
(2011) 01 DEL CK 0473

In the Delhi High Court

Case No : Regular Second Appeal No. 3 of 2011

Manager, Shri Sanatan Dharam Saraswati Bal Mandir School
and Another

APPELLANT

Vs

Shri K.P. Bansal and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Constitution of India, 1950 — Article 311
Delhi School Education Act, 1973 — Section 25
Delhi School Education Rules, 1973 — Rule 114A, 17, 23

Citation : (2011) 3 AD 614 : (2011) 179 DLT 211 : (2011) 2 ILR Delhi 209 :
(2011) LLR 605

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : S.K. Taneja and Puneet Taneja, for the Appellant; Nemo, for the
Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.

C.M. No. 326/2011

Exemption allowed subject to all just exceptions.

RSA No. 3/2011 & C.M. No. 325/2011

1. This appeal has impugned the judgment and decree dated 1.11.2010 which has endorsed the finding of the Trial Judge dated 21.4.2009, whereby the suit of the Plaintiff, Shri K.P. Bansal, seeking a decree of declaration and mandatory injunction to the effect that his resignation letter dated 18.8.1991 had been obtained under pressure and coercion was decreed in his favor. A decree of declaration was passed in favor of the Plaintiff and against the Defendant that the said resignation was obtained by force by the Defendant; decree for mandatory injunction had also been passed directing the reinstatement of the

Plaintiff with full back wages and consequential benefits with effect from 18.8.1991.

2. The Plaintiff had been selected in the Sanatam DharamSaraswati Bal Mandir School, Punjabi Bagh as a TGT Maths teacher. He worked there for about 12 years. On 18.8.1991, the Plaintiff was called to the school and forced to write a letter of resignation. The Plaintiff lodged a police complaint dated 24.8.1991. A representation to the Director of Education was also forwarded on 26.8.1991 to which no reply was received. The appeal filed by the Plaintiff before the appellate body i.e., the Delhi School Education Tribunal was dismissed on 11.6.1992. The Plaintiff also filed a writ petition wherein it was observed that the dispute raised by the Plaintiff could only be decided by a suit. The present suit was accordingly filed.

3. In the written statement the contention was that the Plaintiff had voluntarily accepted his guilt by tendering his letter dated 19.8.1991. His resignation was not given under force or coercion. The suit was also not maintainable in the present form.

4. The Trial Judge had framed the following nine issues:

1. Whether on 18.08.1991, Defendant No. 4 took the resignation of the Plaintiff forcibly as averred in para-6 of the plaint? OPP.

2. Whether Plaintiff is entitled to decree for mandatory injunction as prayed for? OPP.

3. Whether approval given by Defendant No. 2 deserves to be declared as null and void as same has been sought and had come beyond the prescribed time as prescribed by rules No. 114 A of the Delhi School Education Rules? OPP.

4. Whether the management sanctioned the resignation is proper or not? OPP.

5. Whether suit as framed is not maintainable? OPD.

6. Whether present suit is barred by provisions of Section 25 of the Delhi School Education Rules? OPD.

7. Whether suit of the Plaintiff is barred by principle of resjudicata and the Plaintiff is stopped from filing the present suit? OPD.

8. Whether the conduct of the Plaintiff is such as to disentitle him to the discretionary relief of declaration and injunction? OPD.

9. Relief.

5. On the basis of the oral and the documentary evidence led by the respective parties, the suit of the Plaintiff was decreed.

6. The First Appellate Court had endorsed this finding.

7. This is a second appeal. On behalf of the Appellant, it has been urged that the

impugned judgment is a perversity; the circumstances and the background in which this resignation had been tendered and accepted by the Defendants has not been adverted to; the impugned judgment has only gone into the question as to whether the resignation letter dated 18.8.1991 was voluntary or involuntary; the other prior circumstances have been ignored. The Court has overlooked the fact that the racket of fake certificates was going on in the school since April, 1991 and in fact a complaint to the said effect had also been forwarded to the concerned Police Station in May, 1991. On 9.8.1991, the Plaintiff had voluntarily admitted his guilt. All these prior circumstances have been illegally ignored. The finding in the impugned judgment are perverse and liable to be set aside as the relevant evidence has been ignored. For this proposition, reliance has been placed on AIR 1992 Supreme Court 1604 Jagdish Singh v. Natthu Singh. This is a substantial question of law. The Court has also not approached the proposition with regard to the applicability of Rule 114A of the Delhi School Education Rules, 1973 in the correct perspective. It has lastly been submitted that a contract for personnel service could not have been enforced in the manner in which the suit was decreed. For this proposition, reliance has been placed upon a judgment of the Apex Court reported in AIR 1976 Supreme Court 888 Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.

8. Record has been perused. The plaintiff has made a clear averment that the Plaintiff had been harassed by the Defendant and under his dictation was forced to write a resignation letter which was not binding upon him. 18.8.1991 was admittedly a Sunday. It was a holiday. Prior to this resignation, Exhibit DW1/1 (dated 18.4.1991), Exhibit DW1/3 (dated 24.9.1991), Exhibit DW1/4 (dated 6.5.1991) and Exhibit DW 1/5 (dated 15.5.1991) were memos issued by the Defendant School to the Plaintiff. The Trial Judge has delved into these documents and recorded that these repeated memos had built up pressure upon the Plaintiff. The resignation letter dated 18.8.1991 was proved as Exhibit PW1/D4. It was forwarded to the Manager under the signatures of the Principal of the School. Exhibit DW1/17 (dated 19.8.1991) was issued by the General Secretary of the Samarth Siksha Samiti, Jhandewalan informing the Plaintiff that his resignation has been accepted with immediate effect. On the same date, i.e. 19.8.1991 itself, a resolution Exhibit DW2/P1 was passed which was a resolution by circulation whereby the resignation of the Plaintiff had been accepted by all the members of the Samarth Siksha Samiti, i.e., Defendant No. 3. On 21.8.1991, Exhibit PW1/D6 was issued by the Principal of the Defendant School informing the Plaintiff that his resignation letter dated 18.8.1991 has been accepted with immediate effect. All this happened in a span of three days.

9. Trial Court after a close scrutiny of the said documents had drawn a conclusion that this appeared to be a pre-planned venture by the School; the School was well aware of the fact that the resignation would be tendered by the Plaintiff which on 19.8.1991 itself was accepted and on the same date the members of Defendant No. 3 passed a resolution by circulation accepting the said resignation. Approval of the resignation was also accorded on the same date and informed to

the Plaintiff. It was in this background and in these circumstances that the Court drew a conclusion that this resignation appears to have been tendered by the Plaintiff under pressure and coercion. The repeated memos issued to the Plaintiff (noted supra) followed by a letter dated 19.7.1991 issued to Ashok Arora, father of the child, in whose favor the School Leaving Certificate had allegedly been issued were all documents adverted to by the Trial Judge before drawing this conclusion.

10. Exhibit PW1/D2 is the letter dated 9.8.1991 written by the Plaintiff explaining the fact that he had issued the said school leaving certificate in accordance with the practice prevailing at that time; he had handed it over to the Librarian for checking it; his intention was not malaise. Even up to 9.8.1991, it is evident that the Plaintiff had no intention of resigning. After this letter of 9.8.1991, there was no documentary evidence which was produced by either party but it is obvious that in this intervening period i.e., between 9.8.1991 to 18.8.1991 the Plaintiff had changed his mind and tendered his resignation; the pressure which had been built up over him in this preceding period had in fact necessitated this resignation. The cumulative effect of all these facts had been considered by the Trial Judge and upheld by the First Appellate Court. The findings in the impugned judgment of this proposition, inter alia, are recorded as under:

7. The only crucial issue on which the present appeal hinges upon is whether the resignation tendered by the Plaintiff was voluntary or whether it was tendered under coercion and duress practiced upon the Plaintiff by Defendant Nos. 3 & 4. It was the case of the Plaintiff that on 18.08.1991, he was summoned to the school and he was forced to pen down his resignation. Whereas it was the case of Defendant Nos. 3 & 4 that to avoid a stigma on his career and to avoid any inquiry against him he tendered his resignation willingly vide letter dated 18.08.1991 handed on 19.08.1991. The documents which have been placed on record by both the parties have been carefully scrutinized by this Court. There is a well known old adage that Humans have a tendency to lie but the documents do not. The resignation letter proved as Ex.PW.1/D4 is dated 18.08.1991 which day was admittedly a Sunday. In the said letter, it has been categorically stated that "kindly treat this as my notice period right from today i.e. 18.08.1991" The endorsement of Defendant No. 1 "Forwarded to Manager" is also undated. The bare perusal of the letter shows that there is nothing in the letter which indicates that the resignation letter was given on 19.08.1991 and not on 18.08.1991 as alleged by Defendant Nos. 3 & 4. The second letter of even date proved as Ex.PW.1/5 is a letter addressed to the management SDM Saraswati Bal Mandir by the Plaintiff Shri K.P. Bansal which is with respect to waiver of deposition of three months salary. The said letter categorically mentions that:

As per talk when I resigned so you should not ask not to deposit three months salary from me and oblige

The implication of phrase "As per talk when I resigned so you should not ask" is very significant. The same implies that the resignation was preceded by some

conversation between the parties wherein some element of force/coercion can be visualized. As per the said letter, it appears that the Plaintiff was being insisted upon to deposit three months salary because he purportedly showed his desire to resign with immediate effect, to make it some genuine. However, in view of his forced resignation, considering the said condition to be penal, the Plaintiff made a request to the management not to ask him to deposit the three months salary. The said letter appears to have been written under protest on the same day i.e., on 18.08.1991. From the careful scrutiny of the said letters, it appears that soon after the Plaintiff was forced to write the letter of resignation on 18.08.1991 at the behest of Defendant Nos. 3 & 4, he on the same date after leaving the room, wrote and handed letter requesting the management not to ask him to deposit of three months salary.

8. It was further alleged by the Plaintiff that on 19.08.1991 he went to the school, marked his attendance and then went to withdraw his resignation which was not permitted by Defendant Nos. 3 & 4. The pace at which the resignation of Plaintiff was accepted also contradicts the stand of Defendant Nos. 3 & 4. Ex. DW.1/17 is a letter dated 19.08.1991 addressed to the Plaintiff written by Shri Om Parkash Nigam, General Secretary on behalf of Samarth Siksha Samiti which states that the resignation of Shri K.P. Bansal is accepted with immediate effect and he is relieved from the service. It further states that "the cheque with respect to his dues and salary up to 19.08.1991 is attached herewith, please accept the same". Thereafter another letter dated 21.08.1991 proved as Ex.PW1/D.6 was written to the Plaintiff by the Principal in Hindi on the letter head of the school wherein it has been specifically mentioned (English Translation):

That as per the letter of Samarth Siksha Samiti, resignation letter given on 18.08.1991 by you is being accepted with immediate effect. Your salary up to 19.08.1991 has been deposited in your bank account.

Enclosed herewith:

- 1) Letter of Samarth Siksha Samiti accepting resignation.
- 2) Photocopy of cheque with respect to salary up to 19.08.1991
- 3) Photocopy of deposit slip for the aforesaid cheque.

It is very relevant to note that the aforesaid letter dated 21.08.1991 Ex.PW.1/D6 mentions that "your resignation letter dated 18.08.1991 given on 18.08.1991 has been accepted with immediate effect." The phrase "given on 18.08.1991" is self explanatory and needs no corroboration. It necessarily means that the said letter dated 18.08.1991 was indeed given on 18.08.1991 and not on 19.08.1991 as alleged. It also mentions that attached herewith is a copy of Letter of Samarth Siksha Samiti acceptance your resignation. It is rather strange that if the Plaintiff had handed over his resignation dated 18.08.1991 on 19.08.1991 when he came to the school in regular course of business, then why was the cheque dated 19.08.1991 of his dues not handed over to him personally although letter dated

19.08.1991 (Ex.DW.1/17) written by Shri Om Parkash Nigam, General Secretary on behalf of Samarth Siksha Samiti mentions enclosure of the said cheque. Then again if the said cheque was sent to Plaintiff vide Ex. DW1/17 what was the necessity of enclosing photocopy of cheque along with deposit slip vide letter date 21.08.1991 Ex. PW1/D6. Sending original cheque to the Plaintiff vide Ex. DW.1/17 and deposit of same cheque vide deposit slip is also self contradictory. Since it is claimed by Defendant Nos. 3 & 4 that cheque in question was deposited directly in the bank account of Plaintiff, therefore an adverse inference is liable to be drawn against the Defendant No. 3 & 4 with respect to Ex. DW.1/17 not being authentic. It is the admitted case of Defendant Nos. 3 & 4 that after the said cheque was deposited in the account of Plaintiff photocopy of the cheque in question and its deposit slip was sent to the Plaintiff. However, as per the communication between Defendant Nos. 3 & 4 and Syndicate Bank with which the school was maintaining the account of the Plaintiff, the said cheque was not credited as per the deposit slip dated 21.08.1991 in the account of the Plaintiff on 21.08.1991. When the Plaintiff made enquiries regarding the deposit of the cheque in his account on 21.08.1991, he was informed that 21.08.1991 was a bank holiday and no such cheque was deposited in his account. From the aforesaid it is very obvious that no such deposit was made by the school in the account of the Plaintiff on 21.08.1991 because Defendant Nos. 3 & 4 had any intention to pay the salary of the Plaintiff, the Plaintiff would have been handed his dues on 19.08.1991 itself when the Plaintiff came to the school to withdraw his resignation and according to the Defendant Nos. 3 & 4 to tender his resignation.

9. Another argument which was put forth by the Defendant Nos. 3 & 4 was that vide Resolution by Circulation dated 19.08.1991 (Ex. DW.2/P.1), the Members of the Managing Committee resolved that the resignation tendered by the Plaintiff be accepted with immediate effect i.e. 19.08.1991. The perusal of the Resolution by Circulation shows that it bears the signatures of some signatories whose designation is not given. The said resolution is also not signed by the Principal, Shri Satish Kalra who was the ex-officio member of the managing committee and a necessary signatory. It is rather important to note that it has been claimed by the Principal Shri Satish Kalra that the resignation dated 18.08.1991 was given to him by the Plaintiff on 19.08.1991 meaning thereby that the Principal was present in the School on 19.08.1991. However, the Resolution by Circulation does not bear his signature even though he was an important signatory. The said fact only leads to one conclusion that Resolution by Circulation was also resolved on 18.08.1991 and not 19.08.1991 as alleged. The said contradiction also lends credence to the stand of the Plaintiff that the Resolution by Circulation dated 19.08.1991 was circulated and signed by signatories/people present in the room at that point of time on 18.08.1991 itself and not on 19.08.1991. The date 19.08.1991 was written only to corroborate the stand of Defendant Nos. 3 & 4.

10. It is also relevant that minutes of meeting purported to have been recorded for the meeting which took place allegedly on 19.08.1991 were not produced.

Rule XXIII of The Delhi School Education Act and Rules 1973 provides that "Records of the proceedings of the Managing Committee shall be kept in a book or a register where the pages shall be numbered consecutively with the signature and stamp of the Chairman or the Manager on each page. As per Rule 17 of the said Act, the Managing committee is bound to observe the provisions of the Act and the rules made there under faithfully and scrupulously". The mandate of the said rules has obviously not been followed. Even no documentary proof was placed on record to show that the signatories to the Resolution by Circulation were members of the Managing Committee of the school. The entire proceeding were completed within a day i.e., on 19.08.1991 so as to not give any time to the Plaintiff to withdraw his resignation. In the absence of the aforesaid necessary conditions, I am of the opinion that conduct of Defendant Nos. 3 & 4 in accepting the so-called voluntary resignation of the Plaintiff show utter haste and is malafide.

11. There is no perversity in this finding. It is in detail and after an in-depth examination of the oral and documentary evidence drawn the said conclusion. The judgment of Jagdish Singh (supra) is also inapplicable as this is not a case where relevant evidence has been ignored or the Court below has followed an illegal approach.

12. Issue No. 3 had been framed with regard to the applicability of Rule 114 A of the Delhi School Education Rules. Para 12 of the impugned judgment has dealt with this contention. \\While dealing with applicability of Rule 114 A of the Rules, the Court had recorded as under:

The import of the said rule in such cases has been explained in *Mala Tandon Thukral v. Director of Education and Ors.* (Supra). In the said case on similar facts the acceptance of resignation of Mala Tandon Thukral was struck down as the conditions under Rule 114 A were not complied with. It was held therein that the bilateral act of resignation requires two conditions to be fulfilled;

- (i) tendering of the resignation of the Petitioner and acceptance by the school and
- (ii) approval by Directorate of Education within a period of 30 days.

The second condition being not fulfilled in the case, the resignation of the Plaintiff cannot be said to be operative. The twin conditions above stated are cumulative and not in the alternative and failing one of these, the resignation cannot be said to be final.

Approval by the Directorate of Education in this case was on 13.12.1991 i.e., after lapse of 30 days. This answers the second submission made by learned Counsel for the Appellant.

The judgment of the Executive Committee of Vaish Degree College, Shamli and Ors. (supra) is also inapplicable. Para 17 postulates that although normally a Court would not give a declaration about the subsistence of the contract of an employee after he has been removed from service but there are three well-

recognized exceptions - (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

There has been a breach of Rule 114A of the Delhi School Education Rules; Defendant has acted in breach of it.

13. No substantial question of law has arisen. Appeal as also the pending application is dismissed.