



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 1697 OF 2003

DINKAR PRATAPSING SALUNKE
VERSUS
CHALISGAON EDUCATION SOCIETY

Dr. R. J. Godbole, Advocate for the petitioner
Mr. S. P. Shah, Advocate for respondent Nos.1 to 4
Mr. T. K. Sant, Advocate for respondent No.10
Mr. S. B. Jadhav, AGP for the respondent/State

CORAM : R. M. JOSHI, J.
DATE : 27th MARCH, 2025

PER COURT :-

1. Question arises in this petition is as to whether the findings recorded by the College and University-Tribunal regarding voluntariness of the resignation tendered by the petitioner on 22/09/2002 needs interference or not.

2. The facts which led to the filing of this petition can be narrated in brief as under:

(i) It is the case of the petitioner that he was appointed as a lecturer in college of respondent Management on 18/06/1981. On 25/12/1999, he was appointed as a Principal and was confirmed in the said post. Around 15/08/2001 Mr. Prashant Patil was appointed as a lecturer in the senior college but he was unqualified as per the rules of

University Grant Commission. On 16/12/2001 respondent No.3 appointed Mr. Prashant Patil as a part time lecturer in junior college and as per the oral request of the respondent No.1 petitioner signed the order of appointment. An approval was accorded to his appointment by the Competent Authority. On 08/07/2002 a news was published in the newspaper about the illegal appointment of Prashant Patil. It is a case of the petitioner that respondent No.1 took advantage of the said news and used it as a pressurizing tactics against petitioner. It further case of the petitioner that without approval of University of Pune, the petitioner came to be suspended from service. Petitioner challenged the said suspension before the Competent Authority. Petitioner had availed leave and thereafter when on 11/10/2002 he reported to his duty as Principal, it was informed to him by the in-charge Principal that the petitioner's resignation dated 22/09/2002 has been accepted. He was therefore prevented from joining the duties as Principal. Petitioner, therefore, preferred appeal before the College- Tribunal being Appeal No. 12/2002 challenging the acceptance of resignation of the petitioner by respondent Management.

(ii) Respondent No.1 filed reply claiming that the petitioner has tendered the said resignation in the meeting dated 23/09/2002. Respondent Nos. 4 and 5 however claimed that no such resignation was

tendered by the petitioner on 23/09/2002. The persons who were signatory to the said resignation letter as a witnesses have also stated on oath about no such resignation being tendered by the petitioner. There is allegation against respondent No.1 of misusing the signatures of the petitioner by preparing a false resignation letter and acceptance thereof in the meeting dated 23/09/2002. The petitioner has further claimed that the resignation letter being not in consonance with the statute and as it does not prescribe the six months notice or salary in lieu of notice, the act of acceptance of the resignation by the respondent Management is not legal. It is also claimed that the procedure as contemplated under statute 413(3a) of Pune University Act has been violated. The learned Presiding Officer of College and University Tribunal, Aurangabad, however, did not accept the case of the petitioner and dismissed the appeal. Hence, this petition.

3. Learned counsel for the petitioner submits that the Tribunal/ Court is required to take into consideration not only the specific evidence sought to be led before the Tribunal but also for attending circumstances which has led to the tendering of the resignation. It is his submission that the alleged tendering of resignation is preceded with the facts that there were news published in the news paper making allegations with misappropriation of the government fund by appointment of Mr. Prashant

Patil. It is his submission that the respondent Management had not taken any action against the petitioner though his response was sought. It is his submission that even thereafter the news item were published in the news paper in this regard. In this back drop the allegation is made by the petitioner that his signature was obtained on a blank paper purported to be used for tendering apology in respect of the said issue, however, in fact the said signature was misused for tendering resignation from the post. It is his submission that the Chairman and Secretary of the Institution have supported the case of the petitioner with regard to the non voluntariness of the resignation. He has also drawn attention of the Court to the affidavit filed by Jagannath Salunkhe and Dinesh Baliiram Patil indicating the obtainment of forcible signature on the blank papers. It is his submission that the learned Tribunal has adopted a hyper approach view when the inconsistencies in the statement of the witnesses and the case sought to be made out by the petitioner was given undue importance. According to him the order of the Tribunal cannot sustain in view of the fact that the Tribunal has failed to take into account all attending circumstances which has led to the obtainment of the alleged resignation. To support his submission he placed reliance on the judgment of Co-ordinate Bench of this Court in case of ***Bahujan Vikas Mandal, Akola and Another Versus Masnda Vithalrao Parsutkar and Another, 2011(2) Mh.L.J., 203***. The attention of the Court is drawn to

paragraph 13 of the said judgment in order to submit that the resignation unless it is his hand writing cannot be accepted. The judgment is also relied upon in order to support the contention about taking into account all attending circumstances. Similarly reliance is placed on the judgment of the Division Bench of this Court in case of ***Chandrakant Damodar Lone Vs. Chhatrapati Shivaji Education Society and Ors in Writ Petition No. 3580 of 1984, dated 17th December, 1987*** which dealt with the fact in which undated blank resignation was obtained by the Management and which was held to be not legal. He also placed reliance on the judgment in case of ***J. B. Shaikh V. N. Z. Kulange and Ors, 414 H.C.Bom., 1992*** where the Division Bench has held that the petitioner did not intend to resign and in any event the letter did not give notice three months as required by Rule 40 of Maharashtra Employees of Private Schools (Conditions of service) Rules, 1981. He submits that the Tribunal has committed error in interpreting statute No. 413 (3a). It is his submission that if the respondent was intended to waive the notice period, the resolution ought to have reflected the said intention, which is absent herein. According to him, the act of petitioner challenging the suspension before the Competent Authority indicates that the publication of news in matter of Mr. Patil, could have never become a reason for him to resign. It is his submission that all these aspects are totally ignored by the Tribunal and hence the order impugned cannot sustain and deserves

to be allowed.

4. Learned counsel for the respondent Management supported the impugned order. According to him the petitioner has come out before the Tribunal with a specific case that the Chairman of the Institution had approached him for obtaining signature on a blank paper. He has drawn attention of the Court to the relevant observations made by the learned Tribunal on the basis of the pleadings of the petitioner wherein it is stated that it was supposed by the petitioner that the said signature was obtained for the purpose of tendering apology. It is his submission that the case of the petitioner is falsified with the affidavits filed of these two witnesses. It is his submission that the attending circumstances indicate that there was issue with regard to the appointment of the Mr. Patil and the appearance of the new in the news paper. It is his submission that in order to avoid any inquiry against the petitioner, he has tendered his resignation. Finally he submits that the findings of the fact recorded by the Tribunal being not in consistent with the material on record, cannot be interfered with in exercise of writ jurisdiction.

5. There cannot be any dispute made with regard to the proposition sought to be canvassed by the learned counsel for the petitioner that all attending circumstances to the tendering of the

resignation need to be considered in order to ascertain whether the resignation is voluntary or otherwise. It needs to be noted at the first instance that it was never case of the petitioner that he was forced to sign any resignation. The case of the petitioner is that his signature was obtained on the blank paper which according to him was supposed to be used for tendering apology. In the light of this specific case sought to be made out by the petitioner, the affidavits of these witnesses indicate altogether different story than the one propounded by the petitioner. In this regard reference can be made to the observations of the Tribunal in paragraph Nos.34 and 35 which reads thus:

"34. Now, I will come to the factual aspect regarding obtaining resignation by force or fraud. In para No. 25 of the appeal memo, the appellant has contended that, 22-09-2002, the Chairman approached him in company of some persons and told him that, if he wanted to settle matter amicably, then he should sign some documents. Though there was no mistake on the part of the appellant, he showed his willingness to settle the matter and because of the political vendetta and atmosphere created, the appellant decided to sign the document, and the appellant then signed the blank documents. He has contended that, he thought that, the Chairman of the Managing Committee would prepare some apology on that blank document. Thus, though it is being argued that the appellant was forced to sign the blank document, and the resignation was obtained from him fraudulently, the pleadings are not to that effect. It is nowhere contended in the pleading that, he was forced to sign the blank documents. He was only asked to sign the documents and taking into consideration the circumstances, he decided to sign the documents. There is nothing in the pleading that the Chairman had given the assurances that he would prepare an apology on that

document. It is contended that the appellant thought that a letter of apology would be prepared on the blank documents. It is rather surprising that, when the situation was such, how the appellant agreed to sign the blank document. It is rather not believable that he would sign the blank document.

35. The appellant to support his contention, has filed two affidavits of two witnesses, namely (1) Shri Jagannath Pratapsing Salunkhe and (2) Shri Dinesh Baliram Patil. Both of them, in their affidavits, have stated that on 22-9-2002 at about 9.30 to 10.00 p.m., they were at the residence of the appellant. They had gone there to make inquiry about his health. At that time, there was phone call and Jagannath Salunkhe received that call. It was a call from Shri Narayan Agrawal, the Chairman of the Managing Committee. He recognized his voice. Shri Narayan Agrawal then told on phone that, if the matter with respect to appointment of Prashant Patil was to be closed, then he was sending his persons to obtain signatures of the appellant and the two persons present there should sign as witnesses. It was also told on phone that, if no signatures were given, then he will have to face dire consequences. The witnesses have further stated in their affidavits that, thereafter, two persons came to the residence of the appellant. They were of 40 to 45 years of age. They told that, they had come from the Chairman for obtaining signatures of the Principal on the papers. They showed the papers to the Principal. The Principal then said that, how could he sign on blank papers. Two persons then asked him to sign without any grievance and also threatened that he should remember what lesson was taught to J.B. Deshpande. The witnesses have stated that, they then asked the Principal not to enter into argument, he should think about his family and sign the papers. Thereafter, the Principal signed the blank papers and these two witnesses signed the blank papers. The two persons then left with the signed papers.

36. If all this had happened, as stated by these two witnesses in their affidavits, why to that effect is not mentioned in the pleadings. In the rejoinder also,

nothing to that effect has been mentioned. In the pleadings, different story is given which mentions that the Chairman himself approached in the company of some persons and asked the appellant to sign the papers. There is no mention that, these two witnesses were present when the Chairman approached. The names of these two witnesses are not appearing in the appeal memo. It clearly appears that, these two witnesses are got up witnesses just to show that, the appellant was forced to sign the blank papers. No reliance can be placed on the evidence of these two witnesses."

6. These findings are recording of the fact and that having regard to the case sought to be made out before the Tribunal, by the petitioner, the findings of fact recorded cannot be termed as perverse in order to cause any interference therein. Coming to the submission about the attending circumstances, it is not the case that there were no incident/ events preceding the issue of resignation. Admittedly the issue was raised in the news paper with regard to the appointment of Mr. Patil. At the first instance, no action was contemplated against the petitioner, however, when next time the news appeared in the news paper, admitted the action was contemplated against him. This Court finds no reason to accept the submission that in such case no one would resign from the post, as it would depend upon individual and his natural/ mental strength to face the stress of the inquiry. No straight jacket formula therefore is not possible to be adopted in such cases. The attending circumstances therefore also indicate that the possibility the petitioner tendering

resignation himself is not ruled out.

7. It is not the case of the appellant/petitioner that has been victimised for any other reason. Hypothetically, if it is accepted that the Management was able to obtain petitioner's signature on blank paper, nothing would have prevented the Management to prepare resignation of the petitioner from the employment itself. The Management having not done so, creates a possibility of resignation been tendered by him voluntarily.

8. Coming to the statute 413(3a), it is specific provision therein that though the Principal is required to give three months notice or in lieu of notice pay for three months, however, there is discretion vested with the Management to waive the notice period. This rule does not contemplate that in any particular manner said discretion is to be used. Nothing is indicated therein that discretion should be communicated in so many words. Once the discretion is there with the Management of waiving the notice period, acceptance of the resignation of itself indicates the waiver thereof. This Court, therefore, concurs with the findings recorded by the Tribunal in this regard.

9. For the reasons recorded herein above and since the view

taken by the Tribunal is possible/plausible view, no interference is caused therein in the exercise of writ jurisdiction. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

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