
(2016) 07 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition No. 4806 of 1997

Jagannath Bhivsan Mistry

APPELLANT

Vs

Satpuda Shikshan Prasarak Mandal

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

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

Citation : (2016) 5 AIRBomR 12 : (2016) LIC 3824

Hon'ble Judges : P.R. Bora, J.

Bench : Single Bench

Advocate : Mr. R.J. Godbole, Advocate, for the Petitioner; Mr. S.P. Brahme, Advocate, for the Respondent Nos. 1 to 3; Mr. P.G. Borude, AGP, for the Respondent/State

Final Decision : Dismissed

Judgement

P.R. Bora, J.—The Petitioner has filed the present writ petition against the judgment and order dated 19th February, 1997, passed by the School Tribunal, Nasik in Appeal No.51 of 1995. The Petitioner had preferred the aforesaid appeal under Section 9 of the Maharashtra Employees of Private Schools Act, 1997 (hereinafter referred to as "MEPS Act") challenging the order passed by the Respondent No.3 whereby the School Management had relieved the Petitioner from services on the ground that the Petitioner had resigned his post voluntarily.

2. It is the case of the Petitioner that an undated resignation letter was obtained by the Management from him under coercion. It is the further contention of the Petitioner that the said undated resignation letter was misused by the Management by putting the date on the said resignation letter as 1st March, 1995 and accepting the said resignation in the meeting alleged to be held on 29th May, 1995. It is the further contention of the Petitioner that on 31st May, 1995, he became aware of the fact that his undated resignation letter obtained

by the Management, has been misused by the Management and that on the basis of the said resignation letter, his services have been put to an end with effect from 31st May, 1995. It is the further contention of the Petitioner that the moment he became aware that he has been wrongfully relieved from the services by misusing the undated resignation letter obtained from him by the Management, on the same day he lodged protest with the Management and also with the authorities in the Education Office. It is the further contention of the Petitioner that since the Management did not consider his request, he was constrained to approach the School Tribunal challenging his removal from services on the basis of alleged letter of resignation. It is the further contention of the Petitioner that the learned School Tribunal without considering the objections raised by him and though he had not admitted the fact that the resignation letter was obtained by the Management on 1st March, 1995, incorrectly recorded that the Petitioner had accepted said fact and proceeded to hold that the resignation was voluntarily submitted by the Petitioner. The Petitioner has, therefore, prayed for setting aside the order passed by the School Tribunal and consequently to direct the Respondents to reinstatement him with continuity of service and back-wages.

3. Shri. R.J. Godbole, learned counsel for the Petitioner submitted that the Tribunal has failed in properly appreciating the facts involved in the instant case as well as the relevant legal provisions contained in the MEPS Act and Rules. The learned counsel submitted that throughout it was the contention of the Petitioner that the undated resignation letter was obtained by the Management from him some time in the year 1988-89 and that the date appearing on the alleged letter of resignation as 1st March, 1995, was not put by the Petitioner and was not in his handwriting, but was written by somebody else at the instance of the Management. The learned counsel further submitted that the School Tribunal has wrongly recorded that the Appellant had admitted that the alleged letter of resignation was obtained from the Petitioner on 1st March, 1995 and that since he did not raise any dispute till the said resignation was accepted and as a result of which the Petitioner was relieved from the services, the Petitioner has no right to claim that the resignation so tendered was not voluntary.

4. The learned counsel further submitted that the instantaneous complaints so lodged by the Petitioner with the Management as well as with the Social Welfare Officer and the Education Officer, sufficiently indicate that the resignation alleged to have been tendered by the Petitioner was not voluntary. The learned counsel submitted that when the Petitioner had raised objection that the alleged letter of resignation was not tendered by him, it was incumbent on the part of the School Tribunal to examine whether the requirement of Section 7 of the MEPS Act has been complied with or not. The learned counsel submitted that without properly considering the import of the provisions of Section 7 of the MEPS Act and Rule 40 of the MEPS Rules, the School Tribunal has recorded a finding that the Petitioner had voluntarily resigned from the services of the Respondents.

5. Relying on the judgment of this Court in the case of Bahujan Vikas Mandal, Akola and another v. Nanda Vithalrao Parsutkar and another, reported in, 2011 (2) Mh.L.J. 203, the learned counsel submitted that if the notice of resignation is given in breach of prohibition under Sub-Rule (3) of Rule 40 and if it is not as per the requirement of Section 7 of the MEPS Act, the resignation cannot be said to be valid. The learned counsel, therefore, prayed for setting aside the order passed by the School Tribunal and consequently prayed for direction of reinstatement of the Petitioner with continuity of services with full back-wages.

6. The learned counsel brought to my notice that on 13th May, 2016, the Petitioner has tendered an affidavit in the present matter wherein the Petitioner had made it clear that he does not claim any back-wages from the date of his termination till the date of his superannuation and that he is only claiming continuity of service and retiral benefits, which would include provident fund, gratuity and pension. The learned counsel submitted that since in the meanwhile the Petitioner had attained the age of superannuation, he has submitted the aforesaid proposal and he still stand with the proposal.

7. Shri. Brahme, learned counsel for Respondent Nos. 1 to 3 opposed the submission advanced on behalf of the Petitioner. The learned counsel submitted that the School Tribunal has considered each and every aspect of the matter and all the objections raised by the Petitioner and has turned down the said objections with reasons. The learned counsel submitted that no interference is required in the impugned judgment. Relying upon the judgment of this Court in the case of Atul Nathuram Naiknawade v. Secretary Bhagiratibai Late High School, Obad and others, reported in 2015 (6) Mh.L.J. 258, submitted that once an employee signs the letter expressing his intention to resign and voluntarily submits a copy thereof to the Management, that would be substantial compliance of Section 7 of the MEPS Act. The learned counsel submitted that the School Tribunal after having assessed the evidence before it has rightly rejected the appeal filed by the Petitioner and no interference is required in the judgment and order so passed. The learned counsel, therefore, prayed for dismissal of the petition.

8. I have carefully considered the submissions advanced by the learned counsel for the respective parties. I have perused the impugned judgment and other material placed on record by the Petitioner as well as the Respondents. The entire controversy in the present matter revolves around the letter dated 1st March, 1995 alleged to be a letter of resignation allegedly submitted on the said date by the present Petitioner with the Management. As has been noted herein above, it is the specific contention of the Petitioner that an undated resignation letter was obtained from him by the Management some time in the year 1988-89 and that the date appearing in the so-called resignation letter as 1st March, 1995 was not written by him, but by somebody else at the instance of the Management. The contention so raised by the Petitioner instance has not been accepted by the School Tribunal. According to the observations made by the

Tribunal in para 8 of its judgment, no much weightage can be attached to the fact that the resignation letter was not forwarded by the Petitioner to the Management by registered post in view of the fact that receipt of said letter has not been disputed by the Management. The observations so made by the Tribunal are apparently unacceptable. It shows that the import of the provisions so made under Section 7 of the MEPS Act is either not properly understood by the learned Tribunal or the Tribunal has misconstrued the said provisions. The learned Single Judge of this Court in the case of Bahujan Vikas Mandal, Akola and another v. Nanda Vithalrao Parsutkar and another (supra) has observed that the requirement of forwarding the resignation by registered post is intended to ensure that the employee is not subjected to the action of coercion or duress, which may operate if an employee is required to sign a letter of resignation and hand it over to the Management in person.

9. Though it was sought to be canvassed by Shri. Brahme, learned counsel for the Respondent that this Court in the case of Atul Nathuram Naiknawade v. Secretary Bhagiratibai Late High School, Obad and others (supra) held that merely because a copy of the resignation has not been forwarded by registered post cannot make the resignation void or invalid, the said judgment read as a whole, lays down that if a serious dispute about the voluntary nature of resignation is raised, as has been raised in the present matter, the surrounding circumstances would assume significance and the fact that the resignation was not submitted in the mode, which has been statutorily prescribed, would be a material consideration.

10. In the instant case, the material on record shows that the day on which i.e. 31st May, 1995, a communication-cum-order was received to the Petitioner that he has been relieved from the services of the Respondent by accepting the letter of resignation submitted by him on 1st March, 1995, instantaneously he lodged the protest in writing with the Management and disputed the fact of submitting any resignation by him on 1st March, 1995. The record further shows that the Petitioner had also forwarded a copy of the said letter to the District Social Welfare Officer, Dhule. The material on record further shows that on 7th June, 1995, the Petitioner again forwarded a letter to the Management contending therein that he has not submitted any resignation and that he shall be reinstated in the services. The letter sent by the Petitioner to the President of the Management on 23rd June, 1995, copies of which were sent to the Deputy Director of Education, District Education Officer etc., is also the part of record wherein also he has candidly denied the fact of his submitting the resignation on 1st March, 1995. There are some more letters, which are also filed on record, which show that the Petitioner was consistently and earnestly fighting with the Management contending that he has not submitted any resignation and that he shall be reinstated in the services. From the material on record, the only inference, which emerges is that the Petitioner had not voluntarily submitted the resignation with the Management.

11. The School Tribunal did not accept the contention of the Petitioner that the alleged resignation was not submitted by him on 1st March, 1995 and that the Petitioner was never intending to submit any resignation on the ground that the Petitioner did not raise his voice till he was served with the order of relieving him from the services. According to the School Tribunal, had it been the fact that the Petitioner was not intending to voluntarily resign, he must have raised objection and lodged his protest/complaint with the supervisory authority immediately after obtaining a resignation letter by the Management from the Petitioner on 1st March, 1995 and would not have waited till 31st May, 1995. The reasoning so recorded by the Tribunal is absurd. It can be gathered from the material on record that it was the specific case made out by the Petitioner since beginning that, for the first time, on 31st May, 1995 when he received the letter from the Management communicating to him that he has been relieved from the services as he had submitted a letter of resignation on 1st March, 1995, he came to know that his undated resignation letter has been misused by the Management. There was no reason for the Petitioner to lodge any protest or make any complaint before the said date. There is no material on record on the basis of which an inference can be drawn that the Petitioner had accepted the fact that the letter of resignation was obtained from him by the Management on 1st March, 1995. The observations made and the conclusion recorded by the Tribunal is contrary to the evidence on record and hence cannot be sustained.

12. In the aforesaid peculiar circumstances, the fact that the resignation was not submitted in the mode, which has been statutorily prescribed is a material consideration. Having regard to the evidence on record and more particularly, instantaneous protest made by the Petitioner the moment he received the letter dated 31st May, 1995 and the consistent follow up made by the Petitioner thereafter, by making correspondence with the Management as well as the Government Officers clearly indicates that the Petitioner was never intending to resign from the services of the Respondent. The allegation made by the Petitioner that his undated resignation was obtained by the Management some times in the year 1988-89 and that the same was misused by the Management by putting a date as 1st March, 1995 is difficult to be ruled out.

13. The Tribunal has further failed in appreciating the provision incorporated in Sub-Rule (3) of Rule 40 of the MEPS Rules. Said provision reads thus:

"40. Resignation :

(1) ?

(2) ?

(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."

14. In the instant case, it is quite evident that the notice allegedly given on 1st March, 1995 was covering the part of summer vacation. It is, thus, clear that if the Petitioner was really intending to resign from the post he would not have given the notice of resignation during the period, covering part of summer vacation, which is the express prohibition contemplated in Sub-Rule (3) of Rule 40 of MEPS Rules. As held by the learned Single Judge of this Court in the case of Bahujan Vikas Mandal, Akola and another v. Nanda Vithalrao Parsutkar and another (supra) if the notice of resignation is given in breach of the prohibition under Sub-Rule (3) of Rule 40 of the MEPS Rules, then that would make the resignation invalid. For the reasons stated above, the impugned judgment cannot be sustained and deserves to be quashed and set aside. As has been elaborately discussed herein above, the evidence on record clearly establishes that the Petitioner did not submit any resignation and was never intending to resign from the post, on which he was working with the Respondent.

15. For the reasons recorded as above, the order passed by the School Tribunal impugned in the present petition as well as the order passed by the Management on 29th May, 1995 thereby relieving the Petitioner from their services deserves to be quashed and set aside.

16. Now the further question arises as to what sort of relief can be awarded to the present Petitioner in view of the fact that in the meanwhile period the Petitioner had attained the age of superannuation. As noted earlier, the Petitioner has filed on record an affidavit on 13th May, 2016 contending therein that he does not claim any back-wages from the date of his termination till the date of his superannuation and that he is only claiming continuity of service and retiral benefits, which would include provident fund, gratuity and pension. It appears to me that a very reasonable proposal is given by the Petitioner. In the result, the following order -

ORDER

I. The order dated 19th February, 1997, passed by the School Tribunal, Nasik in Appeal No.51 of 1995 and the order passed by Respondent No.1 on 29th May, 1995 relieving the Petitioner from services of the Respondents are quashed and set aside.

II. Respondent Nos.1 to 3 are directed to notionally reinstate the Petitioner to the post, which he was holding on the date of his termination and shall also grant him continuity of service. The Petitioner will not be entitled for any back-wages.

III. Respondent Nos.1 to 3 are further directed to process and forward the pension papers of the Petitioner to the appropriate authority as expeditiously as possible preferably within a period of three months from the date of this order.

IV. Rule made absolute in above terms.