

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1435 OF 2018

1. Anand S/o Dhondiram Shinde
Age 50 years, occ. Service as Headmaster
R/o C/o Chatrapati Shivaji Secondary &
Higher Secondary School, Sawarmal
Tq. Mukhed, Dist. Nanded.
 2. The Secretary,
Sanjay Madhavrao Atnure
Age 50 years, occ. Agril.,
R/o Smt. Vithabai Shikshan Prasarak Mandal
Itgyal, Tq. Mukhed, Dist. Nanded.
- Petitioners

Versus

1. The Education Officer (Secondary)
Zilla Parishad, Nanded.
 2. Shivaji S/o Mohanrao Patil
Age 41 years, Occ. Service
R/o C/o Chatrapati Shivaji Secondary &
Higher Secondary School, Sawarmal,
Tq. Mukhed, Dist. Nanded.
- Respondents

Mr. A.S. Usmanpurkar, Advocate for the petitioners.
Mrs. D.S. Jape, AGP for respondent No.1.
Mr. A.S. Reddy, Advocate for respondent No. 2.

CORAM : M.G. SEWLIKAR, J.

DATE : 12th August, 2021.

ORAL ORDER :

1. Rule. Rule made returnable forthwith.

2. By consent of the parties, heard finally at the stage of admission.

3. This petition under Article 227 of the Constitution of India is filed for assailing the order dated 15th December, 2017, passed by the learned School Tribunal in Appeal No. 45/2014 whereby the appeal of respondent No. 2 came to be allowed.

4. Facts in nutshell can be stated as under :-

Respondent No. 2 was appointed as Assistant Teacher on 18th January, 2001. In the month of January, 2005, he was promoted as Headmaster. On 19th June, 2013, petitioner No. 1 along with some persons came to the school and by exerting force on respondent No. 2, got resignation written from him. On 29th June, 2013, respondent No. 2 made representation to the Deputy Director of Education, Latur Division, Latur, alleging therein that petitioner had forcibly obtained resignation from him. On 9th July, 2013, the Deputy Director of Education, Latur Division, Latur, directed the Education Officer to take action in accordance with law. Even after tendering of alleged

resignation, respondent No. 2 was working as a Headmaster till 24th August, 2013. He signed muster also till that date. On 3rd September, 2013, respondent No. 2 preferred appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("MEPS Act" for short) which was numbered as Appeal No. 36/2013 whereby he challenged his forcible resignation. During the pendency of the appeal, petitioner No. 1 came to be promoted as Headmaster of the said school and respondent No. 2 was reverted as Assistant Teacher.

5. Learned School Tribunal, by order dated 15th December, 2017, allowed the appeal declaring the impugned resignation as illegal, null and void. It also set aside proposal dated 21st June, 2013, in favour of petitioner No. 1 and reversion of respondent No. 2 was also set aside. Learned School Tribunal, however, directed petitioner to reinstate appellant-respondent No. 2 herein to the post of Headmaster with all consequential benefits. This order is under challenge in the instant writ petition.

6. It is not in dispute that the petitioners failed to file written statement before the learned School Tribunal. Therefore,

appeal proceeded without their written statement.

7. Heard Shri Usmanpurkar, learned counsel for petitioners, Smt. Jape, learned AGP for respondent No. 1 and Shri Reddy, learned counsel for respondent No. 2.

8. Learned counsel Shri Usmanpurkar submitted that learned School Tribunal committed a grave error in allowing the appeal. He submitted that respondent No. 2 did not adduce any evidence about forcible resignation. Respondent No. 2 had voluntarily tendered resignation. Therefore, he did not challenge the said resignation before the School Tribunal for almost three months. He submitted that appeal against reversion or reduction in rank was not maintainable before the School Tribunal. He further submitted that respondent No. 1 – Education Officer declared respondent No. 2 as surplus. For this reason also, respondent No. 2 cannot be reinstated as Headmaster. This fact was ignored by the learned Tribunal. He, therefore, prayed for setting aside the impugned order.

9. Learned counsel Shri Reddy submitted that the order of Education Officer declaring respondent No. 2 as surplus was

withdrawn by the Education Officer by communication dated 16th February, 2019. On the basis of this communication, respondent No. 2 was allowed to join the duties. He submitted that respondent No. 2 worked as Headmaster even after tendering of the alleged resignation. He submitted that this is a clear indication that resignation was tendered under pressure. He, therefore, supported the order of learned School Tribunal and prayed for dismissal of the petition.

10. It is not in dispute that respondent No. 2 was appointed as Assistant Teacher and was promoted as Headmaster in the Month of January, 2005. According to respondent No. 2, his resignation dated 19th June, 2013 was obtained under pressure.

11. Learned School Tribunal placed reliance on Section 7 of the MEPS Act which reads as under :-

7. Procedure for resignation by employees of private schools.

If any employee intends to resign his post in any private school, at any time after the appointment date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him.

As per this rule, resignation letter is to be drawn up in duplicate by the employee. He is expected to sign both the copies of this letter along with date and then forward one copy to the Management by registered post and keep the other copy with him.

12. Learned Tribunal further placed reliance on Rule 40 of the MEPS Rules, which reads thus :-

40. Resignation :

(1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month's notice. The management may, however, allow an employee to leave service earlier on payment of pay (excluding allowance) 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.

13. It appears that there was no compliance of Rule 40 of the MEPS Rules. Respondent No. 2 did not give three months notice nor was he paid three months salary. It is worth noting that despite having tendered resignation on 19th June, 2013, respondent No. 2 continued to work as Headmaster till 24th August, 2013. If he had tendered resignation voluntarily, there was no reason for him to work as a Headmaster. His resignation was accepted on the same day i.e. 19th June, 2013. Therefore, cumulative effect of all these circumstances is that resignation was not voluntary and it was a forcible resignation. In addition to this, petitioners did not file written statement denying allegations of respondent No. 2 in this respect.

14. In this view of the matter, there appears no infirmity in the order of the learned School Tribunal. Petition is devoid of any substance hence dismissed with no order as to costs. Rule discharged.

(M. G. SEWLIKAR)
Judge