

(2013) 05 DEL CK 0092

In the Delhi High Court

Case No : Writ Petition (C) 13546 of 2009

Harish Chandra Rawat

APPELLANT

Vs

The Directorate of Education and Others

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 DEL CK 0092

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Amrit Pal Singh Gambhir, for the Appellant; Anuj Tyagi, for Mr. Sachin Chopra, for R-1 and Mr. Kamal Mehta, with Mr. Sudeep Tyagi, for Respondents No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by one Sh. Harish Chandra Rawat against his erstwhile employer/respondent No. 3/Modern School, Poorvi Marg, Vasant Vihar, New Delhi. Respondent No. 2 is the Management of the respondent No. 3/School. Respondent No. 1 is the Directorate of Education. In the writ petition, petitioner seeks the relief of setting aside of the resignation letter dated 11.09.2009 on the ground that the said resignation letter was obtained by the school on account of undue influence, threat, force, pressure and coercion, i.e. without the free will and consent of the petitioner. The writ petition was filed on 27.11.2009. Earlier the petitioner had vide letters dated 21.09.2009 and 08.10.2009 sought to take back the resignation letter on the ground that the resignation was obtained under threat and petitioner was forced to resign. The facts of the case are that the petitioner was a Dance Teacher in the respondent No. 3/School. There were allegations against the petitioner of allowing one girl student Mahima Pangasa to regularly go out of the school without the permission of the school authorities or her parents. The petitioner's hand written letter dated 09.09.2009 gives the entire history as to how the petitioner repeatedly

allowed Mahima Pangasa to leave the school to meet her boyfriend. There is also the fact of petitioner giving his mobile phone to Mahima Pangasa for talking to her boyfriend. The mother of Mahima Pangasa on coming to know of the aforesaid made a complaint dated 08.09.2009 to the school against the petitioner. The mother of Mahima Pangasa was a single mother. It is pursuant to the complaint dated 08.09.2009 that the petitioner came into the spot of bother. The mother, Smt. Meera Pangasa, three days after her letter dated 08.09.2009, submitted another letter giving the mobile phone and sim card given to her daughter by the petitioner. The respondent No. 3/School conducted an inquiry. Statements of a school employee was taken, and when the almirah of the petitioner in the school was opened in the presence of five other employees as also the student Mahima Pangasa, a white t-shirt and black pant belonging to Mahima Pangasa was found and which showed that the petitioner was assisting the girl student to bunk from the school. Illegal bunking from the school took place sometimes in the guise that the girl student used to be in dance dress i.e. probably she would be going out for dance classes.

2. Faced with the aforesaid situation, and which would have entailed the dismissal of services of the petitioner from the respondent No. 3/School and the adverse monetary consequences, petitioner submitted his resignation dated 11.09.2009.

3. In this writ petition, respondent No. 3/School filed its counter-affidavit way back on 19.04.2010. Along with the counter-affidavit the respondent No. 3/School attached the letters of the mother Smt. Meera Pangasa dated 8.9.2009 and 11.9.2009. Statements of one Smt. Mangla, an employee of the school was also annexed showing that the girl student Mahima Pangasa used to be taken out from the gate by the petitioner. The apology letter written in hand of the petitioner and signed by the petitioner dated 09.09.2009 was also filed. The document with respect to inspection of the almirah of the petitioner dated 09.09.2009 where private dress of the student Mahima Pangasa was recovered (and which inspection report is signed by five other employees besides student Mahima Pangasa) was also filed. The letter of the petitioner dated 11.09.2009 submitting his resignation was also filed. The school also filed an undertaking on plain paper of the petitioner that he had not resigned under any pressure. Most importantly, the respondent No. 3/School filed a copy of the bank account showing that the petitioner on his voluntary resignation was paid an amount of Rs. 5,26,982/- on 11.09.2009 in full and final settlement. This amount of Rs. 5,26,982/- as per the copy of the bank account filed was shown to have also been utilized by the petitioner by making various cash withdrawals of huge amounts of Rs. 2,50,000/- + Rs. 50,000/- on 14.09.2009 and Rs. 62,000/- on 17.09.2009. An amount of Rs. 57,000/- was also withdrawn in cash subsequently on 01.10.2009. There are other instances also of utilization of the amount which was credited in the account of the petitioner.

4. The petitioner took time for filing of rejoinder-affidavit firstly on 21.04.2010.

Matter was listed on 28.05.2010 and once again time was sought to file Rejoinder-affidavit. Again time was taken for filing rejoinder-affidavit on 02.08.2010 and the matter was listed on 06.12.2010 when adjournment slip was circulated. Again for the next date 26.05.2011, adjournment slip was circulated.

Again further time was sought to file rejoinder on 03.10.2011. On 26.03.2012 none appeared for the petitioner and the matter was adjourned. Two orders which have been passed thereafter are relevant and which are dated 10.10.2012 and 06.12.2012. These orders show that petitioner challenged the documents filed along with counter-affidavit in April, 2010 for the first time on October, 2012 i.e. after about two and a half years. This Court in view of the stand taken by the petitioner directed the concerned SHO to collect the original documents having signatures of the petitioner from the school and to get the same compared by CFSL with the signatures on the inspection report dated 09.09.2009 prepared on opening of the cupboard of the petitioner wherein the private clothes of the girl student Mahima Pangasa were found. The original documents being the communications dated 09.09.2009 and 29.09.2009 were found to be missing in the school and, therefore, on 06.12.2012, this Court directed the school to conduct an inquiry and file a report. Today, the report has been filed in a sealed cover which has been opened and perused. A photocopy of this report has been handed over to the counsel for the petitioner.

5. The report filed is basically to report and find out the genuineness of the letters dated 09.09.2009 and 11.09.2009 of the petitioner. The letter dated 09.09.2009 is a detailed letter written in Hindi script of two pages in the handwriting of the petitioner and signed by the petitioner. There is also the document showing opening of the almirah of the petitioner dated 09.09.2009. The report filed by the Trustee of the school shows that there cannot be doubt as to the genuineness of the letters dated 09.09.2009 and the almirah opening document of the same date inasmuch as these documents were given to the Director of Education way back on 01.02.2010.

6. Before me today counsel for the respondent has filed the original payment voucher signed by the petitioner on 11.09.2009 whereby the petitioner in full and final settlement received the amount of Rs. 5,26,982/- and which was credited to his account-an aspect which I have already referred to earlier. Before me, the original undertaking and the hand written letter of the petitioner dated 11.09.2009 containing his signature have also been filed as also the original letter of resignation dated 11.09.2009.

7. On a query put to the counsel for the petitioner, it is not denied by the petitioner that the amount of Rs. 5,26,982/- was credited in the petitioner's account and utilized by him. The explanation given to the Court on behalf of the petitioner is that after all how was the petitioner to survive unless he utilized the amount of Rs. 5,26,982/- credited in his account. It is argued that since the petitioner did not receive salary, the petitioner had no option but to utilize the amount.

8. I have found the arguments urged before me on behalf of the petitioner nothing except an eye-wash. The stand is an eye-wash because I have already referred to above, huge cash withdrawals of amounts of Rs. 2,50,000/-, Rs. 50,000/- and Rs. 57,000/- within about a month of the amount being credited in the bank account of the petitioner. Surely, and it is not disputed, that petitioner's salary was neither Rs. 50,000/- nor Rs. 57,000/- nor Rs. 2,50,000/- for the petitioner to claim utilization of these amounts as his salary.

9. Though counsel for the respondent wanted the original documents being the payment voucher, the original undertaking dated 11.09.2009 and the original resignation letter of the same date to be filed in this Court, however, after perusing the originals, I have returned the originals to the counsel for the respondent No. 3/School and directed keeping photocopies thereof. By this order, I am also directing that respondent No. 3/School should put these three original documents in a sealed cover for future reference, at least for a period of two years initially, subject to further orders of this Court or any other Court.

10. From the above facts, following conclusions can be drawn:

i. The petitioner was found guilty of allowing a girl student Mahima Pangasa to regularly bunk school for meeting her boyfriend.

ii. The petitioner also gave a mobile phone with sim card to the girl student Mahima Pangasa, and which was returned back by the mother, Smt. Meera Pangasa to the respondent No. 3/School.

iii. The mother, Smt. Meera Pangasa complained to the school of the undesirable conduct of the petitioner by her complaint dated 08.09.2009.

iv. The petitioner finding himself to be in troubled waters asked for an apology by a detailed hand written letter dated 09.09.2009.

v. To avoid any complications of departmental proceedings being initiated against the petitioner and the petitioner losing his service benefits, the petitioner preferred to resign from the school and take an amount of Rs. 5,26,982/- in full and final settlement.

vi. The petitioner utilized a substantial part of the huge amount of Rs. 5,26,982/-, and which possibly would not have been available to him after completion of the departmental inquiry if the petitioner was imposed a punishment (and he was ordinarily bound to be imposed punishment of dismissal from service) and therefore the petitioner with open eyes resigned whereby the jural relationship of an employee and the employer between him and the respondent No. 3/School comes to an end.

vii. I find the stand of the petitioner that he was forcibly made to resign, only a convenient stand besides being a misguided one, especially because he has been guilty of gross misconduct of allowing a girl student to regularly bunk from the school and that too to meet her boyfriend. This is unacceptable under any set of

circumstances or rules.

viii. The record shows that there are as many as 4 documents containing signatures of the petitioner with regard to his admitting the guilt, his taking voluntary resignation and his getting credited and utilizing an amount of Rs. 5,26,982/-. The resignation letter is dated 11.09.2009, undertaking is dated 11.09.2009, the payment voucher signed whereby an amount of Rs. 5,26,982/- was received by the petitioner is also of 11.09.2009. The fourth document is the inspection report of almirah of the petitioner in the school wherein the private dress of the girl student was found and which is dated 09.09.2009.

11. In view of the above, there is absolutely no scope to exercise any judicial powers in favour of the petitioner, much less in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Just because the petitioner has had a long service record with the respondent No. 3/School does not mean that the petitioner should have done acts which were grossly violative of the discipline of the school. Possibly the acts may have also put the girl student in gross danger which circumstance thankfully did not arise. In view of the above, there is no merit in the petition, which is accordingly dismissed with costs of Rs. 15,000/-.