

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6381/2019

(AVATAR MEHARBABA SHIKSHAN SANSTHA ARVI (CHHOTTI) & ANOTHER **VERSUS** THE
PRESIDING OFFICER, ADDITIONAL SCHOOL TRIBUNAL, CHANDRAPUR & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P. Bhandarkar, counsel for petitioners.
Shri H.D. Dubey, A.G.P. for R-1 & 3.
Shri S.D. Chande, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 14, 2019.

The challenge raised in the present writ petition is to the judgment of the School Tribunal dated 09.08.2019 by which the appeal filed by the respondent no.2 herein under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the said Act') has been allowed. After setting aside the order of termination dated 27.06.2017, the Management has been directed to reinstate the respondent no.2 in service.

It is the case of the respondent no.2 that pursuant to an advertisement issued for filling in the post of Assistant Teacher she had applied for the same. After following the prescribed procedure the respondent no.2 was selected and was thereafter issued an order of appointment dated 27.12.2010. Her appointment was approved by the Education Officer from 01.01.2011 for a period of two years. After completing the period of probation, the services of the respondent no.2 became permanent. According to the said respondent, the Management obtained her signatures on blank papers under some pretext. It also started demanding amounts

from the respondent no.2 for continuing her services in the school. On 11.05.2017 she made a complaint to the Education Officer in that regard. Since she was not receiving salary she had also filed Writ Petition No.3858 of 2017 before the High Court. In the academic session 2017-18, the respondent no.2 joined the school on 27.06.2017. However, on the next day, she was restrained from discharging her duties on the ground that her services stood terminated. Being aggrieved she filed appeal under Section 9 of the said Act.

The Management in its written statement took the stand that on 11.05.2017 the respondent no.2 had submitted her resignation in her own handwriting. This resignation letter was accepted by the Management in its meeting held on 16.05.2017. It resolved to give effect to the termination of services from re-opening of the school. Since the resignation was tendered by following the prescribed procedure it was stated that the appeal was filed as an afterthought. It was further denied that any amounts were demanded from the respondent no.2. On the contrary, she had agreed to discharge duties without accepting any payment till the period grants were made admissible to the school. It was thus pleaded that the appeal was liable to be dismissed.

The learned Presiding Officer after considering the material on record held that there was no reason for the respondent no.2 to resign from service on the ground that she was not getting any salary for the work done. The fact that she was agitating her claim for payment of salary before the High Court indicated that there was no reason for her to resign from service. The fact that a complaint was made to the Education Officer also could not be ignored. It was thus held that the resignation was contrary to the provisions of Rule 40 of the Maharashtra Employees of Private

Schools (Conditions of Service) Rules, 1981 (for short, 'the said Rules') on the ground that the resignation was tendered in the month of May when there was vacation. On these counts therefore the learned Presiding Officer proceeded to allow the appeal and directed reinstatement of the respondent no.2 with back wages. Being aggrieved the Management has challenged the said order.

Shri S.P. Bhandarkar, learned counsel for the petitioners submitted that the learned Presiding Officer committed an error in holding that the respondent no.2 had not resigned from service. Referring to the letter of resignation dated 11.05.2017 it was submitted that it was written in her own hand and there was no reason to doubt the same. In the meeting of the Managing Committee held on 16.05.2017 it was resolved to accept the same. Since the resignation was tendered on the last day of the session, there was no breach of the provisions of Rule 40 of the said Rules. The reason furnished in the letter of resignation was also probable as the respondent no.2 was not receiving her salary for a considerable period. It was submitted that considering the overall facts of the case, there was no reason to doubt the fact that the respondent no.2 had infact resigned from the service. In support of his submissions, the learned counsel placed reliance on the decisions in *Barshi Education Society, Barshi Versus Ashok Ganesh Kulkarni & Others* [2004(3) Mh.L.J. 587], *Sayyad Maksood Ali Sayyed Roshid Ali Versus Uruj-E-Urdu Education Society, Kalamb & Another* [2011(4) Mh.L.J. 952] and *Progressive Education Society & Another Versus Mohammad Ali Gulam Dastagir Dafedar & Others* [2017(5) Mh.L.J. 242]. It was thus submitted that there was non-consideration of relevant aspects by the learned Presiding Officer and hence the impugned judgment was liable to be set aside.

Shri S.D. Chande, learned counsel for the respondent no.2 supported the impugned judgment. According to him, as the respondent no.2 was a permanent Assistant Teacher, there was no reason for her to resign from service. The ground alleged to be mentioned in the letter of resignation had no bearing whatsoever especially in the light of the fact that the respondent no.2 had already filed Writ Petition No.3858 of 2017 for seeking the relief of arrears of salary from the date of her appointment. Though the school was not receiving grants when the respondent no.2 was initially appointed, with passage of time such grants became admissible to the school. The respondent no.2 was in need of employment and she being a permanent Assistant Teacher it was not logical to hold that she intended to resign from service. It was rightly found that there was breach of the provisions of Rule 40 of the said Rules and though the provisions were for the benefit of the Management, the resignation was rightly held to be not voluntary. He therefore submitted that there was no reason to interfere with the impugned judgment.

I have heard the learned counsel for the parties at length and I have perused the documents placed on record. The finding as recorded that the respondent no.2 was appointed as an Assistant Teacher after following the due process of law and the fact that she had completed the period of probation is not under challenge by the petitioners. It is thus undisputed that the respondent was a permanent teacher at the petitioner no.2-School. While according to the respondent no.2, her services were otherwise terminated on 27.06.2017, it is the case of the Management that she had resigned from service on 11.05.2017. In the said letter of resignation it has been stated that as the respondent no.2 was working as an Assistant Teacher from

01.01.2011 but she had not received her salary from the State Exchequer she intended to resign from the post of Assistant Teacher. The reason put forth in the letter of resignation is non-receipt of salary by her. It is not in dispute that on 12.06.2017 the respondent no.2 had filed Writ Petition No.3858 of 2017 seeking a prayer to release her salary from 01.01.2011 onwards. There does not appear to be any reference to the aspect of the respondent no.2 resigning from service though the said writ petition was filed after 11.05.2017. In the light of the fact that the respondent no.2 was agitating her claim with regard to arrears of salary there does not appear any justifiable reason for her to resign from service on that count. It is to be seen that on 11.05.2017 itself the respondent no.2 had issued a letter to the Education Officer which was at Exhibit 3/14 in which an apprehension was expressed that the Management was likely to misuse the blank signed papers obtained from her. The respondent no.2 having served for a period of almost six years and having attained the status of a permanent employee in normal circumstances was not expected to resign from service on the ground that her salary was not being paid from the State Exchequer. Observations to that effect in the impugned judgment are found to be justified.

The learned Presiding Officer has then found that the provisions of Section 7 of the said Act which were mandatory in nature were not found to have been complied with. The resignation letter dated 11.05.2017 was not shown to have been sent by registered post. Further it is not the case of the Management that in lieu of the period of notice, it had paid her salary. The fact that the resignation letter is dated 11.05.2017 indicates that it was given during the period of vacation. Though the provisions of Rule 40 of the said Rules are enacted for the

benefit of the Management as observed in *Barshi Education Society, Barshi* (supra), payment of salary in lieu of notice period has not been shown to have been made. I find that after taking into consideration all surrounding circumstances especially the attempt to join duties in academic session 2017-18 coupled with the fact that the respondent no.2 who was a permanent employee had taken steps to redress her grievance as regards her arrears of salary from 01.01.2011, the stand taken by the Management that the respondent no.2 had voluntarily tendered her resignation does not inspire confidence. The circumstances of the case as well as the preponderance of probabilities favour the respondent no.2 and not the Management. Though there cannot be any quarrel with the ratio of the decisions relied upon by the learned counsel for the petitioner, on considering the overall material on record, I find that the learned Presiding Officer was justified in holding that the respondent no.2 had not resigned from service. Hence, the order of termination dated 27.06.2017 was rightly set aside. At the same time, the respondent no.2 having stated on oath that she was not gainfully employed from the date of termination of services, that statement has been rightly taken into consideration to grant full back wages.

Thus in the light of aforesaid discussion, I do not find any reason to interfere with the judgment of the School Tribunal. There is no jurisdictional error committed in that adjudication. The Writ Petition is accordingly dismissed with no order as to costs.

JUDGE