

(2024) 05 CAL CK 0013
In the Calcutta High Court
Case No : S.A. No. 104 Of 2008

Nirmala Sahu (Samanta)

APPELLANT

Vs

Nandigram Braja Mohan Girls? High School & Ors.

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : (2024) 05 CAL CK 0013

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Arabinda Chatterjee, Golam Mustafa, Kakali Dutta, Susanta Pal, Ananya Neogi

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. Being aggrieved by and dissatisfied with the judgment and decree passed in T.A. No.57 of 2006/ 02 of 2007 dated 29th September, 2007 passed by second court of Additional District Judge, Tamluk, present second Appeal has been preferred. By the order impugned learned court below affirmed the judgment dated 31.07.2006 passed by learned Civil Judge (Junior Division) 2nd Court Tamluk in T.S. No. 38 of 2006.

2. Respondent/ plaintiff/ Nandigram Braja Mohan Girls High School and others (hereinafter called as school authority) instituted aforesaid T.S. No.38 of 1987 against the present Appellant. In the said suit present respondent as plaintiff contended that defendant no.1/appellant herein was appointed as Headmistress of plaintiffs/school on 11.07.1984. Said Headmistress/defendant no.1 tendered her resignation from that post on 16th December, 1996 with a request to release her on a particular date. On 7th February, 1987 the then secretary of the school issued a notice calling a meeting of the managing committee for consideration of the aforesaid letter of resignation. The meeting of the managing committee was

held on 15th February, 1987 and unanimous resolution was taken to accept the letter of resignation. Plaintiff alleged that appellant/Headmistress attended school on 16.02.1987 and the then secretary by a letter tried to intimate the decision of managing committee with request to hand over the charge to defendant No.2 on 20.02.1987, but she refused to accept the said letter and left the school. However, the secretary further intimated the acceptance of the resignation tendered by her by registered post on 17th February, 1987 but neither registered envelop nor the A/D card came back to the authority though the letter was allegedly correctly addressed. It is further case of the respondent/plaintiff that after knowing the decision of acceptance of the resignation of the appellant by the managing committee, the appellant tried to withdraw the resignation letter by sending a letter of withdrawal, which the school authority received by post on 16.02.1987 wherein the secretary was also requested not to give effect to the resignation letter. Thereafter appellant/headmistress allegedly tried to forcibly enter the school premises on 27.02.1987 and thereafter tried to create deadlock situation in the school and inspite of repeated request she refused to make over charge which the school authority informed the District Inspector of Schools. Plaintiff claimed that after submission of resignation and acceptance of the same by the managing committee, it is to be declared that defendant no.1 is no longer the Headmistress of the plaintiff/school and also sought for injunction to that effect.

3. Appellant herein/Defendant no.1 contested the suit by filing written statement contending that getting frustrated with the misdeeds of the managing committee and most of the members/staff of that school, she tendered her resignation on 16.12.1996 with a request to accept her resignation and to release her on 15.01.1987. It is submitted by the Appellant/Headmistress that the resignation letter had not been accepted by the authority till 13.02.1987. On 14.02.1987 she was pressurised by some of the guardian members and as also 'gheraod' by the local people and finding no other alternative, she wrote a letter withdrawing the resignation, which was received by the school authority on 16.02.1987. She further contended that in pursuance of the withdrawal letter of resignation, the secretary of the school by his Memo No. 17/87 dated 18.02.1987, informed her about the non-acceptance of resignation letter. Thereafter the secretary also informed the Appellant that her salary for the month December, 1986 to January, 1987 would be disbursed within February, 1987 and she was requested to continue her duty as Headmistress of the school as usual. Defendant no. 1's further case is that suppressing material fact, plaintiff filed aforesaid suit alleging in the plaint that the managing committee took a resolution dated 15.02.1987 to the effect that her letter of resignation had already been accepted and her withdrawal letter would not be considered again.

4. According to defence contention the said resolution was taken with malafide intention by the School Authority and behind the knowledge of the defendant in order to oust her from the said post by any means. She further alleged that the resignation letter having been withdrawn by the defendant and the same also

having been accepted by the authority concerned and the same also having been informed to all concerned, the school authority has no right to accord approval of appointment of any teacher in her place, since she was functioning as Headmistress of the school concerned. The appointment of one Dipti Maity as Teacher-in-Charge is illegal arbitrary and without jurisdiction and contrary to the provision of rules for management of non-government institution. In fact the school authority vide letter no. 15A/87 dated 10.02.1987 requested the appellant to take necessary steps for formation of academic counsel of the school at an early date in the interest of the school. By another letter being Memo no. 15B/87 dated 10.02.1987, secretary of the school requested appellant to prepare all registers and other necessary papers in connection with the financial transaction of the school for verification by the sub-committee and was further requested to represent the school on 20.02.1987.

5. Appellant's further case is that the members of the managing committee of the school, suppressing all such matter filed aforesaid T.S. No. 38 of 1987 on 27.03.1987 for a declaration that she is no longer Headmistress nor she is entitled to claim any right, title interest as Headmistress and an exparte order of injunction was suddenly pasted in the residential premises of the appellant.

6. The Trial Court framed as many as six issues out of which issue no. 4 was whether plaintiffs are entitle to get the declaration that the defendant Np.1 is no longer Headmistress of the plaintiff/school. However after considering the materials in record, learned Trial Court passed decree in favour of plaintiff/school on 21.07.2006. Being aggrieved by that order defendant no.1/appellant herein preferred first appeal before the court below but the court below as stated above, also dismissed the appeal.

7. A Division Bench of this court while admitted the second appeal vide order dated 07th January, 2008, was pleased to held that this second appeal will be heard on the following substantial questions of law.

(a) Whether the learned Courts below committed substantial error of law in overlooking the fact that in the resignation letter dated 16th December, 1966, the appellant sought for permission to release her and the school authority did not communicate such fact of release before 16th February, 1987, when the school authority already received the letter revoking the resignation.

(b) Whether the learned Court of appeal below committed substantial error of law in ignoring the well settled principle that the appellant having already communicated her decision to withdraw the resignation before the school authority communicated its decision of acceptance, the resignation should be deemed to have been withdrawn.

8. Learned senior counsel for the appellant Mr. Aurobindo Chatterjee strenuously argued that both the courts below did not take into consideration the most vital documents relating to withdrawal of resignation dated 14.02.1987 as well as the acceptance of the same by the Managing Committee as communicated by the

secretary vide letter dated 18.02.1987. Mr. Chatterjee in this context submitted that since there is no rule governing the field of tendering and accepting the resignation, the general principle is that an intimation in writing sent to the competent authority by the incumbent of his intention or proposal to resign from the office /post from a future specified date, can be withdrawn by her at any time before it becomes effective i.e. before it affects the termination of the tenure of the office /post of the employment. In the absence of a legal contractual or constitutional bar, a prospective resignation can be withdrawn before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resigner.

9. He further contended that the resignation tendered by the incumbent can be withdrawn before she was actually relieved from the service. Accordingly Mr. Chatterjee argued that in the particular case although the resolution had been taken for accepting the resignation letter on 16.12.1986 but the same had been made effective from 20.02.1987. Referring a Divisions Bench judgment passed by this Court, he argued that in the absence of any rule to the contrary the resignation of a Headmistress of a school shall be prospective in nature, as the resignation has become effective from the date when the authority accepts it. In the present case the effective date of accepting the resignation is on 20.02.1987. So the resignation tendered by the appellant dated 16.12.1986 cannot be acted upon, as the withdrawal letter dated 14.02.1987 had been accepted by the school authority on 16.02.1987. Therefore, the resolution taken by the school authority dated 15.02.1987 which was intended to give effect on and from 20.02.1987 has become redundant in view of receipt of withdrawal letter sent by the appellant herein.

10. He further argued that even after tendering resignation she was requested to continue her duty as Headmistress as usual but the courts below did not consider this aspects of the matter. Plaintiff filed letter being No.17/87 dated 18.02.1987 by which she was informed that her resignation dated 16.12.1986 cannot be accepted by School and her letter of withdrawal dated 14.12.1987 is highly accepted and also the letter being memo No. 15 A/87 dated 10.12.1987 wherein School requested Appellant to take necessary steps for formation of academic council of the School and another letter vide Memo No. 15B/87 dated 10.12.1987, whereby she was requested to prepare all registers in connection with financial transaction of the School for verification by sub-committee and to represent School on 20. 02.1987 at 2p.m, but all these documents though filed were not marked by the Trial Court as Exhibit. In fact filing of the suit by the school authority was absolutely on suppression of material fact. Accordingly appellant has prayed for setting aside the impugned judgments by allowing this second appeal.

11. In reply Mr. Pal learned counsel appearing on behalf of respondent No. 15 & 16 submits that by the resolution dated 15th February 1987 it was resolved unanimously that no request for withdrawal of resignation would be reconsidered

and that the resignation was offered by the appellant voluntarily and it was accepted by the school authority unanimously. He further submits that the appellant has no explain why she waited till 16th February, 1987 to withdraw her resignation when she had resigned on 16th December, 1986 and such conduct of the appellant clearly reveals that after knowing the decision of the managing committee on 15th February, 1987, she tried to withdraw her resignation on 16th February, 1987.

12. He further submits that from Exhibit-13 and 14 its appear that the approval of Dipti Maity as the teacher-in-charge in place of appellant herein, after her resignation was accepted which clearly proves that the letter of resignation was accepted properly and that is why the name of Dipti Maity was approved. After acceptance of the letter of resignation on 15.02.1987, the withdrawal has become infructuous because from the very conduct of the appellant, it is evident that she was very much watchful in every fact and circumstances of the school. The letter issued by the Secretary dated 18.02.1987 vide memo no 17/87 and the letters being memo no 15A/87 dated 10.02.1987 and 15B/87 dated 10.02.1987, which though filed before the Trial court and have been relied by the appellant herein but they are all un-exhibited documents and the appellant cannot rely upon said un-exhibited documents in support of her case. This is also because plaintiff/respondent did not get the opportunity to make cross examination upon the said documents. Accordingly Mr. Pal contended that the effective date in a resignation letter refers to the date on which the resignation is accepted by the school authority through its managing committee decision dated 15.02.1987 and subsequent attempt to withdrawal of resignation is not acceptable in the eye of law. Accordingly he has prayed for dismissal of this second appeal.

13. On perusal of judgment of Trial court it appears that the Trial court decreed the suit with the following observation :

"Therefore, after acceptance of the letter of resignation the withdrawal has become infructuous because from the every conduct of defendant no. 1 it is evident that she was very much watchful in every facts and circumstances of the school and accordingly she ought to have put forward her letter of withdrawal before the resolution dated 15.02.1987, wherein her letter of resignation was unanimously accepted and as such her claim to be a Headmistress is not tenable."

14. Learned First Appellate court after hearing both the parties frame three questions of law for consideration

(i) Whether the defendant no.1/appellant after tendering her resignation by the latter dated 14.12.1986 in her own handwriting is competent to withdraw the same.

(ii) Whether communication of acceptance of resignation to the appellant is a must or not.

(iii) Whether the original suit is maintainable under section 34 of the Specific Relief Act, as negative declaration has been sought for in the plaint.

15. Learned court below while deciding the issue of maintainability of the suit held that the suit is not barred under section 34 of the Specific Relief Act merely because negative declaration has been sought for in the plaint. However while discussing the main issue in controversy i.e. whether after tendering resignation, on 16.12.1986, she was competent to withdraw the same by the letter of withdrawal, which allegedly received by the school authority on 16.02.1987 after her resignation was accepted by the school authority through its resolution dated 15.02.1987, the court below held that normally the tender of resignation becomes effective and his service or his tenure, terminated when it is accepted by the competent authority. Accordingly the defendant no.1/Headmistress has no locus standi to withdraw her offer of resignation after it was accepted on 15.02.1987 and since it was her voluntarily resignation, it cannot be withdrawn after the acceptance of the resignation tendered by the present appellant. Court below further held that appellant have full knowledge about the acceptance of her resignation by the school committee and it was duly communicated to her on 16.02.1987 when she was still present in the school on that day till 1.40 p.m., which is an admitted fact as per evidence of the present appellant who deposed as DW-1 and the school committee has also informed all the authority concerned by letters about the acceptance of the resignation tendered by the present appellant and who was also requested to make over charge to the defendant no.2. Court below thus was of clear view that the jural relationship between appellant and plaintiffs/school became seized from the moment of acceptance. Relevant portion of the order of the court below may be reproduced below:-

"Besides this point it further appears from the resolution Book, Exhibit. 13, that the withdrawal letter dated 14.02.1987 sent on 16.02.1987 was not also accepted by the School committee as the School Committee declined to give effect on the letter, Exhibit 21. So, it appears that the jural relation between the appellant and the plaintiff/school Authority became ceased from the moment of acceptance of the Resignation letter, Exhibit. 1. Besides, even assuming that the acceptance of the resignation was not communicated to the present appellant in that even, it appears in view of the decisions of the Hon'ble Apex Court reported in AIR 1969 SC 180, AIR 2004 2004 SC 3196 and also in view of the principles of the decisions of the Hon'ble Courts, I find that from the moment of acceptance of the resignation voluntarily tendered by the present appellant, the resignation became effective when it operated to terminate the employment of the present appellant, regardless of the question as to whether the acceptance of resignation was duly communicated to the present appellant or not."

16. In the above backdrop and on the basis of substantial questions of law as framed by the Division Bench of this court, let me consider whether the courts below have drawn correct inference from proved facts by applying the law properly and/or whether courts below reached to the ultimate finding, ignoring

material evidence on record.

DECISION

17. Before going to further details, let me reproduce the relevant dates with events in connection with the present case

(i) That the present appellant was appointed as Headmistress of the Plaintiff/ School on 11.07.1984

(ii) That the appellant by her letter dated 16.12.1986 offered to resign from the post with a request to release her on 15.01.1987.

(iii) That on 7th February, 1987, the then Secretary of the School, issued a notice calling a meeting of the Managing Committee for consideration of the letter of resignation of the appellant.

(iv) That the school committee in its meeting held on 15.02.1987 accepted the resignation of the appellant with effect from 20.02.1987 and the intimation of such acceptance of resignation was sent by to her by Regd. Post on 17.02.1987 with A/D.

(v) That by the letter dated 14.02.1987 sent under registered post the appellant withdrew her offer of resignation and the said letter was received by the school Authority on 16.02.1987.

(vi) That neither the A/D card nor the Regd. Letter dated 17.02.1987 came back and as such further regd. Letter was also sent to her home address on 21.02.1987, which was received by her on 02.03.1987.

(vii) Notwithstanding that her resignation having been accepted and intimation thereof having been received by the appellant on 2.3.1987, the defendant No. 1 (Present appellant) allegedly forcibly entered into the School Premises and allegedly created disturbance in the normal work of the School on several occasions.

(viii) The cause of action of the suit allegedly arose on 21.02.1987.

18. The moot question therefore is whether courts below were justified in reaching to a conclusion that jural relationship between plaintiff and appellant came to an end with the acceptance of exhibit 1 (letter of resignation) on 15.02.1987, which is just before the date of receipt of withdrawal letter by the School Authority .

19. From the resignation letter dated 14.12.1986, it appears that appellant cited reasons for her tendering resignation in the letter and requested to give effect of such letter on and from 16.01.1987. However school authority did not release her and on the contrary learned counsel for the appellant by referring two un-exhibited letters dated 10.02.1987 issued by the school authority, being memo no. 15A/87 dated 10.02.1987 and memo no 15B/87 dated 10.02.1987, (which were filed before court below but not marked exhibit) tried to establish that the

jural relationship of plaintiff/schools and the appellant herein was continuing long after 16. 01.1987.

20. On perusal of extract copy of resolution dated 15.02.1987, it appears that the plaintiff/school authority specifically resolved that the resignation letter dated 20.02.1987 was accepted but it was given effect on and from 20.02.1987 and in that resolution it was also decided that the appellant will be asked to handover charge after relieving herself from the duty to one Smt. Dipti Maity, Teacher-In-Charge, by 4.00 P.M on 20.02.1987 and appellant herein Smt. Nirmala Samanta shall be relieved from all her duties from that date and it was further resolved in the said meeting that by 20.02.1987, appellant shall handover the income and expenditure statement to the secretary of the school and after getting approval by the managing committee in respect of such submitted account, the last pay certificate of appellant shall be issued.

21. From the aforesaid resolution two things are apparent that the decision of accepting resignation was given effect to, on and from 20.02.1987 and Smt. Dipti Maity, Teacher-In-Charge was asked to take all charges from the appellant on 20.02.1987 and from that date only appellant would be relieved from all her responsibilities. However last pay certificate of appellant was withheld till the income and expenditure account furnished by appellant by 20.02.1987 would be approved by the Managing Committee.

22. Now admittedly school authority received withdrawal letter of appellant on 16.02.1987 when admittedly she was not relieved from her post and when her resignation from the post was not given effect to.

23. During hearing no such provision prescribing procedure for submission of resignation by Headmaster or an Assistant teacher and the mode of acceptance of the same has been placed before this court

24. In Union of India and others Vs. Gopal Chandra Mishra and others, reported in (1978) 2 SCC 301 it was held that it will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "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 resigner. This general rule equally applicable to government servant and constitutional functionaries.

25. In Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia reported in (1997) 4 SCC 280 it was held in paragraph 7 is follows:

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order

accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

26. In *Shambhu Murari Sinha Vs. Project and Development India Ltd. and another*, reported in AIR 2002 SC 1341 after considering relevant judgements passed earlier, Apex court in this case held that in view of the settled position of law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntarily retirement before the relationship of employer and employee came to an end.

27. In *AIR India Express Limited and others Vs. Captain Gurdarshan Kour Sandhu* reported in (2019) 17 SCC 129 it was held in paragraph 12 as follows:

"12. It is thus well settled that normally, until the resignation becomes effective, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paras 41 and 50 in *Gopal Chandra Misra [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303]* , "in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post" or "in the absence of a legal contractual or constitutional bar, a 'prospective resignation' can be withdrawn at any time before it becomes effective". Further, as laid down in *Balram Gupta [Balram Gupta v. Union of India, 1987 Supp SCC 228 : 1988 SCC (L&S) 126]* , "If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter."

28. In view of the law laid down by the Apex Court since 1978 is that in the absence of anything to the contrary in the provision governing the terms and conditions regarding tendering resignation and/or acceptance thereof, a "prospective" resignation can be withdrawn at any time before it became effective.

29. In the present case admittedly it was adopted in the resolution that appellant would be relived from her duties on and from 20.02.1987 and admittedly school authority received the withdrawal letter sent by appellant on 16.02.1987, then in view of the settled position of law, the courts below did not come to a correct finding in the facts and circumstances of the case and erroneously observed that prospective resignation cannot be withdrawn once it is accepted in the meeting, even though a future date was given from which the resignation will take effect. Therefore the observation of the courts below that jural relationship of plaintiff and defendant no.1 terminated with the acceptance of Exhibit-1 is contrary to law as declared by Apex Court right from *Gopal Chandra Mishra's case (supra)* and the courts below have drawn wrong inference from proved facts by applying the law incorrectly.

30. There is another aspect of the matter. The term resignation has been defined in dictionary as spontaneous relinquishment of one's own right which is covered by the maxim "resignatio est juris propii spontanea refutatio". From the resignation letter it is clear that as Appellant was not getting redressal of her grievances ventilated by her to the managing committee about non-cooperation of the said committee and that most of the members of the staff of the institution are not willing to perform their scheduled duties for which they are being paid by the Government and as in spite of her level best endeavour, she failed to rectify the defect, she got frustrated and out of intense mental distress she submitted the resignation letter on 16.12.1986.

31. Accordingly it is axiomatic that the appellant under some compelling circumstances submitted her resignation on 16.12.1986 with a request to give effect such resignation on or from 16.01.1987, though it was not given effect by the school authority from the said date and instead she was allowed to continue with her duties. Later on the managing committee accepted her resignation in the meeting dated 15.02.1987 but it was given effect from a future date i.e. from 20.02.1987. Appellant by a letter dated 14.02.1987 had withdrawn her resignation which the School Authority received on 16.02.1987.

32. In a recent decision in the case of X vs. Registrar General, High Court of Madhya Pradesh and another, 2022 LiveLaw (SC) 150, Apex Court held that the resignation tendered by a lady judicial officer under a compelling circumstances would not be treated as a voluntarily resignation and as such the same is not acceptable. Accordingly the Supreme Court by setting aside the order of Madhya Pradesh High Court on accepting the resignation of the officer directed the High Court Administration to reinstate said lady judicial officer in the service.

33. From the contents of the letter it is palpably clear that in the present context also, appellant under some peculiar and compelling circumstance as stated in Exhibit-1 (resignation letter) submitted her resignation. The resolution dated 15.02.1987 makes it clear that the resignation of the appellant was prospective in nature as according to resolution the resignation would become effective from 20.02.1987 when she was asked to handover charges to the teacher in charge, since resignation involved many ramifications including monetary benefit to the person who put in resignation after acceptance of resignation. The committee also resolved to issue last pay certificate to the appellant on being satisfied about the accounts directed to be submitted by 20.02.1987. It is thus clear that the resignation tendered by the appellant was not a voluntary one. Now if any resolution is adopted going against the law of land stating that even if withdrawal letter is filed by appellant, that would not be considered favourably, cannot bind the Appellant being against the law.

34. In such view of the matter I have no other option but to conclude that the resolution taken by the Managing Committee on 15.02.1987 accepting the resignation by the appellant, is vitiated with the acceptance of withdrawal letter by the plaintiff's school on 16.02.1987 i.e. before the date from which

acceptance of resignation was given effect. Court below ought to have held that the resignation tendered by appellant deemed to have not accepted and given effect to, in view of withdrawal letter tendered before giving effect of such resignation, as settled in aforesaid judicial pronouncements.

35. In view of above the judgment passed in T.S. No. 38 of 2006 by the Civil Judge (Junior Division) 2nd Court Tamluk on 31st July, 2006 and decree dated 05.8.2006 and also the judgment and decree passed by the Court below dated 29.09 2007 in T.A. 57 of 2006 / 02 of 2007 are hereby set aside. T.S No. 38 of 1987 stands dismissed.

36. S.A. 104 of 2008 is thus allowed. Records of court below be returned immediately.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.