

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

**WRIT PETITION NO.5199 OF 2014**

Maratha Shikshan Sanstha Uran & Ors. .. Petitioners  
Vs.  
Mohan Yashwant Kundale (since deceased)  
through his legal heirs  
1a)Smt.Anandibai Yashwant Kundale and Ors. .. Respondents

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Mr.Satyajeet Rajeshirke for the petitioners.  
Mr.Umesh Pawar for the respondent no.1.  
Mr.A.R.Metkari, AGP for the respondent no.2.

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**CORAM : R.D. DHANUKA, J.**  
**DATE : 11<sup>th</sup> August 2016**

P.C.

. By this petition filed under Article 227 of the Constitution of India, the petitioners (management) have impugned the judgment and order dated 26<sup>th</sup> February 2014 passed by the learned Presiding Officer, School Tribunal, Kolapur thereby allowing the appeal filed by Shri Mohan Yashwant Kundale who continuously worked as an Assistant Teacher in the school run by the petitioner no.1. Shri Mohan Yashwant Kundale was appointed as an Assistant Teacher on 2<sup>nd</sup> January 1995.

2. It was the case of the petitioners that the said Assistant Teacher was remaining absent for quite sometime without any prior permission. On 25<sup>th</sup> June 2013, the said Assistant Teacher applied for voluntary retirement due to his physical inability and for a direction to refer for medical check up before Civil Surgeon, Sangli for necessary

certificate. It is the case of the petitioners that on 2<sup>nd</sup> July 2013, the management issued a letter for medical check up and directed to submit before the Civil Surgeon, Sangli. On 16<sup>th</sup> July 2013, the said Assistant Teacher informed the management that he was not going to avail VRS and started working in the school. In the said letter dated 16<sup>th</sup> July 2013, the said Assistant Teacher also informed the management that his health was good. It is not in dispute that though the said Assistant Teacher had withdrawn his application dated 25<sup>th</sup> June 2013 vide their letter dated 16<sup>th</sup> July 2013, the management placed the said matter in its Committee meeting on 25<sup>th</sup> September 2013 and accepted the said proposal initially made by the said Assistant Teacher.

3. In view of the termination of his services by the management, the said Assistant Teacher filed an appeal (55 of 2013) before the school tribunal impugning the said termination. The school tribunal framed five issues and has partly allowed the said appeal filed by the Assistant Teacher by judgment and order dated 26<sup>th</sup> February 2014. It is held by the school tribunal that the said Assistant Teacher had revoked his intention for VRS application dated 25<sup>th</sup> June 2013. The school tribunal in the said judgment and order refused to grant any prayer for back wages and directed the management to reinstate the said Assistant Teacher on his original post with continuity of service. The school tribunal granted liberty to the management to consider the absence period prior to 25<sup>th</sup> September 2013 strictly according to Rule 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981.

4. During the pendency of the writ petition, the said Assistant Teacher expired on 18<sup>th</sup> June 2014. The management has impugned the said judgment and order dated 26<sup>th</sup> February 2014 in this writ petition.

5. I have heard learned counsel appearing for both the parties and I have perused the impugned judgment and order dated 26<sup>th</sup> February 2014 passed by the learned Presiding Officer, School Tribunal, Kolhapur.

6. There is no dispute that the said Assistant Teacher had already withdrawn his proposal on 25<sup>th</sup> June 2013 by his subsequent letter dated 13<sup>th</sup> July 2013. In my view, once the said Assistant Teacher had withdrawn his application proposing to take VRS under the Voluntary Retirement Scheme, the management could not have accepted the original proposal subsequently in the meeting of management and could not have terminated the services of the said Assistant Teacher with retrospective effect. The school tribunal has considered this issue at a great length and has rightly rendered a finding that the impugned order dated 25<sup>th</sup> September 2013 passed by the management thereby accepting the proposal of the said Assistant Teacher for voluntary retirement was illegal and has rightly quashed and set aside the same.

7. Learned counsel for the management states that the management has duly submitted the proposal for process of payment of pension and other benefits to the Education Department in respect of the said Assistant Teacher.

8. In my view, the findings recorded by the school tribunal are recorded after considering the provisions of law and the facts pleaded by both the parties and are not perverse. I do not find any infirmity with the order passed by the school tribunal. Petition is devoid of merit and is accordingly dismissed. No order as to costs.

9. The Education Department is directed to process the proposal made by the management for sanction of pension and other consequential benefits in respect of the said Assistant Teacher and release his legal dues within a period of eight weeks from today. Parties to act on the authenticated copy of this order.

***R.D. DHANUKA, J.***