

(2011) 07 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 1465 of 2009

Sayyed Maksood Ali Sayyed Roshid Ali

APPELLANT

Vs

Uruj-E-Urdu Education Society and Another

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 7

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 40, 40(1), 40(2)

Citation : (2012) 1 BomCR 730

Hon'ble Judges : Deshpande R.K., J

Bench : Single Bench

Advocate : M.G. Bhangde and R.M. Bhangde, for the Appellant; Rashi Deshpande, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Deshpande R.K., J.—This petition challenges the judgment and order dated 19-1-2009 passed by the School Tribunal, Amravati, dismissing Appeal No. 61 of 2008 filed by the petitioner challenging his otherwise termination from service by accepting his resignation dated 12-1-2008 by resolution dated 10-2-2008. The facts of the case are as under :

The petitioner was appointed as an Assistant Teacher on 1-7-1985. He was promoted as Head Master on 10-10-2004. The petitioner tendered his resignation from service on 12-1-2008, which was accepted by the Management on 10-2-2008. He was not allowed to work on the post with effect from 26-6-2008 and hence he challenged his otherwise termination from service by filing Appeal No. 61 of 2008.

2. Before the School Tribunal, it was not the case of the petitioner that he did not tender resignation on 12-1-2008 or that it was a forged and fabricated document, not executed by the petitioner. It was also not the case of the

petitioner that he had neither prepared the resignation dated 12-1-2008, nor had signed it. He, however, took the stand that the said resignation was procured by the respondent No. 1 forcibly. It was the stand taken that the said resignation was subsequently withdrawn by his letter dated 30-1-2008 sent by registered post acknowledgment due, which was received by the Management on 7-2-2008. His contention was that before acceptance of the resignation on 10-2-2008, the Management had received the letter for withdrawal of resignation on 7-2-2008, and hence the resignation dated 12-1-2008 could not have been acted upon. Thus, the contention was that it was illegal acceptance of the resignation, which amounts to otherwise termination.

3. The case of the Management was that the petitioner had personally tendered his voluntary resignation dated 12-1-2008. Thereafter again the petitioner had forwarded the another resignation of the same date by registered post acknowledgment due on 7-2-2008. It was the stand taken that the resignation dated 12-1-2008 was accepted by the Management on 10-2-2008. According to the Management, it had never received the communication dated 30-1-2008 from the petitioner, said to be the withdrawal of resignation dated 12-1-2008. Acting on the basis of the voluntary resignation dated 12-1-2008, the Management had passed a resolution on 10-2-2008, which is legal, valid and proper.

4. The School Tribunal has rejected the contention of the petitioner that the resignation tendered on 12-1-2008 was involuntary, as the same was given under force, duress and coercion. It was held that the petitioner was earlier working as President of the Society and was Head Master of the School and since the group led by him was in minority, he tendered voluntary resignation from the employment, as he was not interested to work as Head Master under the Management controlled by the other persons. It has further recorded the finding that the petitioner was holding the key post in the Management as well as in the School and it is difficult to accept the contention of the petitioner that he was pressurized by the Secretary of the School to obtain such resignation. After going through the contents of the resignation, the finding is also recorded that the petitioner had given his resignation by his freewill and voluntarily from the post of President of the Society as well as Head Master and the copy of the same was also sent to the Assistant Charity Commissioner and Education Officer Yavatmal.

5. On the question of withdrawal of resignation by the letter dated 30-1-2008, the Tribunal has recorded the finding that there was no pleading in the memo of appeal about withdrawal of the resignation. In rejoinder, a case is put forth and the same is, therefore, rejected on the ground that it is an afterthought. The further finding is also recorded that the letter of withdrawal of the resignation dated 30-1-2008 appears to have been manipulated. With these findings, the appeal has been dismissed.

6. Shri M.G. Bhangde, the learned Senior Counsel, appearing for the petitioner, has urged that the resignation tendered by the petitioner on 12-1-2008 was

withdrawn by letter dated 30-1-2008, which was received by the Management by registered post acknowledgment due on 7-2-2008. Hence, the Management could not have passed a resolution accepting the resignation on 10-2-2008. According to him, the finding recorded by the Tribunal that the letter of withdrawal of resignation dated 30-1-2008 was manipulated and afterthought, is without any basis. He submits that the Management could not have accepted the resignation dated 12-1-2008 after receipt of letter of withdrawal of resignation on 7-2-2008.

7. It is the further submission of Shri R.M. Bhangde that the Management has put forth the story of receipt of two letters of resignation bearing the same date, i.e. 12-1-2008 one by hand delivery on 12-1-2008 itself and the other by registered post acknowledgment due on 7-2-2008. According to him, if the stand of the Management was that on 7-2-2008 it was not the letter of withdrawal of resignation dated 30-1-2008 received, but it was another letter of resignation dated 12-1-2008, then in the absence of production of the letter of resignation dated 7-2-2008 the School Tribunal was required to draw an adverse inference to the effect that it was the letter of withdrawal of resignation dated 30-1-2008, which was received on 7-2-2008.

8. It is the further contention of Shri Bhangde that the resignation dated 12-1-2008 was involuntary for the reason that it was not sent by registered post acknowledgment due, as required by section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act"). It was also not the notice of resignation coupled with the payment in lieu of notice to show that the resignation tendered was voluntary. He has relied upon the judgment of the learned Single Judge of this Court in [Siddheshwar Kreeda Mandal, Sillod vs. Uttam s/o Kisanrao Shrikhande and others], reported in 2008 B.C.I, (soft) 236(A.B.) : 2009(2) Mh.L.J. 275. In para 11 of the said judgment, it has been held that when a particular mode of resignation is prescribed, i.e. giving of notice and payment in lieu of notice, the intention is to avoid the possibility of obtaining resignation under duress or tendering of resignation in haste or in a heat of moment. It has been held that the procedure for sending resignation by registered post, as laid down in section 7 of the MEPS Act, is to ensure that the act is voluntary and the facts of the case will have to be considered keeping in mind the omission to comply with section 7 of the MEPS Act and Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("the MEPS Rules").

9. Relying upon another judgment of this Court, which I have delivered, in Bahujan Vikas Mandal and Kranti Jyoti Marathi Prathmik Shala Vs. Ku. Manda Vithalrao Parsutkar, Kranti Jyoti Marathi Prathmik Shala and The Education Officer (Primary), , Shri M.G. Bhangde has urged that the resignation in question is a typewritten document and not handwritten, which is in breach of the mandatory requirement of section 7 of the MEPS Act, which renders the resignation illegal and involuntary. The learned Counsel has further relied upon

the facts on record indicating that there were complaints filed against the petitioner by the members of the Management and certain offences were also registered against him. The petitioner was pressurized to tender resignation under the threat of prosecuting such complaints and prosecution. Accordingly, immediately after the resignation was tendered on 12-1-2008, the petitioner was discharged from the criminal proceedings. He, therefore, submits that the Tribunal has committed an error in holding that the petitioner had given his resignation by his freewill and voluntarily from the post of President of the Society as well as that of the Head of the School.

10. Now to deal with the argument that the resignation in question is typewritten and not handwritten, which is in breach of the mandatory requirement of section 7 of the MEPS Act, rendering the resignation as illegal and involuntary, section 7 of the said Act needs to be seen and the same is reproduced below:

Section 7 - Procedure for resignation by employees of Private Schools : "If an employee intends to resign his post in any private school, at any time after the appointed date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him,"

The provision is in two parts. The first part contains threefold requirements, viz. (i) drawing up a letter of resignation in duplicate, (ii) signing both the copies of that letter, and (iii) putting the date thereon. The second part deals with the forwarding of one copy of resignation to the Management by registered post and keeping the other copy by an employee with him. The first part deals with the execution and authenticity of the resignation, and the second part deals with the mode of delivery of the resignation. The requirement of drawing up of a letter of resignation has been held to be in the handwriting of an employee in the decision, which I have delivered in Bahujan Vikas Mandal's case, cited supra. The threefold requirements of first part have also been held to be mandatory. If the resignation produced by the employer is found to be in violation or breach of threefold requirements of first part, then the resignation will be rendered illegal and, involuntary.

11. The provision of section 7 of the MEPS Act is incorporated for the benefit of an employee. It deals with the procedure to be followed in tendering resignation. It is intended to provide protection or safeguard to an employee against an unscrupulous act of the Management calling an employee, exerting pressure or force on him or to give him any kind of inducement or incentive to obtain the signatures on blank papers, which may be used for preparing resignation of a suitable date subsequently, to get rid of an employee by adopting circuitous way. Hence an employee has to scrupulously follow it in tendering resignation. If an employee fails to follow the procedure or admits to have executed a typewritten or printed letter of resignation and further admits to have tendered or delivered such resignation personally or through someone to the Management, the employee loses the protection provided therein. In such a situation, section 7 of

the MEPS Act is not at all attracted and the employee cannot claim protection of section 7, to declare the resignation in breach of the provision to be illegal and involuntary.

12. In *Balaleshwar Shikshan Mandal and Another Vs. Jaywant Bhaguji Gadekar and Others*, , this Court has held that merely because a copy of the letter of resignation has not been forwarded by registered post, cannot make the resignation void. It was in the background of the fact that the employee neither disputed the execution of the document, nor the delivery thereof to the Management. It was held that the mode of despatch would be relevant in cases where the employee disputes the execution of the document.

13. In *Barshi Education Society Vs. Shri Ashok Ganesh Kulkarni and Others*, , it has been held that the requirement is intended to ensure that the employee is not subjected to any kind of coercion or duress, which may operate if an employee is called in person, required to sign a letter of resignation and hand it over to the Management in person. It has been held that when the question as to whether the resignation was or was not voluntary is raised, all the relevant circumstances must be considered by giving due importance to the fact that sending of resignation by registered post shows that it is truly voluntary.

14. In *(Shri Sant Sawtamali Shikshan Prasarak Mandal, Tembhumi vs. State of Maharashtra and others)*, reported in 2009(Supp.) Bom.C.R. 533 : 2008(6) Mh.L.J. 529, it has been held that the requirement of sending resignation by registered post is a safeguard provided to an employee against the Management taking undue advantage of compelling a teacher to give resignation either by force or by giving any type of inducement. It was held that the requirement of section 7 of the MEPS Act will have to be seen in its totality to find out whether the resignation tendered is voluntary or not.

15. The judgment in the case of *Bahujan Vikas Mandal*, cited supra, which I have delivered, lays down that the requirements of drawing up of a resignation in duplicate by an employee in his own handwriting (not typed or printed), signing both the copies, and putting the date thereon, as contemplated u/s 7 of the MEPS Act, is mandatory. It has been held that the noncompliance or breach of the requirements of section 7 renders the resignation involuntary and void ab initio. This view was taken in the background of the facts that the employee had disputed the execution of the letter of resignation and also the despatch of it by post. While taking the said view, reference has also been made to all the judgments, cited supra, in paras 13, 14 and 15.

16. Keeping in mind the law, as aforesaid, laid down by this Court, it will have to be held that the twin requirements of execution and mode of despatch or delivery contained in section 7 of the MEPS Act are interlinked or interconnected and its compliance has to be seen in its totality and not in isolation to find out the real nature of resignation. When the mode of delivery by registered post is disputed by an employee, the proof of execution of resignation becomes

significant and mandatory. When the execution of resignation is disputed by an employee, the mode of despatch or delivery by registered post becomes significant and mandatory. The non-compliance or breach in both the cases, would result in rendering resignation as illegal and involuntary.

17. It is now well-settled that a ratio of the judgment is required to be understood in the light of the facts stated therein. In the judgment, which I have delivered in the case of Bahujan Vikas Mandal, there was a dispute raised not only about the execution of the letter of resignation, but also about the mode of its despatch or delivery. In the light of this factual position, it has been held by this Court that the requirements of drawing up of a resignation in duplicate by an employee in his own handwriting, signing both the copies thereof and putting the date thereon, have been held to be mandatory. The said judgment cannot be construed to lay down a law that the requirements of section 7 of the MEPS Act are mandatory even in cases where neither the execution of the letter of resignation is disputed, nor the mode of despatch or delivery of such resignation is disputed. In short, the said judgment is not applicable to the cases where the question of execution, authenticity or mode of despatch or delivery of such resignation is not disputed. Hence, the ratio of the said judgment is clarified accordingly.

18. Reliance is also placed on Rule 40 of the MEPS Rules, which is reproduced below:

"40. Resignation.

(1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month's notice. The management may, however, allow an employee to leave service earlier on payment of pay (excluding allowance) for three months, or as the case may be, one month in lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay or the period by which the notice period falls short

(2) If any Management allows an employee to leave service earlier either without due notice or without making payment of pay in lieu of notice as specified in sub-rule (1), a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned.

(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."

The contention of Shri Bhangde is that the resignation dated 12-1-2008 is neither the notice of three calendar months, nor it was accompanied by three months' salary in lieu of notice. The further contention is that failure to comply with the aforesaid rule renders the resignation illegal and involuntary. These

contentions cannot be accepted. Rule 40 prescribes the manner of tendering the resignation at the discretion of an employee, which is apparent from the use of the word "may" at different places in sub-rule (1) of the said rule. The employee may or may not follow such procedure and failure to follow such procedure would not render the resignation tendered in breach of the said rule as invalid or involuntary. Similarly, it is also left to the discretion of the Management whether to accept the resignation tendered in breach of sub-rule (1) and this is apparent from the provision of sub-rule (2) of Rule 40. The said rule is obviously for the benefit of the Management. The Management may waive compliance of sub-rules (1) and (2) of Rule 40, but that would not render the resignation as invalid or involuntary. But if the Management insists for compliance of sub-rules (1) and (2) of Rule 40, then it is open for it to reject the resignation, which is not in compliance of the said sub-rules.

19. Now coming to the judgment of this Court in the case of Siddheshwar Kreedha Mandal, cited supra, it was a case where the alleged resignation was dated 1-7-1994 and its acceptance was dated 13-7-1994. Thereafter from 1-8-1994 to 3-8-1994, the employee had attended training classes. On 31-8-1994, the employee had written to the Education Officer that the Management on 8-8-1994 forcibly obtained his signatures on the blank papers. The employee was found to have worked upto 31-8-1994 and hence the fact of tendering resignation and its acceptance was not believed by the Court. It was in the light of these facts, this Court has held that the facts of the case will have to be considered by keeping in mind the intention of the provision of section 7 of the MEPS Act, i.e. sending of resignation by registered post. The proposition cannot be disputed. However, the facts of the case are required to be seen. It was a case where the contents were disputed and the case was of signature obtained on blank paper. Here in this case, the fact of tendering resignation by the petitioner on 12-1-2008 is not disputed. There is no dispute in the present case about drawing up of a letter of resignation, its contents, mode of its tendering, its execution and authenticity, etc Hence, the question of keeping in view the intention of the legislation behind the resignation, as contemplated u/s 7 of the MEPS Act, does not at all arise in the present case. The judgment cited is, therefore, not applicable.

20. It is the case of the petitioner that he has withdrawn the letter of resignation dated 12-1-2008 and that such withdrawal was communicated to the Management by his letter dated 30-1-2008 despatched on 31-1-2008 by registered post acknowledgment due and received by the Management on 7-2-2008. Hence, the burden of proof to establish all these facts is upon the petitioner and he has to stand on his own legs to establish his case. If the petitioner fails to bring evidence on record to establish such facts, then it is he who would fail. There is nothing on record to show that the petitioner has led any evidence or there is any material on record to establish that it was the letter of withdrawal of resignation dated 30-1-2008, which was despatched by registered post acknowledgment due on 31-1-2008 by the petitioner and that it was this letter which was received by the Management on 7-2-2008. The petitioner has

totally failed to establish all these facts. The Tribunal has noted that in the memo of appeal dated 11-8-2008, there was no case pleaded about withdrawal of resignation on 30-1-2008 and it was the stand taken in the rejoinder dated 24-11-2008 about withdrawal of resignation, which is an afterthought and based upon the manipulated document. I have gone through the pleadings in the memo of appeal and also the rejoinder and I do not find any fault with such finding recorded by the Tribunal.

21. The petitioner has placed reliance upon the letter dated 7-4-2008, said to have been sent by the petitioner to the Pay Unit, Yavatmal, wherein a vague statement is made that he has sent a letter of withdrawal of resignation to the Management. From the said letter, it appears that the copy is marked to the Education Officer (Secondary), Zilla Parishad, Yavatmal. This letter has neither been referred to in the memo of appeal nor even in the rejoinder. The alleged letter is sent after two months of acceptance of the resignation. It needs to be noted that the date of withdrawal of resignation is conspicuously absent from this letter dated 7-4-2008. There is no averment anywhere about the despatch or sending of this letter either to the Pay Unit or to the Education Officer. Hence, such document is totally unbelievable and it is of no help to the petitioner to establish that he had withdrawn the letter of resignation.

22. It is the story of the Management that it received two letters of resignation dated 12-1-2008 - one was received on that date itself, personally delivered by the petitioner, and the other was received by registered post acknowledgment due on 7-2-2008. If the receipt of letter of resignation on 7-2-2008 is accepted to be true, then nothing prevented the Management to produce on record the said letter of resignation. Undisputedly, it is only one letter of resignation tendered on 12-1-2008, which is placed on record. The question is what would be an adverse inference that could be drawn for failure to produce this letter on record - whether it would be that the Management received the letter of withdrawal of resignation dated 30-1-2008 or that the Management did not receive the second letter of resignation dated 12-1-2008. Obviously, an adverse inference would be that the Management did not receive the second letter of resignation dated 12-1-2008 by registered post acknowledgment due on 7-2-2008. There cannot be an adverse inference to the effect that the Management did receive the letter of resignation dated 30-1-2008 under certificate of posting on 7-2-2008. Hence, non-production of letter received on 7-2-2008 does not substantiate the contention of the petitioner that the Management received the letter of withdrawal of resignation.

23. It is not disputed that the Management has received the letter of resignation dated 12-1-2008 from the petitioner. Then what was received by the Management on 7-2-2008 remains a mystery and the probable reason is that the Management wanted to develop a case that it received such resignation dated 12-1-2008 by registered post acknowledgment due in compliance of the requirement of section 7 of the MEPS Act. In the absence of discharge of burden

by the petitioner to establish that it was a letter of withdrawal of resignation dated 30-1-2008, that was sent and received by the Management on 7-2-2008, the case of the petitioner will not advance further and what was received by the Management is insignificant.

24. The contention of Shri M.G. Bhangde is that the resignation was tendered only in order to avoid the prosecution of criminal complaints filed against him and hence the same is involuntary, cannot be accepted. He has urged that after tendering the resignation, the Management had failed to attend the proceedings of criminal prosecution, as a result of which, the petitioner has been discharged from the said prosecution. At the most, this may indicate that there was some settlement arrived at between the petitioner and the rival group holding the Management of the School. However, that by itself is not enough to establish that the resignation tendered was involuntary. On the contrary, it shows that the petitioner had consciously and voluntarily tendered the resignation with a view to get rid of the criminal proceedings instituted against him. The petitioner has derived benefit of the same and cannot now turn around and say that the resignation tendered by him was invalid or involuntary.

25. The case of the petitioner is that even after acceptance of resignation on 10-2-2008, the petitioner has been working on the post till 26-6-2008 and has produced on record the evidence to establish that he has signed the muster roll. The petitioner was admittedly the Head of the School and was the President of the Society and nothing would turn around the fact that he has been signing the muster roll on 26-6-2008. At any rate, it shall not have any bearing on the validity of the acceptance of the resignation by the Management. In view of above, no fault can be found with the view taken by the School Tribunal, which is based upon the relevant considerations. The petition is, therefore, dismissed. No order as to costs.