

(1987) 06 MAD CK 0008
In the Madras High Court

Stella Jayaraj

APPELLANT

Vs

The Private Collage, Appellate Tribunal and Others

RESPONDENT

Date of Decision : 15-06-1987

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 14, 20, 21, 38(4)

Citation : (1987) 2 MLJ 194

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—The petitioner was in the employ as a Professor of Education of Annammal Training College for Women,

Tuticorin, hereinafter referred to as "the College" of which the third respondent was the Secretary and Correspondent. The allegation put against

the petitioner was that at the staff meeting held on 5.2.1977, she orally resigned her job making it effective from 31.3.1977. On 5.3.1977, the third

respondent wrote to the petitioner as follows:

In the staff meeting held on 5.2.1977 Saturday, at 12.30 P.M. you resigned your job and went out and once again came in and qualified it that the

resignation will be effective from 31.3.1977. After due consideration, I have decided to accept your resignation. I waited all these days for your

written resignation but I did not receive it. So please send your resignation in writing forthwith.

On 7.3.1977, the petitioner wrote back to the third respondent in the following terms:

I am in receipt of your letter dated 5.3.1977. Kindly excuse me for the statement I had made during the Staff meeting on 5.2.1977. After the

meeting till now I was feeling apologetic for the statements I had made during the staff meeting. Please pardon me and keep me as one of your

staff. If you wish I am ready to ask pardon in front of all the staff who had wounded you by her thoughtless wordings. I consider you as my father

and I once again beg pardon and ask you to retain me as your staff.

On 18.3.1977, the third respondent addressed a communication to the petitioner as follows:

Further, to the two letters referred to above I have to inform you that you will be relieved from your services, as from the afternoon of 31st March,

1977 as your resignation has already been accepted.

You will be entitled for the vacation salary, subject to recovery if any as per the three memos issued to you by the Principal.

On 28.3.1977, the petitioner wrote a communication to the President, Managing Committee of the College, the contents of which run as follows:

With reference to your letter dated 18th March relieving me from my service from the afternoon of 31st March, I wish to state the following facts

and request you to reconsider the same. At the staff meeting held on 5th Feby., in the presence of the Correspondent, I was mentally excited in the

course of a discussion on academic issues and might have made some remarks without being fully conscious of their significance or implications. I

recovered from the mental upset within a week and resumed my duties in the college with the usual vigor and zeal.

Only after receiving correspondent's letter on the 5th March directing me to submit in writing my resignation, I had orally made at the staff meeting,

I understood the seriousness of the situation and I immediately tendered an apology to the respondent for the remarks I made at the staff meeting

and even added that I was prepared to offer the apology in front of the staff. I never really intended to resign my job.

Having stated these facts, kindly permit me to bring to your kind notice, that I have worked in our college for 14 years. 10 years as lecturer in

physical science and 4 years as professor of education. All the 14 years I was taking Educational Psychology. This year I took Educational

Philosophy also. I am married and I have four children who are being educated in the local English Medium Schools. My husband who is not a

Ceylon citizen is obliged to return to India and he is expected to arrive here

shortly. He will naturally be unemployed and I have to look after him

also. How far I have efficiently served our institution all these years, may be gauged from the results.

I wish to state further that by God's race I am at present enjoying normal health of body and mind and I can very well continue to perform my

duties in the college with all zeal with which I have been doing all these years. My husband will soon be at my side and take over the responsibility

of running my house.

In view of these facts and circumstances, I most humbly request you to reconsider your relieving order, revoke it and allow me to continue in your service after 31st March.

On 31.3.1977, this is what the third respondent wrote to the petitioner:

Your letter was considered in the meeting of the Managing Committee held today. Since you have misbehaved in the presence of the

correspondent, the Principal and other members of the staff, in the staff meeting convened on 5.2.1977 to discuss the welfare of the students and

since you have made unholy charges against the management and threatened to write to the Newspapers about the college and finally resigned

your job quite voluntarily in the presence of all, the Committee feels that the question of reconsidering does not arise.

The petitioner preferred an appeal on 10.4.1977 to the second respondent u/s 20 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, Act

No. 19 of 1976, hereinafter referred to as "the Act". The second respondent disposed of this appeal on 29.2.1980 in the following terms:

I am directed to inform you that your request for reinstatement is not feasible of compliance.

2. The petitioner preferred a further appeal to the first respondent u/s 21 of the Act and that appeal was disposed of by the first respondent on

3.10.1980. The first respondent dismissed the appeal of the petitioner. The order of the second respondent dated 29.2.1980 and the judgment of

the first respondent dated 3.10.1980 are being put in issue in this writ petition.

3. The following are the points which Mr. Vijay Narayan, learned Counsel for the petitioner urged before this Court:

(1) The petitioner could not be stated to have tendered a resignation in the eye of law since the rules framed under the Act and the requisite Form

7-A and in particular Condition 9 thereof contemplate a specified mode of a staff of the College going out of the service and in the present case,

the statutory formalities have not been adhered to.

(2) In any event, even the alleged oral resignation was not to the proper authority, namely, the College Committee which alone is in in charge of

general administration of the College as well as appointments which would also include terminations as per Section 14 of the Act.

(3) There had been no formal acceptance of even the alleged oral resignation by the College Committee.

(4) Before the resignation became effective on 31.3.1977, the petitioner had withdrawn the same on 28.3.1977.

(5) The order passed by the first appellate authority, namely the second respondent is a non-speaking order and has not assigned any reason for

discountenancing the claim of the petitioner and this has violated the principle audi alteram partem and the second appellate authority, namely, the

first respondent giving reasons will not bring any amelioration to this glaring legal lacuna.

(6) The first respondent while disposing of the second appeal is vested with the same powers as a Civil Court as laid down in Section 38(4) of the

Act and in the instant case, the first respondent has permitted the college to place documentary evidence without adhering to the procedure thereof

and without affording an opportunity to the petitioner to counter-act the same.

4. Since I am obliged to accept the first point taken by the learned Counsel for the petitioner which point has got a sound basis on the well

accepted principles of courts including the highest in the land, I find no need to go into the other points raised by the learned Counsel for the

petitioner. If there is any law or statutory rule or agreement governing the conditions of the service which lay down the modality or method,

adopting which an employee has to go out of service voluntarily, that alone has to be adhered to and in such a case, the general law governing the

resignation cannot be invoked. The law or the statutory rule or the agreement alone must hold the field and must be strictly complied with. In the

absence of such a law or statutory rule or agreement, the services of an employee will stand terminated from the date on which his request for

resignation is accepted by the employer. But whenever there is a law or statutory

rule or agreement which governs the situation, there should be compliance with the same. This point was taken before the first respondent and there had been advertence to Condition No. 9 of Form 7-A prescribed under the rules and yet the legal consequences and implications thereof have not been appreciated by the first respondent and he has opined that inspite of the rule, there can be a resignation orally. Condition No. 9 of Form 7-A prescribed by the rules, reads as follows:

That the said teacher shall be entitled to have his/her services terminated either by giving to the college committee three months" notice thereof in writing or by paying the college committee three months" pay and allowances in lieu of such notice if he/she is a permanent teacher. In the case of a teacher who is not permanent, the period of notice shall be two months and the amount payable in lieu thereof shall be two months" pay and allowances.

Admittedly in the instant case, the resignation put against the petitioner was not at all in conformity with the above condition. Hence, it is not possible to count and act upon the alleged oral resignation. This aspect is sufficient for the petitioner to succeed. As stated above, in this view, I have not gone into the other points raised by the learned Counsel for the petitioner. Accordingly, the writ petition is allowed and as a result, the order passed by the third respondent on 18.3.1977 which was the subject-matter of appeal and further appeal before the second respondent and first respondent respectively will stand deleted and the petitioner will be deemed to be in service under the third respondent from 1.4.1977 with all the attendant service benefits. No costs.