



IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH: NAGPUR

WRIT PETITION NO .3887 OF 2001

PETITIONER:

Tukaram s/o Tulshiram Nakhate, aged about 32 years, occupation : clerk r/o
village Mokhara, tahsil Paoni, District:Bhandara.

VERSUS

RESPONDENTS:

- 1] Presiding Officer, School Tribunal, Nagpur (Chandrapur)
- 2] Pragatishil Shikshan Sanstha through its PreidentShri Vilas Deorao Raghute
r/o Kurza, tahsil Pauni, District : Bhandara.
- 3] The Headmistress, Raghute High School, Palora (Chouras), tahsil Paoni,
District Bhandara.
- 4] Education Officer (Secondary), Zilla Parishad, Bhandara, District Bhandara
- 5] ShriV..Gadwe, Clerk, Raghute High School, Palora, Tahsil Paoni,District :
Bhandara.

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Shri S.A.Bari, advocate for the petitioner

Shri M.V.Masodkar, advocate for respondent no.2.

Shri S.B.Ahirkar, AGP for respondent no..

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CORAM: SMT. VASANTI A. NAIK, J.

DATE: DECEMBER 07, 2009

ORAL JUDGMENT

By this petition, the petitioner impugns the judgment passed by the Presiding Officer, School Tribunal, Nagpur (Chandrapur) on 11.4.2001 dismissing the appeal filed by the petitioner under the provisions of section 9 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act 1977.

2] The petitioner had filed an appeal before the Presiding Officer, School Tribunal, Nagpur claiming that he was appointed by the respondent/ management as a Clerk w.e.f. 3.9.1991. It is the case of the petitioner that the petitioner was again appointed as a Clerk by the appointment order dated 15.7.1993. It was pleaded by the petitioner in the appeal memo that the President of the Society called the petitioner to his residence on 6.12.1996 and obtained a letter of resignation which was backdated. It is stated in the appeal memo that the date was wrongly shown on the resignation letter as 5.11.1996. It was pleaded that the resignation letter was obtained under duress and since the petitioner was not permitted to attend his duties w.e.f. 10.12.1996, he challenged his oral termination before the School Tribunal. It was pleaded by the petitioner that his services could not have been terminated without holding due and proper enquiry.

3] The management denied the claim of the petitioner. It was denied that the petitioner was appointed as a Clerk. It was pleaded that initially the petitioner was appointed as Laboratory Attendant. The pleadings in the appeal memo about the forced

resignation were denied by the management. It was pleaded that the petitioner had voluntarily resigned from the post of clerk in order to secure a better job. The Tribunal on appreciation of the material on record dismissed the appeal filed by the petitioner by the impugned order dated 11.4.2001.

4] Shri S.A.Bari, the learned counsel for the petitioner, submitted that the Tribunal was not justified in holding that the petitioner had resigned from the post of Clerk without considering the mandatory provisions of section 7 of the Act of 1977 and Rule 40 of the Rules of 1981. It is submitted on behalf of the petitioner that the resignation was tendered by registered post and the petitioner had also not given three months notice as required by the provisions of rule 40. The learned counsel for the petitioner submitted that the police report filed on 8.12.1996 also showed that the resignation was a forced resignation. The learned counsel for the petitioner submitted that in the facts and circumstances of the case, the Tribunal could not have arrived at a finding that the resignation was not obtained under duress. The learned counsel for the petitioner relied on the decisions reported in 1988(1) CLR Page 175 & 1992(1) CLR Page 414 to canvass that the provisions of section 7 and rule 40 of the Act and the Rules, respectively are mandatory in nature.

5] Shri Masodkar, the learned counsel for the respondent no.2 supported the

judgment passed by the Tribunal on 11.4.2001 and submitted that the case of forced resignation or obtaining of resignation under duress is an afterthought, as the resignation was tendered on 5.11.1996 and the report was lodged on 8.12.1996. It is submitted on behalf of the respondent no.2 that it is not stated in the report that the resignation, obtained on 8.12.1996 was shown to be backdated as 5.11.1996. The learned counsel for the respondent no.2 submitted that the resignation was accepted by the resolution of the managing committee on 7.12.1996 and the findings recorded by the tribunal on the issue of legality of the resignation need not be interfered with in exercise of writ jurisdiction. The learned counsel for the respondent no.2 also sought for the dismissal of the writ petition. Learned counsel for the respondent no.2 relied on the decision reported in 2003(4) ALL MR Page 108, 2005 (4) Mh.L.J. Page 1064 and 2004 (2) Mh.L.J. 909 to substantiate his submission that the provisions of section 7 or rule 40 of the Act and the Rules, respectively are not mandatory in nature.

6] I have considered the submissions made on behalf of the parties and also perused the impugned order along with the documents which are filed on record. On a perusal of the same, it appears that that the Tribunal had on a proper appreciation of the material on record, found that the resignation letter tendered by the petitioner cannot be said to be illegal. The Tribunal observed that the resignation letter was tendered by the petitioner on 5.11.1996 and the resignation was accepted on 7.12.1996. The complaints were made

to the police station for the first time on 8.12.1996. The tribunal rightly observed that during the period of one month, the petitioner could have either withdrawn the resignation letter or could have filed the police report immediately. But this was not done. It is also necessary to note that though it is the case of the petitioner in the appeal memo that the date was wrongly mentioned on the resignation letter as 5.11.1996, though the same was obtained on 6.12.1996, the petitioner had failed to state this material fact in the police complaint. The resignation letter was written by the petitioner in his own handwriting. In such circumstances the Tribunal held that the resignation letter tendered by the petitioner could not have been said to be illegal, as it was not obtained under force or threat. The submission made on behalf of the petitioner that there was non-compliance of the provisions of section 7 and rule 40 of the Act and Rules, respectively, at the time of tendering of the resignation and the provisions of the Act and the Rules being mandatory, the findings of the Tribunal are illegal is liable to be rejected. This court has in the judgment reported in 2003(4) ALL MR 108, 2005 (4) Mh.L.J. 1064 and 2004 (2) Mh.L.J.909, held that the resignation letter tendered in person and not sent by registered post cannot be said to be illegal. It is also held that the notice period under rule 40 can also be shorter than three months as rule 40 itself provides for the consequences that would follow, if the notice period is shorter than 3months. The aforesaid reported decision clearly support the case of the respondents. The judgment reported in 1992(1) CLR 414 cannot be of any assistance to the case of

the petitioner as on a perusal of the letter of resignation in that case the Division Bench had observed that the letter indicated that the petitioner therein was desirous of securing leave for a duration of one year to undertake the course for B.Ed. examination and the same could not have been treated as a resignation letter. Similarly, this court observed in the judgment reported in 1988 (1) CLR 175, that it was not necessary for the court to decide the question as to whether the provisions of section 7 of the Act of 1977 were mandatory or directory in nature.

7] In the instant case, the Tribunal on a proper appreciation of the material on record held that the facts and circumstances reveal that the resignation letter dated 5.11.1996 was not a forced resignation letter, but was voluntarily tendered by the petitioner. The findings recorded by the School Tribunal on the said issue are pure findings of facts based on a proper appreciation of the material on record. The findings require no interference in exercise of the writ jurisdiction.

8] In the result, the writ petition fails and is dismissed with no order as to costs.

JUDGE

SMP.