

(2004) 02 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 8483 of 2003

Barshi Education Society

APPELLANT

Vs

Shri Ashok Ganesh Kulkarni and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

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, 40(1), 40(2)

Citation : (2004) 5 BomCR 772 : (2005) 104 FLR 2 : (2004) 3 MhLj 587

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : S.V. Pitre, for the Appellant; Sachin Pande, for the Respondent

Judgement

D.Y. Chandrachud, J.—In pursuance of the order of the Court dated 11th December 2003 issuing notice, the First Respondent has appeared. Service has been effected on the Second and Third Respondents and an affidavit of service has been filed. The Fourth Respondent, the State of Maharashtra is served and appeared on the previous occasion through the A.G.P.

2. The First Respondent was appointed initially as an Assistant Teacher and thereafter since 1st November 1991 as a Headmaster in a primary school run and conducted by the Petitioner at Barshi. On 16th October 1998, the First Respondent tendered his resignation as Headmaster. The resignation, it is admitted, was submitted in person. The management accepted the resignation on 3rd November 1998. On 7th January 1999, the First Respondent instituted a Civil Suit contending that the resignation was not voluntary and prayed for reinstatement with back wages. The plaint came to be returned for presentation before the School Tribunal, having regard to the provisions of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the Act"). Parties were heard by the School Tribunal.

3. By an order dated 17th October 2003, the School Tribunal came to the conclusion that the resignation dated 16th October 1998 was not valid in law. The Tribunal held that the First Respondent shall be deemed to be in continuous service as a Headmaster of the School from the date of his promotion till the acceptance of his resignation and thereafter until he retires from service. Before the Tribunal, the First Respondent had, however, stated that he was willing to apply for voluntary retirement with effect from 31st December 2003. Consequential orders were thereupon passed by the Tribunal, directing the management to forward all the papers in connection with the application of the First Respondent for voluntary retirement to the Administrative Officer of the School Board at Barshi. The Tribunal directed that the First Respondent shall be deemed to have retired from service on 31st December 2003 and would be entitled to consequential benefits including continuity of service, pay fixation, leave encashment, pensionary benefits and gratuity.

4. When this petition came up for admission on 11th December 2003, a statement was made before the Court on behalf of the Petitioner that the management accepts operative directions four to seven issued by the School Tribunal. The only challenge which was preferred was in respect of operative directions two and three. In order to facilitate an understanding of the extent of the challenge, it would be appropriate to extract the directions given by the Tribunal:

"1. Appeal allowed without costs.

2. The acceptance of appellant's resignation dt. 16th October 1998 by management is hereby quashed and set aside.

3. Appellant shall be deemed to be (in) continuous service as Headmaster of the school from his promotion as Headmaster from 1st November 1991 till acceptance of resignation dated 16th October 1998 and even thereafter till today and thereafter till his retirement.

4. Appellant shall be deemed to have applied for voluntary retirement by treating pursis Exh.32 as his application for voluntary retirement.

5. Appellant Headmaster and respondent management shall prepare all the necessary papers for appellant's retirement and submit the same to Administrative Officer, Municipal School Board, Barshi or concerned authority and the authority shall act accordingly of retirement of appellant on 31-12-2003.

6. Appellant shall prepare his pay bill at the pay scale of Headmaster and submit the said bills i.e. the bills for difference of pay between Headmaster's post and Asst. Teacher's post" (Salary of Asst. Teacher's post already drawn by him).

7. Appellant shall be deemed to have been retired on 31st December 2003 (after office hours). Appellant will be entitled for all the consequential benefits of service continuity like and including addition of qualifying service for retirement on Voluntary retirement, pay fixation, leave encashment, pensionary benefit,

benefit of back wages for the post of Headmaster's post, gratuity etc."

5. Now, it is common ground that after the alleged resignation dated 16th October 1998, the First Respondent continued in service as an Assistant Teacher until 31st December 2003 when he sought voluntary retirement. This Court while issuing notice on 11th December 2003 had directed the management to deposit in Court an amount calculated with reference to the order of the Tribunal. Accordingly, it is stated before the Court that an amount of Rs. 36,000/- has been deposited in this Court, representing the difference of salary between what was drawn by the Petitioner as an Assistant Teacher and what he would be entitled to, had he been continued after 16th October 1998 as a Headmaster.

6. In allowing the appeal, the three grounds which weighed with the School Tribunal were: (i) The alleged letter of resignation was not sent by Registered Post as required by Section 7 of the Act; (ii) The acceptance of the resignation was within a period of 20 days as opposed to three months; and (iii) The management has not denied the allegation that the resignation was forced.

7. Section 7 of the Act provides thus:

"7. Procedure for resignation by employees of private schools! If any 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."

8. The safeguards which have been provided by the legislature in Section 7 are in order to ensure that an employee of a private School is not subjected to the use of force or duress to secure his resignation from service. For one thing, u/s 7, the resignation has to be a written resignation contained in a letter duly signed and dated by the employee. Oral resignations are impermissible. The resignation has to be forwarded by registered post to the management. Section 7 uses the expression that the employee may forward one copy of the letter of resignation to the management by registered post. The requirement that the letter be forwarded by registered post is intended to ensure that the employee is not subjected to the kind of coercion or duress which may operate if an employee is called in person, required to sign a letter of resignation and hand it over to the management in person. Often times, it is alleged before the Court that the management sent for the employee, pressurised the employee to tender a letter of resignation on the spot and then used that to contend that the services of the employee have come to an end. Where an employee has submitted the resignation not by registered post but otherwise, a greater degree of circumspection is required on the part of the tribunal particularly when it is alleged that the resignation was not voluntary. 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 is one of the relevant circumstances. The

Tribunal proceeded on the basis that the resignation must necessarily be regarded as invalid when it is not sent by registered post. That in my view, would not be a correct interpretation of Section 7. The legislature has used the expression that the employee may forward one copy of the resignation to the management by registered post. This provision cannot, in my view, be interpreted to mean that the resignation must be regarded as invalid in every case where it is not sent by registered post. While construing all the circumstances of the case, the Tribunal must undoubtedly have due regard to the fact that the legislature has laid down that the employee may send one copy of the resignation by registered post to the management. The mode of service may, in a conceivable case, have a bearing on the question as to whether the resignation is truly voluntary. In cases where the employee seeks to dispute the voluntary nature of the resignation, each case must be decided on the basis of all the facts and circumstances before the Tribunal and it would be stretching the provisions of Section 7 too far to hold that the mere fact that the resignation was not sent by registered post is sufficient to invalidate it. The Tribunal was, therefore, in error in holding that the resignation must be regarded as invalid on the ground that it was not sent by registered post.

9. The second ground which weighed with the School Tribunal was that the management accepted the resignation within a period of three months. Now, so far as this aspect of the matter is concerned, Rule 40 of the Maharashtra Employees of Private School Rules, 1981 provides 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 allowances) 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 for 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 (i), 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."

10. A reading of Rule 40 would show that the provision of three calendar months' notice in the case of a permanent employee and one month's notice in the case of a non-permanent employee has been introduced in order to enable the management to make alternative arrangements and to secure itself against the dislocation resulting from the departure of an employee. The management

must have a sufficient period of time to make alternative arrangements particularly upon the departure of a member of the teaching staff. The requirement of a notice is for the benefit of the management. Rule 40(1) stipulates that the management may allow an employee to leave service even earlier on payment of salary for three months or as the case may be, one month, in lieu of notice by the employee. The amount which has to be paid by the employee is restricted to the pay for the period which falls short of the required notice. Sub-rule (2) of Rule 40 provides that if the management allows an employee to leave service earlier without due notice or without his making payment in lieu of notice, a proportionate amount representing the pay in lieu of notice shall be deducted from the grant due to the school. These provisions have been introduced for the benefit of the management and to ensure that sufficient notice is given by the employee in order to enable the management to make necessary arrangements. In taking this view, I am also supported by a decision of a Division Bench of this Court in *Banda Navbharat Shikshan Prasarak Mandal v. Raghunath Ganesh Manorikar*, 1992 2 CLR 956. The Division Bench held that the period of three months' notice was provided for the benefit of the management so that the management would not encounter difficulty in appointing a substitute teacher. The Division Bench held that it is open to the management to exercise the power conferred by the rule and accept the resignation forthwith by payment of salary in lieu of notice. In that view of the matter, the second ground which has weighed with the Tribunal in setting aside the order of termination is erroneous.

11. The Tribunal has also held that the management has not denied the allegation that the resignation was forced. This finding also is incorrect in view of the fact that in paragraphs 7 and 8 of the written statement, there was a specific denial of the allegation that the resignation was forced. In these circumstances, the order passed by the School Tribunal is unsustainable on all the three grounds which weighed with the Tribunal. The School Tribunal disposed of the appeal primarily on the three grounds adverted to hereinabove. Hence, the Tribunal has not decided on merits as to whether the First Respondent has been able to establish his case that the resignation that he tendered from the post of Head Master was not voluntary. Both Counsel for the Petitioner and the First Respondent have stated before the Court that since the First Respondent has in any event now agreed to retire with effect from 31st December 2003, no useful purpose would be served in remanding the matter back to the Tribunal. The challenge by the management to the order of the Tribunal was, as noted in the earlier part of this judgment, confined only to a part of the order. The management has now stated before the Court through its Counsel that it is ready and willing to permit the First Respondent to withdraw the aforesaid amount of Rs. 36,000/- and that the Petition may be disposed of having regard to the aforesaid statement. Counsel appearing on behalf of the First Respondent has agreed that the First Respondent may, in the circumstances, be allowed to withdraw the aforesaid amount in full and final satisfaction of the second and

third directions issued by the School Tribunal. In the circumstances, the First Respondent is permitted to withdraw the aforesaid amount of Rs. 36,000/- deposited by the management in pursuance of the interim order passed in the proceedings on 11th December 2003.

12. Counsel appearing on behalf of the Petitioner and the First Respondent stated that the First Respondent has already submitted his application for voluntary retirement with effect from 31st December 2003. Counsel for the management states that all the papers in connection therewith have been forwarded to the Second Respondent who is the Administrative Officer of the Primary School Board. The Second Respondent shall take necessary steps to process the said papers and pass necessary orders thereon within a period of four weeks from the date on which an authenticated copy of this order is produced before him by either of the parties. It would be open to the Petitioner to seek reimbursement from the Second Respondent of the amount which has been paid over to the First Respondent in pursuance of the order of this Court dated 11th December 2003. The Second Respondent shall deal with any such request for reimbursement in accordance with law and pass orders thereon.

13. The Court has been informed that after the alleged resignation of the First Respondent on 16th October 1998, the Third Respondent was appointed as a Headmaster. The Court is informed by Counsel appearing on behalf of the Petitioner that the approval of the Second Respondent to the appointment of the Third Respondent has been withheld on account of the pendency of the proceedings before the School Tribunal. Now that the First Respondent has voluntarily agreed to retire from service with effect from 31st December 2003, the petitioner would be at liberty to move the Second Respondent for the grant of approval to the appointment of the Third Respondent and in the event such an application is made, that application shall also be determined in accordance with law.

14. The Petition shall stand disposed of in the aforesaid terms. No order as to costs.

15. Parties be given copies of this order duly authenticated by the Sheristedar/ Personal Secretary of this Court.