

(2004) 03 BOM CK 0116
In the Bombay High Court
Case No : Writ Petition No. 2292 of 1990

Damodar Raut

APPELLANT

Vs

Education Officer, Zilla Parishad and Others

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Constitution of India, 1950 — Article 217, 226, 227

Citation : (2004) 106 BOMLR 923

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.T. Kharche, J.—By invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner-employee has challenged the order dated 4.9.1990 passed by the learned Presiding Officer, School Tribunal in Appeal No. STN/166/1988 whereby the appeal came to be dismissed and the contention of the petitioner that he was entitled for reinstatement was negated.

2. Relevant facts are as under :

The petitioner was appointed as a clerk in a clear vacancy on probation for a period of two years by appointment order dated 1.6.1987 or from the date of assuming the charge of the post. He was entitled for all the allowances and his appointment was purely temporary for the period of two years from 1987 to 1989 in the clear vacancy, on probation. The respondent No, 2 Little Flower High School was facing certain allegations regarding misappropriation and consequently the petitioner-employee by his letter dated 7.4.1988 tendered the resignation on the ground that he was suffering from mental torture. Thereafter on 9.5.1988, the petitioner has changed his mind and withdrew his resignation by sending a letter under certificate of posting which was addressed to the Headmistress of the school. The respondent-management did not take any decision on the said resignation and ultimately no communication was received

by the petitioner-employee, and therefore, he has again addressed 3 to 4 letters asking the management to allow him to join his duty. The management on 2.7.1988 communicated the petitioner-employee that his resignation was accepted w.e.f. 2.7.1988. The petitioner employee challenged his termination on account of acceptance of his resignation before the School Tribunal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act, 1977). The contention of the management was that the resignation was accepted in accordance with law and the appeal itself was not maintainable. The School Tribunal, on hearing the learned Counsel for the parties dismissed the appeal on 4.9.1990. This is how the petitioner is before this Court.

3. Mr, Arun Patil, the learned Counsel for the petitioner contended that Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short the Rules, 1981) prescribes the procedure regarding the resignation to be tendered by the employees and accepted by the management. The permanent employee can resign after giving three months' notice. So far as the petitioner is concerned, he was appointed in a clear vacancy, and therefore, was not a temporary employee, and therefore, he could have resigned from the post only after giving three months' notice. No such notice was given by him and the resignation letter dated 7.4.1988 was withdrawn on 9.5.1988, and therefore, there was no acceptance of the resignation within a reasonable time after it was tendered nor the management had complied with the provisions of Sub-rule (2) of Rule 40 of the Rules, 1981. Mr. Patil further contended that the alleged resignation does not conform with the requirements of Section 7 of the Act and Rule 40 were also not complied with and the subsequent conduct of the management shows that there could not have been any resignation in existence which could be accepted. He contended that in fact, the petitioner did not intend to resign and in fact when he had sent letter dated 9.5.1988 to the management expressing his intention to withdraw the resignation, still then the management did not take any decision up to 2.7.1988. He contended that it is only after the receipt of 3-4 letters from the petitioner-employee, the management-with the signature of the Headmistress addressed the communication dated 2.7.1988 to the petitioner informing him that his resignation was accepted on 2.7.1988 and therefore, this was in contravention of the provision of Section 7, Rule 40. In support of these submissions, he relied on the decisions of the Division Bench of this Court in the case of Chandrakant Damodar Lone v. Chhatrapati Shivaji Education Society and Ors. 1988 (1) Cl.R. 175 : (1988) 1 L.L.N. 512 : 1988 (56) F.L.R. 359 and J.B. Shaikh v. N.Z. Julange and Ors. 1992 (I) Cl.R. 414.

4. Mr. Patil further contended that Section 7 of the Act prescribes a procedure for tendering resignation by the employees of private schools and these provisions of law contemplate that if any employee intends to resign his post in any private school at any time after the date of appointment, he shall draft 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. He contended that in the present case, the

petitioner-employee only signed the letter of four lines under a mental pressure disclosing his intention that he was tendering resignation voluntarily and called upon the management to accept the same, but the management did not communicate anything about the said resignation. He contended that not only this, the resignation was withdrawn on 9.5.1988 by sending another letter for which also again there is no communication received and hence the petitioner-employee had sent 3 or 4 letters requesting the management to allow him to join his duties, Mr. Patil further contended that the management did not take any decision on the resignation of the petitioner-employee and simply kept it in abeyance and suddenly on 2.7.1988 the petitioner employee received the communication that his resignation was accepted on that date. Mr. Patil further contended that in the circumstances, the impugned order passed by the School Tribunal cannot be sustained in law for the simple reason that the School Tribunal did not advert to the requirements of Section 7 read with Rule 4 of the Rules, 1981.

5. Mr. Patil, learned Counsel, for the petitioner contended that the general principle regarding resignation is that, in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective when it operates to terminate the employment or the office-tenure of the resigner and this general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions for his service/ or office, by his own unilateral act of tendering resignation, give up his service/ or office, normally, the tender of resignation becomes effective and his service/ or office-tenure terminated, when it is accepted by the competent authority. In support of these submissions, he relied on the Constitutional Bench decision of Supreme Court in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, and the Division Bench decision of the Apex Court in Union of India v. Wing Commander T, Parthasarathy (2001) 1 SCC 158 : 2001 SCC 180 : AIR 2001 SC 158 : 2001 L.I.C. 53.

6. The learned Counsel for respondent No. 2 contended that the petitioner came to be appointed as a clerk on 1.6.1987 for a period of two years purely on temporary basis. He tendered his resignation on 7.4.1988 before the expiry of the period of two years. However, he did not mention the due date of resignation as is required by Rule 40 of the Rules which states that a non-permanent employee may leave service after giving one calendar month's notice. The petitioner who was a non-permanent employee could have given one calendar month's notice about his resignation and that having done so the resignation becomes final after one month on the date on which it was tendered. However, the petitioner by his letter dated 9.5.1988 withdrew his resignation which was tendered personally on 7.4.1988 and this withdrawal was after the expiry of period of one month. Prior to that the respondent No. 2 by the letters dated 11.4.1988 and 23.4.1988 had informed the petitioner that the resignation will be accepted as soon as it is placed before Managing Committee which could not

convene a meeting earlier view to annual promotion examination. Ultimately, the petitioner's resignation was accepted on 2.7.1988. It is further contended that the work of the petitioner during his tenure was not satisfactory and there were many complaints about his work and the petitioner has accepted his mistakes in his letter dated 4.4.1988.

7. The learned Counsel for respondent No. 2 further contended that once the resignation is accepted then the withdrawal letter is of no consequence. He, therefore, contended that the impugned order passed by the School Tribunal is perfectly legal and correct and no interference into the same is warranted.

8. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. It is not in dispute that the petitioner was appointed by the order of appointment dated 1.6.1987 which reads thus :

Order of Appointment [Vide Rule No. 9(5)]

No. Date : 1.6.1987 To,

Shri Damodar Vithalrao Raut,

1315, Omnagar, Nagpur.

With reference to your application dated 27.5.1987 I have the pleasure to inform you that you are hereby appointed as clerk on Rs. 260 per month in the scale of Rs. 260-495 with effect from 1st June, 1987 or the date you report for duty. You will be entitled to allowance such as compensatory local allowance. House rent allowance and Dearness allowance as specifically sanctioned by Government from time to time.

Your appointment is purely temporary for period of two years from 1987 to 1989 in the clear vacancy, OR Your appointment is on probation for period of two years.

The terms of your employment and conditions of service shall be as laid down in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules made thereunder.

You shall have to undergo a medical examination by Dr. N. Deogade within three months from the date of joining the post. Your appointment shall be conditional pending the receipt of physical fitness certificate from the doctor whose name is mentioned above.

You are requested to acknowledge receipt of this order of appointment and communicate the acceptance of the appointment within...days from the date of receipt of the same. Subject to the approval of Zilla Parishad.

If no reply accepting the appointment is received within the period mentioned in paragraph 5 the order shall be treated as cancelled.

Yours faithfully, Sd/illegible Head Mistress Little Flower High School, Nagpur.

9. The petitioner/employee tendered his resignation written in Marathi on 7.4.1988 which is translated here for the sake of convenience as under :

To,

Head Mistress,

Little Flower High School,

Nagpur.

Subject : Regarding acceptance of resignation.

Madam,

I was appointed in this school for two years. But, because having mental torture here I voluntarily tender this resignation. The resignation may kindly be accepted. Hence this request.

Yours faithfully.

At this juncture, it is necessary to reproduce Section 7 of the Act which deals with the procedure for resignation by the employees of private school. It reads as under:

If any employee intends to resign his post in any private school, at any time after the appointment 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.

10. Rule 40 also deals with the procedure of resignation and contemplates as under :

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 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 (1) 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 beginning of the first term of the year.

11. Bare reading of the aforesaid provisions would reveal that in case an employee of a private school wants to tender a resignation he has to address the

letter of resignation in duplicate and sign both the copies of that letter by putting the date thereon. The second requirement of law as per Section 7 of the Act is that he has to forward one copy to the management by registered post and keep the other copy with him. Similarly, according to Rule 40, the procedure is prescribed for tendering resignation by permanent employee as well as non permanent employee.

12. In Chandrakant Damodar Lone v. Chhatrapati Shivaji Education Society 1988 (I) C.L.R. 175 : (1988) 1 L.L.N. 512 :1988 (56) F.L.R. 359 (cited supra), the Division Bench of this Court held that admittedly the alleged resignation does not conform with the requirements of Section 7 of the Act and Rule 40 was also not complied with. The subsequent conduct of the management also shows that there could not have been any resignation in existence which could be accepted. There is much substance in the contention of the petitioner that while appointing him as a Head Master, an undated blank resignation was taken by the management which was not legal for could have been acted upon. To say the least, the petitioner had not tendered any resignation on 26.2.1983. The finding recorded by the School Tribunal is wholly based on misreading of the evidence and could safely be termed as perverse.

13. In J.B. Shaikh v. N.Z. Kuange and Ors. 1992 (I) C.L.R. 414 it was held that the petitioner did not intend to resign or did not give notice of duration of three months as required under Rule 40 and as such the letter was held invalid resignation.

14. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, the general principle of law has been laid down and it was observed that "the general principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office-tenure of the resigner. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by competent authority.

15. The aforesaid decision of the Constitution Bench was followed by the Supreme Court in Union of India v. Wing Commander T. Parthasarathy (2001) 1 SCC 158 : 2001 SCC 180 : AIR 2001 SC 158 : 2001 L.I.C. 53 wherein it has been held in para No. 6 as under :

We have carefully considered the submissions of the learned Counsel appearing on either side. The reliance placed for the appellants on the decision reported in Raj Kumar's case is inappropriate to the facts of this case. In that case this Court merely emphasised the position that when a public servant has invited by

his letter of resignation determination of his employment his service clearly stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the condition of the service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority and that till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned had locus penitential but not thereafter. This judgment was the subject-matter of consideration alongside the other relevant case law on the subject by a Constitution Bench of this Court in the decision reported in *Union of India v. Gopal Chandra Misra*. A request for premature retirement which required the acceptance of the competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before it became so complete. It is all the more so in a case where the request for premature retirement was made to take effect from a future date as in this case. The majority of the Constitution Bench analysed and declared the position of law to be as hereunder : (SCC p. 317, para 50)

50. It will bear repetition that the general principle is that in the absence of a legal contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resigner. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary/ who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

(emphasis supplied)

16. The law position that emerges from the aforesaid decisions of the Supreme Court is that the general principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective and it operates to terminate

the employment or the office tenure of the resigned. A request for premature retirement made by the employee, which required the acceptance of the competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before it become so complete. It is all the more so in a case where the request for premature retirement was made to take effect from a future date and a substantive legal right of withdrawal of resignation cannot be denied to a person who sought withdrawal of resignation before it is accepted.

17. In the present case, there is a prescribed procedure to be followed regarding tendering as well as the acceptance of resignation by virtue of Section 7 read with Rule 40 and it would reveal that the resignation tendered does not conform with the requirements of these provisions of law. Perusal of the resignation letter dated 7.4.1988 would show that the petitioner/employee had intention to resign from the service because of the mental torture from which he was suffering at the place of his service and, therefore, out of sheer frustration he tendered the resignation though it has been mentioned in the letter that he has tendered the resignation voluntarily. It would clearly reveal from this letter that it was not at all voluntary but was tendered because of the frustration due to mental torture. It is also obvious that this letter tendering resignation was not sent by registered post as is required by Section 7 of the Act. There was no communication from the side of the management so far as the acceptance of the resignation is concerned and, therefore, the petitioner had addressed letter dated 9.5.1988 informing the management that he withdraw his resignation. It is pertinent to note that the management communicated its decision by the letter dated 2.7.1988 and informed the petitioner/employee that his resignation has already been accepted with effect from 2.7.1988. There is no whisper in this letter as to when the decision regarding acceptance of resignation was taken by the management. It would also reveal that the management also did not think it necessary to communicate as to whether the request for withdrawal of resignation submitted by the petitioner/employee was considered and then rejected.

18. It is not disputed that the petitioner/employee is a non-permanent employee in the school and his service could have been terminated on one calendar month's notice. The letter of resignation does not indicate that a month's notice has been given by the employee for resignation from the service nor the management has communicated anything to the employee as is required under Rule 40(2) of the Rules. In such circumstances, this Court is of the considered opinion that the said resignation tendered does not conform with the requirements of Section 7 of the Act and Rule 40 was also not complied with. The subsequent conduct of the management also show that they did not consider the letter dated 9.5.1988 submitted by the petitioner for withdrawal of his resignation. There was inordinate delay in communicating the acceptance. It is only on 2.7.1988 that the communication was made. In that view of the matter, it is obvious that the impugned order passed by the School Tribunal cannot be

sustained in law and the petitioner would be entitled for reinstatement. Therefore, the impugned order passed by the School Tribunal is hereby quashed and the order of termination/acceptance of resignation by the management is set aside. However, having regard to the facts and circumstances this Court is not inclined to grant back wages to the petitioner/employee and the management is directed to allow the petitioner/employee to join his services within a month. With these observations, this petition is allowed. Rule is made absolute in aforesaid terms. There shall be no order as to costs.