

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9206 OF 2021

1. Nava Samaj Mandal
2. Nitin Godiwala Junior College of Commerce Petitioners

V/S

1. State of Maharashtra
2. The Regional Dy Director of
Education Mumbai Region
3. Presiding Officer
School Tribunal Mumbai
4. Santosh Upadhyay Respondents

Ms. Rujuta Joshi i/b Ms. Monika Parikh *for the Petitioners.*
Ms. Savina R. Crasto, AGP *for Respondent Nos.1 and 2/State.*
Mr. Vimal Sanghavi *for Respondent No.4.*

CORAM : SANDEEP V. MARNE, J.
DATE : 7 NOVEMBER 2025.

ORAL JUDGMENT:

1. The Petition challenges judgment and order dated 1 October 2021 passed by Presiding Officer, School Tribunal, Mumbai allowing Appeal No.1 of 2020 filed by the Respondent No.4 challenging his 'otherwise termination' from 26 November 2019. The School Tribunal, while allowing the Appeal, has set aside the oral termination of the Respondent No.4 and has directed the Petitioner-Management to reinstate him on his previous post as a full time Assistant Teacher for Hindi subject with full backwages and continuity in service.

2. Brief facts leading to the filing of the Petition are stated thus:

Respondent No.4 came to be appointed as an Assistant Teacher on a temporary basis with effect from 4 July 2008 till 30 April 2009. His services were further extended upto 3 April 2011. In the academic year 2011-12, Respondent No.4 became permanent Assistant Teacher in Hindi subject. In the year 2015, Respondent No.4 was promoted to the administrative post of Supervisor. It is the case of the Petitioner- Management that Respondent No.4 was unable to discharge duties of the post of Supervisor efficiently and there were numerous complaints from staff and students with regard to his attitude and approach to work. It is the case of the Petitioner-Management that Respondent No.4 tendered resignation from services on 16 November 2019. However, instead of putting an end to his services, the Petitioner-Management adopted sympathetic view and gave an offer to him to join as part-time teacher for the academic year 2019-20 for Hindi subject. The Management treats letter dated 26 November 2019 as acceptance of resignation tendered vide letter dated 16 November 2019 and this is how services of Respondent No.4 were brought to an end.

3. Respondent No.4 approached School Tribunal by filing Appeal No.1 of 2020 challenging his oral termination. The Tribunal has proceeded to allow the Appeal by judgment and order dated 1 October 2021 setting aside the oral termination of Respondent No.4 and directing his reinstatement with full backwages and continuity in service.

4. Aggrieved by the order passed by the School Tribunal, the present Petition is filed. The Petition came to be admitted by order dated

5 January 2023 and the order of the School Tribunal has been stayed. The Petition is called out for final hearing.

5. Ms. Joshi, the learned counsel appearing for the Petitioner would submit that the School Tribunal has erred in allowing the Appeal filed by Respondent No.4 and by directing his reinstatement ignoring the position that his services were never terminated. She would submit that Respondent No.4 voluntarily resigned from services on 16 November 2019. She would further submit that in law, the two posts of Supervisor and Assistant Teacher are inseparable and therefore, the resignation dated 16 November 2019 from the post of Supervisor would necessarily tantamount to resignation from services of the Petitioner-Management. She would submit that the resignation has been accepted vide letter dated 26 November 2019. That Respondent No.4 was given an offer to join as a part-time teacher, which he has failed to avail. She would submit that the Tribunal has failed to take into consideration the aspect of acceptance of resignation by the Petitioner-Management and has erroneously treated cessation of services of Respondent No.4 as termination when in fact, the services are brought up to an end by way of acceptance of resignation. She would therefore submit that Respondent No.4 was not entitled to be reinstated in services. She would pray for setting aside the impugned order passed by the School Tribunal.

6. *Per contra*, Mr. Sanghavi the learned counsel appearing for Respondent No.4 would support the order passed by the School Tribunal. He would submit that Respondent No.4 had tendered resignation only from the post of Supervisor and had expressly communicated to the Management that he desired to continue on the post of Assistant Teacher. That he never intended to resign from the post

of Assistant Teacher. He would submit that there is no document on record to indicate that resignation has been accepted in any manner. That Respondent No.4 was prevented from joining duties after issuance of letter dated 26 November 2019 and has been orally terminated. He would therefore submit that the School Tribunal has correctly considered the act of cessation of services of Respondent No.4 as oral termination. That the offer given by the Petitioner-Management for continuation of services as part time Teacher has rightly been construed by the School Tribunal as an action of reduction in rank, and oral termination. He would submit that School Tribunal has not committed any glaring error for this Court to exercise jurisdiction under Article 227 of the Constitution of India. He would pray for dismissal of the Petition.

7. Rival contentions of the parties now fall for my consideration.

8. Respondent No.4 was admittedly a permanent Assistant Teacher working with the Petitioner-Management. While working as Assistant Teacher, he came to be promoted to the post of Supervisor. Rule 5 of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 (**the MEPS Rules**) deal with the posts of Assistant Head and Supervisor. Under sub-rule (3) of Rule 5 of the MEPS Rules, every secondary school with more than ten classes can have one or more posts of Supervisor in accordance with provisions of sub-rule (4) of Rule 5 of MEPS Rules. Under sub-rule (5) of Rule 5 of the MEPS Rules, the post of Supervisor needs to be filled from amongst permanent staff strictly on the basis of seniority-cum-merit. Seniority is to be determined on the basis of guidelines given in Schedule-F of the MEPS Rules. The merit is to be determined in accordance with record of service. Based on

provisions of sub-rules (3) and (5) of Rule 5 of the MEPS Rules, Ms. Joshi has contended, and in my view rightly so, that the post of Supervisor is essentially a promotional post and not just assignment of additional duties as Supervisor to an Assistant Teacher. Since the post is to be filled by way of seniority-cum-merit, it's an upward movement in the career of an Assistant Teacher, who is required to man additional duties and responsibilities while holding the post of Supervisor.

9. However, at the same time, it appears that a person who is promoted to the post of Supervisor still needs to continue to discharge the duties as a Teacher. This is clear from the duties of Supervisor as enumerated in Schedule-I of the MEPS Rules. Under the Schedule the Supervisor needs to perform the enumerated duties "in addition to his duties as a Teacher in respect of class or classes taught by him personally". Thus a Teacher promoted as Supervisor performs twin roles of a Teacher and a Supervisor.

10. It appears that on account of these peculiar circumstances where a Supervisor needs to perform duties of Teacher as well, Respondent No.4 was persuaded to believe that he could give up position as Supervisor. Accordingly he issued letter dated 16 November 2019 seeking to resign from the post of Supervisor. He believed that by resigning from the post of Supervisor, he can continue to work as an Assistant Teacher. His belief is expressly spelt out from the wordings of the resignation letter, which reads thus:

To
The Principal
Nitin Godiwala Jr. College of Comm.
Vileparle (East)
Mumbai 400057

Sub: Resignation from the Post of Supervisor

Respected Madam

I Santosh Satyanarayan Upadhyay wants to resign from my post of Supervisor, and wish to work like a Asst. Teacher. All the duties and responsibilities of Asst. Teacher I will do with my best ability.

The Post of Supervisor is very important and I am facing some health issues thats why I am resigning from my Post.

I had learnt many things from this post.

Madam its my humble request to you, pleas accept my resignation from the Post of Supervisor.

Thanking You

Yours Faithfully

Sd/-

16/11/2019

Santosh Upadhyay

Till next instructions, you are supposed to do work with full responsibilities of Supervisor. The decision will soon be informed to you.

Sd/-

18/11/19

11. It is contended by Ms. Joshi that the two posts of Supervisor and Assistant Teacher are inextricably connected and it was impermissible to resign from the post of Supervisor while retaining the post of Assistant Teacher. In my view, it is not necessary for this Court to go into the aspect of permissibility to separate the post of Supervisor from the post of Assistant Teacher or permissibility for a person to tender resignation only from the post of Supervisor by retaining the post of Assistant Teacher. If Petitioner-Management believed that it was impermissible to tender resignation from the post of Supervisor while retaining the post of Assistant Teacher, it ought to have communicated so to Respondent No.4. On the other hand, if Petitioner-Management believed that letter dated 16 November 2019 was a resignation from

entire services with the Petitioner, it could have accepted the said resignation by communicating the acceptance to Respondent No.4. In that situation, the acceptance letter would have communicated the factum of acceptance of resignation and relieving of Respondent No.4 from duties. However, Petitioner- Management did neither of the two. It neither communicated to Respondent No.4 that his resignation was defective and that he could not have resigned selectively from the post of Supervisor by retaining the post of Assistant Teacher. Petitioner-Management also did not treat letter dated 16 November 2019 as resignation from services of even Assistant Teacher or accept the same by communicating the acceptance to Respondent No.4. What it did instead is to write a communication dated 26 November 2019 to Respondent No.4, which makes an interesting reading. Letter dated 26 November 2019 is reproduced below:

To
Mr. Santosh Upadhyay
Supervisor
Nitin Godiwala Jr. College of Commerce
Dixit Cross Road No.1,
Vile Parle East
Mumbai 400057

Subject: Regarding your resignation dtd. 16th Nov, 2019 from the current post.

Mr. Santosh Upadhyay

We are in receipt of your resignation dtd. 16th Nov, 2019 from the current post. The management has decided to continue your services as part-time teacher because you have certain health issues (as cited in your resignation). As a full time assistant teacher, there are several duties in the college, which will effect your health adversely. Management has deep concerns for your health and doesn't want you to deteriorate your health. You can join as a part time teacher for academic year 2019-20 for Hindi subject with immediate effect.

We wish you good health.

Sd/-

Principal

12. Thus letter dated 26 November 2019 referred to the resignation letter dated 16 November 2019 issued by Respondent No.4. However, far from stating that the resignation was accepted, Petitioner-Management communicated to Respondent No.4 that “the Management has decided to continue your services”. The nature of continuation of that services is being discussed separately. What needs to be noted at once is that there is no express communication by the Petitioner-Management to Respondent No.4 that his resignation was accepted in any manner. On the contrary, the Petitioner-Management communicated to Respondent No.4 that it had decided to ‘continue’ his services. It therefore cannot be accepted that letter dated 26 November 2019 is acceptance of resignation tendered by Respondent No.4, as is sought to be falsely suggested now. Thus it is safe to conclude that the resignation tendered by Respondent No.4 was never accepted. The contention of Ms. Joshi that letter dated 26 November 2019 meant ‘deemed acceptance’ deserves outright rejection. There is no concept of deemed acceptance of resignation in service jurisprudence. The offer of resignation needs to be accepted and acceptance needs to be communicated. There is no dearth of decisions holding that resignation can be revoked before acceptance. Therefore acceptance of resignation is mandatory for resignation to take effect. Offering part-time job can, by no stretch of imagination, be treated as acceptance of resignation.

13. Coming to the offer of continuation of services by Petitioner-Management to Respondent No.4, it appears that letter dated 26 November 2019 offered job to Respondent No.4 as “Part-Time Teacher”. The reason for giving such offer to Respondent No.4 was indicated in the letter dated 26 November 2019 as the health issues suffered by Respondent No.4 as indicated in his resignation letter. The

Management felt that as a Full-Time Assistant Teacher, there were several duties in the College which could affect his health adversely. Far from accepting the resignation, the statement in the letter dated 26 November 2019 that *“as a Full Time Assistant Teacher, there are several duties in the College which will affect your health adversely”* would clearly indicate positive consideration of the aspect of continuation of services of Respondent No.4. Though Petitioner-Management was willing to continue Respondent No.4 on the position as Assistant Teacher, it felt that his health issues would not permit him to effectively render the duties of the position as Assistant Teacher. It therefore cannot be countenanced that letter dated 26 November 2019 ever communicated to Respondent No.4 that either his resignation from services was accepted or his offer for resigning from the post of Supervisor was rejected in any manner.

14. In my view therefore, there is no decision by the Petitioner-Management to accept resignation tendered by Respondent No.4 on 16 November 2019. In any case, he never intended to resign from services as is now falsely sought to be suggested on behalf of the Petitioner-Management. The Petitioner-Management clearly understood the exact effect of the letter dated 16 November 2019 and was in fact willing to continue Respondent No.4 as Assistant Teacher, but felt that his health issues would come in his way for continuing on the post of Assistant Teacher. It has now taken a *volte-face* and contended that Respondent No.4 resigned from services entirely on 16 November 2019, which was accepted by the Petitioner-Management on 26 November 2019.

15. In my view therefore, the manner in which the services of Respondent No.4 are brought to an end by the Petitioner-Management is

clearly illegal and arbitrary. The School Tribunal has rightly interfered in the manner in which the services of Respondent No.4 are brought to an end. Whether to give it a nomenclature of termination or not is a matter of semantics. What ultimately matters is the fact that Respondent No.4 was not permitted to enter the School and perform his duties. A perfect case was made out by Respondent No.4 for setting aside the order of oral termination.

16. The contention of Ms. Joshi that Petitioner-Management was sympathetic towards Respondent No.4 by offering him the post of part time Teacher does not appeal to this Court. If Respondent No.4 was already holding the post of permanent Teacher and had risen to the position of Supervisor, it is difficult to fathom as to how conversion of services of full-time Teacher to that of part-time Teacher would amount to expression of any sympathy towards him. In fact letter dated 26 November 2019, which had the effect of bringing down the status of Respondent No.4 from the position as Supervisor to that of Part Time Teacher, has rightly been construed by the School Tribunal as an attempt of reduction in rank.

17. The conduct of Respondent No.4 is sought to be highlighted for justifying his unceremonious removal from service. If Respondent No.4 had misconducted, the Petitioner-Management ought to have followed the procedure prescribed in the MEPS Act and Rules, and imposed appropriate punishment on him. The Petitioner-Management cannot throw a Teacher out of service and then justify the removal by citing the allegation of misconduct. Even otherwise, the afterthought justification of allegations of misconduct is unacceptable in the light of willingness of Petitioner-Management to continue the services of Respondent No.4

as Part-Time Teacher. If he had really misconducted, the Petitioner-Management would not have continued him even as a Part-Time Teacher. The case involves deliberate misreading of the resignation letter. Instead of either reverting Respondent No.4 from the post of Supervisor to that of Assistant Teacher or informing him that he could not selectively seek resignation from the post of Supervisor, Petitioner-Management illegally changed his position to that of Part-Time Teacher.

18. Considering the overall conspectus of the case, I am of the view that no case is made out for interference in the findings recorded by the School Tribunal. The Petitioner-Management has acted arbitrarily in unceremoniously sending Respondent No.4 home without inquiry or without imposing punishment. A full-time permanent Teacher cannot be given offer to work part-time and his inability to accept the offer cannot be construed as voluntarily giving up of job. The termination of Respondent No.4 has rightly been set aside by the School Tribunal directing his reinstatement with full backwages and continuity of service. Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

19. After the judgment is pronounced, Ms. Joshi would pray for continuation of stay on the order of the School Tribunal for a period of eight weeks. The request is opposed by the learned counsel appearing for Respondent No.4. Considering the nature of findings rendered while dismissing the Petition, I am not inclined to continue the stay order any further. The request is accordingly rejected.

(SANDEEP V. MARNE, J.)