

# SUPREME COURT OF INDIA

Jaywant Bhaguji Gadekar

Vs.

Balaleshwar Shikshan Mandal

C.A.No.472 of 2007

(A.K.Mathur J.)

30.07.2008

## ORDER

1. We have heard learned counsel for the parties.
2. This appeal by special leave is directed against the judgment and order dated 10th June, 2003 passed by the learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No.6046 of 2002 whereby the High Court has set aside the order of the Tribunal and held that once the petitioner has sent the letter of resignation and the same has not been withdrawn, therefore, it becomes final and the view taken by the Tribunal was not correct.
3. Aggrieved against this order the petitioner filed a Letters Patent Appeal but it was rejected on the ground that it is not maintainable. Hence the petitioner has approached this Court by way of a special leave petition challenging the order of the learned Single Judge dated 10th June, 2003. Leave was granted by this Court.
4. The brief facts which are necessary for the disposal of this appeal are that the appellant was appointed as Assistant Teacher in the Balaleshwar Shikshan Mandal against a clear and permanent vacancy on probation. Certain complaints were received against the appellant from the students regarding his misbehaviour. In the wake of these complaints, the appellant tendered conditional resignation on 16th August, 1998. The letter of resignation was sent to the Chairman of the Institution. It was alleged that since the allegations have been levelled against him and he want to be absolved of the allegations, he tender his resignation from the post and after an inquiry is held and he is exonerated, he may be reinstated. The letter of resignation dated 16th August, 1998 reads as under:-

“Due to the various allegations levelled against the institution, the charges are orally levied upon me. In that regard I am held responsible for adverse effect on the image of Institution and School. Till the time of conclusion of appropriate inquiry into the said charges, I am tendering resignation from my post. If I am found innocent then I shall be given an opportunity to discharge my duties.”

5. That was responded by the Institution by the communication dated 9th December, 1998 and accepted the resignation and relieved the appellant.

6. Thereafter, on 11th December, 1998 the management revoked the letter dated 9th December, 1998 accepting the resignation of the appellant. The resultant position is that normally he shall be treated to have restored to service as the management has declined to accept the conditional resignation. The appellant did not approach the management and filed a petition before the School Tribunal, Pune Region and the Tribunal by its order dated 25th June, 2002 allowed the appeal of the appellant and ordered that the impugned action of Respondent Nos. 1 and 2 of not allowing the appellant to join duties by the end of the August, 1998 is hereby set aside.

7. The Respondent Nos. 1 and 2 were directed to reinstate the appellant as an Assistant Teacher with effect from 1st September, 1998 with full backwages.

8. This order was challenged by the School Management by filing a writ petition before the High Court and the learned Single Judge of the High Court after reviewing the matter came to the conclusion that since the appellant has already resigned, therefore, there is no right to continue in service. In that context, the learned Single Judge ordered that no specific letter has been adverted to by the Tribunal in its judgment nor that letter has been made available before this Court withdrawing the communication dated 9.12.1998 and accepting the letter of resignation of the appellant. We regret that the view taken by the learned Single Judge of the High Court is not correct.

9. The appellant sent a letter of resignation with a condition that he is resigning till an appropriate inquiry in the charges is made and if he is found innocent, then he may be given opportunity to serve out as teacher. The letter of resignation dated 16th August, 1998 was accepted to by the management by communication dated 9th December, 1998 which reads as under :-

“Your voluntary resignation letter dated 16.8.1998 tendered to this Institution has been accepted in the Board Meeting held on 29.11.1998. The Management is obliged to you for the services rendered by you to the institution till this date.”

But soon thereafter on 11th December, 1998 this letter was revoked which reads as under :- "Kindly treat the management's letter dated 9.12.1998 as cancelled.”

10. Therefore, the resultant position after review of the above mentioned three letters is that the appellant's conditional resignation was accepted but it was subsequently revoked on 11th December, 1998 meaning thereby that the appellant's letter of resignation by giving a condition was not accepted nor was it communicated to him that your letter of resignation is accepted unconditionally.

11. Learned Single Judge of the High Court has observed that letter dated 11th December, 1998 was not referred to by the Tribunal nor was it placed before the High Court but we

regret to say that the letter of 11th December, 1998 is before us and this find reference in the order of the Tribunal. The Tribunal has clearly mentioned that "Besides, we have document on record to that the chairman of the institution has issued letter dated 11.12.1998 i.e. after the alleged resignation was given by the appellant, informing that the management's letter dated 9.12.1998 be treated as cancelled."

12. Therefore, the letter of resignation, the communication of the management dated 9.12.1998 and the letter dated 11.12.1998 were taken into consideration by the Tribunal and granted a relief to the appellant but unfortunately, it seems that it has missed the attention of the High Court.

13. Consequently, we set aside the order of the learned Single Judge and remit this case back to the High Court to consider the effect of the revocation of the letter of management dated 11th December, 1998 and reconsider the matter in the light of the aforesaid letter of withdrawal.

14. The appeal is accordingly, allowed. The order dated 10th June, 2003 passed by the High Court is set aside and the case is remitted back to the High Court to decide the matter in accordance with law.

15. Since it is a matter of a teacher who has been out of job since 1998, we request the High Court to expedite the hearing of the matter.

No order as to costs.