

(1986) 12 MAD CK 0020

In the Madras High Court

Case No : W.A. 514 of 1984 and W.Ps. No's. 3566 and 6868 of 1984

Grama Committee High School, Venkateswarapuram

APPELLANT

Vs

Arunachalam and Others

RESPONDENT

Date of Decision : 24-12-1986

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 15

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15, 17

Citation : (1988) 1 LLJ 119 : (1987) 100 LW 543 : (1987) 2 MLJ 219

Hon'ble Judges : Srinivasan, J;M.N. Chandurkar, J

Bench : Division Bench

Judgement

Srinivasan, J.—The petitioner in W.P. 3566 of 1984, hereinafter referred to as the petitioner, was the Headmaster of Grama Committee

High School, Venkateswarapuram, Tenkasi Taluk, Tirunelveli Dt., from June 1959. The School represented by its Secretary is the petitioner in

W.P. 6868 of 1984 hereinafter referred to as the respondent.

2. The petitioner was on medical leave from 15th October 1982 to 12th December 1982. On 7th December 1982 he sent a letter to the Secretary

of the respondent that he was resigning his post of Headmaster with effect from that date even though he was on medical leave. The petitioner

made an entry in the Masters' attendance register for December 1982, as against his name "Resigned of his own accord. Left from service". In the

Executive Committee meeting held on 12th December 1982, the resignation was accepted and one N. Kalidhasan, who was a first Assistant in the

school, was appointed as Headmaster in charge until a new Headmaster was appointed. One of the resolutions passed by the Executive

Committee was that the petitioner should hand over charge immediately to the

Secretary. Another resolution was that a sum Rs. 10,795 which the petitioner had retained in his hands without depositing in the Teacher's Provident Fund account, should be handed over by him to the Secretary immediately. The resolution, passed by the Committee were signed by five members of the Committee. It is common ground that the Committee consisted of eight members only including the petitioner.

3. On 15th December 1982, the Secretary of the respondent sent a letter to the petitioner informing him of the acceptance of his resignation by the Executive Committee and requesting him to hand over all the school records and charge immediately. On the same day, the Secretary sent letters to the District Educational Officer, Tirunelveli and the Chief Educational Officer, Tirunelveli informing them about the Headmaster's resignation and enclosed copies of his letter and the intimation of its acceptance. On receiving the intimation about the acceptance of the resignation, the petitioner wrote to the Secretary of the respondent a letter on 16th December 1982 in which he had made a complaint that the Secretary had not taken sufficient steps for the repayment of a sum of Rs. 55,000 advanced by the petitioner for the construction of the school. In that letter he had threatened that if the Secretary did not peacefully settle the matter, the rights and actions of the petitioner and others could not be controlled and that they being the majority, would take sufficient action to protect their rights. It is significant to note that in the said letter, the petitioner had not said anything about his resignation dated 7th December, 1982. On 21st December 1982, the petitioner sent a letter to the District Educational officer in which he had stated that a sum of Rs. 55,000 was due to him from the school and that in spite of his repeated demands, steps were not taken for repayment of the same. He had also stated that he sent his resignation letter dated 7th December 1982, as there was no discussion about the amount payable to him on 5th December 1982, and there was an attempt to enrol new members. He had also alleged that in the meeting held on 12th December 1982, majority of the members walked out as there was no discussion about the amount payable to him. He had informed the District Educational Officer that one of the members of the Committee by name S. Arumugham was in Virudhunagar as the Principal of Polytechnic and a decision would be taken in a meeting which would be held after the said

Arumugham case. He had also stated that such decision would be communicated to the addressee who should take action there after. On 23rd December 1982, the Secretary to the respondent issued a notice through a lawyer to the petitioner calling upon him to handover all the records relating to the school within a week from the receipt of the notice and to pay the Teacher Provident fund amounts which had been withheld by the petitioner. It was alleged in that notice, that the petitioner had, with a fraudulent motive, resigned on 7th December 1982, without giving any reason, in order to escape from his responsibility and that the petitioner had not handover all the records relating to the school pondent. It was alleged that a sum of Rs. 10,795 out of the Teachers Provident Fund was not handed over to the respondent. It was specifically stated that the resignation letter dated 7th December 1982 was accepted in the meeting of the school committee held on 12th December 1982 and that the same had been communicated to the concerned educational authorities.

4. To this notice, the petitioner sent a reply through his lawyer. In his reply, the petitioner stated that he was forced to resign by circumstances beyond his control and in view of the fact that amounts advanced by him were not paid back to him. On 4th February 1983, the petitioner sent letters to the Chief Educational Officer, Tirunelveli, the relevant portion of which reads as follows -

Thiru V. K. Subramaniam is the Secretary of the Governing Board and the school. As Secretary of the Board, and school, he owes Rs. 20,000 (loan given by me for school expenses) and another loan of Rs. 55,000 (for construction of additional new buildings) - Total Rs. 75,000 - Despite my repeated requests to him the Secretary has not taken effective steps to settle the said two loans, which are pending discharge and final settlement for the last fourteen years, due to which delay, disturbances in my family has arisen. Thus, due to vexation and to make the public and the Governing board members understand the dilatory tactics and the hide and seek policy adopted by the Secretary (Thiru V. K. Subramaniam), in the repayment of the amounts of the loans taken from me, I was forced to resign my appointment as Head master of the said High School for more than two decades. Also I submit that the financial dealings of the Secretary are of late not in the interests of school, which deter me from

exercising my duties as Headmaster of the school peacefully and efficiently.

Now some members of the school governing board and some of the leading gentlemen of the village approach me frequently in the best interests of

their wards and the school and promise me to take up the matter regarding loan, etc. with the Secretary and the Governing board of the school in

all seriousness and to settle the repayment of the loans referred to very quickly.

In the above circumstances, I submit that I withdraw my resignation of appointment as Headmaster of the school and I request that my letter of

resignation dated 7th December 1982 may be please treated as withdrawn. I solicit orders to rejoin duty as Headmaster of the High School which

post is still vacant.

5. The Secretary of the respondent sent a letter on 19th March 1983 to the Chief Educational Officer, Tirunelveli. In that letter, he referred to the

earlier communication dated 15th December 1982. He had enclosed another photostat copy of the resignation letter. He had also referred to the

acceptance by the Executive Committee of the resignation and requested the Chief Educational Officer to pass an order of approval of relieving the

petitioner from service.

6. After all these had happened, the Chief Educational Officer wrote a letter to the petitioner on 20th July 1983, in which he had asked the

petitioner to state whether the resignation was written on compulsion or whether it was given voluntarily with full knowledge of the same. On 21st

July 1983, the petitioner sent a communication to the Chief Educational Officer, Tirunelveli, requesting him to issue directions to the school

authorities for repayment of the amount paid by him and also for reinstatement in service at an early date. Of course, he had referred to the

withdrawal of the resignation letter.

7. By his letter dt. 21st August 1983, the Chief Educational Officer, Tirunelveli, requested the petitioner to meet him in his office on 27th August

1983, in connection with the resignation letter and the withdrawal thereof. It seems that the petitioner appeared for personal hearing on 27th

August 1983 and presented certain statements to the Chief Educational Officer, Tirunelveli. Referring to the said fact in a letter of even date, the

petitioner raised also a contention that his resignation was conditional in addition to its being forced.

8. The Chief Educational Officer inspected the school on 16th December 1983, and saw the endorsement made by the petitioner in the Master's

attendance register that he "resigned of his own accord". Thereafter, he passed an order on 24th February 1984, in which he rejected the request

of the petitioner to accept his withdrawal and reinstate him in service. It is better to give a translation of the relevant portions of the said order

hereunder :-

1. The management did not terminate the service of the Headmaster either by taking disciplinary action or by obtaining resignation letter by

compulsion. The former Headmaster Thiru I. Arunachalam abstained from his duty on his own accord with effect from 7th December 1982. If he

really wanted to resign his job he should have submitted his resignation with 3 months' notice as per the TNPS Act 1973 and R. 15 of the Rules of

1974. Otherwise, he should have paid 3 months' salary to the management and requested for acceptance of the resignation immediately. At the

same time he should have forwarded a copy of resignation to the CEO by registered post. Thiru I. Arunachalam has not followed this procedure.

2. After the management accepted the resignation as per rules, he should have got relieved from duty by the Secretary to the School after handing

over charge of the Headmaster to a seniormost teacher appointed by the school Secretary. But one week before the management could accept the

resignation, he abstained from duty without handing over charge to the proper person. As per the rules, His action is liable for disciplinary

proceedings.

3. He should have submitted the withdrawal letter to the same person to whom he had written the resignation letter. Without doing so, the appeal

preferred before the Chief Educational Officer is not acceptable.

4. It is not necessary to file appeal before the Educational Department when no harm is caused by the management. In the above circumstances, it

is not possible to pass any order on the letter dated 4th February 1983 submitted by Thiru I. Arunachalam who has voluntarily resigned from his

post of Headmaster, Grama Committee High School, Venkateswarapuram.

He is advised to make such a request to the school Secretary and obtain appropriate orders.

On the same day, the same officer passed another order refusing to grant the

approval prayed for by the respondent. The relevant portion of the said order is as follows -

The Secretary by his letter dated 19th March 1983, has sought approval from the Chief Educational Officer, informing the facts that the school

Committee has accepted the resignation of I. Arunachalam from the post of Headmaster, Grama Committee High School, Venkateswarapuram on 12th December 1982.

1. The Secretary has received from the Headmaster a resignation letter dated 7th December 1982, only and after its acceptance by the Executive

Committee has written to the competent authority i.e., the C.E.O. seeking ratification. As per the existing rules prior approval should have been

obtained from the competent authority before accepting the resignation letter. The C.E.O. has powers to accord prior approval only and there is

no provision in the rules to accord ratification after the management has accepted the resignation on its own.

2. After receiving the resignation letter from I. Arunachalam on 3 months' notice or on payment of 3 months' salary, the C.E.O. should have been

addressed for prior approval by writing a letter explaining the reasons for accepting the resignation. The management without receiving the

resignation letter and receiving only a letter announcing relinquishment of service from I. Arunachalam has passed resolution accepting that letter.

After obtaining prior approval of the competent authority, accepting the resignation thereafter and appointing a responsible teacher to take charge

and after Thiru I. Arunachalam handed over charge, the management should have issued the relieving order to Thiru I. Arunachalam. It is seen

clearly that the Management has not acted in accordance with the rules.

Therefore, it is not possible to permit the request of the Secretary for ratification.

9. The petitioner who is aggrieved by the refusal of the Chief Educational Officer, to accept his withdrawal, has filed W.P. 3566 of 1984, for

quashing the same. The respondent filed an appeal against the said order to the Joint Director of School Education, Madras. As the appeal was

not disposed of for a long time, the respondent filed W.P. 6868 of 1984 for quashing the order of the Chief Educational Officer, passed against it

refusing to accord approval. The petitioner filed W.M.P. 5527 of 1984 in W.P. 3566 of 1984, for a direction to the Chief Educational Officer,

Tirunelveli, to pass an order reinstating him as Headmaster of the school, pending disposal of the writ petition. In the said petition, Mohan, J.

passed the following order -

In view of the fact that admittedly no prior sanction for acceptance of the resignation was accorded by the Chief Educational Officer, Tirunelveli,

the petitioner cannot be relieved of his services. Therefore, he shall be deemed to be in service until the necessary sanction is obtained. In view of

this, he shall be reinstated forthwith and be paid all the arrears of salary due to him.

It is against the said order, the respondent filed W.A. 514 of 1984. When the appeal came before us, we directed the writ petitions also to be

posted along with the appeal so that the entire matter could be disposed of.

10. Mr. K. Ramamurthi, learned counsel appearing for the petitioner, raised the following contentions -

(1) The resignation of the petitioner has not been accepted by the school Committee which is the only authority capable of accepting the

resignation. In this case, the resignation having been accepted by the Executive Committee, i.e, the Educational agency only, the acceptance is not

valid in law.

(2) Under R. 17A of the Tamil Nadu Private Schools (Regulation) Rules, there should be prior approval by the Chief Educational Officer before

any resignation of a teacher could be accepted by the school authorities. In the absence of any such approval, acceptance of the resignation is not

lawful.

(3) A resignation can be withdrawn before it is accepted by the appropriate authority.

In this case, the resignation was withdrawn before the approval of the Chief Educational Officer could be granted. Consequently, the withdrawal of

the resignation was a valid one. Hence, the resignation of the petitioner was ineffective.

11. Mr. Govind Swaminathan, learned counsel for the respondent, contended that under the existing rules, there is no necessity for acceptance of a

resignation in order to be effective. According to him, the resignation of the petitioner took effect co instant in view of the unambiguous language

used by the petitioner. He contended further that the proper authority to accept

the resignation was the Educational Agency and in the present case, it is only the Educational Agency which accepted the resignation. Learned counsel submitted that the only function of the Chief Educational Officer is to find out whether the resignation was voluntarily given or not. According to him, if it is found by the Chief Educational Officer that the resignation is a valid one, he has no option but to give his approval to relieve the teacher. As regards the letter of withdrawal dated 4th February 1983, learned counsel submitted that there could be no question of withdrawal in view of his first submission and in any event, it is ineffective as it was long after the acceptance of the resignation and as it was never sent to the educational agency.

12. Before dealing with the respective contentions of the parties, it will be useful to refer to the relevant provisions of the Tamil Nadu Private

Schools (Regulation) Act, and the rules made thereunder. S. 2(3) defined "educational agency" in the following terms :

... ""Educational agency"" in relation to -

(a) any minority school, means any person who, or body of persons, which, has established and is administering or proposes to establish and

administer such minority school; and

(b) any other private school, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain

such other private school.

A "school committee" is defined in S. 2(8) as meaning the school committee constituted under S. 15 in relation to a private school. S. 15 of the act

provides for the constitution of a school committee. S. 18 sets out the functions of the school committee and the responsibility of the educational

agency as follows -,

(1) Subject to the provisions of this Act, and the rules made thereunder, the school committee shall have the following functions, namely -

(a) to carry on the general administration of the private school excluding the properties and funds of the private school;

(b) to appoint teachers and other employees of the private school, fix their pay and allowance and define their duties and the conditions of their

services; and

(c) to take disciplinary action against teachers and other employees of the private school;

(2) The educational agency shall be bound by anything done by the school committee in the discharge of the functions of that committee under this

Act.

(3) For the purposes of this Act, any decision or action taken by the school committee in respect of any matter over which the school committee

has jurisdiction shall be deemed to be the decision or action taken by the Educational agency"".

13. Among the rules framed under the Act, R. 15 and R. 17-A will be relevant. R. 15 provides for an agreement to be entered into by the school

committee with the teacher or other person in Form VII-A or VII-B, if the appointment is for a period exceeding three months. R. 17-A reads

thus -

17-A. Educational agencies not to obtain compulsory resignation letter either at the time of appointment or subsequently from the employees in

their school :-

(1) Whenever a teacher or other persons employed in a private school tenders his resignation of appointment, he shall inform the fact of his

resignation in writing by registered post with acknowledgment due to the District Educational Officer, Inspector of Girl's Schools or the Deputy

Inspector of Schools, concerned.

(2) No teacher or other person employed in a private school to give to the Educational agencies at any time undated or predated resignation letter.

(3) No educational agency shall insist or compel any teacher or other person employer in a private school to give at any time undated or predated

resignation letter.

(4) No teacher or other person employed in private school shall be relieved from service on the strength of resignation letter. The resignation letter

shall, on receipt, be sent to the Chief Educational Officer concerned in respect of teachers and other persons employed in High School and

Teachers training institutes and to the District Educational Officer concerned in respect of teachers and other persons, employed in pre-primary,

primary and middle schools. The Chief Educational Officer concerned shall in turn get the confirmation of the teacher or other persons employed,

as the case may be, as to the fact of such resignation and then accord his approval to relieve the teacher or other person employed, as the case may be, from service.

(5) Entries regarding the date of acceptance of resignation or appointment shall be made by the Secretary of the school Committee in the Teachers

Service registers of the teacher or in the service register of other persons employed in a private school under proper attestation and duly

countersigned by the District Educational Officer or the Inspectors of Girls' Schools, as the case may be.

(6) No substitute shall be appointed in the place of a teacher or other person employed in a private school who has been relieved on the basis of

the resignation letter tendered by him, without obtaining prior approval of the Chief Educational Officer concerned in respect of the teachers and

other persons employed in High schools and Teachers training institutes and the District Educational Officer concerned in respect of teachers and

other persons employed in pre-primary and middle schools.

14. Form VII-A is the Form of Agreement to be executed by the school committee in respect of permanent teachers Clause 9 thereof is in the

following terms :-

That the said teacher shall be entitled to have his/her services terminated either by giving to the school committee three months' notice thereof in

writing or by paying the school committee three months' pay and allowances in lieu of such notice if he is a permanent teacher. In case of a teacher

who is not permanent, the period of notice shall be two months and the amount payable in lieu thereof shall be two months' pay and allowances.

15. It is seen that there is no section in the Act which governs resignation of a teacher R. 17-A and Form VII-A referred to in R. 15 of the Rules

framed under the Act are the two relevant provisions. Though the word "resignation" is found only in R. 17 A, Form VII-A was in vogue even

prior to the introduction of the said rule. The prescribed Form of agreement as found in Form VII-A contains a clause viz., Clause 9 enabling a

teacher to terminate his/her services by unilaterally giving a notice of three months' or paying three months' pay and allowances to the school

committee. It is for the teacher to choose either of the courses. This right of unilateral termination of the contract of service could be exercised by

the teacher subject to the conditions referred to in Clause 9 of the agreement. As the agreement is entered with the school committee, the notice of termination should be given to the school committee. If a teacher is desirous of terminating his services voluntarily but is not willing to comply with the conditions specified in clause 9, he cannot do so unless the management of the school agrees to waive the conditions. It is open to the management to relieve the teacher from the rigour of the contract without insisting upon three months' notice or payment of three months' salary and allowances by the teacher. In such cases, termination of services of a teacher is brought about by his voluntary resignation de hors the contract and the acceptance of the same by the management of the school.

16. It is only to govern such voluntary resignations. R. 17A was introduced by G.O.Ms. No. 586 dated 2nd April, 1981. The necessity for framing a specific rule was brought about by the unscrupulous tactics adopted by several educational agencies in obtaining undated resignation letters from teachers even at the time of appointment or predated letters of resignation letters from them by force and making use of them whenever they liked.

When such instances came to light in multitude, the Government thought fit to frame R. 17A in order to explode the camouflage adopted by the educational agencies for terminating the services of innocent and gullible teachers under the garb of resignation letters which were not in fact voluntary. We have already extracted the terms of the Rule.

17. If a teacher wants to terminate his services in accordance with the terms of the contract, he can issue a notice under clause 9 of the agreement or pay three months' salary and allowances to the school committee. Under clause 9 of the Agreement, the relevant authority to whom the teacher must send his notice is the school committee. But, under R. 17A, the concerned authority is the educational agency, Whenever a teacher wants to terminate his services of his own accord otherwise than under the terms of the contract, he shall resort to R. 17A and address his resignation letter to the educational agency. Thus clause 9 of the agreement and R. 17A provide for two different contingencies and the provisions of one cannot be telescoped into the other. If the rule making authority had thought that the teacher should always terminate his services only in accordance with the terms of the contract, R. 17A would not have been framed. The very fact that R.

17A has been introduced shows that there can be resignations of teachers outside the provisions of their contract. We have seen already that under clause 9 of the agreement between the teacher and the school committee, there is no question of acceptance on the part of the school committee as the termination of the services could be effected unilaterally by the teachers by complying with the terms thereof. Under R. 17A too, there is no specific provision for express acceptance of a resignation tendered by a teacher. Clause (1) thereof enjoins the teacher who tenders the resignation to inform the fact of his resignation to the District Educational Officer, Inspectress of Girls' Schools or the Deputy Inspector of Schools concerned. It is not clear whether such information should be sent to the District Educational Officer as well as the Inspector of Girls' Schools or the Deputy Inspector of Schools or to any one of the three officials specified in the clause. Whether it is to be sent to one official or two officials, it should be sent in writing by registered post. Normally, it can be presumed that when a teacher sends information to the concerned official or officials as required by clause (1) in writing by registered post, it is a voluntary resignation.

18. As clauses (2) and (3) of R. 17A specifically refer to the educational agency, it can be taken that the teacher who resorts to this rule for resigning his job, should send his resignation letter to the educational agency. Clause (4) of the Rule begins by restraining the school from relieving the teacher from service on the strength of the resignation letter. The terms used are "relieved from service". The question of relieving from service can only arise after termination of services. They are two distinct and different concepts and are not identical, though the interval of time between the two may be insignificant. What is prohibited by the first part of the clause of the rule is only relieving from service and not termination of services or acceptance of resignation.

19. The next part of the clause requires the educational agency to forward the resignation letter to the Chief Educational Officer concerned in respect of teachers employed in High School and Teachers-training institutes and to the District Educational Officers concerned in respect of Pre-primary, Primary and Middle schools. The reason for the dichotomy introduced in this clause is not known. While there is no such division in Cls.

(1) to (3) of the rule, Clause (4) alone makes a distinction between High School and Teachers-training institutes on the one hand and Pre-primary,

primary and middle schools on the other. While the teachers of all the schools without any exception have to send information of their resignations

to the District Educational Officer and or the Deputy Inspector of Schools or Inspectors of Girls' Schools, the educational agencies of High

Schools and Teachers training institutes should send the resignation letters received by them to the Chief Educational Officer and the other

educational agencies should send such resignation letters to the District Educational Officers. While one can appreciate a provision whereby the

employees as well as the employers are made to send the information of resignation to the same official so that he could come to a conclusion

about the truth of the resignation whenever there is a coalescence of the information sent by the employee with the letter of resignation sent by the

employer, the purpose of two different authorities under the two clauses is beyond the reach of our imagination. The last part of Clause (4) requires

the Chief Educational Officer or the District Educational Officer concerned to get confirmation as to the fact of such resignation. It is not clear

whether the confirmation referred to therein is independent of the information sent by the teacher in writing by registered post. In case where the

information is sent under Clause (1) by the teacher to the District Educational Officer and the educational agency sends the teachers' resignation

letter to the Chief Educational Officer under Clause (4), what is the procedure to be adopted by the latter ? Is he to address the District

Educational Officer and obtain the information sent by the teacher ? We are unable to solve the riddles and it is for the rule making authority to

consider this aspect of the matter and clarify the position by suitable amendments.

20. In spite of all conundrums mentioned above, the last part of Clause (4) of the Rule makes it clear that the educational authority shall accord its

approval to relieve the teacher on getting the confirmation of the fact of resignation. The language of this clause is mandatory. When once the fact

of resignation is confirmed, the educational authority shall accord its approval to relieve the teacher from service. For the second time, the clause

used the words "relieve ... from service" There is no ambiguity with regard to the subject matter of approval to "relieve from service". There is also

no uncertainty in the function of the concerned official under the clause. What all he has got to do is to get confirmation of the fact of resignation. If

there is no confirmation, he shall not give his approval and if there is confirmation, he shall accord his approval.

21. While the first four clauses of R. 17-A do not make any reference to acceptance of resignation, Clause (5) directs the Secretary of the school

to make entries regarding the date of acceptance of resignation or appointment in the Teachers service register of the teacher. Obviously, the

acceptance referred to in Clause (5) is the acceptance by the educational agency. In order to place a harmonious construction on Cls. 1 to 5, we

have to interpret the word "acceptance" in Clause (5) as to mean express or implied acceptance. Whenever the educational agency forwards the

resignation letter to the concerned authority, there is by implication an acceptance on the part of the educational agency. It is not necessary that

there should be a formal act of acceptance by the educational agency before forwarding the resignation letter to the Educational authority under

Clause (4). There is no provision therefore in Cls. (1) to (4). If the educational agency concerned forwards the resignation letter to the educational

authority under Clause (4), it goes without saying that the former has accepted the resignation of the teacher concerned. That is the acceptance

referred to in Clause (5). It is needless to point out that the educational agency would not forward the letter of resignation to the educational

authority if it chooses not to accept the resignation of the teacher. It is, therefore, fallacious to contend that unless and until the Educational

authority accords his approval, there can be no acceptance of the resignation or that the acceptance is inchoate and incomplete. The provisions in

Clause (5) that the entries regarding the date of acceptance of resignation in the Teacher's service register shall be made by the secretary of the

School Committee under proper attestation and duly countersigned by the educational authorities makes it clear that the Educational Authorities

have nothing to do with the acceptance as such. As and when the educational agency chooses to send the resignation letter of the teacher to the

educational authority, the acceptance becomes complete. If the registration is not voluntary, the acceptance thereof would be of no effect

whatever. If the educational authority finds that the resignation is not voluntary, there will be no resignation in the eye of law. Hence, the validity of

the acceptance of the resignation depends on the truth and voluntary nature of the resignation and not on the approval of the Educational authority.

22. Turning to the facts of the present case, the resignation was accepted by the educational agency in the Executive Committee meeting held on

12th December 1982, and that was also communicated to the petitioner. It is only thereafter, the Secretary of the School Committee sent a

communication to the Educational authorities informing them about the resignation of the teacher and also the acceptance of the same by the

educational agency. The acts of resignation and acceptance thereof being complete, the service of the teacher got terminated thereby. What

remained to be done was only relieving of the petitioner. In fact, the petitioner was aware of this position as evident from his letter dated 21st July

1983, written to the Chief Educational Officer, Tirunelveli Dt., wherein the prayed for reinstatement in the service. The question of reinstatement

could arise only if there was a termination of service. The said letter dt. 21st July 1983 was written in English by the petitioner himself. He had used

the word "reinstatement" in two places in that letter. We have no doubt that the petitioner knew fully well the meaning of the words used by him in

his letter. Hence, the contention urged by learned counsel for the petitioner that the educational agency was not entitled to accept the resignation of

the petitioner and that any acceptance of the resignation could be made only after the educational authorities accorded their approval after making

due enquiries, cannot be accepted. Nor do we accept the contention of learned counsel for the petitioner that the appropriate authority to accept

the resignation of the petitioner is the School Committee and not the educational agency. We have already pointed out that under R. 17A the

concerned authority is the educational agency and not the school committee.

23. As regards the third contention of learned counsel for the petitioner, that a resignation could be withdrawn before it is accepted by the

appropriate authority, he has relied upon several decisions. The first of them is that of the Supreme Court in *Jai Ram Vs. Union of India (UOI)*, . In

that case, an employee in the Central Research Institute at Kasauli was repeatedly writing to the Director of the Institute letters expressing his

desire to retire from service and praying for grant of leave preparatory to retirement. Though his request was denied initially, the Director of the

Institute ultimately sanctioned the leave as was admissible to him under the rules. It was found that he was entitled to leave preparatory to retirement on average pay for six months from 1st June, 1946 to 30th November, 1946, and on half average pay for five months and 25 days thereafter, the period ending on 25th May, 1947. On the 16th May, 1947, he sent an application to the Director stating that he had not retired and asked for permission to resume his duties immediately. The permission was refused on the ground that he had already retired, having voluntarily proceeded on leave preparatory to retirement. While upholding the decision of the employer the Supreme Court observed that it is open to a servant who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission to change his mind subsequently and ask for cancellation of the permission thus obtained, but he can be allowed to do so only as long as he continues in service and not after it has terminated.

24. The next decision relied upon by learned counsel is Raj Kumar Vs. Union of India (UOI), wherein the Supreme Court had occasion to deal with the case of a member of the Indian Administrative Service, whose resignation was accepted by the Government and before the communication of the order accepting the resignation reached him, he withdrew his resignation. The Supreme Court held that he had no locus paenitentiae to withdraw his offer of resignation after it was accepted. The Supreme Court drew a distinction between an order of termination of service, which would not be effective until it was intimated to the employee concerned, and an acceptance of a resignation which became effective, the moment the resignation was accepted. The Supreme Court pointed out in that case that their attention was not invited to any statutory rule or regulation relating to resignation by members of Indian Administrative Service especially as to the date on which the resignation became effective.

Under the circumstances, the Supreme Court observed Raj Kumar Vs. Union of India (UOI), as follows -

... But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand 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 conditions of

his 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. Till

the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has

locus paenitentiae but not thereafter.

25. Neither of the above decisions would apply to the facts of the present case, as we have already seen that the resignation sent by the petitioner

was accepted expressly by the educational agency which is the appropriate authority, even though such express acceptance was not necessary

under the relevant rules, viz., R. 17-A. Learned counsel then relied upon the decision of a Division Bench of the Madhya Pradesh High Court in

Bairam Singh v. Civil Surgeon Narasimhapur 1971 Lab 1C. 121 Division Bench held that a resignation should be accepted by the appropriate

authority and normally the appointing authority is the appropriate authority. It was held that unless and until the appropriate authority accepted the

resignation, the employee had a right to withdraw and intimate the same to the authority. This decision is pressed into service by learned counsel

for the petitioner in support of his submission that the resignation ought to be accepted by the School Committee which is the appointing authority

according to him, and in the absence of any acceptance by the School Committee, the petitioner had a right to withdraw the resignation. We have

already held that the appropriate authority under R. 17-A is the educational agency and not the School Committee. When there is a specific rule

prescribing the appointing authority, for dealing with the resignations of teachers, that rule cannot be ignored. We have already pointed out that

Clause (9) of the agreement between the teacher and the School Committee provides for a different situation than the one provided for by R. 17-

A. The petitioner in this case has resorted to R. 17-A and not to Clause (9) of the agreement. It must also be pointed out that the petitioner has not

produced any agreement between his and the School Committee and even if there is one such agreement as prescribed in Form VII-A, that will

not govern the resignation tendered by the petitioner to educational agency.

26. Learned counsel drew our attention to the decision of the Supreme Court in Raj Narain v. Indira Gandhi AIR 1972. SC. 1303. In that case,

the Supreme Court has only reiterated the principle laid down in Raj Kumar v.

Union of India (supra). That will not help the petitioner in the present case as seen already. Reliance is placed upon the decision of Punjab and Haryana High Court in *Maghatrai v. State of Punjab* and another 1973 All India Service Law Journal 318, which only follows the decision of Supreme Court in *Rajkumar v. Union of India* (supra), and holds that a resignation cannot be accepted after it is withdrawn. We do not see how this decision will help the petitioner in this case. Admittedly, the letter of withdrawal of the resignation was sent by the petitioner only on 4th February 1983, and that too, not to the educational agency but to the Chief Educational Officer and the District Educational Officer. While the petitioner sent his resignation letter to the educational agency, it is not known how he sent the letter of withdrawal to the aforesaid officials instead of the educational agency. Even assuming that the said letter dated 4th February 1983 could be treated as a proper withdrawal of the resignation, it was made long after the resignation was accepted by the educational agency on 12th December 1982, and, therefore it could not be of any effect. On the date on which the petitioner write his letter of withdrawal, viz., 4th February 1983, he had no right to withdraw his resignation, which had already been accepted by the appropriate authority.

27. Lastly, learned counsel for the petitioner referred to the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, . In that case, the Supreme Court had to deal with a resignation of a High Court Judge and his withdrawal thereof. The letter of resignation in that case was dated 7th May, 1977 and addressed to the President of India and it read that the resignation shall be effective on 1st August, 1977. On 15th July, 1977, the letter of withdrawal was sent revoking and cancelling the intention to resign on 1st August, 1977. In a writ petition filed by an advocate of the High Court for issue of a quo warranto, the Full Bench of Allahabad High Court consisting of five Judges held by a majority of three as against two that the resignation was complete and could not be withdrawn. The matter was taken on appeal to the Supreme Court. While reversing the decision of the Full Bench of the High Court, the Supreme Court held that the resignation in that case was a prospective one and it could be withdrawn at any time before it became effective. After dealing with the law on subject at some length, the

Supreme Court observed as follows -

It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, "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 resignor. 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 Art. 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 unpraesenti 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.

28. In the present case, the resignation of the petitioner is not a prospective resignation. On the other hand, it is very specific that it will take effect

immediately. The letter is dated 7th December 1982, and the petitioner has stated therein that he would resign his post from that date itself in spite

of the fact that he is on medical leave. The ratio of the decision of the Supreme Court in the aforesaid case, viz., *Union of India v. Gopalchandra*

(supra) will not apply to the facts of the present case. We hold that it was not open to the petitioner to withdraw his resignation, particularly after it

was accepted by the educational agency on 12th December 1982.

29. We are unable to appreciate the way in which the matter has been dealt with by the Chief Educational Officer. It is seen that the Secretary of

the respondent has communicated to the Chief Educational Officer as well as the

District Educational Officer, even on 15th December 1982, and the factum of resignation of the petitioner and the acceptance thereof by the educational agency. The Educational authorities did not make any enquiry to ascertain whether the resignation was voluntary or not until July 1983 when the Chief Educational Officer wrote to the petitioner to send his explanation as to whether the resignation letter was obtained from him by force or whether it was voluntary. The lethargy with which the matter has been dealt with by the educational authorities has to be condemned. R. 17 contemplates immediate action on the part of the concerned educational authority. It is elementary principle that an employee whose services are terminated should be relieved from services within a short time after such termination. If the time gap between the date of termination of service and the relieving of the employee is unduly long, that will only lead to unnecessary and undesirable complications. The only matter to be ascertained by the Educational authority is to find out whether the resignation is voluntary or not. There is no justification whatever for the concerned authority to take more than a year for ascertaining the said fact. Unfortunately, the rules do not prescribe any time limit for the educational authorities to take necessary action on receipt of information of resignation by a teacher or other employee. It will be highly desirable that such a provision is made prescribing a time limit within which the educational authorities concerned should act.

30. What remains to be done is to consider the validity of the two orders passed by the Chief Educational Officer, Tirunelveli, on 24th February 1984. In one of the orders, he has rejected the prayer of the petitioner to accept his withdrawal of resignation and reinstate him in service. The reasoning of the educational authority as found in the said order is entirely wrong. He has proceeded on the footing that in order to resign his job, the petitioner should have given three months' notice or paid three months' salary to the management. He has also made a reference to R. 15 of the Rules framed under the Act. We have already dealt with R. 15 and Form VII-A referred to in the said rule. As we have pointed out earlier, a teacher has to resort to Clause (9) of the agreement between him and the School Committee only when he wants to terminate his services in accordance with the terms of the contract. When the teacher wants to resign

outside the provisions of the agreement between him and the School

Committee, he should resort only to R. 17A. Under that rule, it is not necessary to give three months' notice or pay three months' salary. The

entire order of the Chief Educational Officer is based upon a misconception of the scope of the two provisions. He has telescoped the provision of

Clause (9) of the agreement into R. 17-A and confused the issue. His conclusion that he cannot accept the letter of withdrawal dated 4th February

1983 is correct, though the entire reasoning given by him in support of the said conclusion is erroneous. As seen from the order, he found that the

resignation was voluntary. He ought to have held that it was not open to the petitioner to withdraw his voluntary resignation which had already been

accepted by the educational agency.

31. In the order passed by him on the same day, the Chief Educational Officer has refused to grant approval to relieve the petitioner from service

as prayed for by the management of the school. The view of the Chief Educational Officer that the educational agency should obtain prior approval

before accepting the resignation of the teacher is not warranted by the provisions of the rule. The authority has proceeded on the footing that the

management has sought for ratification of the acceptance of the resignation. The relevant rule, viz, R. 17A does not contemplate any ratification by

the Educational authority of the acceptance of the resignation. There is no need for such ratification. As we have interpreted the Rule, the only

function of the Educational authority is to get confirmation of the fact of resignation and to accord its approval to relieve the teacher from service.

The acceptance of the resignation of the teacher should be made only by the educational agency, and such acceptance not be express.

32. In view of our interpretation of the relevant R. 17-A, we hold that the petitioner's service stood terminated on 7th December 1982 itself, when

he tendered his resignation with immediate effect. Consequently the appropriate order to be passed in the two writ petitions is to quash the order

dated 24th February 1984, made by the Chief Educational Officer, Tirunelveli, at Palayamkottai in the proceedings No. 57002/A5/82 and to

direct him to accord his approval under R. 17-A of the Tamil Nadu Private Schools (Regulation) Rules to relieve the petitioner from service.

In the result, W.P. No. 3566 of 1984 is dismissed and W.P. No. 6868 of 1984 is

allowed. There will be no order as to costs. Consequently, no orders are necessary in W.A. No. 514 of 1984, which arises out of an interlocutory order in W.P. No. 3566 of 1984. The writ appeal is dismissed. There will be no order as to costs.