
(2012) 04 BOM CK 0024
In the Bombay High Court
Case No : Suit No. 188 of 1995

Shaikh Abdul Rahim Nabi

APPELLANT

Vs

The Anjuman-I-Islam and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 11
Constitution of India, 1950 — Article 12
Industrial Disputes Act, 1947 — Section 33C(2)
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 7, 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 40
Transfer of Property Act, 1882 — Section 106

Citation : (2012) 4 ALLMR 678 : (2013) 1 BomCR 687 : (2012) 134 FLR 447 : (2012) 4 MhLj 280

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : A.N. Maniyar, for the Appellant; A.G. Kothari for Defendant Nos.1 and 2., for the Respondent

Judgement

Mrs. Roshan Dalvi, J.—The Plaintiff is a teacher in the defendant No.2 school run by Defendant No.1 (The School). Defendant No.3 is another teacher in the School. The Plaintiff tendered his letter of resignation to the school on 25th August, 1993. The Principal of the School accepted resignation and the Plaintiff "s service was terminated. The Plaintiff challenges the letter or resignation as having been obtained by coercion and upon the premise that it was not accepted by the Principal on the next day. The Plaintiff sought to withdraw his resignation by his letter dated 3rd September, 1993 on the ground that it was obtained by coercion. The Plaintiff further sent a letter dated 3rd September, 1993 to the Principal of the school stating the same facts. The Plaintiff received the acceptance of his resignation from the school under the letter dated 26th August, 1993 after the Plaintiff sought to withdraw his resignation under his letter dated

3rd September, 1993. The Plaintiff claims that he received that letter on 7th September, 1993 anti- dated to 26th August, 1993. The Plaintiff challenged his termination by his resignation on the ground that it was forcibly obtained before the school tribunal as the competent authority under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) by way of an appeal as provided u/s 9 of the Act.

2. The appeal of the Plaintiff shows how his resignation was obtained on 25th August, 1993 and how it was accepted "on the very next day i.e. 26th September, 1993" received by him on 7th September, 1993 by post. In the appeal the Respondent also contended that his resignation letter was required to be accepted by the management i.e. by the managing committee of the school and the fact that it is shown to be accepted on 26th August, 1993 i.e. the next day it shows that the managing committee was not called and it was not considered by the managing committee. He imputed malafides upon the school as the resignation letter was accepted "with great hurry".

3. The Plaintiff applied for declaration of his resignation letter dated 25th August, 1993 as void and illegal and not binding on him and claimed to be reinstated. The tribunal dismissed his appeal by holding that the resignation letter was not forcibly obtained. The tribunal accepted the contention of the school that the letter dated 26th August, 1993 was not delivered to the Plaintiff on the next day when he was called for the acceptance of his resignation and the fact that he attended the school to accept receipt of the resignation letter shows that it was not forcibly taken. The tribunal accepted the contention of the school that the resignation letter was hand delivered next day but because it was not signed in acknowledgment by Plaintiff, the Principal of the school was advised to send it by registered post also which the Plaintiff received on 7th September, 1993. The tribunal accepted this fact upon the premise that though this specific case of acceptance of resignation was made out in the Written statement filed by the school in the appeal before the tribunal, the Plaintiff had not refuted or denied that case by filing a rejoinder. The tribunal found no merits in the contention raised by the Plaintiff and dismissed the appeal by its order dated 19th April, 1994.

4. The order of the tribunal came to be challenged in the Writ Petition filed by Plaintiff being No.2768/1994 which also came to be dismissed. Review Petition from the order in the Writ Petition also came to be dismissed upon the observation that the Plaintiff had accepted the lapses on his part and tendered his resignation without force or coercion.

5. The Plaintiff accepts that position. The Plaintiff accepts that his resignation was voluntarily given. The Plaintiff has now sued the school not for any declaration with regard to the letter of resignation, but with regard to the acceptance of such resignation.

6. The Plaintiff claims that the letter of acceptance dated 25th August, 1992 be

declared illegal and not valid and not binding upon the Plaintiff. The Plaintiff claims to be reinstated with back wages and for an order and injunction against preventing him from discharging his duties in the school.

7. The defendant Nos. 1 & 2 (school) has filed Written Statement. The school has contended that the issue in this suit has been full and finally decided, adjudicated and dismissed by the School Tribunal as also, the High Court and consequently, the suit is barred by principles of Res judicata and the Plaintiff is estopped from challenging his resignation or its acceptance which has become finally conclusive and binding upon the Plaintiff. The defendants have also contended that the suit is not maintainable as it is barred being a general remedy when the special remedy under the MEPS is made available to the Plaintiff. Consequently, in terms the defendants has challenged inherent jurisdiction of this Court to try a suit which is barred under the MEPS Act.

8. The Plaintiff contends that the issue with regard to his resignation is indeed barred by principles of Res judicata, but not the issue with regard to the acceptance of his resignation. He contends that since the resignation would come into force only upon his acceptance and the acceptance is not proved by the school, the resignation is of no effect. He contends that the tribunal could have only decided the question relating to his resignation as that would terminate his services, but not the question relating to his acceptance or also the withdrawal of his resignation which only the Civil Court can determine. He, therefore, contends lack of inherent jurisdiction in the school tribunal to determine these aspects; these aspects can be determined only by Civil Court, the aspects relating to the tender of his resignation notwithstanding.

9. Based upon the respective pleadings of the parties several issues on law and facts have been framed. The first issue relates to the maintainability of the suit considering its bar by the principles of Res Judicata. As the issue bar relates to the bar created by law of Res judicata U/s. 11 of the Civil Procedure Code, it is required to be tried as a preliminary issue under Order 14 Rule 2 of C.P.C. The issue is framed and answered as follows :

PRELIMINARY ISSUE

1 Do defendant Nos. 1 & 2 prove that the suit is not maintainable, misconceived and barred by principles of res judicata.

Yes

10. Since this is a question of law, counsel on behalf of both parties have been heard. They agree that oral evidence is not necessary to decide this issue.

11. It is contended on behalf of the Plaintiff that the school tribunal had jurisdiction only to consider whether the termination of service of the Plaintiff was valid or not. It had no jurisdiction to consider the acceptance of the Plaintiff's resignation. Counsel on behalf of the Plaintiff drew my attention to the order of the school tribunal to show that with regard to the acceptance of the

resignation of the Plaintiff by the School the tribunal itself accepted that it had no jurisdiction. The relevant part of the order of the tribunal which has now become final and which is accepted by both the parties runs thus:

I have, therefore, the least hesitation to come to the conclusion that the resignation letter dated 25th August, 1993 in the instant matter was voluntarily tendered by the appellant in his own handwriting and signature and he has failed to show that it was obtained by force or under duress as alleged by him. In that view of the matter it is needless to state that Sec. 9 of the Act, 1977 in as much as the resignation in question was voluntarily the rendered this tribunal will have no jurisdiction.

12. The tribunal has referred to nothing other than the resignation letter of the Plaintiff and concluded that it was voluntarily tendered while stating that it had no jurisdiction. It cannot be seen from this extract of the order, relied upon by the Plaintiff that the school tribunal accepted that the acceptance of the Plaintiff's resignation was not a part of its jurisdiction. This portion of the order does not relate to the acceptance letter at all.

13. In fact in the very next sentence after this portion the tribunal deals with the acceptance of the Plaintiff's resignation and the admission of the Plaintiff about the fact that he had accepted his acceptance of his resignation. That part of the order runs thus:

There is another aspect viz. The appellant admits that immediately on 26th August, 1983 he had received acceptance letter accepting his resignation dated 25th August, 1993. It is, therefore, quite clear that the resignation letter dated 25th August, 1993 by which the appellant had tendered his resignation with immediate effect was accepted immediately on the next day by the President of the Trust and, therefore, the acceptance of the resignation letter having been completed on the very next day i.e. On 26th August, 1993 I am of the opinion that the appellant is not entitled to reopen it by sending a letter dated 3 rd September, 1993 by saying that it was not voluntary.

14. The tribunal further considered the case of Banda Navbharat Shikshan Prasarak Mandal & Ors. Vs. Raghunath Ganesh Manorikar & Ors. in Writ Petition No. 4438 of 1984 when the submission with regard to the procedure for resignation and its acceptance were considered upon the case of the Plaintiff U/s. 7 of MEPS and Rule 40 of the MEPS rules. The tribunal further observed about the entitlement to accept a letter or resignation by the management thus:

It was further held that the submissions that the management was not entitled to accept before expiry of three months has no meaning. The period of 3 months was provided for the benefit of the Management so that a substitute can be appointed and it was open for the management to give as the advantage and accept the resignation forthwith by payment of salary for three months. In view of the observations as made in the above mentioned Writ Petition which was decided on 29th August, 1992. This is also published and it is reported in 1992 2

CLR, 956. I find no merits in the contentions as raised by the appellant in this respect.

15. Hence the tribunal also considered the contention of the Plaintiff relating to the acceptance of his resignation within the statutory period of three months. The tribunal accordingly found no merits in the contention of the Plaintiff in that regard also as is specifically expressed in the last sentence quoted above.

16. Consequently, the tribunal dismissed the appeal on merits.

17. A reading of the order of the school tribunal dated 19th April, 1994 in the appeal filed by the Plaintiff shows that the tribunal has considered not only the Plaintiff's resignation but also the acceptance of the resignation. The tribunal has concluded finally that the Plaintiff's resignation was voluntarily tendered. The tribunal has also concluded that the acceptance of the Plaintiff's resignation by the school was valid and proper. The contentions of the Plaintiff that it was not have been rubbished.

18. It is this entire order which came to be challenged in the Writ Petition and the Writ Petition has come to be dismissed on merits. It may be mentioned that a contract for termination of services of an employee initiated by the employee by tendering his resignation can be completed only by the acceptance of his resignation. It is like any other contract in law. It constitutes an offer by the person offering to resign. It must necessarily be accepted for a contract to take place. Upon acceptance the resignation itself becomes valid and the service gets terminated as mentioned in the letter of acceptance and as per any statutory requirements by which the parties are governed. Only the offer, if accepted, would constitute a contract which could be legally enforceable. Challenge to a resignation alone, therefore, cannot be made ground for challenging the termination of the services. It is, therefore, in the jurisdiction of the school tribunal to see and adjudicate upon the resignation as well as its acceptance. Hence an adjudication upon the offer implies an adjudication upon his acceptance thereof also.

19. The Plaintiff himself had mentioned not only about his resignation but made out a case of how the acceptance of the resignation was made with immediate effect from 25th August, 1993 "on the very next day i.e 26th August, 1993" in paragraph 4 of his appeal itself. Consequently, the Plaintiff had also set out in his appeal under Sec. 7 of MEPS Act and Rule 40 of MEPS rules relating resignation of employees by private schools. The Plaintiff had also specifically contended about the requirement of the acceptance of his resignation by the managing committee of the school and has contended that the immediate acceptance on the very next day shows that it was not the decision of the managing committee and imputed malafides upon the school in view of its acting "with great hurry".

20. In fact, the Plaintiff has sought to withdraw his resignation .He contended that it was withdrawn before its acceptance by the management. Consequently, the prayer that the resignation letter is null and void does not exclude the

Plaintiff's case relating to the acceptance of the same resignation letter under the same transaction between him and the school.

21. The contention of the Plaintiff that whereas the School Tribunal can adjudicate upon his resignation letter, only the Civil Court he can adjudicate upon his acceptance letter, which is comprised in the same contract, requires this courts to go into the same facts already adjudicated upon.

22. The principle of Res Judicata, enunciated u/s 11 of the Civil Procedure Code, would apply with full force in such cases. It is the substantive law of evidence which requires Courts not to duplicate its adjudication upon facts already adjudicated and hence the entire dispute between the parties must be brought before Court which tries the dispute. Having seen that the tribunal has actually gone into the question of resignation as well as his acceptance, it cannot be argued that it would have no jurisdiction for one of these facts, if it had jurisdiction for the other. Hence all the submissions which require to be made in respect of the acceptance must be deemed to have been made and considered by the tribunal as that would constitute the entire contract upon the offer and acceptance which was required to be adjudicated. The relevant parts of Sec. 11 would, therefore, have to be seen alongside the judgments to that end. The relevant parts of Section 11 run thus :

11. Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I...

Explanation II...

Explanation III...

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

23. This principle has been illustrated since the case of Rao Sobhagsingh vs. Rao Ranjitsingh, AIR (32) 1945 Privy Council 132. In that case the Court had to again adjudicate upon the defence of whether the Plaintiff was entitled to half the shares in certain portions of the offerings which could have been considered in an earlier defence in the previous suit between the parties. The Plaintiff was deemed to have taken up such defence, as he ought to have, in the previous suit. It was, therefore, held that it must be deemed to be a matter directing and substantially in the previous suit within the meaning of explanation IV to Section 11. The defence in the subsequent suit was, therefore, barred.

24. In the case of *Greenhalgh v. Mallard*, (Court of Appeal (Somervell and Evershed, LJJ, 255 HL), it was held that when in a previous suit the purpose of contract was shown to be unlawful and in a subsequent action the means by which contract was stated to unlawful, the second action would be barred by principles of *Res Judicata*. In the judgment of Lord Justice Somervell, a collateral agreement came to be considered. The Plaintiff alleged fraud by a meeting of Board of Directors called in the absence of the Plaintiff to enter into the business transaction. The earlier action declaring the purpose of such meeting unlawful was held to have barred the later action. It is observed that the principles of *Res Judicata* "were not confined to the issues which the Court is actually asked to decide, but that covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of Court to allow a new proceeding to be started in respect of them". Quoting from the case *Handerson Vs. Handerson*, (1) (3) 1947, All England Law Reports, the Court accepted that the parties to the litigation must bring forward the whole case before the Court and the Court will not permit the parties to open the same subject of litigation in respect of the matter which might have been brought forward in a earlier litigation but which was not brought forward either due to negligence, inadvertence, accident or omission. The plea of *Res Judicata*, therefore, applies to "every point which properly belonged to the subject of the litigation and which parties, exercising reasonable diligence, might have brought forward at the time". The Court considered the earlier case of *Brunsdan v. Humphrey* where damage to goods and injury and damage for personal injury were held could not be brought separately. The court also considered the abuse of the process of Court that such litigation was contrary to the principle of public interest that there should be an end to the litigation which was the extension of the strict rule of the *Res Judicata*.

25. In the case of *State of Uttar Pradesh V/s. Nawab Hussain*, AIR 1977 Supreme Court 1680, a plea that IGP was the appointing authority and hence the Dy. I.G.P. was not competent to dismiss the Petitioner was held to be barred by *Res Judicata* upon the earlier petition of the Petitioner having been filed challenging disciplinary proceedings on the ground that he was not afforded a reasonable opportunity to meet the allegations against him. The Supreme Court laid down that *Res Judicata* was analogous to the principle of estoppel as rule of evidence. The Supreme Court held that the broader rule of the evidence prohibited re-assertion of the cause of action. The Supreme Court laid down two theories upon which the doctrine of *Res Judicata* runs thus :

1. the finality and conclusiveness of judicial decisions for the termination of disputes in the public policies; and
2. Protection of initial interest from multiplication of litigation.

The Supreme Court held that it, therefore, served public as well as private purpose by not allowing reopening of matters which were once adjudicated upon and to obtain the second judgment which might give rise to conflicting

judgments.

26. A party, therefore, cannot sue upon one cause of action and reserve for subsequent litigation another cause of action as that would tantamount to abuse of process as held by Lord Justice Summervell in the case of *Greenhalgh v. Mallard* (Supra). The Supreme Court quoting from the judgment in the case of *Greenhalgh v. Mallard* held that such actions come under the parameters of constructive Res Judicata which is an amplification of the general principle.

27. In the case of *Nawab Hussain* (Supra) quoting from earlier cases the Supreme Court held that a previous decision of a matter of controversy presided after full contest or after providing fair opportunity to the parties to prove their case would operate as Res Judicata in subsequent regular suit. It further held that "it is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter".

28. Hence the competence of tribunal in deciding upon the acceptance of the resignation of the Plaintiff which is the part of the contract itself, becomes immaterial.

29. This Court in the case of *Indu D/o. Vishnu Mahajan Vs. National Safety Council and Ors.*, on 5th August, 1987, held that once a previous Writ Petition of the workers was dismissed challenging the order of termination because it was found that Respondent was not "State" within article 12 of the Constitution, the subsequent application for payment of wages U/s. 33C(2) of the Industrial Disputes Act became barred by Res Judicata.

30. In the case *Kamlabai And Ors. vs. Mangilal Dulichand Mantri*, (1987) 4 Supreme Court Cases 585, the Supreme Court held that the eviction decree based upon the surrender of lease of tenant, which was not challenged, has been contrary to the statutory provisions could not be challenged subsequently in execution proceedings. In that case the tenant was stated to have expressed the desire to terminate the lease. He surrendered the tenancy. He did not handover the possession. Hence execution was applied for. No permission was required to terminate the lease U/s. 106 of the Transfer of Property Act because of the tenant's act of surrender to terminate the lease. That having been seen it was held that the old tenancy neither continued nor a new tenancy had started. It was held that the objection to the jurisdiction of the rent Court could have been raised in the initial proceeding itself and could not be taken up in execution. The Court observed that the tenant admittedly did not raise that objection which was for him to raise and hence the principle of constructive Res Judicata applied in execution proceedings. Thus seen, the further contentions the Plaintiff had with regard the acceptance of the resignation were to be taken by the Plaintiff before the tribunal. The Plaintiff did not take up those contentions. The defendant herein contended that the Plaintiff had attended the school and accepted the acceptance of his resignation on the next day, a fact which could have been

refuted but was not. The decision of the tribunal considering the facts with regard to the tender of the resignation as also, its acceptance came to be final. A further suit in the Civil Court upon the acceptance of the resignation, aside from being barred U/s. 9 of the MEPS Act, is barred by principle of Res Judicata. Consequently, the preliminary issue is answered in the affirmative holding that the suit is barred by Res Judicata. Hence the order.

The suit is dismissed.