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

WRIT PETITION NO. 3639 OF 1994

Arjun Rangnath Gaikwad,  
Age : Major, Occ : Nil,  
R/o Dhanegaon, Tal.Kaij,  
District Beed.

...PETITIONER

-VERSUS-

- 1 The President,  
Rehabilitation Dhanegaon,  
Backward Class Shikshan Prasarak  
Mandal, Dhanegaon Camp,  
Tq.Kaij, District Beed.
- 2 The Secretary,  
Rehabilitation Dhanegaon,  
Backward Class Shikshan Prasarak  
Mandal, Dhanegaon Camp,  
Tq.Kaij, District Beed.
- 3 The Headmaster,  
Dhanegaon High School,  
Dhanegaon Camp, Tq.Kaij,  
District Beed.
- 4 The Education Officer,  
Zilla Parishad, Beed,  
District Beed.
- 5 The Presiding Officer,  
School Tribunal, Aurangabad,  
District Aurangabad.

...RESPONDENTS

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Shri P.G.Deshmukh, Shri H.A.Joshi, Shri Y.P.Deshmukh, Advocates h/f  
Smt.Smita Deshpande, Advocate for the Petitioner.

Shri V.G.Sakolkar, Advocate for Respondent Nos.1 to 3.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 01<sup>st</sup> October, 2015**

Oral Judgment:

1            This petition was admitted on 10.06.1998. No interim relief was granted to the Petitioner.

2            The Petitioner is aggrieved by the judgment and order dated 21.09.1994 delivered by the School Tribunal in Appeal No.93/1993.

3            The Petitioner submits that he was appointed by orders dated 11.12.1988, 12.06.1989, 11.06.1990 and 11.06.1991 as an Assistant Teacher in the Physical Education Department. Each of these appointments were for a single academic year. From 11.06.1991 till 01.07.1993, he claims to be the Incharge Headmaster.

4            It is submitted that in 1993, the Respondents/ Management received grant-in-aid. However, from 02.07.1993, the Petitioner was disallowed from discharging his duties which tantamounts to an oral termination. He, therefore, preferred Appeal No.93/1993 under Section 9

of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “the MEPS Act, 1977”) before the School Tribunal for assailing his oral termination.

5           The Respondent/ Management filed their Written Statement contending that the Petitioner was not orally terminated. He had voluntarily resigned and his resignation was accepted by passing a resolution.

6           The Petitioner submits that he had never resigned and has never seen the face of a resignation letter as contended by the Respondent/ Management. He used to sign on blank papers in his day to day functioning as Incharge Headmaster. The Management has misused his signatures on blank papers and have got the resignation typed on the said papers.

7           The Petitioner further submits that the resignation has to be tendered in accordance with Section 7 of the MEPS Act and the procedure for considering the resignation and its acceptance is provided for in Rule 40 of the MEPS Rules, 1981. The Management has come forward with a false and dishonest plea that the Petitioner has resigned on 30.04.1993 and his resignation was accepted on 10.05.1993.

8           The Petitioner has referred to the resignation letter dated 30.04.1993 and submits that the signature appearing on the said letter is in fact the signature of the Petitioner. Similarly, the acknowledgment dated 20.05.1993 in which the Petitioner has thanked the Management for accepting his resignation, also bears his signature. He, however, submits that the text appearing in the said two documents were never typed by the Petitioner. He had no intention of resigning, much less any desire to resign. He further submits that false allegations are levelled upon him and the impression that the resignation letter creates is that the Petitioner acknowledges his guilt and his misdemeanors, which is an eyewash.

9           The Petitioner further submits that he is presently not gainfully employed in the literal sense of the term. He is working as a daily-wager in order to survive. The Management deserves to be directed to reinstate the Petitioner in service with continuity and full back-wages. Alternatively, he submits that the notional continuity of service be granted and the arrears of wages from 20.05.1993 till today be directed to be paid.

10          Shri Sakolkar, learned Advocate for the Management, has strenuously supported the impugned judgment. At the very outset, he submits that the Petitioner had prepared false and bogus appointment

orders dated 11.12.1988, 12.06.1989, 11.06.1990 and 11.06.1991. He was never appointed as an Assistant Teacher in the Physical Education Department. He was engaged as an Incharge Headmaster without being employed earlier by the Management from 11.06.1991 till 10.05.1993.

11           He further submits that the Petitioner realized that he had committed certain serious misdemeanors which would amount to serious misconducts, if proved. The Petitioner, therefore, found it fit to tender his resignation by putting forth his admissions of having committed such misdeeds. Though the Petitioner tendered his resignation on 30.04.1993, the Management did not show any undue haste in accepting the said resignation. It was placed before the Governing Body which passed the resolution on 10.05.1993 thereby, accepting his resignation as well as of another person, namely, Shri N.P.Palwade. Shri Sakolkar, therefore, submits that this would make it apparent that the Management did not act in undue haste and considered the resignation of the Petitioner and another employee in the meeting called for the said purpose.

12           He submits that the admission of the Petitioner in the resignation of having committed grave and serious misdeeds would not generate confidence in the Employer to take him back. The Management cannot be foisted with such employees. He, however, frankly states that

the Management did not wait for 30 days period with reference to a temporary employee like the Petitioner while accepting the resignation as prescribed under Rule 40 of the MEPS Rules, 1981.

13           I have considered the submissions of the learned Advocates as have been recorded herein above and have gone through the petition paper book and the impugned judgment with their assistance.

14           The only issue that requires consideration is whether, the resignation of the Petitioner can be said to be extracted by force, duress, coercion or by playing fraud upon him. The issue is whether, the Management has violated the prescription set out in Rule 40 of the MEPS Rules, 1981 in accepting the resolution.

15           The Petitioner has come with a case that he had no idea at all about the resignation dated 30.04.1993 and acknowledgement letter dated 20.05.1993 signed by him. The signatures on both these documents are, however, admitted. I find from these two documents that the signature is exactly below the text in each of them. In the resignation letter, the signature is at the bottom. In the acknowledgement letter dated 20.05.1993, the signature is in the middle of the page which is just below the four lines of acknowledgement.

16            Nevertheless, the Petitioner being an educated person, cannot be expected to sign on blank papers and handover such papers to the Management as has been contended by the Petitioner. So also, ever since the acceptance of the resignation, the Petitioner has not been paid his salary. It is only on 02.07.1993 that he claims of having suffered oral termination. I do not find any evidence on record which would substantiate the story put forth by the Petitioner with regard to his resignation.

17            In the light of the above and in the absence of any evidence, I cannot come to the conclusion that the resignation was obtained by force, duress, coercion or by playing fraud upon the Petitioner.

18            Insofar as the procedure for acceptance of the resignation is concerned, Rule 40 of the MEPS Rules, 1981 lays down that the resignation of a non-permanent employee could be accepted after one month. For clarity, Rule 40 is reproduced as under:-

“40.    *Resignation:-*

(1)    *A permanent employee may leave service after giving three calender months notice and a non-permanent employee may leave service after giving one calender month's notice. The Management may, however, allow an employee to leave service earlier on payment of pay (excluding allowances) for three months, or as*

*the case may be, one month in lieu of notice by the employee. The amount in lieu of notice shall be restricted to the pay or the period by which the notice period falls short.*

- (2) If any Management allows an employee to leave service earlier either without due notice or without making payment of pay in lieu of notice as specified in sub-rule (1), a proportionate amount of pay in lieu of notice shall be deducted from the grant due to the school concerned.*
- (3) An employee entitled to vacation shall not give notice of resignation during the vacation or so as to cover any part of the vacation. The notice of resignation shall not be given within a month after the beginning of the first term of the year.”*

19           In the face of the contentions of the Petitioner that he had never issued a resignation letter, there does not appear to be any compelling circumstance for which the Management accepted the resignation of the Petitioner within the prescribed period of one month. Either the Petitioner/ Employee has to request for acceptance of resignation within the notice period or the Management has to allow the Employee to leave services during the notice period or without notice as per Rule 40(2) reproduced as above.

20           It is an admitted position that the resignation dated 30.04.1993 has been accepted by the Management on 10.05.1993. Rule 40 has, therefore, been violated which could be said to render the acceptance of resignation, void. Nevertheless, it cannot be overlooked that

this Court has declined interim relief to the Petitioner in 1994 and a period of 22 years has lapsed post he being relieved from employment.

21           In this backdrop and in the light of the contention of Shri Sakolkar that the Petitioner had resigned since he wanted to evade the disciplinary proceedings and had admitted his guilt, reinstating him only on account of non compliance of Rule 40 neither appears to be pragmatic nor practical in the given situation.

22           I, therefore, find it more appropriate to penalize the Respondent/ Management for having shown undue haste in accepting the resignation of the Petitioner without letting the notice period expire. It cannot be overlooked that the Petitioner is litigating against the Management for the past about 23 years.

23           In such circumstances, by way of compensating the Petitioner in the light of the violation of Rule 40 of the MEPS Rules, 1981, I deem it proper to impose costs of Rs.1 lac on the Respondent/ Management, which shall be paid to the Petitioner within a period of 12 weeks from today.

24           This Writ Petition is, therefore, partly allowed and Rule is

made partly absolute to the extent of directing payment of compensation of Rupees One Lac to the Petitioner within TWELVE WEEKS.

**(RAVINDRA V. GHUGE, J.)**