



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**928 WRIT PETITION NO. 10282 OF 2023**

1. President/Chairman,  
Inayat Education Society  
Inayat Nagar Parbhani,  
Tq. Parbhani, Dist. Parbhani

2. Head Mistress,  
Maulana Abul Kalam Azad  
Urdu High School,  
Inayat Nagar Parbhani,  
Tq. Parbhani, Dist. Parbhani.

**.....PETITIONERS**

**VERSUS**

1. The State Of Maharashtra  
Through Education Officer (Secondary)  
Zilla Parishad Parbhani.

2. Sayyed Athar Sayyed Aajam,  
Age : 36 years, Occu.: Nil.  
R/o. Kadrabad Plot (Rajnagar)  
at post Tq. & Dist. Parbhani.

**....RESPONDENTS**

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Mr. K. M. Nagarkar, Advocate for the Petitioners  
Mr. R. K. Ingole, AGP for Respondent No.1 – State  
Mr. R. J. Godbole, Advocate for Respondent No.2  
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**CORAM : AJIT B. KADETHANKAR, J.**  
**DATE : 19.08.2026**

**JUDGMENT :-**

. Rule. Rule made returnable forthwith. By consent of the parties,  
the petition is heard for final disposal.

2. It is not in dispute that respondent No.2/employee was lawfully appointed as a Watchman under the service of the present petitioner – school management. The competent authority i.e. the Education Officer has also accorded approval to the services of respondent No.2/employee. It appears that subsequently some differences occurred between respondent No.2 and the petitioner – school management which resulted into otherwise termination dated 15.02.2011. The respondent/employee contended that by verbal termination, he was prevented from attending the school which is termed as an oral termination.

3. Feeling aggrieved thereby, the employee approached the School Tribunal under Section 9 of the M.E.P.S. Act, 1977. The respondent – management caused its appearance and defended the appeal by filing a written statement. The sole contention of the respondent – management was that the employee himself had abandoned the services and it was not the case that at any point of time, the management prevented him from joining the services. Thus, attributing the entire liability to the employee, the school – management submitted that the appeal itself was not maintainable before the Tribunal. So far as the lawfulness of the appointment and approval is concerned, there was no dispute raised by the school – management before the Tribunal. After hearing the parties at length and after going through the

record produced before it, the learned Presiding Officer of the School Tribunal arrived at a conclusion that the management had terminated the petitioner's services with effect from 15.02.2011 by way of oral termination. Accordingly, the oral termination was set aside. The appeal was allowed. The petitioner was directed to reinstate the employee in service with full back wages. As against this, the petitioners are before this Court.

4. During the proceedings, it is apprised to this Court that the employee/respondent No.2 has resigned from the services and he is no more with the petitioner – school management. Now, the only issue remains as regards the payment of back wages and submission of pension papers to the Zilla Parishad authorities at the hands of the management. To deny the back wages, Mr. K. M. Nagarkar, learned Advocate for the petitioners vehemently submits that the management right from inception, submitted that it was a case of voluntary abandonment of the services and the School Tribunal has not looked into this aspect of the matter correctly. It is again sought to be submitted by Mr. Nagarkar that the petitioner in fact ought to have approached the authorities if his case was that he was prevented from joining the duty and signing the muster roll. He would submit that the muster roll was produced before the Tribunal and yet the School Tribunal did not look into the said muster roll. With this submission, Mr. Nagarkar submits that the petition

be allowed and the order passed by the Tribunal be set aside.

5. Mr. R. J. Godbole, learned Advocate for respondent No.2 would support the findings recorded by the School Tribunal. He would submit that in fact, it was the duty of the management to show that the petitioner was voluntarily absent from the duty. It is his further submission that since the employee has voluntarily resigned from the services, there would be no impediment for the school management to prepare and send the pension proposal of the resigned employee. His main concern is about the back wages to which the employee is entitled. Mr. Godbole would conclude his arguments with the submission that, on merits, there is no case for the school management in this writ petition and hence directions be issued to the management for granting back wages and submitting his pension papers.

6. Learned AGP submits that since the employee who was appointed on regular pay scale, was terminated without conducting any enquiry. Hence, in the light of the law laid down by the Hon'ble Supreme Court in the case of *Educational Society, Tumsar and Others vs. State of Maharashtra and Others*, reported at *2016 3 Supreme Court Cases 512*, it is the duty of the management to pay the back wages for such period.

7. I have heard the learned Advocates for both the parties at length. I have perused the case papers produced before me. Although it is the contention of the petitioners that the petitioners had voluntarily abandoned the services, the School Tribunal discarded this argument by recording that there is no document. With this finding, paragraph 9 is reproduced as below:

*“There are no documents on record produced by the respondent Nos.1 and 2 to show that the appellant remained himself absent from the school and he was voluntarily abandoned his duties. The respondent Nos.1 and 2 have not produced muster roll to show that the appellant was absent on the duties.”*

8. It is abundantly clear that the petitioner – management miserably failed not only to prevail before the School Tribunal but also before this Court to make out a case of voluntary abandonment of services at the behest of the respondent – employee. The findings of the Tribunal also reveal that no document i.e. muster roll was filed by the management before the Tribunal to show that the petitioner was voluntarily absent for a certain period. May it be even if, assuming that the petitioner was out of service for a certain period illegally, the management ought to have at least issued a show-cause notice to the petitioner on that count. Even if muster roll could be produced, it comes from the custody of the petitioner – management. Hence it could not be a conclusive proof of absence of an employee.

9. Mr. Nagarkar, learned Advocate for the petitioners would rely on the judgment rendered by this Court in the case of **Kumari Meena vs. T. R. Patil Vidyalaya**, reported at **2014 SCC Online BOM 1541**. Mr. Nagarkar made an endeavour to impress upon this Court that if an employee remains voluntarily absent from the services, the action for conducting an enquiry may not arise. I do not find any reason to disagree with such legal proposition. However, the facts are quite different. The law would be applicable only if the facts arise. In the case in hand, the petitioner – management failed to produce on record anything to show that the employee had voluntarily remained absent from the services despite any call by the management. Hence, with due respect, I observe that the cited case may not be of any avail to the petitioner.

10. My attention is also invited by Mr. Nagarkar to the order passed by this Court dated 22.03.2022 in Writ Petition No.8897 of 2016 filed by the present respondent No.2 in this Court. The writ petition was filed at the behest of the respondent – employee whose application seeking condonation of delay was rejected by the School Tribunal. This Court allowed the writ petition, condoned the delay and directed the School Tribunal to register the appeal and to hear it on merits. In the operative order at clause (a) of paragraph 9, this Court observed as below:

*“Considering that 30 days is the limitation from the date of the cause of action, if the petitioner eventually succeeds in his appeal, he would be deprived of the back wages from 15.03.2011 till August, 2015 in the light of the impugned order having been delivered on 03.09.2015. However, continuity in service would be granted.”*

The said order remains intact. Obviously, while granting back wages, this order will prevail over. For the reasons recorded above, I find that the petitioner could not make out a case for interference by this Court under Article 227 of the Constitution of India. Resultantly, the petition fails.

11. The impugned order dated 07.02.2023 passed by the learned Presiding Officer School Tribunal, Latur in appeal no.11 of 2022 is confirmed.

12. Within two months from today, the petitioner – school management shall submit a comprehensive pension proposal including all the claims which the respondent – employee is entitled and shall submit the same to the appropriate authority. The Education Officer shall, within one month from the date of receipt of the proposal, release the pension and pensionary benefits.

13. So also, within two months from today, the petitioner – management shall pay the arrears of the salary and backwages to the respondent – employee till the date of his reinstatement keeping in mind the

order passed by this Court at clause (a) of paragraph 9 in Writ Petition No.8897 of 2016.

14. Writ Petition stands dismissed in above terms.

15. Rule stands discharged.

[AJIT B. KADETHANKAR, J.]

PRW