/96

To

*The Education Officer
Zone XXVII, Disstt Central,
Directorate of Education,
Bala Road,
NEW – DELHI – 2.*



Subject: Approval for confirmation of A.R.Nandan Adhoc U.D.C from 01/07/1995.

Sir,

With due respect the following case is submitted for your approval.

Mr.A.R.Nandan is working as U.D.C. Adhoc since 22/12/90 in place of Shri N.N.Rao U.D.C who had gone on lien to Navodaya Vidyalaya Samiti, Hyderabad. Shri N.N. Rao has now submitted his resignation as he has been absorbed as Office Supdt. w.e.f 1/7/95. A copy of his resignation is enclosed.

The Managing Committee has resolved to regularize the services of Mr A.R.Nandan w.e.f 1/07/95.

Now you are requested to approve the appointment of Mr A.R.Nandan as U.D.C w.e.f. 01/07/1995.

Thanking you sir,

Encl:

- 1. Appointment Order of Sh N.N.Rao from N.V.S.*
- 2. Appointment Order of A.R.Nandan.*
- 3. Technical Resignation of Sh N.N.Rao*
- 4. Observbtion letter for Sh N.N.Rao from N.V.S.*
- 5. Extracts of M.C.Resolution for regularize Nandan as U.D.C.*
- 6. Office Order of Mr. Nandan.*
- 7. Resignation of NN.Rao, Acceptance by M.C of AES Sr Sec School.(handwritten).*

*Sd/-
(E. Eswar Prasad)
Hony.Manager”*

(emphasis supplied)

From a conjunctive reading of both the interconnected letters, it is apparent that the respondent no. 2/DoE had received the relevant documents and information regarding the acceptance of petitioner's technical resignation and absorption with the NVS School, in the year 1996 itself. Moreover, it is not disputed that the said Sh. A. R. Nandan was confirmed as UDC in place of the petitioner. Thus, the argument that the respondent no. 2/DoE was kept in the dark or that the petitioner and



Andhra School had colluded is not only untenable in law, but contrary to facts too.

32. Next, learned counsel for Andhra School submitted that section 8(2) of DSEA is inapplicable to the respondent School because the Andhra School is a linguistic minority government aided school and as such, the respondent no. 2/DoE cannot interfere in the matters of administration. This Court is fortified in its view by the judgement of his Court in **G. Valli Kumari** (*supra*). The relevant paragraph is extracted hereunder:-

“17. The propositions which can be culled out from the abovenoted two judgments are:

(i) Sections 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and minister their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognized aided/unaided minority educational institutions.

(ii) Section 12 of the Act, which makes the provisions of Chapter IV of the Act inapplicable to unaided private recognized minority educational institutions is discriminatory except to the extent of Section 8(2) is applicable to private recognised aided as well as unaided minority educational institutions and the authorities concerned of the Education Department are bound to enforce the same against all such institutions.”

33. Now coming to the arguments addressed on rule position in both, the Leave Rules as well as the Pension Rules. Learned counsel had vehemently submitted that the Andhra School having not obtained the approval of the Director under Rule 114A of the DSER of the resignation of the petitioner coupled with the fact that the Andhra School never obtained sanction from the respondent no. 2/DoE regarding extension of deputation, the rigors of Rule 12(2) of the Leave Rules read with Rule 26 of the Pension Rules would disentitle the petitioner from claiming *pro rata* pension. The argument regarding applicability of Rule 12(2) of the Leave Rules is unfounded. This is for the reason that it is based on the premise that the



petitioner was on unauthorized leave exceeding 5 years on account of the Andhra School not having obtained sanction for extension of deputation from the respondent no. 2/DoE. However, the fundamental error in the said argument is that the petitioner never proceeded on leave in the first place. No rule has been shown to the Court that extension of deputation, without obtaining sanction or approval of the DoE, would tantamount to either unauthorized absence from service or unauthorized leave. There is nothing to indicate, even remotely, that the petitioner was not in service of the NVS School even beyond the sanctioned deputation period ending on 15.02.1992. As such, the said argument is untenable and rejected.

34. The argument of applicability of Rule 26 of the Pension Rules was premised on Rule 12(2) of Leave Rules applying to the petitioner's case. In view of the opinion held above, the question of Rule 26 applying does not arise. Moreover, Rule 26 applies in cases of voluntary resignations by the government servant which may entail forfeiture of past service. This argument even otherwise does not hold water in view of the DoPT OM No. 28034/25/87-Esst(A) dated 11.02.1988. As per the purport of the OM, in cases where government servants apply for posts in the same or other departments through proper channel and upon selection are asked to resign for administrative reasons, such employees can tender technical resignations, which is considered as a mere '*technical formality*'. Thus, the case of the petitioner falling squarely within the ambit of the aforesaid OM of the DoPT, even this argument is fallacious and rejected. The relevant clauses of OM dated 11.02.1988 is extracted hereunder:-

“No. 28034/25/87-Esst(A)
Government of India/ Bharat Sarkar
(Karmik, Lok Shikayatratha Pension Mantralaya)
Department of Personnel & Training
(Karmic Aur Prasikhan Vibhag)



New Delhi, the 11th Feb., 1988

OFFICE MEMORANDUM

Subject: Resignation from Service - Procedure in respect of

The undersigned is directed to state that instructions have been issued from time to time on the above subject. These instructions have now been consolidated for facility of reference and guidance of all the Ministries/ Departments of the Government of India.

1. xxx

2. xxx

3. xxx

4. xxx

5. xxx

6. xxx

7. xxx

8. *A Government servant who has been selected for a post in a Central Public enterprises/ Central autonomous body may be released only after obtaining and accepting his resignation from the Government service. Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.*

9. *In cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the now post treating the resignation as a 'technical formality'.*

sd/-

(S.K.Parthasarathy)

Joint Secretary to the Govt. of India."

35. This Court has already opined, *in extenso*, on the non-applicability of Rule 114A of the DSER to the petitioner in the preceding paragraphs.

36. Thus, in view of the above, in the considered opinion of this Court,



the period of service of the petitioner *w.e.f.* 01.02.1977 through till 01.07.1995, i.e., the date of absorption in the NVS School should and ought to be counted towards qualifying service for the purposes of *pro rata* pension as applicable to the petitioner. Upon applying such qualifying period, the respondent no. 2/DoE is directed to calculate the *pro rata* pensionary benefits to the petitioner and release the same in favour of the petitioner in accordance with law within a period of eight weeks from the date of receipt of this order.

37. The writ petition is disposed of in aforesaid terms alongwith pending applications without any order as to costs.

TUSHAR RAO GEDELA, J.

MAY 29, 2024