

CASE NO.:
Appeal (civil) 4343 of 2007

PETITIONER:
Modern School

RESPONDENT:
Shashi Pal Sharma & Ors

DATE OF JUDGMENT: 18/09/2007

BENCH:
S.B. Sinha & H.S. Bedi

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4343 OF 2007
(Arising out of SLP (C) No.1721 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. Appellant herein is a school recognized and governed under the Delhi School Education Act, 1973 (for short, 'the Act') and the rules framed thereunder. First Respondent herein had, at all material times, been working as a Sanskrit teacher in the appellant school. On or about 14.03.1997, his wife made a complaint to the Principal of the school informing that the First Respondent had made fake coupons meant to be used at the fate of the school held on 15.12.1996. Several other serious allegations were made by the first respondent's wife against him. He tendered his resignation purported to be on the ground of having some domestic problems. The said letter of resignation reads thus :
"Because of some urgent and serious domestic problems it is difficult for me to continue serving the school. I request you to kindly accept this my letter of resignation.
Since my circumstances require me to take such a major step, I request your indulgence in making my situation somewhat easier by acceding to my following requests :-
(A) My gratuity and other dues including earned leave may be encashed and disbursed quickly.
(B) The privilege of students that my children have enjoyed in Modern School at no cost to me may be continued.
(C) My association with the school particularly through my books being used by the middle school for Sanskrit may be continued.
(D) In case my benefit accrues to me for the past period on account of revision of salaries arriving out of the pay commission or the school management, the same may be granted to me in the due course.
(E) Any fallout of my domestic problems and any attempts to malign me may please be ignored and not be allowed to effect upon my children."

3. Indisputably, acceptance of resignation by the appellant from a teacher is governed by Section 114A of Act, 1973 which reads as under :
"114A. Resignation:- The resignation submitted by an employee of a recognized school shall be

accepted within a period of thirty days from the date of receipt of the resignation by the managing committee with the approval of the Director :
Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period."

4. The resignation tendered by the first respondent was accepted by the appellant and forwarded to the Director of Education in terms of its letter dated 09.03.1997, stating :

"Enclosed please find the copy of the letter of resignation submitted by Mr. S.P. Sharma, a teacher of our school.
Since we need to advertise and get a substitute teacher needs to be recruited immediately. We have accepted his resignation subject to your approval. Since he is teaching class X Board classes, we need to find a replacement at the very earliest in the interest of students right from the start of the new session. A replacement cannot be legal unless the post falls vacant. Hence, we request your indulgence and co-operation for an immediate approval."

5. As no order of approval was received by the appellant from the Director of Education as was required under Section 114A, it, by its letter dated 13.05.1997, informed the said authority that they were accepting the resignation and going ahead with fresh recruitment as per the Act and the Rules. By a letter of the said date, acceptance of his resignation was communicated to the First Respondent, stating :
"This is to inform you that we accept with regret your resignation letter dated 17th March, 1997. You have our sympathies for the domestic problems you face.

We shall do whatever we can do help your children with their education. You shall be relieved w.e.f. June 17, 1997 after the three months notice period which expires on June 16, 1997. You are requested to contact the school office after June 16, 1997 on any working day during working hours to settle all full and final dues."

6. On receipt of the said letter, the First Respondent by his letter dated 15.05.1997 and annexing therewith a purported letter withdrawing his resignation dated 18.03.1997, a letter of the Director of Education regarding procedure for compliance of Rule 114(a) of Delhi School Education Rules 1973 as also a telegram dated 14.5.1997 contended that acceptance of his offer of resignation was illegal and invalid. The Education Officer of the Government of Delhi also contended that the fact that the First Respondent had withdrawn his resignation on 18.3.1997 was not brought to the notice of the Managing Committee and the purported resolution adopted by it through circulation was not in accordance with law. Appellant was, therefore, advised to hold the meeting of the Managing Committee in future in accordance with the directions of the Department. Purported refusal to accord approval by the State was resented to by the appellant herein in terms of letter dated 26.06.1997 addressed to the Education Officer, Directorate of Education, stating :

"We are surprised that our letter seeking approval of the resignation of Shri S.P. Sharma which was dated 19.3.1997 has been acknowledged by you on 17.6.1997. We are unable to appreciate the reason for this delay.

We are surprised to note that you have purported not to accord approval for the acceptance of the resignation of Shri Sharma due to the reasons enumerated in your communication. As regard, the first reason, the school did not receive any withdrawal of the resignation of Shri Sharma on 18.3.1997 and since there was no receipt of any letter of withdrawal of the resignation, there was no necessity of bringing this to the notice of the Managing Committee. A subsequent communication enclosing a so-called withdrawal of resignation letter was sent to the school but by that time the Managing Committee of the school had already accepted the resignation and the said letter, if at all, is an after-thought.

As regards the second reason, we are surprised to note that the resolution of the managing Committee passed through circulation is not valid. Time and again resolutions have been passed through circulation by our Managing Committee and you have accorded approval, but it appears that now your stand is changing.

In the light of the aforesaid, we would request you to withdraw your communication dated 17.6.1997."

7. First Respondent thereafter filed a writ petition in the High Court of Delhi questioning acceptance of his purported resignation. A learned Single Judge of the said court by an order dated 01.04.2003 dismissed the same.

8. We may notice that in the said writ proceedings, the First Respondent herein raised a contention that it had never received the purported letter dated 18.03.1997 from the First Respondent withdrawing his resignation. It was furthermore contended that the telegram which was sent by the First Respondent to the appellant cannot be construed to be one whereby the resignation submitted by him can be said to have been withdrawn.

9. The learned Single Judge of the High Court called for the original records of the school, perused the same and opined that the purported receipt of the letter by the office of the appellant is not correct, stating :

"The specific stand of the teacher is that he submitted his letter withdrawing the resignation letter on 18.3.1997 in the school which was received by the school authority by giving a diary number which is 1715 of 18.3.1997. I had called for the original dispatch register from the school authority in order to examine the veracity of the said statement pursuant to which the same was placed before me. The said diary No.1715 of the dispatch register relates to some other correspondence and not that of the particular letter stated to have been submitted by the Respondent No.4 under the said number. It is interesting to note that the said entry is of one Shri C.S. Sharma which is also dated 18.3.1997 and the petitioner is seeking to take advantage of the said entry because of similarity in the surname. Besides, the previous day the teacher submitted his resignation giving urgent and serious domestic problems as the reason for submitting the resignation and on the very next day he allegedly submitted another application withdrawing the letter of resignation stating that his domestic problems which forced him to take a drastic step like submitting a resignation had been solved overnight. It appears that the said letter is made out by the Respondent

No.4 in order to show that he had withdrawn the resignation letter even before it was accepted by the Principal. By that he also could persuade the Director of Education not to accord approval to the acceptance of the resignation which is established from the letter of the Director of Education dated 17.6.1997."

10. Aggrieved by and dissatisfied with the said order dated 01.04.2003 passed by the learned Single Judge of the High Court, an intra-court appeal was preferred by the First Respondent herein and by reason of the impugned judgment dated 13.12.2005, a Division Bench of the High Court allowed the same holding that as the First Respondent was to be relieved with effect from 17.06.1997, he could have withdrawn his resignation on any day prior thereto and as he had withdrawn his resignation prior to 17.06.1997, the question of acceptance of his resignation by the appellant did not arise. In regard to the contention of the appellant that the letter dated 18.03.1997 whereupon the First Respondent relied upon, was a forged document, the Division Bench held :

"Learned counsel for the respondent submitted that the appellant had fabricated the letter dated 18.03.1997. In our opinion, this fact is disputed by the appellant and it is not for this court to go into this disputed question of fact in writ jurisdiction. At any event, since we have not relied on the alleged letter dated 18.3.1997, the same has no relevance."

11. Mr. Anip Sachthey, learned counsel appearing on behalf of the appellant, would submit that having regard to the finding of fact arrived at by the learned Single Judge, the Division Bench of the High Court committed a manifest error in passing the impugned judgment.

12. Mr. K. Ramamoorthy, learned Senior Counsel appearing on behalf of the respondents, on the other hand, submitted :

(i) Having regard to the circular letter issued by the Education Department of the Government of Delhi, purported acceptance of resignation by the members of the Managing Committee was wholly illegal;

(ii) The State Government having not granted its approval, the impugned judgment should not be interfered with.

(iii) As the letter of resignation had been withdrawn by the First Respondent, the High Court rightly relied upon a decision of this Court in Srikantha S.M. v. M/s. Bharath Earth Movers Ltd. [(2005) 8 SCC 314] : [JT 2005 (12) SC 465].

13. The terms and conditions of the service of the First Respondent are governed by the provisions of the said Act and the rules framed thereunder. We have noticed hereinbefore that if resignation is submitted by an employee of a recognised school, it is obligatory on the part of the Managing Committee of the school to accept the same within a period of 30 days from the receipt of the letter. Such acceptance must be preceded by the approval of the Director in this behalf. Proviso appended to Section 114A of the Act, however, raises a legal fiction that in the event no approval is received within the period of 30 days, the same would be deemed to have been received.

14. It is neither in doubt nor in dispute that legalities apart, the Managing Committee of the appellant-School accepted the resignation submitted by the First Respondent on 19.03.1997. Acceptance of the said resignation was, however, subject to the approval of the Director of Education. It is not in dispute that the Director of Education did not communicate his decision in regard to approval or refusal thereof within a period of 30 days from the date of receipt of the said letter and in that view of the matter, subject of course to the withdrawal of the resignation by the concerned employee, the approval

would be deemed to have been accorded.

15. Two principal questions, therefore, arise for our consideration herein namely, (i) whether the First Respondent has legally withdrawn his letter of resignation; and (ii) whether the First Respondent could withdraw his resignation prior to 16.06.1997.

16. Resignation submitted by the First Respondent could be withdrawn by him before its acceptance. Such acceptance of resignation was to be made within a period of one month. Within the said period itself, the Director of Education should have accorded or refused to accord his approval. We have noticed hereinbefore, the findings of the learned Single Judge of the High Court holding categorically that the purported letter dated 18.03.1997 was never received by the authorities of the school. The said finding of fact has not been interfered with by the Division Bench of the High Court.

17. Once the resignation of the First Respondent had validly been accepted, the question which would arise for consideration is as to whether the same could be done before 17.06.1997. It is not a case where acceptance of the resignation was made effective from a future date. Resignation of the First Respondent having been accepted, only he was to be relieved from 17.06.1997. We have noticed hereinbefore the purport of Section 114A of the Act, in terms whereof resignation was to be accepted within a period of 30 days. In view of the aforementioned statutory provision, in our opinion, only because the First Respondent was to be relieved with effect from 17.06.1997 the same would not mean that even thereafter it was open to the First Respondent to withdraw his resignation. In fact, if the aforementioned letter dated 18.03.1997 is excluded from consideration, he had not withdrawn his resignation at all. We may at this juncture notice the telegram sent by the First Respondent, which is as under :

"DEPARTMENT OF TELECOMMUNICATIONS
INDIA
TELEGRAM
X 1850 N-120 NEW DELHI RAJOURI GARDEN
14/5 30/36 PRINCIPAL MODERN SCHOOL
VASANT VIHAR NEW DELHI MY
RESIGNATION OF SEVENTEENTH MARCH 1997
WAS DULY WITHDRAWN THE NEXT DAY
YOUR ACCEPTANCE IS NOT ACCEPTED
BECAUSE IT IS INFRUCTUOUS \026 S.P.
SHARMA."

18. In terms of the said telegram the First Respondent did not withdraw his resignation. He merely purported to have communicated that the same stood withdrawn on the next day of his submission of resignation, namely, 18.03.1997. If the contention of the First Respondent that he had withdrawn his resignation on 18.03.1997 is found to be correct, as has been held by the learned Single Judge of the High Court, in our opinion, receipt of the said letter by itself would not amount to withdrawal of his resignation before it is accepted. There is no doubt whatsoever that the Director of Education acted in terms of the representation made by the First Respondent that he had withdrawn his resignation. If the same was factually incorrect, the said authority was obligated in law to communicate his decision to the school authority within a period of 30 days from the date of communication of the letter of the First Respondent.

19. The decision of this Court in Srikantha S.M. (supra), in view of the factual situation obtaining in the instant case, cannot be said to have any application whatsoever. In that case even after the purported acceptance of the resignation of the appellant, he had been granted casual leave from 05.01.1993 to 13.01.1993 and was informed that he would be relieved after office hours on 15.01.1993. In the aforementioned fact situation obtaining therein, this Court opined :

"26. On the basis of the above decisions, in our opinion, the learned Counsel for the appellant

is right in contending that though the respondent-Company had accepted the resignation of the appellant on 4.1.1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5.1.1993 to 13.1.1993. Moreover, he was informed that he would be relieved after office hours on 15.1.1993. The vinculum juris, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4.1.1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company upto 15.1.1993.

27. In affidavit in reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on 4.1.1993. It was because of the request of the appellant that he was continued upto 15.1.1993. In the affidavit in rejoinder, the appellant had stated that he reported for duty on 15.1.1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs. 13,511/- was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that upto 15.1.1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8.1.1993. It was, therefore, on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside."

20. As we have noticed hereinbefore, the terms and conditions of service are governed by the statute and the statutory rules. As acceptance of the resignation of the First Respondent was communicated to him within a period of 30 days, the same would take its effect in terms thereof.

21. Reliance placed by Mr. Ramamurthy on the departmental instruction dated 17.10.1996 is not relevant. The said departmental instruction reads thus :

"As per provisions of Delhi School Act and Rules, 1973, the Managing Committee of the school is the appointing authority in respect of aided and unaided recognized schools. On various occasions the Managing Committee has to discharge the statutory obligation of obtaining approval of the Director of Education to various proposals by passing a resolution.

Before any proposal is put up before the D.E., for obtaining his approval, the individual proposal is to be examined on merits, which includes scrutiny of the resolution passed by the Managing Committee.

In the past, it is observed that most of the

schools are not adhering to the approved Scheme of Management. DE nominees have been provided to all the aided and unaided schools, who are not invited by the Managing Committee of the schools. In some cases, 'special invitees' are invited to attend the meeting of the Managing Committee in contravention to the approved Scheme of Management.

All the Managers of aided/unaided schools are therefore, directed \026

1. to call the meeting of the Managing Committee in accordance with the approved Scheme of Management.
2. to invite the DE nominees/advisory board nominees in the meeting and notice of the meeting should be sent by special messenger or by Regd. Post only.
3. to incorporate in the body of resolution, the names of members who have attended the meeting of Managing Committee. If the DE nominee has not attended the meeting, a certificate should be recorded therein that notice of meeting of Managing Committee was sent on _____ (Date) by Regd. Post or by special messenger.
4. Resolution should not be passed by circulation among the members."

22. The manner in which the meeting of the Managing Committee should be called for is a matter governed by the internal rules of the school. The said departmental instructions does not state that any deviation therefrom would result in the Resolution passed by the Managing Committee by circulation, if rendered nullity, the same must be held to be directory.

23. The Division Bench of the High Court committed a serious error in passing the impugned judgment, which cannot be sustained and is set aside accordingly. The appeal is allowed. No costs.