

(2005) 10 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 405 of 1994

Awadbin Ahamad

APPELLANT

Vs

Presiding Officer, School Tribunal and Others

RESPONDENT

Date of Decision : 03-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 7, 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
40

Citation : (2006) 1 ALLMR 771 : (2006) 110 FLR 113 : (2006) 2 MhLj 215

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : C.G. Madkholkar, for the Appellant; Indira Bodade, AGP for
respondent Nos. 1 to 5, Z.A. Haq, for respondent Nos. 2 and 3 and N.R. Saboo,
for respondent Nos. 2A and 3A and Adkar, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this writ petition under Article 226 of Constitution of India, the petitioner, a Clerk working with respondent No. 2 in respondent No. 3 School has challenged the Order of School Tribunal dated 17-12-1993 by which appeal preferred by the petitioner has been rejected by it. The case of the petitioner was that he has been terminated by oral order with effect from 3-8-1991.

2. The petitioner has contended that he joined the services of respondent in 1985 and in 1990 amount of Rs. 20,000/- was demanded from him and he was not permitted to sign attendance register. The petitioner approached the Education authorities and at the instance of authorities, the petitioner was again permitted to sign attendance register. It is in this background on 3-8-1991, he was orally discontinued from services. The petitioner challenged this discontinuation by filing appeal vide appeal No. 168/1991-A u/s 9 of Maharashtra

Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter referred to as the Act), before the School Tribunal. Before the School Tribunal, the management came up with a defence that petitioner had submitted resignation which was duly accepted by the management and its acceptance was also communicated to the petitioner. The management, therefore, contended that there was no termination. The management also pointed out that after the petitioner left the service, a fresh advertisement was issued and the petitioner submitted his application for employment in response thereto. The School Tribunal has considered this position and thereafter has arrived at a finding that the petitioner did submit his resignation and as such his story of oral termination with effect from 3-8-1991 was not accepted and the School Tribunal dismissed the appeal.

3. I have heard Shri Madkholkar, learned counsel for the petitioner, Smt. Bodade, learned AGP for respondents No. 1 and 5, Shri Saboo, learned counsel for respondents No. 2A and 3A, Shri Haq, learned counsel for respondents No. 2 and 3 and Shri Adkar, learned counsel for respondent No. 6.

4. The learned counsel for the petitioner has invited attention to the order of School Tribunal to demonstrate that the School Tribunal has expressly recorded a finding that resignation tendered by the petitioner is undated. He contends that in view of this finding, the resignation itself was illegal and void and the School Tribunal, therefore, ought to have allowed the appeal. In support, he has placed reliance upon the Division Bench judgment in Writ Petition No. 3580 of 1984 dated 17-12-1987. He further states that the petitioner did not get opportunity to point out that said resignation was not in his handwriting and was never tendered by him as the resignation was produced at the stage of final hearing. He contends that at the time when stay application was considered by the School Tribunal, a typed copy of resignation was produced and hence the School Tribunal did grant interim relief in favour of the petitioner. He further states that the reason given by the School Tribunal that the petitioner applied in response to new advertisement for recruitment is incorrect and false. There is no such application. To demonstrate this, he invites attention of Court to reply filed by the petitioner to application for intervention filed by present respondent No. 6 before the School Tribunal.

5. As against this, Shri Haq, learned counsel contends that the School Tribunal has considered the case at length and has found that the petitioner did not dispute the handwriting or signature on the resignation and as also the handwriting upon the envelop through which said resignation was received by the management. He further states that the handwriting in the application for grant of employment is also not denied by the petitioner. He also invites attention to the fact that though School Tribunal has recorded a express finding in this respect, no corresponding ground challenging such finding is taken in writ petition. He further states that the issue whether resignation is genuine or is not genuine is to be decided in the facts of the each case and he invites attention to

two judgments of this Court in the case of Barshi Education Society Vs. Shri Ashok Ganesh Kulkarni and Others, and in Balaleshwar Shikshan Mandal v. Jaywant Bhaguji Gadekar, reported at 2004(5) Mh.LJ. 216 ; 2003(4) All MR 108, in this respect. He contends that provisions of section 7 of the Act and Rule 40 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the Rules), are to be looked into as guiding principles and in appropriate cases the Court has to consider all surrounding circumstances to reach a finding in this respect.

6. Before this Court, there are three Judgments produced by the parties which consider the provisions of section 7 of the Act and Rule 40 of the Rules. In the judgment of the Division Bench dated 17-12-1987, in Writ Petition No. 3580 of 1984, it appears from discussion in para 6 that the Division Bench found that as the resignation was undated, it could not have been accepted. However, if one goes through the entire judgment, it is apparent that the said undated resignation was accepted by the employer on 2-3-1983 and the employee was directed to hand-over the charge to the Secretary for the time being. On very next date i.e. on 3-3-1983, the employee informed the management that he never tendered any resignation and he also asked for xerox copy of alleged letter. It appears that then there was some correspondence between the parties and thereafter the management decided to initiate Disciplinary Action against the employee. It is in this background that the Division Bench has considered the provisions of section 7 of the Act and Rule 40 of the Rules. It has been however held that it is the totality of the circumstances which must decide the fact as to whether the resignation was tendered by the petitioner or not.

7. In the judgment reported at Barshi Education Society Vs. Shri Ashok Ganesh Kulkarni and Others, , 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 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 1992 (2) 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.

8. The last ruling on the point is reported at 2003(4) All MR 108, again considers the same situation and has held that when the letter of resignation is dated

16-8-1998 clearly expressed intention of the employee to resign and the letter was dated and duly signed by respondent No. 2 and it was made over to the management, merely because its copy was not forwarded by registered post, it would not render the resignation void. Thus, it is apparent that the issue has been considered in the facts and circumstances of each case in these rulings.

9. When one comes to the facts of present case, it is apparent that the resignation has been received by the management by registered post and the management has produced envelop before the School Tribunal. The envelop as also the resignation produced before the School Tribunal is in the handwriting of present petitioner. The grievance made by the petitioner that such resignation was not produced earlier or was produced at the time of final hearing of the appeal appears to be incorrect. From the very judgment of the School Tribunal, it is apparent that the said copy of resignation was produced along with the written statement. However, in any case, the petitioner could have made grievance about said resignation by filing appropriate application at the time of delivery of judgment. In the facts and circumstances of the case, no such steps have been taken by the petitioner. The grievance of the petitioner that resignation is not in his handwriting does not appear to be correct because the School Tribunal has recorded that the petitioner did not dispute that resignation was in his handwriting. Similarly, the signature on resignation was also found to be that of the petitioner. Though the learned counsel tried to contend that these findings recorded by the School Tribunal are perverse, there is no such challenge in present writ petition. Thus, a resignation in the handwriting of petitioner duly signed by him was sent by registered post to the management and the management has received it and has acted upon it. In such circumstances, mere fact that said resignation was undated will not make any material difference and will not affect the validity of the resignation. The absence of date is not a factor which will show that the resignation was involuntary.

10. Apart from this, it appears that the management has also produced before the School Tribunal the documents showing subsequent action taken by it on resignation. The management passed the resolution on 26-4-1991 and accepted that resignation. The acceptance letter was then forwarded to the present petitioner and the management also produced acknowledgment of that acceptance letter of the petitioner. The petitioner has signed that acknowledgment on 30-4-1991. Not only this, but thereafter the management has published fresh advertisement on 23-6-1991 and the petitioner applied for appointment by application dated 28-6-1991 in response to that advertisement again. The School Tribunal has found that in such circumstances, the story that his resignation was involuntary or there was no such resignation, cannot be accepted. In this background, the School Tribunal has found that the story of oral termination from 3-8-1991 is unsustainable. When these facts or record are seen, it cannot be said that the findings of School Tribunal are in any way perverse or erroneous.

11. No case is, therefore, made out for interference in writ jurisdiction. Writ Petition is accordingly dismissed. There shall be no order as to costs.