

(2004) 02 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 3024 of 2003

Shri Neminath Jain Bhramhacharya Ashram (Jain Gurukul)
and Others

APPELLANT

Vs

Shri Rajendra Sitaram Nikam and Others

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

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

Citation : (2004) 2 ALLMR 287 : (2004) 6 BomCR 472 : (2004) 102 FLR 306 :
(2004) 2 MhLj 909

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : M.S. Karnik, for the Appellant; K.Y. Mandlik, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—By an order dated 11th September, 2002 which is impugned in these proceedings, the School Tribunal has come to the conclusion that the resignation which was tendered by the First Respondent was not voluntary. There is consequently an order of reinstatement though without back wages.

2. The First Respondent was in the service of the Petitioner since September, 1993. He was confirmed in service as a lecturer in Industrial Electronics on 16th December, 1995. The First Respondent had been deputed to pursue a vocational course which he was pursuing at Walchand College of Engineering at Sangli. From the evidence which was recorded before the Tribunal it emerges that on 19th June, 2001 during the term of the vocational course, the First Respondent was directed to attend the college. No reason was assigned as to why he was asked to visit the college. The First Respondent was then asked to leave. Again on 26th June, 2001 the First Respondent was directed to report to the college where he was compelled to sit in the office of the Principal till 5.00 p.m.

Thereafter he was taken to the office of the Chairman, where the Vice-Chairman and the Principal were also present. It is in the course of this meeting that, according to the Respondent, he was threatened and compelled to resign. The Chairman accepted the resignation on the very same day allegedly without a resolution of the Managing Committee and the dues of the First Respondent were paid over immediately. For the first time in the course of the deposition of the Principal what was sought to be stated was that the First Respondent had been called to the College because though he had been permitted to attend the vocational course in a college at Kolhapur, he was doing so at Sangli. The School Tribunal has, in my view, correctly come to the conclusion that this defence was without any basis and that it was not even set up in the reply which was filed before the Tribunal. On 8th July, 2001 the First Respondent wrote a letter to the Management withdrawing his resignation.

3. Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 lays down the procedure for the submission of a resignation by an employee. Under that Section, if any employee intends to resign his post in a private school, he has to draw up a letter of resignation in duplicate, sign both the copies and put the date thereon. The statute provides that he may then forward a copy to the Management by registered post and keep the other copy with him. The legislature has provided the safeguard that the resignation by an employee must be in the form of a written communication and that it must be remitted by a specified mode viz. by registered post. These safeguards have been provided specifically to obviate situations such as the present where the allegation, (found true upon inquiry by the Tribunal) is that the employee was called by the Management and threatened that he would be terminated unless he resigned.

4. My attention has been drawn to a judgment of my Learned Brother Mr. Justice A.M. Khanwilkar in *Balaleshwar Shikshan Mandal v. Jaywant Bhaguji Gadekar* (Writ Petition 6046 of 2002 decided on 10th June, 2003). That was a case where an Assistant Teacher who had been appointed in a private school resigned voluntarily on 16th August, 1998 and which resignation was placed before the Managing Committee in a meeting held on 29th November, 1998 when it was accepted. A communication in that regard was sent to the Petitioner on 9th December, 1998. The fact that the Petitioner had submitted a resignation on 16th August, 1998 was not disputed, nor was the fact that the resignation was handed over to the Chairman and that it had been accepted. In these circumstances, Khanwilkar, J. held that once the resignation was accepted, the matter stood finally concluded. The Tribunal had proceeded on the basis that the resignation had not been accepted by the Management and had been ignored which was contrary to the record. On these facts, the learned Judge held that merely because a copy of the letter had not been forwarded by registered post would not render the resignation void. The learned Court held that on a plain reading of Section 7 it would appear that once an employee signs a letter expressing his intention to resign and voluntarily submits a copy thereof to the Management

this would constitute substantial compliance with Section 7. Therefore, that was a case where on all accounts there was no dispute about the fact that the resignation had been voluntarily submitted by the teacher and the only grievance of the teacher was that the Management had in fact not accepted the resignation and had ignored it. On the contrary, the judgment of the learned Single Judge would seem to indicate that where as in the present case, there is a serious dispute about the voluntary nature of the resignation, the surrounding circumstances would assume significance and the fact that the resignation was not submitted in the mode which has been statutorily prescribed would be a material consideration. One need not go as far as to hold that a resignation which is not forwarded by registered post must on that ground be regarded as invalid in every case irrespective of the surrounding circumstances. An extreme position is not warranted on the language of Section 7. What must be emphasized is that where an employee seeks to contend that his resignation was not voluntary, the Tribunal must decide that question on the basis of the evidence before it. The fact that the resignation has not been submitted by the mode of registered post is one factor to be considered though that in itself is not conclusive. In the present case the Tribunal has held on the basis of the evidence before it that the resignation was not voluntarily submitted. That finding is not shown to be perverse.

5. The Tribunal has also held that under Rule 40 of the Rules framed under the Act, three months notice has to be furnished. I am however not inclined to accept the view of the Tribunal that the failure to furnish three months' notice would invalidate the resignation for the simple reason that this rule has been inserted for the benefit of the Management and not the employee. Rule 40 itself provides that if the notice of three months is not furnished the Management would be entitled to deduct a proportionate part of the wages payable for the period which falls short of the notice prescribed. Hence, on this aspect of the matter, I am not in agreement with the view expressed by the Tribunal.

6. Be that as it may, I am of the view that the finding of fact which has been recorded by the Tribunal that the resignation in the present case was not a voluntary act is based on material which came on the record of the Tribunal during the course of the proceedings before it. The Management had given no cogent reason to explain as to why employee was summoned on two occasions while he was pursuing a vocational course at Sangli and in fact, the explanation which was furnished has been found to be untrue. In the reply before the Tribunal no reason was stated as to why the employee had been summoned in the first place. In fact, during the course of the hearing of this Petition, learned counsel appearing on behalf of the Management has relied upon a compilation of documents including a letter making certain allegations against the teacher. If the Management really was acting on the basis of this letter as it appears to be now the case, this is one more reason for the Court to hold that the employee was in fact pressurised and that the resignation was not voluntary. The order which has been passed by the School Tribunal is for reinstatement though

without any back wages. That order is, in my view, proper having regard to all the facts and circumstances of the case. The Petition shall, in the circumstances, stand rejected. No costs.

Parties be given a copy of this order duly authenticated by the Sheristedar/ Personal Assistant.