

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

**LETTERS PATENT APPEAL NO. 1 OF 2018
IN
WRIT PETITION NO. 5952 OF 2010**

Bhaidas Chudaman Fulpagare
Age : 37 years, occu.: nil
R/o Lane No.14, Subhash Nagar,
Dhule.

Appellant.

Versus

1. The State of Maharashtra
2. Dhule Education Society.
3. The Head Master
K.S.K. New City High School, Dhule
4. Education Officer (Secondary),
Z.P. Dhule.

Mr. A.R. Borulkar, Advocate holding for
Mr. N.L. Chaudhari, Advocate for the appellant.
Mr. R.V. Dasalkar, A.G.P. for respondent Nos.1 and 4.
Mr. Shriram V. Deshmukh, Advocate holding for
Mr. S.P. Shah, Advocate for respondent Nos.2 and 3.

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Dated : 01.03.2018.

ORDER (PER SUNIL K. KOTWAL, J) :-

1. This Letters Patent Appeal is directed against the order dated 31.08.2010 passed by the Single Judge of this Court in Writ Petition No. 5952/2010, upholding the order dated 19.11.2009 passed by the Presiding Officer of School Tribunal, Nashik, dismissing the Appeal No. DHL/15/2009 filed by the appellant against the order of his termination.

2. Contention of the appellant is that he was appointed as 'Shikshan Sevak' in the School run by respondent No.2 on 07.02.2005 and his initial appointment was for a period of three years. The appellant remained absent from duty from 11.02.2005 on account of his illness and resumed services thereafter since 13.02.2006. Contention of the appellant is that the Management had issued oral order of termination since 21.11.2006. He seeks quashment of the oral order of termination issued by the Management.

3. In reply, learned Counsel for the Management submitted that the appellant abandoned his service since 04.07.2005 and did not turn back to resume the duty at any point of time thereafter. The Management has denied the contention in respect of issuance of

oral order of termination on 21.11.2006. Learned Counsel for the Management submitted that under Rule 16 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981, the appellant was required to tender an application for leave within seven days from the date of his absence. However, the appellant neither tendered such application nor he informed the School the reason for his absence.

4. Learned Counsel for the appellant tried to convince this Court that the appellant remained absent from duty for a period of 41 days on account of illness. However, no substance is placed on record to substantiate this contention or to show that he had proceeded on leave during the above said period after securing permission from the Management.

5. Rule 16 (2) of the M.E.P.S. Rules, 1981 reads as under :-

“An application for leave other than casual leave or extension of leave or to proceed on leave after vacation shall ordinarily be made in good time before the date from which the leave or its extension is sought. Even in exceptional cases where it is not possible to apply beforehand because of circumstances beyond the control of the employee, the application shall be made within 7 days from the date of absence. A non-permanent employee shall be

deemed to have abandoned his service if he fails to apply for leave within seven days from the date of his absence”.

6. A bare glance of Rule 16 (2) of M.E.P.S. Rules makes it clear that even in the exceptional cases where it is not possible to apply beforehand due to unavoidable circumstances, the employee shall submit leave application within 7 days from the date of absence. A non-permanent employee shall be deemed to have abandoned his service if he fails to apply for leave within 7 days from the date of his absence.

7. Undisputedly, the appellant was appointed as 'Shikshan Sevak' on 07.02.2005 and he had not become permanent till the date of his alleged termination. Therefore, it was his duty to submit leave application within 7 days from the date of his absence. The ailment of the appellant cannot be a ground to claim exemption from such mandatory requirement. Otherwise also, no substance is on record which shows that the appellant was bed-ridden during the period of 41 days of his absence. In the circumstances, we do not find any perversity in the order passed by the learned Single Judge while dismissing the Writ Petition and confirming the order passed by the School Tribunal in Appeal No. DHL/15/2009.

8. We hold that this Letters Patent Appeal being devoid of merit deserves to be dismissed.

9. Hence, the following order.

ORDER

1. Letters Patent Appeal No.01 of 2018 is dismissed.
2. No order as to costs.

**(SUNIL K. KOTWAL)
JUDGE**

**(T.V. NALAWADE)
JUDGE**

vdd/