

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.434 OF 2014**

DISTRICT : NAVI MUMBAI

Smt. Manisha Chandrakant Gosavi,)
Age 33 years, occ. Service,)
R/at:202, Monarch Sapphire, Plot No.15, Sector 35/E,)
Near Gokul Dham, Kharghar, Navi Mumbai 410210)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Directorate of Vocational Education & Training,)
Annexure Building, Mumbai 400032)
2. Director,)
Directorate of Vocational Education & Training,)
3, Mahapalika Marg, Post Box No.100636,)
Mumbai 400001)
3. Joint Director,)
Directorate of Vocational Education & Training,)
49, Kherwadi, Aliyaware Jung Marg,)
Bandra East, Mumbai 400051)

4. M.P. Sonawane,)
 The then Principal of the Institute of I.T.I.,)
 Vikramgadh, Thane)
 New address: Industrial Training Institute (Girls)
 The Old Mumbai Agra Road, Near Adiwasi)
 Vikas Bhavan, Tryambak Naka, Nasik 422002)..Respondents

Shri Amol Joshi – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondents No.1 to 3

Shri C.T. Chandratre, Advocate holding for

Shri M.B. Kadam – Advocate for Respondent No.4

CORAM : Shri Justice A.H. Joshi, Chairman
 Shri P.N. Dixit, Member (A)
 RESERVED ON : 4th February, 2019
 PRONOUNCED ON : 18th February, 2019
 PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri Amol Joshi, learned Advocate for the Applicant, Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 to 3 and Shri C.T. Chandratre, learned Advocate holding for Shri M.B. Kadam, learned Advocate for Respondent No.4.

Brief facts:

2. The Applicant was appointed on 6.2.2009 on contractual basis. On 3.9.2010 the Applicant was appointed on permanent basis as Craft Instructor. On 15.4.2011 the Applicant proceeded on medical leave. As she remained absent for six months she was asked to join the duties

before the examination in the ITI where she was posted. On 2.7.2011 the Applicant tendered resignation and subsequently on 25.7.2011 the Applicant recalled her resignation. The Applicant submitted second resignation on 6.12.2012 and the same was accepted on 10.1.2013. The Applicant has prayed as under:

“10(b) This Hon’ble Tribunal after considering the aforesaid entire record and contentions and exhibits of this Original Application further be pleased to examine the legality, validity and propriety of the impugned orders and further declare that the impugned orders dated 10.1.2013 is bad in law, false, arbitrary, illegal and further be pleased to quash and set aside the same.”

(Quoted from page 30 of OA)

3. The grounds given by the Applicant are summarized below:

- (i) *The Applicant had lodged a complaint making serious allegations about sexual harassment by Respondent no.4 (para 7(d) of OA).*
- (ii) *The Respondents no.2 and 3 did not conduct enquiry against the alleged officers about the sexual harassment mentioned by her.*
- (iii) *Applicant was issued a charge sheet dated 3.12.2012 as per Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 pertaining to her unauthorized absenteeism (para 7(b) of OA).*
- (iv) *Applicant was denied permission to withdraw her resignation application though she had made oral submissions (para 7(j) of OA).*
- (v) *Frivolous allegations have been made against the Applicant regarding loss of material to the tune of Rs.1,39,452/- (para 7(k) of OA).*
- (vi) *Applicant came to know that her resignation is accepted only on 13.5.2013 when she was asked to pay to the Government the losses incurred (para 7(m) of OA).*

- (vii) *The Applicant was forced to tender resignation under coercion and duress (para 7(s) of OA).*
- (viii) *The Applicant contended that she has not given the resignation voluntarily and, therefore, accepting the same is illegal.*

4. The learned Advocate for the Applicant has cited following judgments in support of the above prayer:

- (i) *Prabha Atri (Dr.) Vs. State of U.P. & Ors., 2003 I CLR 221, Civil Appeal No.8317-8318 of 2002 decided by Hon'ble Supreme Court on 11.12.2002.*
- (ii) *M/s. J.K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur Vs. State of U.P. & Ors., AIR 1990 SC 1808.*
- (iii) *State of Punjab Vs. Amar Singh Harika, Appeal (Civil) No.938 of 1964 decided by Hon'ble Supreme Court on 6.1.1966.*

5. The Respondents in their affidavit have submitted that Respondent no.4 worked as Principal of the ITI at Vikramgad, District Thane from 16.1.2009 to 31.12.2011 (para 4 of the affidavit page 118 of OA). The Applicant submitted her second resignation on 6.12.2012 and the same was accepted on 10.1.2013. Thereafter the Applicant filed a police complaint at Vikramgad on 1.8.2013 against Respondent no.4. According to Respondent no.3, "The only intention to file the Police Complaint was to get revoke the resignation submitted by her". (para 5 page 118). The Respondent no.3 further mentions in para 12 as under:

"12. With reference to para No.6.8, I say and submit that the Respondent no.3 i.e. Joint Director, Vocational Education and Training, Bandra, Mumbai orally instructed the Respondent no.4 i.e. ITI, Vikramgardh to take cognizance about the said misconduct and ensure that the issue is not repeated again or else strict action will be taken on the officers responsible."

(Quoted from page 119 of OA)

6. The Respondent no.3 mentions that Applicant was allowed to revoke her resignation letter submitted on 2.7.2011 on humanitarian ground and the Applicant was allowed to resume her duties. The Respondent no.3 further states in para 21 as under:

“21. With further reference to para no.6.17, I say and submit that the Applicant submitted her second resignation dated 6.12.2012 again based on medical grounds. The Applicant’s resignation was duly accepted by the Respondent no.3 in accordance with the GR dated 2.12.1997 issued by GAD and the same was informed by office order dated 10.1.2013. Thereafter the Respondent no.4 issued a letter dated 30.1.2013, informing about the shortage of material found in the consumable register amounting to Rs.54,552/- and shortage of Goods inventory amounting to Rs.84,900/-. Therefore, the total amount of Rs.1,39,452/- was ordered to be recovered from the Applicant. However, till date the Applicant has not paid a single penny towards the said recovery.”

(Quoted from page 122 of OA)

7. The Respondents have therefore prayed that the OA is without any foundation and devoid of any merit.

8. Issues for consideration:

- (i) *Whether resignation submitted by the Applicant being qualified and conditional was it liable to be accepted?*
- (ii) *Whether the Applicant is entitled for the relief sought?*

9. In the light of rival pleadings referred hereinbefore it shall be useful to refer to the admitted facts on record, which are as follows:

Sr. No.	Date/ Exh./ Page No.	Particulars
1	6.5.2011, Exh.E, p.44	Applicant submitted complaint to Director, Vocational Education & Training and complaint of conduct of the Principal Shri Sonawane which is in the nature of complaint of sexual harassment.
2	20/23.5.2011, p.47	Letter was issued by Director to the Joint Director directing investigation of the complaint.
3	2.7.2011, Exh.R-1, p.128	Applicant submitted resignation.
4	25.7.2011, Exh.G, p.48	Applicant submitted application for withdrawal of resignation.
5	25.7.2011, Exh.H, p.49-50	Applicant submitted application to the Principal for medical leave along with medical certificate dt. 14.6.2011.
6	25.7.2011, Exh.I, p.51	Applicant submitted application to the Director for seeking temporary transfer from ITI, Vikramgad to any other institute at Mumbai or Thane City or Navi Mumbai.
7	1.9.2011, Exh. J, p.52-53	Applicant submitted application for seeking extraordinary medical leave along with medical certificate dt. 1.9.2011.
8	19.12.2011, Exh. K, p.54-55	Applicant submitted application dt. 19.12.2011 along with medical certificate dt. 22.11.2011 for maternity leave.
9	17.5.2012, Exh.L, p.56-57	Applicant submitted application dt. 17.5.2012 seeking extraordinary medical leave to the Joint Director along with medical certificate.
10	3.12.2012, Exh.N, p.59-65	Charge sheet was issued to Applicant towards misconduct.
11	6.12.2012, Exh.M, p.58	Second resignation letter.
12	22.12.2012, Exh.O, p.66-70	Applicant submitted representation to the Director of Vocational Education & Training by speed post making serious grievances about conduct of Principal Shri Sonawane.
13	30.1.2013, Exh.P, p.71-74	Recovery letter issued to Applicant by Respondent no.3.
14	15.3.2013, Exh.Q, p.75	Applicant submitted a letter to Respondent no.4 asking for copies of letters communicating about the decision taken on her second resignation.

10. The events and documents above referred present a graph as to how the situation has developed as has been described by the Applicant. From the foregoing documents what transpires is as follows:

- (1) *Applicant submitted complaint relating to sexual harassment.*
- (2) *Director Vocational Education & Training ordered enquiry in the matter of Applicant's complaint dated 6.5.2011 by the Joint Director.*
- (3) *Nothing has come on record as to whether enquiry was conducted and as to what has transpired in the enquiry, if any conducted.*
- (4) *Applicant submitted representation relating to her higher risk pregnancy accompanied by medical certificate.*
- (5) *She also submitted request for further continuation of medical leave.*

11. The fact that the Applicant has submitted medical leave is admitted in the reply filed by Respondent no.3. The relevant text reads as under:

"19. With reference to para nos.6.14 to 6.16, I say and submit that the Applicant submitted her application for extra ordinary medical leave to the Respondent no.3 (not through proper channel i.e. through Respondent no.4)."

(Quoted from page 121 of OA)

12. It is not shown by the Respondents that at any point of time the medical certificates and the state of health of the Applicant were disputed and/or applicants was not referred for further medical examination.

13. The charge sheet which apparently is the cause propelling the reason of resignation by the Applicant is eloquently emerging.

14. The charges no.1 to 3 which are described in annexure to the memo copy whereof is at page 59-63 of OA is worth advertence. For ready reference item no.1 to 3 contained in Annexure-1 to the memo of charge is quoted below:

“जोडपत्र - एक

श्रीम.एम.सी. गोसावी, शिल्प निदेशक (विजतंत्री), औद्योगिक प्रशिक्षण संस्था, विक्रमगड यांच्याविरुद्ध तयार करण्यांत आलेल्या दोषारोपातील बाबींचे विवरणपत्र.

बाब - एक

उक्त श्रीम.एम.सी. गोसावी, शिल्प निदेशक (विजतंत्री), औद्योगिक प्रशिक्षण संस्था, विक्रमगड हे दि. २०/०६/२०११ पासून संस्थाप्रमुखांना कोणतीही पुर्व सुचना न देता अद्यापपर्यंत गैरहजर आहेत. त्यांची सदरची अनुपस्थिती अनधिकृत असून त्यांनी महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ च्या नियम क्र.३ मधील पोटनियम (एक)(दोन)(तीन) चा भंग केला आहे.

बाब - दोन

उक्त श्रीम.एम.सी. गोसावी, शिल्प निदेशक (विजतंत्री), औद्योगिक प्रशिक्षण संस्था, विक्रमगड यांनी अनधिकृतपणे गैरहजर राहून शासकीय कामकाजात विशेषतः प्रशिक्षणाच्या कामकाजात अडचणी निर्माण करून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ च्या नियम क्र.३ मधील पोटनियम (१) (एक)(दोन) व (तीन) चा भंग केला आहे.

बाब - तीन

उक्त श्रीम.एम.सी. गोसावी, शिल्प निदेशक (विजतंत्री), औद्योगिक प्रशिक्षण संस्था, विक्रमगड यांनी त्यांची कामावरील अनधिकृत गैरहजरी व अनियमितपणाच्या कृतीमुळे असे दर्शवून दिले आहे की, त्यांना शासकीय सेवेत स्वारस्य नाही व शासकीय सेवेविना त्यांचा उदरनिर्वाह चालू शकतो. अशाप्रकारे श्रीम.एम.सी. गोसावी यांनी महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ च्या नियम क्र.३ मधील पोटनियम (१)(एक)(दोन) व (तीन) चा भंग केला आहे.

(डॉ.आर.आर. आसावा)

सहसंचालक

व्यवसाय शिक्षण व प्रशिक्षण

प्रादेशिक कार्यालय, मुंबई-५१.”

(Quoted from page 61 of OA)

15. From the foregoing observations certain conclusion emerges that:

(a) *The complaint submitted by the Applicant was of sexual harassment.*

- (b) *The said complaint has not been investigated as per the Vishakha Guidelines, laid down by the Hon'ble Supreme Court in **Vishakha & Ors. v. State of Rajasthan, AIR 1997 SC 3011** and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*
- (c) *The contents of charge sheet refer to absence of the Applicant from 20.6.2011 and it is exactly the same period for which the Applicant has proceeded on medical leave due to high risk pregnancy for which even medical certificate was furnished by her.*
- (d) *In the background that Applicant was apprehensive about the illtreatment and sexual harassment at the hands of Shri Sonawane, her act of submitting leave application directly with a copy to the Principal, has to be viewed in positive sense.*
- (e) *It is admitted in para 19 of the affidavit in reply quoted in foregoing paragraph, that the charge sheet has been issued despite of the fact that Applicant's leave application is very well on record.*

16. If the facts, namely:-

- (i) *The Applicant claims that she has suffered sexual harassment;*
- (ii) *The Applicant has filed the complaint to the Director;*
- (iii) *An enquiry was initiated but not completed or no findings are declared to the Applicant;*
- (iv) *Applicant was required to undergo leave for high risk pregnancy and she was required to take leave and had submitted leave application;*
- (v) *Applicant's medical leave has remained undecided. Applicant was not referred to medical examination as regards her claim as regards high risk pregnancy; and*
- (vi) *Applicant was charge sheeted and she submitted resignation, she has also submitted a detailed complaint/representation dated 22.12.2012;*

All facts called and described in foregoing text taken together would demonstrate that her resignation was not voluntary, but under duress.

17. The resignation made by Applicant and even notice pay remitted by the Applicant cannot be believed to be totally voluntary act as those acts are propelled due to the duress which has operated due to the circumstances mentioned in foregoing paras.

18. In view of the foregoing discussion the reliance of the learned Advocate for the Applicant on the judgment that the resignation ought to be voluntarily tendered is rightly done. The facts of present case, where the enquiry on the *Vishakha Guidelines* is not conducted and on other hand the Applicant was met with a charge sheet for misconduct which ought not to have been issued, in absence of due and proper investigation of Applicant's complaint, Applicant's claim of high risk pregnancy and complication after delivery, without adjudicating Applicant's claim for leave. A charge for absence without leave could never have been levelled yet it was, and Applicant was brought under shadow of fear leading her to elect to resign. In the result, these facts prove Applicant's grievances.

19. Issues framed by this Tribunal deserve to be answered as under:

Sr. No.	Issues	Findings
1	<i>Whether resignation submitted by the Applicant being qualified and conditional was it liable to be accepted?</i>	No.
2	<i>Whether the Applicant is entitled for the relief sought?</i>	Yes. As per final order.

20. In the result, Original Application is allowed. The Applicant shall be entitled to the relief of reinstatement with full back wages. This Tribunal further directs that the department shall conduct inquiry under the

Vishakha Guidelines, laid down by the Hon'ble Supreme Court in *Vishakha & Ors. (supra)* and the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, relating to sexual harassment as well decide Applicant's period of leave so far undecided.

21. In the facts and circumstances of the case, the Applicant shall suffer cost of litigation owing to her misfortune and Respondents shall suffer their own costs.

(P.N. Dixit)
Member (A)
18.2.2019

(A.H. Joshi, J.)
Chairman
18.2.2019

Dictation taken by: S.G. Jawalkar.