

(2017) 07 BOM CK 0036
In the Bombay High Court
Case No : 5687 of 2000

The Progressive Education Society & Anr.	APPELLANT
Vs	
Mr. Mohammad Ali Gulam Dastagir Dafedar and others	RESPONDENT

Date of Decision : 01-07-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Maharashtra Emplo

Citation : (2017) 07 BOM CK 0036

Hon'ble Judges : R.G. Ketkar

Bench : SINGLE BENCH

Advocate : Vineet Naik, I.M. Khairdi, Akshay P. Shinde, Ramkrushana Yedave, Vijay Killedar, A.B. Tajane

Judgement

1. Heard Mr. Naik, learned Senior Counsel for the petitioner, Mr. Shinde, learned Counsel for respondent No.1, Mr. Yedave, learned Counsel for respondent No.2 and Mr. Tajane, learned Counsel for respondent No.3 at length. Office remark shows that respondent No.4 is served by R.P.A.D. None appears on behalf of respondent No.4.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioners have challenged the judgment and order dated 11th August, 2000 passed by the learned Presiding Officer, School Tribunal Solapur [for short "Tribunal"] in Appeal No. 125 of 1996. By that order, Tribunal allowed the appeal preferred by the first respondent, hereinafter referred to as "respondent" and set aside otherwise termination order dated 25th March, 1996 terminating his service. The Tribunal directed the petitioners herein to reinstate the respondent in service as a "Junior Clerk" since the date of termination i.e since 25th March, 1996 till he is actually reinstated in the service with back wages.

3. By order dated 22nd November, 2000, after hearing both the sides, this Court

granted interim stay only of reinstatement and clarified that there is no stay to the order of the Tribunal for payment of back wages. By order dated 10th January, 2001, this Court admitted Petition by issuing Rule and continued interim order granted on 22nd November, 2000.

4. Aggrieved by the order dated 22nd November, 2000 passed by the learned Single Judge of this Court, petitioners preferred Letters Patent Appeal No. 134 of 2001. By order dated 4th February, 2002, Division Bench of this Court disposed of Letters Patent Appeal. This Court did not interfere with the stay granted to the order of reinstatement. In so far as back wages are concerned, this Court permitted the respondent to withdraw amount of Rs. 2,12,394/subject to furnishing security to the satisfaction of Registrar of this Court. Withdrawal of the amount by the respondent was without prejudice to the rights and contentions of the parties. The relevant and material facts, giving rise to filing of the present Petition, briefly stated, are as under.

5. Respondent was working as a Junior Clerk in the Progressive Education Society's Urdu Primary SchoolPetitioner No.1 since 1988. It is the case of the petitioners that on 28th October, 1994, respondent on his own volition tendered resignation. On 30th October, 1994, School Committee unanimously accepted the resignation and instructed Head Mistress to ensure that charge of the post is taken over by her and it shall be the responsibility of the Head Mistress to collect documents from the respondent. On 8th November , 1994, Secretary of the first petitioner informed respondent that he is relieved after office hours on 31st October, 1994 and called upon him to hand over charge to the Head Mistress at the earliest. This was received by the respondent on 9th November, 1994. It is the case of the petitioners that at the time of handing over charge, respondent also handed over documents, list is at Exhibit I, Page Nos. 146 to 148.

6. Respondent preferred Appeal No. 125 of 1996 before the Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [for short "Act"] on 6th November, 1996. Respondent contended that in the year 1993, firstly he was called upon by the Institution to tender his resignation under duress. Respondent was threatened that in case he does not tender resignation, he would be terminated. He was also threatened about his likelihood of losing future prospects of the Society. By letter dated 10th July, 1993, he gave resignation. Respondent requested management/petitioners not to act upon the resignation which was illegally obtained from him. Petitioners refrained from acting on it and allowed the respondent to continue in service. Once again, in the year 1994, petitioners procured resignation from the respondent. In the said resignation, no date was inscribed. Resignation was obtained stating that his services are likely to be terminated. Impression was created by the petitioners that since there is a ban on recruitment, he is not likely to get consideration and his services are likely to be terminated. Respondent once again tendered resignation. To his utter shock and surprise, on 8th November, 1994, respondent received letter informing him that his

resignation was accepted. Respondent, therefore, approached management and upon his representations, majority trustees of the petitioners by letter addressed to the Chairman stated that they have no objection to the respondent continuing in the service. On 17th November, 1994, Head Mistress informed the respondent that his resignation is not accepted and letter dated 8th November, 1994 has been cancelled. It is the case of the respondent that he continued to serve from 1994 till 24th March, 1996 as a clerk on the basis of the letter dated 17th November, 1994 addressed by the Head Mistress. Respondent further contended that there were two contradictory opinions in the management. Majority was on the side of the respondent. Minority including the Chairman was against the respondent. Respondent was assured on number of occasions that his pay bills and proposal for approval would be sent to the Education Department.

7. On 25th March, 1996, respondent was not allowed to serve in the School. Respondent also referred to Writ Petition No. 3281 of 1996 filed in this Court on 20th June, 1996 and its summary dismissal by the Division Bench of this Court on 24th September, 1996. Respondent prayed for setting aside termination with effect from 25th March, 1996 by the petitioners and directing the petitioners to reinstate him from 25th March, 1996 together with back wages and continuity in service. Respondent also impleaded Mohammad Ismail Mashalkar as respondent No.4 [third respondent herein] on the ground that he was allegedly appointed in his place. Respondent clarified that he was not claiming any relief against respondent No.4, but if respondent [appellant] is continued in the service, respondent No.4 was likely to be affected and hence, he is joined as party to the appeal.

8. Petitioners filed written stated dated 9th September, 1997 resisting the appeal. Mrs. Nasimbanu Shaikh, at the relevant time working as Head Mistress, has filed Affidavit dated 16th March, 1998. After considering the material on record, Tribunal allowed the appeal as indicated above. It is against this order, petitioners have instituted the present Petition under Articles 226 and 227 of the Constitution of India.

9. In support of this Petition, Mr. Naik submitted that Tribunal committed serious error in allowing the appeal. He submitted that Tribunal observed in para No. 21 that Head Master of the School and ViceChairman of petitioner No.1 have supported the contention of the respondent that he was in service after alleged resignation till the year 1996 and that the petitioners have otherwise terminated service of the respondent on 25th March, 1996 by preventing him from signing the muster and his joining the duties as a Junior Clerk. He submitted that the said finding is not borne out from the material on record.

10. Mr. Naik further submitted that Tribunal also committed serious error while construing Section 7 of the Act and Rule 14 of the Maharashtra Employees of Private Schools [Conditions and Service] Rules, 1981 [for short "Rules"]. The Tribunal came to the conclusion that in the present case, resignation is without any date and copy of the resignation was not forwarded to the management by

R.P.A.D. Resignation is, therefore, contrary to Section 7 of the Act. The Tribunal also held that Rule 40 lays down that permanent employee may leave service after giving three calendar months notice and a nonpermanent 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 [exclusive of allowances] for three months in case of permanent employee and one month in case of nonpermanent employee. In the present case, respondent is a permanent employee. He has neither given three months notice nor paid three months pay to the management. Resignation is, therefore, not as per Rule 40 of Rules.

11. Mr. Naik relied upon following decisions of this Court: [1] Neminath Bhramhacharya Ashram (Jain Gurukul) and others Vs. Rajendra Sitaram Nikam and others, 2004 (2) Mh. L. J, 909 and in particular paragraphs 4 and 5 thereof to contend that resignation not forwarded by registered post need not be treated as invalid in every case irrespective of surrounding circumstances. An extreme position is not warranted on the language of section 7 of the Act. What must be emphasized is that where an employee seeks to contend that 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 paragraph 5, this Court considered Rule 40 and observed that:

"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".

[2] Anandlal Ganesh Podar Society and another Vs. Mrs. V. Chakravarti and another, 2005 (1) Mh. L. J. 772 and in particular, paragraph 10 thereof once again holding that: "requirement of a notice under Rule 40 is for the benefit of the management".

[3] Awadbin Ahamad Vs. Presiding Officer, School Tribunal and others, 2006 (2) Mh. L. J., 215 and in particular, paragraph 9 to contend that mere fact that the resignation was undated will not make any material difference and will not affect the validity of resignation. Absence of the date is not a factor which will show that resignation was involuntary. Mr. Naik submitted that resignation letter shows that respondent voluntarily tendered resignation on 28th October, 1994.

12. Mr. Naik has taken me through the case made out in the appeal, reply filed by the petitioners and affidavit filed by the Head Mistress Mrs. Naseem Banu Shaikh. In the affidavit Mrs. Shaikh stated that respondent had handed over charge to her on 9th November, 1994 acknowledging the letter given by her in respect of acceptance of his resignation. She stated that letter dated 17th

November, 1994 is false and fabricated document. It was stated that she had taken over as a head of the Primary School with effect from 1st June, 1992. Prior to her, one Mr. Iqbal Siddiki was working as head of the School. He used English rubber stamp which is to the following effect.

"Head Master,

The Progressive Education Societies,

Urdu Primary School, Solapur."

Such impression is found from the letter dated 17th November, 1994 filed by the respondent in Writ Petition on 16th September, 1992. New rubber stamp was made in Marathi. On 10th July, 1996, Head Mistress also gave letter to the Chairman of petitioner No.1 to the effect that letter dated 17th November, 1994 was never issued by her. The said letter bears signature which is forged and fabricated. Letter dated 17th November, 1994 produced by the respondent is fabricated document. Mr. Naik, therefore, submitted that impugned order deserves to be set aside.

13. On the other hand, Mr. Shinde supported the impugned order. Mr. Shinde submitted that respondent had not tendered resignation on his own volition and the resignation was procured from him. He invited my attention to paragraph 4 of the appeal memo where respondent asserted that in the year 1994, resignation was procured from him. He submitted that no date was inscribed by the appellant on the letter as also it was not sent by registered post acknowledgment due. He submitted that resignation was accepted by the School Committee who had no authority to accept resignation. In support of this submission, he relied upon the decision of this Court in the case of Borivali Education Society & another v/s Gira T. Desai & Others in Writ Petition No. 1569 of 1997 decided on 6th October, 1997. He also relied on a decision of this Court in the case of Bahujan Vikas Mandal, Akola and another Vs. Manda Vithalrao Parsutkar and another, 2011 (2) Mh. L. J, 203 which lays down that as per Section 7 of the Act, it is mandatory that the resignation letter must bear date and has to be delivered by registered post. As in the present case, resignation letter does not bear the date and also is not sent by registered post, there is breach of mandatory provision of Section 7 of the Act. The Tribunal was justified in allowing the appeal.

14. Mr. Shinde also has tendered documents which were obtained by the respondent under Right to Information Act, 2005 to substantiate his contention that respondent was working till 24th March, 1996. He, therefore, submitted that no case is made out for interfering with the impugned order.

15. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused material on record. As noted earlier, a perusal of the appeal filed by the respondent shows that on 10th July, 1993, respondent tendered resignation. Upon his request, petitioners did not act upon that

resignation letter. It is the case of the respondent that in the year 1994, once against resignation was procured from him and it does not bear date and the resignation was obtained by creating impression on him that there is ban on recruitment. Respondent is likely to be terminated. A perusal of the resignation letter undoubtedly shows that it does not bear date. English translation of the letter in Marathi is as under:

"I, Shri Mr. Mohammad Ali Gulam Dastagir Dafedar working with Progressive Education Society Primary School as a Clerk since three years. Hereinafter, it will not be possible for me to work as a Clerk and I, therefore, voluntarily tender my resignation today i.e on 28th October, 1994 of the post of Clerk. My application may be sanctioned.

Thus, it cannot be said that the resignation letter does not bear the date. Resignation letter was received on 28th October, 1994 and the School Committee in its meeting unanimously accepted the resignation on 30th October, 1994.

16. Mr. Shinde submitted that School Committee was not having any authority to accept the resignation. He relied upon decision of this Court in the case of Borivali Education Society & another [supra]. I do not find any merit in this submission. Rule(9) (2) of the Rules lays down that appointments of teaching staff [other than Head and Assistant Head] and those of nonteaching staff in a school shall be made by the School Committee. Expression "School Committee" is defined in Rule2 (1) (i) to mean Committee constituted in accordance with the provisions of Schedule "A". Clause 3 of ScheduleA deals with functions of the School Committee which, inter alia, includes appointment of employees [other than Head of the School]. In other words, School Committee is the appointing authority. Mr. Shinde was not in a position to point out any provisions of the Act or Rules which lay down that the School Committee has no power to accept resignation letter. In the absence of any such provision and in view of Rule(2) of the Rules, School Committee being appointing authority will impliedly have power to accept resignation. A perusal of decision of this Court in Borivali Education Society & another [supra] shows that said decision is based upon the concession made by the petitioner's Advocate. In view thereof, said decision does not advance respondent's case that the School Committee was not authorized to accept resignation.

17. Mr. Shinde also relied upon a decision of this Court in the case of Bahujaan Vikas Mandal, Akola and another [supra] and in particular paragraph 11 to contend that Section 7 mandatarily requires sending of resignation by registered post acknowledgment as also must bear the date.

18. As against this Mr. Naik relied upon a decision of this Court in Neminath Bhramhacharya Ashram (Jain Gurukul) and others [supra],. In paragraph 4, it was observed thus:

"My attention has been drawn to a judgment of my Learned Brother Mr. Justice A.M. Khanwilkar in Balaleshwar Shikshan Mandal vs. Jaywant Bhaguji Gadekar

[Writ Petition No. 6049 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".

19. In case of Kushappa Mahadeo Kamble Vs. State of Maharashtra and others, 2010 (4) Mh. L. J, 313, in paragraph 6, learned Single Judge observed that it is not mandatory to send resignation letter to the Management by registered post. He may send by registered post but that does not mean that he cannot tender the resignation personally.

20. Applying tests laid down by this Court in the case of Neminath Bhrabhacharya Ashram (Jain Gurukul) and others [supra], Court has to find out surrounding circumstances in the present case.

21. I do not find any circumstance in favour of the respondent to conclude that resignation tendered by him was not voluntary. As noted above, in the year 1993 also respondent had given resignation and on his request it was not accepted. If at all the petitioners were threatening the respondent to tender resignation, they would have accepted that resignation. The very fact that the petitioners acceded to the request of the respondent and did not act upon his resignation tendered on 10th July, 1993 militates against respondent's case that once again in 1994, petitioners procured resignation from him. The proximity between two resignations does not inspire confidence in the respondent's case. Apart from that, resignation was accepted by the School Committee on 30th October, 1994 and by communication dated 8th November, 1994, respondent was also informed about acceptance of his resignation letter. In such state of affairs, reliance placed by the respondent on letter dated 17th November, 1994 hardly advances his case. Once resignation was accepted, there was no question of Head Mistress addressing a letter on 17th November, 1994 informing the respondent that the letter dated 8th November, 1994 stands cancelled. Even otherwise, Head Mistress at the relevant time has filed affidavit to the effect that communication dated 17th November, 1994 was forged and fabricated document.

22. Mr. Shinde heavily relied upon decision of this Court in the case of Bahujaan Vikas Mandal, Akola and another [supra]. In that case, respondent No.1 filed Appeal bearing No. 63 of 2002 before School Tribunal, Amravati challenging the resolution dated 29th October, 2002 passed by the petitioner accepting resignation allegedly tendered by the first respondent on 30th July, 2002. In paragraphs 4 to 7, this Court referred various circumstances considered by the Tribunal while holding that the first respondent did not tender resignation dated 30th July, 2002. In paragraph 9, this Court referred to the decision in the case of Ballaleshwar Shikshan Mandal and another Vs. Jaywant Bhaguji Gadekar and others, 2004 (1) Bom. C.R. 421. In that case, Section 7 of the Act was considered and it was held that once an employee signs a letter expressing his intention to resign and voluntarily submits a copy thereof to the Management, such an act would be substantially in compliance of section 7. It was further held that merely because a copy of resignation was not forwarded by registered post, cannot make the resignation void. It was further held that mode of dispatch would be relevant in cases where the employee disputes the execution of documents.

23. In paragraph 10, this Court referred to the decision in case of Barshi Education Society Vs. Ashok Ganesh Kulkarni and others, 2004 (3) Mh. L. J. 587. In that case, after considering Section 7, it was held that the requirement of forwarding of resignation by registered post was not mandatory and that the said provision is intended to ensure that the employee is not subjected to the action 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 was also held that where an employee has submitted the resignation not by registered post but otherwise, a greater degree of circumspection is

required on the part of the Tribunal. When it is alleged that the resignation was not voluntary, all the relevant circumstances must be taken into consideration, to find out whether the resignation was voluntary.

24. In paragraph 11, this Court referred to the decision in the case of Sant Sawtamali Shikshan Prasarak Mandal, Tembhurni Vs. State of Maharashtra and others, 2008 (6) Mh. L. J, 529, where it was held that in a given case, Court on considering the evidence on record may come to the conclusion that if the resignation is not sent by registered post, that itself may not be treated as a conclusive proof, for coming to the conclusion that such resignation is not valid.

25. From paragraph 12 onwards, this Court considered whether resignation dated 30th July, 2002 is in handwriting of employee or not. In the present case, it is not disputed that resignation letter dated 28th October, 1994 is in the handwriting of the respondent.

26. Apart from that, respondent came with a case that such resignation letter was withdrawn on 17th November, 1994 and he continued the work till 24th March, 1996. Such case cannot be accepted as there is no concrete material to substantiate plea. A perusal of the appeal memo as also, Writ Petition instituted earlier by the respondent does not remotely indicate that respondent asserted that he was getting salary post 8th November, 1994. In fact, prayer made by the respondent in the Petition for direction to the management to send proposal for approval was also summarily dismissed. In short, respondent could not establish that he was working in this School till 24th March, 1996. In view thereof, impugned order cannot be sustained and as such is liable to be set aside and accordingly is set aside. Rule is made absolute in terms of prayer clause (i) and Appeal No. 125 of 1996 preferred by the respondent before the School Tribunal stands dismissed. Order accordingly.

27. At this stage, Mr. Shinde orally applies for stay of this order. He assures that he will not apply for further extension of interim order. In view thereof, this order shall remain stayed for a period of 8 weeks subject to express understanding that no application for extension to interim order shall be made and entertained by this Court.