
(2011) 12 CAL CK 0009

In the Calcutta High Court

Case No : M.A.T No. 372 of 2008 With C.A.N. 4308 of 2008

Md. Kamaluddin Baidya

APPELLANT

Vs

The State of West Bengal and others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 12 CAL CK 0009

Hon'ble Judges : Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Balai Lal Sahoo and Mr. Abdullah Rahamani, for the Appellant; Jiban Ratan Chatterjee and Mr. Akram Khan For the Respondent no. 6 to 9, Mr. Kallol Basu For the Board of Madrasah Education/Respondent no. 4 and Mr. K.J. Yusuf and Mr. K.A. Rahaman For the State, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against judgment and order passed by the Hon'ble Single Judge dated April 16, 2008 in W.P. No. 780(W) of 2008, inter alia, dismissing an application under Article 226 of the Constitution of India ("the writ petition" in short).

2. The appellant-petitioner is a permanent teacher in English in Ulla Kalsara Kadria High Madrasah (hereinafter referred to as "the said Madrasah").

3. The writ petitioner alleged in the writ petition that due to his popularity amongst the students, some of his colleagues could not tolerate him. He was harassed. Consequently, he developed illness. Admittedly, he was not attending the school for a considerable period of time. In spite of repeated requests, he did not resume his duties.

4. By a letter dated July 21, 2006, the appellant lodged a complaint with the Secretary of the said High Madrasah that he was tortured by the Headmaster and one assistant teacher of the said High Madrasah, namely, Sk. Anwar Ali and the panchayat nominee in the managing committee. The letter was received by the

Secretary on July 22, 2006. Admittedly, no inquiry was held and no action was taken on the basis of such letter.

5. However, it is alleged in the writ petition that in the morning of August 22, 2007, the Headmaster of the said High Madrasah along with his associates allegedly came to the flat of the writ petitioner and assaulted him seriously and on the point of deadly weapons he was compelled to write a letter of resignation and to put his signature on the said letter. The writ petitioner was informed by the Secretary of the said High Madrasah that his resignation, which was received through speed post, was accepted by the managing committee of the said High Madrasah.

6. The writ petitioner purportedly resigned from the service on August 22, 2007, but he, on August 23, 2007, addressed a letter to the Secretary of the said High Madrasah complaining that the purported letter of resignation was not written by him in his own volition, but he was compelled to sign the said letter under coercion. The copy of the said letter was forwarded to the Director of Schools Education, the President of the West Bengal Board of Madrasah Education, the District Inspector of Schools, Barasat, the Superintendent of Police, North 24-parganas and the Officer-in-charge Barasat Police Station.

7. The letter and the copies thereof were sent by speed post with acknowledgement due. The letter was delivered to the Secretary and the Headmaster of the said High Madrasah.

8. The Secretary of the High Madrasah communicated by letter dated September 19, 2007 that the resignation of the writ petitioner was accepted by the managing committee in the meeting purportedly held on September 7, 2007. The resolution was communicated to the District Inspector of Schools, Secondary Education, North 24-Parganas, as also to the West Bengal Board of Madrasah Education.

9. By writing a letter dated September 24, 2007, the writ petitioner again complained to the District Inspector of Schools (Secondary Education), Barasat, District- North 24-Parganas, that he was compelled to sign his resignation letter under coercion. The letter and copies thereof were sent by speed post with acknowledgement due to the addressee and to the Director of Schools Education, the Secretary, West Bengal Board of Madrasah Education and the Secretary of the said High Madrasah.

10. Before the Hon'ble Single Judge, an affidavit-in-opposition was filed by the said Madrasah authorities. In such affidavit-in-opposition, the Headmaster, the said Assistant teacher and the said Panchayat nominee stated, inter alia, that the appellant voluntarily tendered his resignation and such resignation was duly accepted by the managing committee.

11. However, in paragraph 12 of the said affidavit-in-opposition, it was admitted that the answering respondents entered into the room of the petitioner, but it

was denied that the petitioner was seriously assaulted or was forced to write a letter of resignation on the point of deadly weapons. With regard to the letters written by the appellant to the authorities contending that the resignation letter was not written by him voluntarily, however, the denial was evasive.

12. The writ petition was moved, inter alia, for a direction on the authorities to treat the letter of resignation dated August 22, 2007 as non est and to withdraw the purported acceptance of such resignation.

13. The Hon"ble Single Judge, by the judgment and order dated April 16, 2008, dismissed the writ application. The Hon"ble Judge proceeded on the basis that it was patently clear that the appellant, in fact, tendered his resignation. The Hon"ble Judge, however, held that as to whether the resignation was voluntary or was obtained by coercion was a disputed question of fact, which could not be adjudicated by the High Court in a writ petition.

14. Being aggrieved, this appeal is filed.

15. Mr. Balai Lal Sahoo, learned advocate appearing in support of this appeal, submits that, from the facts and circumstances of the case, it is clear that resignation of the writ petitioner was not a voluntary one, but he was forced to write a letter of resignation.

16. Mr. Jiban Ratan Chatterjee, learned senior advocate, appears for the School authorities and submits that once the resignation has been accepted, there is no scope to withdraw such resignation at the instance of the employee concerned.

17. Mr. Kallol Basu, learned advocate appears for the Madrasah Board and contends that writ petition was not maintainable inasmuch as it was purely a dispute between the managing committee of the said Madrasah and a teacher.

18. However, it is pertinent to note that such point of jurisdiction was not taken before the Hon"ble Single Judge. Therefore, we are not inclined to permit the Madrasah Board to take such point, for the first time, before the Appellate Court.

19. Mr. K. J. Yusuf, learned advocate appears for the State respondents and submits that, in fact, the appellant tendered his resignation, which has, since, been accepted by the authorities.

20. The expression "resignation" is explained in Black's Law Dictionary (Fifth Edition, 1979) as formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment.

21. The Latin maxim *resignatio est juris propril spontanea refutation* has been explained in the said dictionary as resignation is a spontaneous relinquishment of one's own right.

22. The case of resignation is not admitted. The writ petitioner filed complaints immediately. He did not lose any time in approaching the authorities. He has

clearly mentioned in his letters that the management had forced him to sign his purported letter of resignation under coercion and duress.

23. If the resignation was not voluntary, it would tantamount to termination. It is settled law that resignation is a bilateral concept; a resignation letter must be unconditional with intention to operate as such. It is, also, settled law that the offer of resignation can be withdrawn before its acceptance.

24. We are of the opinion that the Hon"ble Single Judge was right in holding that it was not possible for the writ court to decide the disputed question whether the appellant resigned voluntarily or not.

25. However, we are, further, of the opinion that the Hon"ble Single Judge, instead of dismissing the writ petition, ought to have relegated the writ petitioner to a fact-finding authority to find out the truth inasmuch as the writ petitioner all through alleged that he was forced to sign the resignation letter under duress.

26. It is true that the writ petitioner was not attending the school for a considerable period of time and his salary was stopped. The West Bengal Madrasah Education Board, also, viewed that continuance of the writ petitioner in service would not be in the interest of the students. Nevertheless, the managing committee of a High Madrasah should not adopt a callous and heartless attitude in seizing an opportunity to get rid of him by forcing him to sign a letter of resignation. A recalcitrant employee can be removed from his service by initiating proper proceedings, but he cannot be removed by circuitous ways. If the continuance of the petitioner in the High Madrasah was opposed to the interest of the High Madrasah, the authorities should have initiated steps for his removal in accordance with law. The rule of law cannot be substituted by coercion and duress.

28. We, therefore, feel that the serious disputed question must be decided by a fact-finding authority. The order impugned is, therefore, set aside.

29. The Director of Madrasah Education is directed to decide as to whether the appellant's resignation was his voluntary act or he was forced to sign the resignation letter under duress, after giving opportunities of hearing to the writ petitioner, the said Madrasah authorities and any other person concerned in the matter.

30. The Director of Madrasah Education is, therefore, directed to answer the said issue within three months from the date of communication of this order to him.

32. By way of abundant caution, we make it clear that we have not decided the claims and the counter-claims of the parties and all questions are to be decided by the said authority strictly in accordance with law and by passing a reasoned and speaking order uninfluenced by any observation made by this Court.

33. After the decision is taken, the said Director shall communicate his decision to all concerned by registered post with acknowledgement due.

34. The appeal and the connected application are, thus, disposed of with the aforesaid directions.

35. We, however, directed the parties to bear their respective costs in this appeal.

36. Urgent xerox certified copy of this judgment, if applied for, is to be given to the learned advocates for the parties.

Kalidas Mukherjee, J.

37. I agree.