

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6902 OF 2012

Shri Lalit Vasudeo Kolambe
age 27 years, occ. Nil
R/o Nimbhora, Tq. Raver
Dist. Jalgaon

Petitioner

Versus

1. The Chairman
New English School,
Nimbhora
Through Shri Dnyandeo Bhagwn Nemade
age 45 years, occ. Agriculture
R/o Nimbhora, Tq. Raver,
Dist. Jalgaon
2. The Head Master
New English School, Nimbhora
Through Shri Ashok Huna Warke
age 52 years, occ. Service
R/o Nimbhora, Tq Raver
Dist. Jalgaon
3. The Education Officer (Secondary)
Zilla Parishad, Jalgaon
4. The Secretary
New English School, Nimbhora
Through Shri Yogesh Madhukar Kolambe
age 38 years, occ. Service
R/o Nimbhora, Tq. Raver
Dist. Jalgaon.
5. The State of Maharashtra
Through the Secretary
The Ministry of Education,
Government of Maharashtra
Mumbai.

Respondents

Mr. M.M. Bhokarika, Advocate for the petitioner.
Mr. S.P. Sonpawale, AGP for respondents No. 3 and 5.
Mr. S.B. Yawalkar, Advocate for respondents No. 1, 2 and 4.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 6th August, 2021.
PRONOUNCED ON : 7th January, 2022

JUDGMENT :

1. Being aggrieved by the judgment and order dated 12th July, 2012, passed by the learned School Tribunal in Appeal No. 47/2011, the petitioner has preferred this petition.

2. Facts giving rise to this petition are that pursuant to the advertisement dated 6th June, 2010, petitioner came to be appointed in respondent-school i.e. New English School, Nimbhora as Shikshan Sewak by appointment order dated 14th June, 2010. It is the contention of the petitioner that he was subjected to harassment during the period from 14th June, 2000 to 14th July, 2010 by the Chairman –Shri Dnyandeo Bhagwan Nemade and respondent No. 2 Headmaster – Shri Ashok Huna Warke. It is further contended that within a day or two after joining the service, respondent No. 4-Secretary –Shri Yogesh Madhukar Kolambe and respondent No. 2

Headmaster – Shri Ashok Huna Warke started harassing and blackmailing the petitioner to give them more amount. Both the Headmaster and the Secretary were bent upon terminating the services of the petitioner from the New English School, Nimbhora, Tq. Raver, Dist. Jalgaon. It is further contended that on account of harassment by respondent No. 2, petitioner decided to get higher education and for the purpose he went to the office of the Education Officer as he was directed to remain present before the Education Officer on 14th July, 2011. It is further contended that because of the harassment caused to the petitioner, he tendered his resignation on 14th July, 2011. However, since the financial condition of the petitioner was not good, he gave an application on 18th July, 2011 for withdrawal of his resignation dated 14th July, 2011. Respondents No. 1 and 2 did not accept this application and, therefore, petitioner sent the said application for withdrawal of resignation by R.P.A.D. The application sent by R.P.A.D. was not claimed by respondents No. 1 and 2. Petitioner received a letter dated 22nd August, 2011, wherein it was mentioned that petitioner had tendered resignation from the post of Shikshan Sewak before the Education Officer and the same was duly certified by the Education Officer and the School Committee had passed a resolution dated 21st July, 2011 in which, resignation of the

petitioner was accepted and the services of the petitioner came to an end with effect from 14th July, 2011.

3. It is contended that the resignation was tendered without following the procedure under Section 7 of the Maharashtra Employees of Private Schools (Condition of Service) Act, 1977 (for short 'MEPS Act') and Rule 40 of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (for short 'MEPS Rules'). Said resignation was not in consonance with the provisions of Section 7 of MEPS Act and Rule 40 of MEPS Rules. It is further contended that petitioner wanted to withdraw his resignation. Therefore, on 18th July, 2011, he went to the school and tendered application for withdrawal of the resignation but that was refused by the school authorities. Therefore, he despatched the said application by R.P.A.D. on 18th July, 2011. Endorsement on the envelop shows that the said envelop was not claimed by the respondents and, therefore, the same should be treated as served on respondents No. 1 and 2. The envelop was returned to the petitioner on 26th July, 2011. Respondents No. 1 and 2 had told the petitioner that a lot many candidates were ready to pay more than Rs. 20,00,000/-. Resignation of the petitioner was accepted on 21st July, 2011 and it

was communicated to the petitioner on 22nd July, 2011. According to the petitioner, resignation was submitted without following prescribed procedure under Section 7 of the MEPS Act and Rules thereunder. In this manner, services of the petitioner came to be terminated on account of his resignation.

4. After receipt of the order of acceptance of resignation, petitioner preferred Appeal bearing No. 47/2011 before the School Tribunal, Nasik. In the appeal, petitioner made all the aforesaid allegations and contended that his resignation was not voluntary, but he was forced to tender the resignation.

5. Respondent No. 1 filed affidavit-in-reply before the School Tribunal. It is contended in the affidavit-in-reply that petitioner had tendered resignation voluntarily as he was not in a position to find time for higher education. It is alleged that petitioner wanted to pursue higher education and since he was not in a position to devote time for higher studies, he tendered his resignation. Respondent No. 1 contended that they never received any such letter by R.P.A.D. nor did petitioner tender application for withdrawal of resignation personally. The said resignation was accepted on 21st July, 2011.

Therefore, respondents No. 1 and 2 prayed for dismissal of the appeal.

6. After hearing both the parties, learned School Tribunal, vide the impugned order, dismissed the appeal of the petitioner holding that resignation of the petitioner was voluntary. It further held that the petitioner falsely projected that he had tendered application for withdrawal of resignation and that he had created a false record of sending the letter of withdrawal of resignation by R.P.A.D. and had also created a false record of endorsement that it was not claimed. It also held that petitioner was not subjected to any harassment but he voluntarily tendered his resignation to pursue higher studies. This order is impugned in this petition.

7. I have heard Shri Bhokarikar, learned counsel for the petitioner and Shri Yawalkar, learned counsel for respondents No. 1, 2 and 4. Learned counsel Shri Bhokarikar has placed on record written notes of argument.

8. Learned counsel Shri Bhokarikar submitted that petitioner was subjected to severe harassment. He submitted that

harassment started since the day of his joining. Petitioner had paid amount of Rs. 11,00,000/- to the management of the school for retaining his job. It was suggested to the petitioner that other candidates were ready to pay more amount to the management even upto Rs. 20,00,000/-. If petitioner did not pay this amount, he would lose his job. This intimidation was given to him by the members of the management including respondents No. 2 and 4. On 11th January, 2011, one Shri Tayade, peon, informed the petitioner that he was called in a meeting. In the said meeting, petitioner was asked to pay Rs. 2,00,000/-. Petitioner expressed his inability. He further submitted that petitioner had filed an application to that effect on 28th January, 2011, with the school authorities. Similar threat was given on 5th April, 2011 and 4th July, 2011, by respondent No. 2.

9. Learned counsel Shri Bhokarika further argued that one Sunil Bhagwat Konde was the tenant of the petitioner and was also member of the management of the school. Petitioner had asked him to vacate the premises. He, therefore, started instigating the members of the management. He also threatened the petitioner that he would compel the petitioner to resign. Shri Bhokarika further

argued that on 8th July, 2011, at 11.00 am, petitioner went to respondent No. 2 – Headmaster with an application narrating the details of harassment he was subjected to. However, respondent No. 2 refused to accept that application. On 12th July, 2011, Supervisor Shri P.K.Choudhari and respondent No. 2 started saying that file to terminate petitioner was ready and petitioner would be removed any time. On 13th July, 2011, respondent No. 4 - Shri Yogesh Kolambe threatened the petitioner that petitioner should resign or he would be murdered.

10. Learned counsel Shri Bhokarikar further argued that on 14th July, 2011, at about 9.30 am, respondent No. 4 called the petitioner. All the members of the management were present and in that meeting, petitioner was asked to tender his resignation forthwith or he would be terminated with immediate effect. A carrot was dangled that if petitioner tendered his resignation, entire amount would be returned to him. Because of the pressure exerted by respondents No. 1 and 2 and other members of the management, petitioner tendered his resignation. He was also asked to tender his resignation on a stamp paper else he would lose job and the amount as well. Because of the pressure exerted on the petitioner by the

aforesaid persons, the petitioner was forced to tender resignation.

11. Shri Bhokarikar further submitted that on 15th July, 2011, petitioner ranged respondent No. 2 at about 3.00 to 4.00 am and told him that he wanted to withdraw his resignation. On 18th July, 2011, petitioner despatched a letter of withdrawal of resignation through R.P.A.D. to the Headmaster of the school. He went to the school with an application for withdrawal of resignation. He was accompanied by Shri Kishor Khachne. However, respondent No. 2 refused to accept the application. There was exchange of words between the petitioner and respondent No. 2 and that was recorded in the handset of the petitioner. On 21st July, 2011, resignation of the petitioner was shown to have been accepted. He submitted that this development clearly indicates that petitioner was forced to tender his resignation. It was not a voluntary resignation. Petitioner has also filed application No. 958/2012 for leading additional evidence. He has filed affidavits of witnesses who are acquainted with the facts of the case and some of them are concerned with the management of the school.

12. Learned counsel Shri Bhokarikar further submitted that

the procedure prescribed under Section 7 of the MEPS Act and Rule 40 of the MEPS Rules has not been followed. He submitted that the application was not forwarded by R.P.A.D. to the respondents. Similarly, three months notice was not given. Therefore, resignation was not a voluntary resignation. He submitted that the learned School Tribunal did not appreciate the evidence on record in its proper perspective. He argued that the learned School Tribunal did not consider that before acceptance of resignation, application for withdrawal of resignation was tendered but the management did not accept it. He further submitted that the petitioner had despatched application for withdrawal of resignation by R.P.A.D. The envelop bears an endorsement as “not claimed” by the school authorities. When postal endorsement “not claimed” is there on the envelop, it goes to show that it has been served on the addressee. Therefore, letter of withdrawal of resignation was served on respondents No. 1 to 4. But despite that, respondents proceeded to accept his resignation which shows that respondents acted with ulterior motive. Their sole intention was to anyhow terminate the services of the petitioner. He, therefore, prayed to allow the petition. He placed reliance on the following authorities :-

1. Saindranath Jawanjal vs. Pratibha Shikshan Sanstha

2007(5) AIR Bom R 119

2. Ku. Padma Gunderao Dadmal vs. Adarsha Dnyan Prakash Shikshan Sanstha, Nagpur and others
2014(6) ABR 610
 3. Shri Sant Sawatamali Shikshan Pasarak Mandal, Tembhurni vs. State of Maharashtra and others
Writ Petition No. 4712/2008 dt. 24.07.2008
 4. Tukaram s/o Tulsiram Nakhate vs. Presiding Officer School Tribunal, Nagpur (Chandrapur) and others
2018(1) ABR 273
 5. Siddheshwar Kreedha Mandal, Sillod vs. Uttam Kisanrao Shrikhande and others
2008(6) AIR Bom R 895
 6. Bahujan Vikas Mandal, Akola and another vs. Ku. Manda Vithalrao Parsutkar and another
2011 LAB I.C. 1195.
13. Learned counsel Shri Yawalkar submitted that petitioner tendered his resignation voluntarily. He had filed application on 8th July, 2011, for long leave of one year i.e. from 13th July, 2011 to 12th July, 2012 as he wanted to pursue higher studies. Since petitioner had not completed three years of service, his application for long leave could not be entertained. Therefore, he tendered resignation on 14th July, 2011. This development clearly shows that petitioner had tendered resignation voluntarily. He was not forced to tender his resignation. He submitted that resignation was written before the

Education Officer, Jalgaon, in the handwriting of the petitioner. It bears the date as 14th July, 2011 and it also bears the signature of the petitioner. He submitted that sending resignation by R.P.A.D. is contemplated only when resignation was to be effective at a later date. In the case at hand, petitioner's resignation was made effective from the date of the application. Shri Yawalkar further submitted that requirement of three months notice is for the benefit of the management and not for the benefit of the employee. During this period, the management can make alternate arrangement to fill in the vacancy which is caused because of the resignation of the employee. He submitted that if this procedure is not followed and one month's salary is not recovered from the employee, the consequences mentioned in Rule 40(3) of the MEPS Rules will follow. But that will not invalidate the resignation. He submitted that respondents never received the letter sent by R.P.A.D. There was no reason for the respondents for not claiming the letter sent through R.P.A.D. by the petitioner. Similarly, petitioner did not tender the application for withdrawal of resignation personally before the management. He submitted that the view taken by the School Tribunal is not a perverse view but it is a possible view. Therefore, he prayed for the dismissal of the petition. He placed reliance on the

following authorities :

1. Union of India (UOI) vs. Ibrahim Uddin and others
(2012) 8 SCC 148
2. Kushappa M. Kamble vs. State of Maharashtra
2010(4) Mh.L.J. 313
3. Karachi Education Society Pune vs. Pruthviraj R. Merchant
2005(4) Mh.L.J. 1035
4. Anandlal Ganesh Poddar Society vs. Mrs. V. Chakravarti
2005(1) Mh.L.J. 480
5. Balaleshwar Shikshan Mandal vs. Jaywant Bhaguji Gadekar
2003(4) ALL MR 108
6. Ashok Balaji Biradar vs. Mahesh Shikshan Prasarak Mandal
2010(1) Mh.L.J. 211
7. Lalmani Ramnath Tiwari vs. Bhimrao Govind Pawar
2001(2) ALL MR 415.

14. Before delving into the question as to whether resignation was voluntary or the petitioner was forced to tender resignation, some events will have to be looked into. Petitioner had applied for leave of one month i.e. from 13th July, 2011 to 12th July, 2012. He had made this application for pursuing higher studies. Petitioner's appointment was for a period of three years i.e. from 14th June 2010 to 13th June, 2013. His application for leave could not be granted.

Therefore, petitioner tendered his resignation. Said resignation is placed on record of the School Tribunal at Exhibit 44. The learned School Tribunal has observed that the said resignation dated 14th July, 2011 bears the signature of the Education Officer indicating therein that the resignation was signed by the applicant before the Education Officer. Resignation dated 14th July, 2011 was forwarded to respondent No. 1 – Chairman and it is at Exhibit 27 on the record of the School Tribunal. Learned counsel Shri Bhokarikar did not dispute that both these resignation letters were signed by the petitioner and they were in the handwriting of the petitioner. These two letters clearly indicate that petitioner wanted to tender resignation as he wanted to pursue higher studies. The action of the petitioner in making signature on his resignation letter before the Education Officer is indicative of the fact that his resignation was voluntary.

15. From the appeal memo before the School Tribunal, it is evident that the period of harassment of the petitioner was from 14th June, 2010 to 14th July, 2010 i.e. of one month. Thus, the torture and harassment which the petitioner was subjected to was only for a period of one month. Appeal memo does not indicate as to what

harassment he suffered thereafter. According to the own showing of the petitioner, he worked there till 14th July, 2011, on which date, he tendered resignation. No details of harassment or torture are given. These averments unequivocally indicate that the petitioner did not have any harassment after July 2010. Appeal memo is conspicuously silent about the alleged harassment. The details of harassment which have been argued by petitioner's counsel Shri Bhokarika (Paragraphs No. 8 to 10 of this judgment) do not find place in the appeal memo. This clearly denotes that these allegations are nothing but an after thought. Petitioner has not given any reason as to why these allegations were not incorporated in the appeal memo. If really petitioner had been tortured to such an extent that he was forced to tender resignation, he would have incorporated these allegations in the appeal memo. In the case of Padma Gunderao Dadmal (supra) it is held that the tribunal is required to refer to and address each and every pleading which is relevant and material while adjudicating the appeal before it. In the case at hand, the School Tribunal has dealt with each and every aspect of the pleadings made by the petitioner. However, the petitioner did not plead the events which are pleaded in the writ petition. When they are not pleaded, there is no question for the School Tribunal to take a note of it and deal with it.

Therefore, the contention that petitioner was forced to tender resignation cannot be accepted. Appreciation made by the learned School Tribunal in this respect cannot be faulted with.

16. Petitioner has filed Civil Application No. 9538/2012 for leading additional evidence. In the case of Saindranath Jawanjali (supra), the Full Bench of this Court has observed thus :

“The Powers of the Tribunal are circumscribed by the provision of O. 41, R. 27 of C.P.C., which enumerates the circumstances in which the School Tribunal can admit additional evidence whether oral or documentary in appeal. They are where the original authority has improperly refused to admit evidence which ought to have been admitted; or where such additional evidence was not within the knowledge of the party or could not after exercise of due diligence, be produced by him at the time when the original authority passed the order, or where the appellate Court itself requires such evidence either (a) to enable it to pronounce judgment or (b) for any other substantial cause.

It has further observed thus :

“Now the question comes; how and at which stage the School Management is expected to seek leave from the Tribunal to lead additional evidence in exercise of its right. Such right should be exercised, as soon as there is challenge to the action of the management, in appeal before the Tribunal, contending that there was no sufficient evidence to prove the charges levelled against the

appellant/employee. In the event of exercise of such right by the school management, the Tribunal is expected to consider the question of grant of leave to lead additional evidence subject to compliance of provision of O. 41 R. 27 of C.P.C. In the event of grant of leave opposite party-employee would also get on opportunity of placing his side before the School Tribunal i.e. when the School Management is allowed to lead additional evidence on the question of misconduct before the Tribunal. At the same time, if the employee comes before the Tribunal challenging the punitive order on merits in appeal contending that the evidence is not sufficient to prove alleged misconduct or that he has some additional evidence in his possession to establish his innocence, which he could not produce for want of knowledge in spite of due diligence at the time when the enquiry was conducted; in such circumstances, there is no fetter on the power of the School tribunal to admit such evidence at the instance of the employee. It is, thus, always open for the School Tribunal to take such additional evidence on record for the reasons to be recorded, after giving rival parties fair opportunity following principles of natural justice.

This decision of Full Bench of this Court is not applicable to the facts of the case at hand. In the aforesaid matter, the question before the Full Bench was whether the School Tribunal hearing appeal against the order of termination/dismissal, reduction in rank etc. can permit the school management to lead evidence before the tribunal in respect of the misconduct alleged against an employee, when the management did not hold any enquiry before terminating

the services of the employee or the enquiry held against the employee is found to be defective.

In the case at hand, the petitioner was in possession of the evidence which he is now intending to adduce by way of additional evidence. It is not his case that it has come to his knowledge after the decision of the appeal. The evidence which he wants to adduce is in the nature of affidavits of witnesses and the conversation which he had recorded on his handset. It cannot be said that this conversation recorded on his handset was not in his possession at the time when appeal was presented. Therefore, the question of adducing additional evidence does not arise.

17. Now, next question is whether petitioner had tendered application for withdrawal of resignation. It is the contention of respondents that on 16th July, 2011, a letter was addressed to the petitioner mentioning therein that his application for resignation was going to be considered. Thereafter, petitioner started reflecting on withdrawal of resignation. According to the petitioner, he tendered application for withdrawal of resignation before the school authorities but that was not accepted and therefore, he despatched the

application for withdrawal of resignation through R.P.A.D. on 18th July, 2011. The learned School Tribunal has observed in this respect that on 18th July, 2011, petitioner personally tendered application for withdrawal of resignation at Jalgaon in the office of the Education Officer. It further observed that on 18th July, 2011, petitioner despatched the said letter from Bhusawal Post Office through R.P.A.D. to respondent No. 1 and on the same day, postman had been to the office of the school authorities and the envelop bears the endorsement "not claimed". The learned School Tribunal further observed that it is impossible to comprehend that all these acts could be done on one single day. I do not find any perversity in the appreciation made by learned School Tribunal. It is beyond comprehension that all these acts can happen on one single day. Even more surprising is the contention that on the same day postman had been to the office of the school and tried to serve the R.P.A.D. on the school authorities but it was not claimed by the school authorities. This sequence of events cannot happen on the same day. Moreover, the staff of respondent No. 1 had no inkling that the said envelop contained letter of withdrawal of resignation of the petitioner. Therefore, the learned School Tribunal was right in observing that petitioner created a show of sending the letter by

R.P.A.D. and that it was not claimed by the school authorities.

18. As indicated above, it can be accepted that when the application for withdrawal of resignation was not accepted by the management, the petitioner came to Bhusawal and despatched the letter by R.P.A.D. However, it is difficult to believe that on the same day the postman went to the office of respondents No. 1 to 4 and tried to effect service on the management of the school. Therefore, the learned Tribunal did not commit any error in arriving at the conclusion that the petitioner has created a false record of effecting service on the management. It is equally difficult to accept that when the postman had gone to the school, no one was there in the school to accept the envelop despatched by R.P.A.D. On this count also, it is difficult to accept that the postman tried to effect service on the management of the school. Moreover, it is incomprehensible that the school management or the staff of the school was aware about the contents of the envelop and therefore, it was not claimed. For these reasons, it cannot be accepted that notice has been served on the respondents.

19. In the case of Basant Singh vs. Roman Catholic Mission,

AIR 2002 SC 3537, it has been held that when summons is proved to have been sent by registered post to correct and given address, it can be presumed that notice is duly served. In the case of M/s Jain Developers, Mumbai vs. Raja R. Chhabria, 2018(2) ABR 266, it has been held thus :-

“There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service.

In the case at hand, as stated earlier, there was no reason for the respondent-school to refuse to accept the envelop. The circumstances discussed above, clearly indicate that the postal authorities never tendered the registered letter to the respondent-school. Therefore, this decision is of no assistance to the petitioner.

20. The next question this Court is called upon to answer is whether the procedure prescribed under Section 7 of the MEPS Act

and Rule 40 of the MEPS Rules is followed or not and if it is not followed what is the consequence of the same.

21. Section 7 of the MEPS Act reads thus :

7. Procedure for resignation by employees of private school -

If any employee intends to resign his post in any private school, at any time after the appointed 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.

22. This provision has been interpreted by this Court in the case of Balaleshwar Shikshan Mandal (supra). This Court has ruled as under :-

“8. The Tribunal has, however, held that there is noncompliance of Section 7 of the Act. It will, therefore, be appropriate to refer to section 7 of the Act which reads thus :

“Section 7 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.”

On plain reading of this Section, it would appear that once an employee signs the letter expressing his intention to resign and voluntarily

submits a copy thereof to the Management, such an act would be substantial compliance of Section 7 of the Act. In the present case, it is not in dispute that the letter dated 16.8.1998 clearly expresses Respondent's intention to resign and the letter is dated and duly signed by the Respondent No. 1 and that the said letter was made over directly to the Management. Merely because a copy of the letter has not been forwarded by registered post cannot make the resignation void as has been found by the Tribunal. The mode of despatch would be relevant in cases where the employee disputes the execution of document. But in the present case, the Respondent No. 1 has neither disputed execution of the document nor the delivery thereof to the management. In such a case, in my view, there is substantial compliance of the procedure for tendering resignation. The Tribunal has further found that there is infraction of Rule 40 of the Rules. Rule 40 reads thus :

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

In the case at hand too, petitioner does not dispute his signature on the resignation. He does not dispute that he had tendered resignation. Therefore, non-sending of letter by R.P.A.D. does not invalidate the resignation. In the case at hand too, the petitioner is a non-permanent employee. Non-compliance of Rule 40 of MEPS Rules does not make the resignation invalid. Sub rule 2 provides that in such a situation proportionate amount of pay in lieu of notice shall be deducted from the amount due to the school concerned. Rule 40 of MEPS Rules shows that non-compliance of provisions of Rule 40 will not render the resignation invalid. The consequence of non-compliance is deduction of proportionate amount of pay in lieu of notice from the amount due to the school concerned. Therefore, it cannot be deduced from this provision that non-compliance will amount to invalidation of the resignation.

23. In the case of Anandlal Ganesh Poddar (supra), this Court, placing reliance on the case of Balaleshwar Shikshan Mandal has observed that once employee signs a letter expressing his

intention to resign and voluntarily submits a copy thereof to the management, this would constitute substantial compliance of Section 7 of the MEPS Act. Further placing reliance on the judgment of Division Bench of this Court in the matter of Banda Navbharat Shikshan Prasarak Mandal vs. Raghunath Ganesh Manorikar, 1992 II CLR 956, it has been observed that :-

“This is also the view which has been taken by a Division Bench of this Court in Banda Navbharat Shikshan Prasarak Mandal vs. Raghunath Ganesh Manorikar, 1992 II CLR 956, where Mr. Justice M.L. Pendse (as the learned Judge then was) speaking for the Court held that a period of three months’ notice is provided for the benefit of the management so that the management would not find any difficulty in appointing a substitute teacher. The Court held that it is, however, open for the management to give up the advantage conferred by the rule and accept the resignation forthwith by payment of salary in lieu of three months’ notice. The School Tribunal has placed a considerable degree of emphasis on the circumstance that the letter of resignation did not furnish three month’s notice and has found fault with the management for having accepted the letter of resignation with immediate effect.

24. Thus, non-compliance of Section 40 of MEPS Act does not make the resignation invalid. Similar view seems to have been taken in the case of Kushappa M. Kamble (supra). It is held in the decision of this Court that it is not mandatory to send resignation

letter to the management by R.P.A.D, he may send the same by R.P.A.D. but that does not mean that he cannot tender the resignation personally. There is no bar to accept the resignation immediately after one month.

25. In the case of Ashok s/o Balaji Biradar (supra) it has been held that the burden to prove that the resignation was under coercion is on the employee.

26. Thus, from these authorities, it is clear that non-compliance of Section 7 of MEPS Act and Rule 40 of MEPS Rules does not invalidate the resignation.

27. Learned counsel Shri Bhokarikar placed reliance on the case of Shri Sant Sawatamali Shikshan Prasarak Mandal, Tembhurni (supra) wherein it has been held thus :-

“So far as the aforesaid provision is concerned, the statute provides that a management cannot take undue advantage by compelling a teacher to give resignation either by force or by giving any type of inducement. There is safeguard provided in the Act and with an object to see that in a given case the management may not pressurise the teacher to give resignation and as to whether in a given case the so called resignation is misused by the management

and for that purpose safeguards have been provided in the statute in the case of resignation.

This authority is of no assistance to the petitioner for the reason that it was consistent case of the teacher that he had never resigned. After the so called resignation, the teacher had signed the muster roll. This is not the case in hand.

28. In the case of Siddheshwar Kreedha Mandal, Sillod (supra), it has been held thus :

11. When law lays down a peculiar mode for resignation, so also when it lays down that a notice or payment in lieu of notice should be given, these are precautions taken by the legislature to avoid possibility of obtaining resignation under duress or tendering resignation in haste or in the heat of moment. Rule 40 of the Rules of 1981 gives period of notice, mainly for reason that during the period of notice a person may reflect on this decision and may within period of notice withdraw such resignation if he relents. Similarly the procedure of sending resignation by registered post as laid down under Section 7 is to ensure that the act is voluntary. So facts of this case will have to be considered keeping in mind omission to comply with Section 7 of the Act of 1977 and Rule 40 of the Rules of 1931.

This authority has no application to the facts of the case at hand. In the aforesaid case, petitioner had tendered resignation

on 1st July, 1994 and it was accepted on 13th July, 1994. Still the petitioner had undergone training classes conducted at Sillod between 1st August, 1994 and 3rd August, 1994. It was further held that this clearly indicates that there must not have been tendering of resignation and its acceptance. This is not the factual situation in the case at hand. Though the petitioner has pleaded that he was forced to tender resignation, the circumstances brought on record by the management clearly spell out that resignation was voluntary.

29. Thus, findings recorded by the learned School Tribunal do not smack of perversity. I do not find any infirmity in the appreciation of evidence made by the learned School Tribunal. In this view of the matter, petition is devoid of any substance hence it is dismissed. Rule stands discharged.

30. Pending application if any, does not survive and stands disposed of.

(M. G. SEWLIKAR)
Judge