

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

WRIT PETITION NO. 7266 OF 2014

1. Shankarrao Gaikwad Gramin Education Society, Taluka Shrirampur, Dist. Ahmednagar, Through it's President, Shankarrao s/o Baburao Gaikwad, Age: 56 years, Occ: Agri., R/o. Ward No. 6, Shrirampur, Tq. Shrirampur, Dist. Ahmednagar.
2. Sow. S.B.Gaikwad Primary School, Shrirampur, Tq. Shrirampur, Dist. Ahmednagar, Through it's Headmistress. ...Petitioners

versus

1. Gorakshnath s/o Ganpat Dhirange, Age: 36 years, Occ: Service, R/o. C/o. Arvind Sonawane Khirali Vasti, Behind Kanda Market, Shrirampur, Tq. Shrirampur, Dist. Ahmednagar.
2. The Education Officer (Primary), Zilla Parishad, Ahmednagar. ...Respondents

.....

Mr. S.S. Jadhavar, Advocate for petitioners.
Mr. P.S. Dighe, Advocate h/f Mr. V.R. Dhorde, Advocate for respondent No.1.
Mr. S.T. Shelke, Advocate for respondent No.2.

.....

CORAM : N.W. SAMBRE, J.

**RESERVED ON : 27/01/2015
PRONOUNCED ON: 30/01/2015**

ORDER :

. This petition is by a Trust registered under the Bombay

Public Trust Act and also Society registered under the Societies Registration Act, questioning the legality and validity of the order dated 01/04/2014 passed in Appeal No. 02 of 2011 by the School Tribunal, Pune Region, Solapur, whereby respondent No.1 to the present petition, who claims to have been working as a teacher in the school managed by the petitioner, ordered to be reinstated with continuity of service by quashing termination order dated 01/01/2011.

2. The few facts relevant for adjudication of the issues involved in the present writ petition are as under :

. Respondent No.1 claims to have passed H.S.C. D.Ed. qualification and after following due process, selected and appointed as *Shikshan Sevak* for the period of 3 years. He claims that he has joined his duty from 03/06/2002 and the Education Officer has granted approval to his appointment.

3. Having completed three years tenure as *Shikshan Sevak*, his services were absorbed as permanent employee and was granted approval as Assistant Teacher w.e.f. 03/06/2005.

4. Respondent No. 1 was appointed as *Shikshan Sevak* and then Assistant Teacher for teaching 5th to 7th Standard, which

were admitted to the grants from 2007. It is claimed by respondent No.1 herein that having completed 8 years continuous service, he was not paid salary, as a result of which, he filed Writ Petition No. 1679 of 2010 before this Court for recovery of salary. The said writ petition is pending for final disposal.

5. Respondent No.1 herein claimed that he was surprised to receive an order bearing Outward No. 1/11 dated 01/01/2011 relieving him from service as an Assistant Teacher w.e.f. 01/10/2010. It is claimed by respondent No.1 that the said termination was based on alleged resignation letter dated 30/09/2010, which according to him, was sham and bogus document. He further claimed that, had it been a case that he would have resigned from the post, the said fact ought to have been brought to the notice of this Court or respondent No.1 by the petitioner-management in the pleadings raised in Writ Petition No. 1679 of 2010 which is pending since then.

6. Learned Tribunal, after considering the rival claims of the parties, has allowed the Appeal No. 02 of 2011 by the order impugned dated 01/04/2014. As such, present writ petition.

7. Mr. Jadhavar, learned Counsel for the petitioner-management, while urging that the order of Tribunal is not

sustainable in the eyes of law, has invited my attention to the findings recorded by learned Tribunal. According to him, once respondent No.1 has tendered resignation, non mentioning of the said fact in the pleadings in Writ Petition No. 1679 of 2010 or otherwise has hardly any bearing, as this Court has already incorporated the said provision as regards tendering resignation by R.P.A.D. to the benefit of the management and not to that of employee. He further claimed that the tribunal has committed an error in observing that the resignation letter and intimation letter dated 29/06/2010 are prepared by the management and same are bogus and manipulated documents. According to him, the order of reinstatement with full back wages is also required to be quashed and set aside, as there are no pleadings and evidence in support of claim of the back wages.

8. If the above referred contentions of the petitioner are tested in the light of pleadings raised in the appeal and reply filed thereto alongwith the documents, it is required to be noted that it is an admitted position on record that Writ Petition No. 1679 of 2010 is pending adjudication before this Court. In the said writ petition, the petitioner i.e. respondent No.1 herein has claimed payment of his salary from the day he has joined the service i.e. from 03/06/2002. It is also not in dispute or it was not brought to my notice by the petitioner-management that appointment of respondent No.1 was

disputed by the management. In that view of the matter, the tribunal has rightly held that respondent No.1 was of permanent employee/Assistant Teacher of the petitioner-management and his services are duly approved by the Education Officer.

9. So far as next contention as regards the alleged intimation dated 29/06/2010 issued by respondent-employee that he, for the personal reasons, is resigning from the post of Assistant Teacher on 30/09/2010 and his resignation be accepted, is concerned, it is required to be noted that in the Writ Petition No. 1679 of 2010, the fact remains that the said issue as regards alleged resignation was of the same period however it was neither brought to the notice of respondent No.1 nor to the Hon'ble Court. As such, the fact remains that in Writ Petition No. 1679 of 2010 the very story of resignation by respondent No.1 was not at all canvassed, though from the events of alleged resignation it is clear that the resignation alleged to have been tendered during that time i.e. at the time of hearing of Writ Petition No. 1679 of 2010, which is still pending. In the pleadings to the said writ petition, the petitioners qua respondents therein have not brought to my notice as regards the said fact pleaded in the reply to the said writ petition. As such, the tribunal was right in considering the said issue for the purpose of setting aside the termination of respondent No.1.

10. The tribunal has given finding that the alleged resignation/intimation is sham and bogus document. In support of the said finding, the tribunal has analyzed the events which took place, according to the respondent-employee, for the purpose of submitting resignation dated 30/09/2010. The tribunal has taken into account that the termination order is dated 01/01/2011, resignation letter is dated 30/09/2010, resignation letter was sanctioned by the management on 31/12/2010 and was terminated retrospectively w.e.f. 01/10/2010. The original resignation though was perused by the tribunal, however, the tribunal noted that the letter dated 29/06/2010 which alleged to have been issued by respondent No.1, three months advance to the date of alleged resignation, in the resignation dated 30/09/2010 there was no mention about earlier intimation dated 29/06/2010. The Tribunal has also taken into account that the President of the petitioner-society has made endorsement as resignation is accepted hence respondent should have been relieved on 01/10/2010, however same came to be accepted on 31/12/2010 for the reasons best known to the petitioner-management perhaps with an intention to cover up their own illegalities.

11. The tribunal has taken into account the provisions of Rule 40 of M.E.P.S. (C.S.) Rules, which provides for mode and

manner in which permanent employee of the school can resign from the service. The tribunal has taken into account the claim put forth by the petitioner-management in its written statement that the appellant on 29/06/2010 for the first time intimated as regards his resignation and deposited an amount of Rs.9656/- i.e. one month salary to the management. It is also mentioned in the said written statement that the resignation was accepted by the management on 01/01/2011 and the said amount of Rs. 9656/- tendered by respondent No.1 in lieu of notice period was deposited in the bank. The said event is rightly viewed by the tribunal as an adverse to the interest of the present petitioners, as amount in lieu of notice period was required to be paid, in case if the employee intend to leave service without completing the notice period. The tribunal has rightly considered that the management should have passed resolution regarding acceptance of resignation when intimation of three months was given to the management by notice dated 29/06/2010.

12. In my opinion, the submission made by learned Counsel for the petitioner-management, in view of above observations hardly bearing any substance.

13. The next contention raised by learned Counsel for the petitioners in relation to the payment of back wages is concerned, once it is held that the petitioner-management has prepared a bogus resignation letter, which in my opinion, has rightly been proved before the tribunal after the tribunal has scrutinized the evidence and pleadings minutely, it cannot be held that respondent-employee was at fault and was not entitled for back wages. Once the respondent-employee has claimed the back wages, burden shifts on the management to prove that respondent No.1 was gainfully employed, which burden is not discharged by the petitioner-management either before this Court or before the tribunal.

14. In the light of above observations, in my opinion, the tribunal has rightly set aside the termination order dated 01/01/2011 and has ordered reinstatement with continuity in service with full back wages. As such, no case for interference is made out. The writ petition is devoid of merits, hence same stands rejected.

[N.W. SAMBRE, J.]