

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.8314/2019

PETITIONERS:

(Orig. Respondents
1 to 3)

1. Navjevan Shikshan Sanstha,
Bhisnur, Office 419/201,
Sanjivani Complex, Hanuman Nagar,
Nagpur -9, through its Secretary.
2. Rani Chitralekha Devi Raje
Bhosle Secondary Vidyalaya,
Kanhargaon, Tah. Hingna, Post
Ridhora (Satgaon), Pin – 441 108,
Dist – Nagpur, through its
Head Master.
3. Rani Chitralekha Devi Raje
Bhosle Secondary Vidyalaya
through its President/Secretary,
School Committee, Post Ridhora
(Satgaon), Pin – 441 108, Tah.
Hingna, Dist. Nagpur.

...VERSUS...

RESPONDENTS

(Orig. Appellant)

(Orig. Respondent
no.4)

1. Ajay s/o Keshavrao Charde,
Aged about 33 years, Occ. Nil,
R/o 114, Narmada Colony, Katol
Road, Nagpur, Tah. & Distt – Nagpur.
2. Yeshwant s/o Sheshrao Chafle
Aged 31 years, Occup : Service,
R/o C/o Rani Chitralekha Raje,
Bhonsale School, Kanhargaon
Post Ridhora (Satgaon),
Pin – 441 108, Tah. Hingna,
District – Nagpur.

(Orig. Respondent no.5) 3. The Education Officer (Secondary)
Zilla Parishad, Nagpur.

Shri A. Shelat, Advocate for petitioner
Shri A.D. Mohgaonkar, Advocate for respondent no.1
Shri A.D. Bhate, Advocate for respondent no.2
Mrs. M.A. Barbde, AGP for respondent no.3

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 24/09/2021

Judgment pronounced on : 14/10/2021

1. Heard Shri A. Shelat, learned Counsel for the petitioners, Shri A.D. Mohgaonkar, learned Counsel for the respondent no.1, Shri A.D. Bhate, learned Counsel for the respondent no.2 and Mrs. M.A. Barbde, learned Assistant Government Pleader for the respondent no.3.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the rival parties.

3. The judgment dated 7/10/2019 passed by the learned School Tribunal, whereby the communication dated 14/8/2015

issued by the petitioners claiming to have accepted the resignation dated 22/6/2015 by the respondent no.1, has been set aside, terming it to be otherwise termination of services, is challenged in the present petition.

4. Shri Shelat, learned Counsel for the petitioners, by inviting my attention to the letter dated 22/6/2015, issued by the respondent no.1, submits, that since there is no dispute, that the said letter is in the handwriting of the respondent no.1, neither is there any dispute about the contents therein, effect has to be given thereto, which would be the resignation of the respondent no.1 and not otherwise. He submits, that the said resignation was not a resignation simpliciter, but was for compensation received by the respondent no.1 to the tune of Rs.10,00,000/- out of which an amount of Rs.9,00,000/-, at the instructions, of the respondent no.1 was paid to his brother by name Satish by way of three postdated cheques dated 3/2/2014 which were encashed on 2/7/2015 and a sum of Rs.1,00,000/- was paid to the respondent no.1, by cheque which also came to be encashed on 25/7/2015. He submits that these payments, are admitted by the respondent no.1, in his

rejoinder. He further submits that the resignation of the respondent no.1 was accepted by the School Committee on 26/6/2016 on which date itself, the respondent no.1 was relieved. That apart, on 5/8/2015 the respondent no.1 had himself informed the Education Officer, Zilla Parishad, Nagpur about the resignation tendered by him, which was indicated from the entry No.4278 dated 5/8/2015 in the inward register of the said office. The complaint made by the respondent no.1 to the Education officer on 12/8/2015, that the resignation was forcibly obtained, according to learned Counsel was an after thought, which was also the position, in respect of the complaint dated 20/8/2015. The termination was challenged by the respondent no.1 by way of Writ Petition No.706/2016, which was withdrawn on 8/2/2016 with liberty to pursue the remedy available under law, in pursuance to which the appeal before the learned School Tribunal came to be filed. Further inviting my attention to the communications dated 12/8/2015, 20/8/2015 and 22/8/2015 made by the respondent no.1, it is contented that there is no mention that after 22/6/2015, the respondent no.1 had ever approached to attend the school and was not allowed to do so, which according to him, falsifies the stand of the respondent no.1. It

is therefore submitted that the resignation is supported by documents and the finding recorded that the resignation was not voluntary by the learned School Tribunal was perverse.

4.1. It is further contended, that the School Committee was clearly empowered to accept the resignation, and that contrary allegations are clearly without any pleadings. He further submits that under Rule 40 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [“the MEPS Rules” for short hereinafter] the obligation is upon the employee to give a notice and failure thereof would not obligate the Management in any manner whatsoever, as it is not necessary for the Management to give any notice under Rule 40 of the MEPS Rules.

4.2. It is further submitted that the mother of the respondent no.1 is running a School in the name of the father of the respondent no.1 wherein the Headmaster had retired, creating vacancy, in which the respondent no.1 might have been interested, which may be the reason for tendering the resignation.

4.3. He further submits that since the payment was admitted, the findings recorded by the learned School Tribunal that there was no approval to the same under the provisions of the Bombay Public Trusts Act were without any merits whatsoever as such an approval was neither required or even if required, was immaterial, in view of the admission.

4.4. Reliance for the above submissions is placed on *Bahujan Vikas Mandal, Akola and another Vs. Manda Vithalrao Parsutkar and another, 2011 (2) Mh.L.J. 203; Sayyed Maksood Ali Sayyed Roshid Ali Vs. Uruj-E-Urdu Education Society, Kalamb and another, 2011 (4) Mh.L.J. 952 ; Atul Nathuram Naiknawade Vs. Secretary, Smt. Bhagiratibai Late High School and others, 2015 (6) Mh.L.J. 258; Kushappa Mahadeo Kamble Vs. State of Maharashtra and others, 2010 (4) Mh.L.J. 313; Progressive Education Society and another Vs. Mohammad Ali Gulam Dastagir Dafedar and others, 2017 (5) Mh.L.J. 242; Juned Khuram Roufuddin Vs. President, Jamiat Ul Muslimeen Social and Education Society, Jalna and others, 2015 (4) Mh.L.J. 450.*

4.5. It is submitted that the judgment in the case of *Chandrakant Damodar Lone Vs. Chhatrapati Shivaji Education Society & Ors., 1 (1988) CLR HC 175* has not been followed by the learned Tribunal, which vitiates the impugned judgment. It is further contended that the learned Tribunal has only considered Rule 40 of the MEPS Rules and the other factors relevant namely, that the resignation was voluntary, was in the handwriting of the respondent no.1, was for compensation and intimation thereof was given to the Education Officer have been ignored. He therefore submits that the judgment is required to be quashed and set aside and the appeal be dismissed as the resignation was voluntary.

5. Shri Mohgaonkar, learned Counsel for the respondent no.1 submits that in the present case the Headmaster and the Secretary of the Institution running the School are one and the same. He submits that even prior to the aforesaid so-called resignation, an earlier attempt was also made, to terminate the employment of the respondent no.1 by the communication dated 17/4/2015, which indicates that the Management anyhow intended to terminate the services of the respondent no.1, who was a

confirmed employee. He submits that on earlier occasion also, the Management had removed 8 to 10 employees, which position was not denied by the petitioners, which indicated the *mala fide* intentions of the petitioners to anyhow remove its employees including the respondent no.1. He further invites my attention to the so-called resignation dated 22/6/2015, to indicate that it bears two dates one 22/6/2013, which has been scored off and the date 22/6/2015 inserted underneath, which according to him, indicates, that the document was not voluntary.

5.1. Further placing reliance upon Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [“the MEPS Act” for short hereinafter], he submits that such a resignation has to be sent by registered post, the intent and purpose behind the same, being to indicate its voluntary nature, which is absent in the present matter. Relying upon Rule 40 of the MEPS Rules, he submits that it is for the petitioners to indicate and demonstrate that there was an acceptance which could be demonstrated, only by producing on record the Resolution of the Managing Committee including the notice calling the meeting, the

agenda and the minutes of the meeting, which are absent in the present matter, as no original Resolution has been placed on record. He further submits that there is even no relieving order, relieving the respondent no.1 from the post held by him, as what has been placed on record, is only a chit of paper signed by the Secretary, who is also the Headmaster.

5.2. He further submits that, the academic session during the concerned period started on 15/7/2015 and therefore, the provisions of Rule 40 (3) of the MEPS Rules are also attracted, which prevents the employee from tendering his resignation in the vacation. He further submits that the respondent no.1 had tried to attend the school after the reopening consequent to the summer vacations of 2015, however, he was not allowed to do so. He submits that there is an attempt by the Management, to fill in the post illegally, for which an objection was raised by the petitioner.

5.3. In so far as the receipt of the amount is concerned, he submits, that it was a private transaction having nothing to do with the employment of the respondent no.1. He submits that the sum of

Rs.9,00,000/- claimed to be paid by the Management to the brother of the petitioner is clearly false, as the said cheques have not been issued by the petitioner no.1-Society, but by individuals and had no concern with the Management. He submits that there is no document of compromise filed by the Management and it is inconceivable that a huge amount of Rs.10,00,000/- would be paid as compensation, without there being anything on record to show on what account it was so paid. He further submits that the so-called resignation is dated 22/6/2015, whereas the deposit of the amount, in the account of the brother of the respondent no.1 was on 22/7/2015 and on 25/7/2015 in the account of the respondent no.1 and it is inconceivable that without a document linking the said payment, to any compensation offered to the respondent no.1, any person, would tender any resignation more than a month earlier in point of time, on the presumption that the cheques would be honoured.

5.4. Even otherwise he submits that it was for the petitioner to have explained and demonstrated by bringing material on record to link the said payment, with the claim by the petitioner that it was

being paid on account of compensation for the resignation tendered, which is clearly absent in the instant matter.

5.5. He further submits, by inviting my attention to Section 5 of the MEPS Act, that the appointment is done by the Management under Section 5 (1) of the MEPS Act and the mere issuance of the appointment order by the School Committee, is only a formality, and does not vest the School Committee with any powers, to accept any resignation, which could only be done by the Management under Rule 40 of the MEPS Rules, which position, according to him, is clearly absent in the present matter. He submits that the resignation was created only with an intention, to create a vacancy in which the nephew of the President of the petitioner no.1, namely, the respondent no.2 herein, could be adjusted. He therefore submits, that the impugned order, is required to be sustained, as it is based upon a correct logical reasoning and applicability of the relevant provisions.

6. Though the impugned judgment in paras 22 and 25 refers to a Resolution No.66 dated 26/6/2015, passed by the

Managing Committee, however, even the petitioners in their reply before the learned School Tribunal, have not made any such averment, nor any document to that effect has been placed on record in the present petition nor any arguments have been advanced by Shri Shelat, learned Counsel for the petitioners in this regard. What finds place on record is the communication dated 14/8/2015, filed by the petitioners which speaks of a Resolution by the School Committee dated 26/6/2015 and nothing else. The petition therefore is being decided on this premise.

7. To consider whether the resignation was voluntary, it is material to have a look at the resignation dated 22/6/2015. A perusal of the said document would indicate, that it is addressed to the Chairman (Secretary) of the petitioner no.1. No doubt the language therein, indicates that a resignation is being tendered, it is however material to note, that there is no acknowledgment or endorsement of anyone having received the same. That apart, the said document bears two dates, the first being 22/6/2013, which has been scored off with the countersign of the respondent no.1 and the date 22/6/2015 written underneath. These two factors itself lead to

a doubt about the genuineness regarding the voluntary tendering of the document.

8. It is necessary to point out that this is not the case of a resignation simpliciter, but one for compensation. The said resignation, is claimed by the petitioners, to be in lieu of compensation of Rs.10,00,000/-, paid to the respondent no.1, by the petitioners. There is no such provision permitting the same in the MEPS Act, and thus this could only be under an agreement between the parties concerned. There is no dispute that an amount of Rs.9,00,000/- by way of three postdated cheques, has been received by the brother of the respondent no.1 on 22/7/2015 and the sum of Rs.1,00,000/- has been received by the respondent no.1 on 25/7/2015, by way of encashment of the said cheques of the above dates. It was however necessary for the petitioners to demonstrate that this payment was on account of compensation, being paid to the respondent no.1 on account of the said resignation. Once this plea was raised by the petitioner/Management, the burden to discharge the same was upon the petitioner no.1/Management. To discharge such burden, it was necessary for the petitioner no.1 to have placed

on record, documents indicating linking of the said payment with the resignation of the respondent no.1, which could either have been a document of settlement, the Resolution by the Managing Committee of the petitioner no.1 in this regard, the payment of this amount from the account of the petitioner no.1 -Society, the authorization/consent of the respondent no.1 to pay 90% of this amount, not to the respondent no.1, but to his elder brother, all of which are conspicuously absent in the present matter. Thus, having raised a plea that the resignation was on account of compensation paid to the respondent no.1, the said burden, has not been discharged at all by the petitioners.

9. As against this, it is not denied by the petitioners that the said cheques in the sum of Rs.10,00,000/- were not issued from the account of the petitioner no.1/Society, but were issued by individuals from their personal account, in view of which admission, the plea put forth that the resignation was on account of compensation received by the respondent no.1, has rightly not been accepted by the learned School Tribunal. That an employee, who admittedly is confirmed in the service and has a long way to go,

considering that in the memo of the writ petition filed in 2019 itself, the age of the respondent no.1 is shown as 33 years, would suddenly tender his resignation, does not appear to be reasonable or logical, in absence of anything to the contrary. It may be a case that such resignation, could be for compensation to be received, however, in absence of any linkage established the same, does not appear to be plausible.

10. In *Bahujan Vikas Mandal* (supra) and *Sayyed Maksood Ali Sayyed Roshid Ali* (supra), relied upon by Shri Shelat, learned Counsel for the petitioners, three requirements, of a resignation, have been enunciated (i) drawing up a letter of resignation in duplicate; (ii) signing both the copies of that letter and (iii) putting the date thereon. No doubt, that it is not in dispute that the resignation is in the handwriting of the respondent no.1 and the date thereupon, has been put by him, and therefore, two of the conditions are satisfied, however the peculiarity of the present matter, requires yet another condition to be satisfied, regarding linking of the compensation to this resignation, as it is a specific case

put forth by the petitioners that the resignation was for compensation, which is absent in the present matter.

10.1. ***Atul Nathuram Naiknawade*** (supra) was a case in which the employee had given a notice of resignation on 3/8/2010 and thereafter had submitted his resignation on 3/11/2010, which was accepted by the Management on 20/11/2010, after which, the employee on 16/12/2010 had called upon the Management not to accept his resignation and raised a plea regarding non-compliance of Rule 40 of the MEPS Rules, which was turned down considering that the period between 3/8/2010 and 3/11/2010, complied with the requirement of Rule 40 (1) of the MEPS Rules and therefore is not attracted in the present matter. It is however material to note that this was a case in which by a Resolution dated 20/11/2010, the resignation was accepted by the Management, and therefore on facts is inapplicable.

10.2. ***Kushappa Mahadeo Kamble*** (supra) was a case in which the resignation was tendered personally, and therefore it was held,

that it was not mandatory, to be sent by post, which not being the matter in issue here, it has no application.

10.3. In *Chandrakant Damodar Lone* (supra), the plea put forth, that the resignation was not voluntary was accepted by the Court, who also found that the requirement of Rule 40 of the MEPS Rules was also not complied with and therefore the judgment of the Tribunal was quashed and set aside and the order of termination was set aside, which is a case, which supports the respondent no.1.

10.4. In *Juned Khuram Roufuddin* (supra), the resignation was linked to the compensation, which linkage is absent in the present matter and therefore, is not of any assistance to the case put forth by the petitioners.

11. It is further material to note, that in support of the contention, that the intimation about resignation, was sent to the Education Officer, the said communication has not been produced on record, rather what has been produced is merely an entry in the inward register of the concerned Education Officer, regarding receipt

of such a letter. That by itself, without the letter actually being brought on record, cannot lead to any presumption, that such a communication was indeed sent by the respondent no.1, to the Education Officer.

12. The further contention by Shri Shelat, learned Counsel for the petitioners that the School Committee was empowered to accept the resignation said to have been tendered by the respondent no.1, has to be looked into, in the background of Rule 2 (i) of the MEPS Rules, which defines the School Committee to be a Committee constituted in accordance with the provisions of Schedule-A. Schedule-A requires the constitution of a School Committee, which is responsible to the Government for management of the school, which has the composition as indicated in Clause – 2 of Schedule-A. The functions of the School Committee are indicated in Clause-3 of Schedule-A, which for the sake of ready reference, are reproduced as under :-

“Schedule ‘A’ Clause -3. Functions of the School Committee shall be as follows, namely :-

(a) management and regulation of the finance of school, keeping of accounts and making investments of the funds of the school;

(b) preparation of budget estimates;

(c) appointment of employees (other than the Head of the School);

(d) institution of new teaching courses;

(e) confirmation, promotion of and minor punishment to the employees other than Head subject to the provisions of the Act and these rules.

(f) grant of leave other than casual leave, to the staff other than the Head of the school whose leave will be granted by the Management.”

A perusal of the above would indicate that the School Committee has not been conferred any power, to accept the resignation of any employee. That is the sole jurisdiction of the Management, under Section 7 of the MEPS Act and Rule 40 of the MEPS Rules. The communication dated 14/8/2015 placed on record by the respondent no.1, which is not disputed by the petitioners, indicates that the resignation was placed not before the Managing Committee of the petitioner no.1 but before the School Committee, which is claimed to have been accepted by the School Committee in its meeting dated 26/6/2015, vide Resolution no.6 in the 48th

Meeting of the said School Committee. It also indicates that the respondent no.1 was relieved on 26/6/2015. Since the School Committee, as indicated above, does not have the authority to accept any resignation, Resolution no.6, as claimed to have been passed in its meeting dated 26/6/2015, accepting the resignation of the respondent no.1, does not carry any meaning whatsoever and is ineffectual, in absence of any power or authority in that regard, which would indicate that there is no acceptance of any resignation by the authority, which is empowered to do so, which obviously would be the Managing Committee of the petitioner no.1. It is also necessary to note that there is no relieving order, relieving the respondent no.1, placed on record.

13. As against this a perusal of Rule 40 of the MEPS Rules, indicates, that a permanent employee has to give a notice of three calendar months of his resignation, which is to be given to the Management. Once such a notice is given to the Management and in case the Management, desires that such an employee has to be relieved immediately or earlier, without waiting for the period of three calendar months to expire, it is then for the Management to

make payment of the pay for three months, to such employee, in lieu of such notice, so that, such an employee, can be relieved forthwith or from such date the Management indicates. Admittedly, in the instant matter the resignation of the respondent no.1 was never placed before the Managing Committee of the petitioner no.1, at any point of time whatsoever, nor is there any Resolution passed by the Managing Committee, indicating the allowing of the respondent no.1 to leave service earlier, by agreeing to pay the salary for three months, in lieu of permitting the employee, to leave earlier, than the period as contemplated by Rule 40 (1) of the MEPS Rules.

Mohammad Ali Gulam Dastagir Dafedar (supra) relied upon by Shri Shelat, learned Counsel for the petitioners, which holds that a School Committee has power to accept resignation, in my considered opinion, does not consider the language and import of Section 7 of the MEPS Act, read with the functions of the School Committee, as contained in Clause-3 (a) to (g) of Schedule-A under Rule 2 (1) (i) and Rule 40 of the MEPS Rules and therefore is *per incuriam* the above provisions of the Statute and Rules framed thereunder.

14. The very purpose of Section 7 of MEPS Act and Rule 40 of the MEPS Rules, appears to be to protect the interest of the employee. It is trite position of law, that when a resignation is tendered, it has to be tendered to the appropriate authority, who is capable of accepting the same. Mere tendering of resignation, by its own, would be of no significance, for the reason, that the Management, may in a given case, refuse to accept the same, for reasons to be recorded, which may include the pendency or an intention to proceed with an enquiry against the employee. Then again Rule 40 (1) of the MEPS Rules categorically provides a period of three months from the date of notice, till the time the resignation comes into effect, and in case, the Management, wants to bring it into effect immediately, then it would be for the Management to have complied with the requirements of payment of pay for the requisite duration as contemplated in Rule 40 (1) of the MEPS Rules. The expression “allow an employee to leave service earlier”, in Rule 40 (1) and (2) of the MEPS Rules, clearly indicates, that once the Management claims that the resignation has been tendered by an employee, the burden would shift upon the Management, to demonstrate compliance with the requirement of Rule 40 (1) of the

MEPS Rules, in case the employer is being allowed to leave service earlier. The “acceptance” therefore forms an integral part of the responsibility of the Management in a case when resignation is tendered by an employee, as by communicating the acceptance, the employee stands informed of his position vis-a-vis the Management. Such an acceptance, has to be demonstrated by placing on record, the minutes of the meeting of the Managing Committee of the Management, which would suffice the acceptance of the resignation.

15. It may also be construed that the period of three months, contemplated in Rule 40 (1) of the MEPS Rules, could be a cooling off period, for the employee, to rethink about the resignation tendered, which before its acceptance, may be possible to be withdrawn by such employee. Contrary thereto, if the Management does not want to continue with the employee, it is open, to immediately accept the resignation by performing the action as provided for in Rule 40 (1) of the MEPS Rules of accepting the same and tendering pay in lieu of notice period.

16. Even Rule 40 (3) of the MEPS Rules, puts an embargo upon an employee, who is entitled to vacation not to give notice of resignation, during the vacation or which may cover any part of the vacation and requires that such a notice of resignation shall not be given within a month after the beginning of the first term of the year.

17. The requirements, as enumerated in Rule 40 (1) and 40 (3) of the MEPS Rules, have to be read in a manner, so as to render them meaningful, as the language used therein, which is plain and unambiguous clearly manifest the intention of the legislature in enacting the same, that it is for the benefit of the employee and though the employee, may by his conduct, waive off the requirement, that however, would not mean that the resignation ought not to be accepted or such acceptance not placed on record, or that the acceptance, could be by anyone other than the Management.

18. That apart, considering the date of the so-called resignation, which is dated 22/6/2015, the same admittedly, is

during the period of vacation, and therefore, stands covered by the language of Rule 40 (3) of the MEPS Rules, on account of breach of which, it would become invalid, as held in ***Bahujan Vikas Mandal*** (supra) itself, as cited by Shri Shelat, learned Counsel for the petitioners.

19. The communications dated 12/8/2015 and 20/8/2015 by the respondent no.1 to the petitioners, have not been replied at all by the petitioners. The contention by the respondent no.1, that the School reopened on 15th of July, 2015, and therefore, there was a violation of the requirement of Rule 40 (3) of the MEPS Rules, also remained unaddressed.

20. The contention that the mother of the respondent no.1 was running a School in which due to the vacancies arisen, the respondent no.1 being interested had resigned is not borne out from the position on record.

21. The delay in filing of the complaint stands explained on account of the summer vacation in the School and its late opening

on 15/7/2015 and refusal of the petitioners in permitting the respondent no.1 to resume his services thereafter.

22. In that view of the matter, since in the instant case, on the facts available, though the resignation, is admittedly in the handwriting of the respondent no.1, since a plea was set up by the petitioners, that the resignation, was on account of compensation received by the respondent no.1, which position has been found to be incorrect by the learned Tribunal and also by this Court as discussed above, I do not find any merit in the petition. The judgment of the learned Tribunal considers the factual position before it rightly by applying the law applicable. The writ petition is therefore dismissed. Rule stands discharged. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)