

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

WRIT PETITION NO. 9605 OF 2021

1. Dr. Zakir Husain Shikshan Prasarak
Mandal, Wadhwana (Bk),
Taluka Udgir, District Latur,
Through its Secretary,
Shri Usman Khan Mahemoodkhan Golandji,
Age: 65 years, Occu: Social Work,
R/o. Wadhwana (Bk.),
Taluka Udgir, District Latur
 2. The Head Master,
Hazarat Miyasha Quardri Urdu Primary School,
Wadhwana (Bk), Taluka Udgir,
District Latur
- ... Petitioners

Versus

1. Shafiq Ahmed Ismilesab Pathan
Age: 53 years, Occu: Nil,
R/o. Ramgopal Nagar, Shelhal Road,
Udgir, Taluka Udgir, Dist. Latur
 2. Mainuddin Ismile Pathan
(Alleged Secretary)
Dr. Zakir Husain Shikshan Parasak Mandal,
Wadhwana (Bk), Taluka Udgir,
District Latur
 3. The Education Officer (Primary)
Zilla Parishad, Latur
 4. Sayad Majid Nawajisali Hashmi
Age: 37 years, Occu: Service,
R/o: Raj Mohammad Darga,
Gunde Bagh Udgir,
Taluka, Udgir, District Latur
- ... Respondents

...

Mr. V. D. Gunale, Advocate for the Petitioners
Mr. A. N. Nagargoje h/f Mr. I. D. Maniyar, Advocate for Respondent No.1
Mr. U. B. Bondar, Advocate for Respondent No.3
Mr. M. A. Jahagirdar, Advocate for Respondent No.4

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd August, 2022

ORAL JUDGMENT :-

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition filed under Article 226 and 227 of the Constitution of India, takes exception to the Judgment and Order dated 27-07-2021, passed by the learned Presiding Officer, School Tribunal, Latur in Appeal No.5/2020, whereby the Tribunal has quashed and set aside the termination order dated 24-01-2015 issued to respondent no.1 and directed his reinstatement with full back-wages and continuity of service.

3. Petitioner No.1 claims to be a Secretary of Dr. Zakir Husain Shikshan Prasarak Mandal, Wadhwana (Bk), Taluka Udgir, District Latur and Petitioner No.2 is the Headmaster of Hazarat Miyasha Quadri Urdu Primary School, Wadhwana (Bk), Taluka Udgir, District Latur.

. Facts in nutshell necessary for adjudication of the present petition are as follows:-

4. Respondent No.1 was appointed as untrained teacher in petitioner no.2/School in the year 1988. In the year 1997, he was

made permanent as Assistant Teacher. It is the case of the Management that in the year 2002, on account of misconduct, Respondent No.1 was suspended and his services were terminated, after conducting inquiry. However, at the request of Respondent No.1, he was reinstated in service in the year 2005.

5. Respondent No.1 proceeded on leave without obtaining prior permission w.e.f. 19-01-2012 and continued to remain absent thereafter. The Management allegedly issued notices as well as public notices in local news papers in the year 2014 to respondent no.1 calling upon him to resume the duty. A final notice was issued to Respondent No.1 on 02-02-2014 calling upon him to resume duty within 10 days from the publication of the said notice. According to the Management, the said notice was tried to be served on respondent no.1 by affixing a copy of said notice on the conspicuous part of the house of Respondent No.1. Panchnama to that effect was conducted and the same is placed on record.

6. A show cause notice was issued to Respondent No.1 calling upon him to explain as to why he is unauthorizedly absent from School w.e.f. 31-12-2011, he was absent for केंद्र सम्मेलन, and he has not given reply to the show cause notice issued on 12-08-2011, he was coming one hour late to the School. Thereafter, a final show cause notice was issued to Respondent No.1 on 07-06-2012 so also

the public notice was published in the local news paper calling upon Respondent No.1 to resume the duty within 10 days from the date of publication of the notice.

7. Thereafter, Respondent No.1 approached before the Education Officer by representation dated 11-07-2014 making a grievance that the Management is not permitting him to resume duty. The Education Officer by communication dated 20-08-2014 informed the Headmaster (Petitioner No.2) to allow Respondent No.1 to join the duty and submit a report to that effect to the office of Education Officer. Management replied the said communication of Education Officer on 13-02-2015, stating that from time to time public notices were issued to Respondent No.1 to resume the duty, however, he has failed to join the duty and Management has passed a resolution holding that Respondent No.1 has abandoned service and therefore, the Management is not in position to allow Respondent No.1 to join the duty.

8. Thereafter, Respondent No.1 approached this Court by filing Writ Petition No.12740/2016, seeking direction to the Education Officer and Management to allow him to join the duty. In the said petition, the Management filed affidavit, stating that by order dated 24-01-2015, service of Respondent No.1 is terminated. Learned Division Bench, therefore, did not consider the prayer of Respondent No.1 to that effect.

9. However, so far as the prayer clause-'C' in respect of salary of Respondent No.1 was concerned, the learned Division Bench has passed following order:

"3. The petitioner shall make a representation with Deputy Director of Education. On receipt of such a representation the Deputy Director of Education shall, after hearing the petitioner and the respondent Nos.5 and 6 take decision upon the eligibility of the petitioner to the salary for the said period.

4. The writ petition accordingly disposed of. No costs."

10. Pursuant to this above order, Respondent No.1 approached before the Deputy Director of Education and the Deputy Director of Education on 22-01-2021, has passed order in favour of Respondent No.1, thereby directing the Management to sanction the leave of Respondent No.1 for the period between 18-01-2012 to 07-07-2014 as per rules and to allow Respondent No.1 to join the duty and pay him salary, as per rules.

11. It is informed by the learned Advocate representing the Petitioners that this order is challenged by the Petitioners by filing a Writ Petition No.11845/2021 before the Division Bench of this Court. By order dated 26-10-2021, the Division Bench has issued notices to Respondent No.1 and others in the said matter.

12. Since the impugned termination order was brought to the notice of Respondent No.1, he challenged the same by filing Appeal

No.5/2020 before the School Tribunal, Latur. The Petitioners were made party as Respondent Nos.2 and 3 in the said appeal and Respondent No.1 was arrayed as "Secretary" (Mainuddin Ismail Pathan) of Dr. Zakir Husain Shikshan Prasarak Mandal, Wadhwana (Bk), Taluka Udgir, District Latur.

13. The Petitioners resisted the said appeal by filing a detail say. The Respondent No.1, in the said appeal, also filed separate reply, contending that Respondent No.1 was on leave since 18-01-2012 and thereafter, there is change in the Management and two rival groups are claiming right over the trust. The present Petitioner No.1 is not Secretary as per Change Report No.90/2013. In short, he supported the case of Respondent No.1 and prayed that appeal filed by Respondent No.1 be allowed. The Education Officer has also filed reply pointing out that communication of Respondent No.1 to the Education Officer and the directions given by Education Officer to the Management to allow Respondent No.1 to join duty.

14. The School Tribunal after hearing the parties allowed the appeal and set aside the termination order dated 24-01-2015 and directed reinstatement of Respondent No.1 with continuity of service, and granted full back-wages and all other consequential benefits. The Petitioners are aggrieved by this order.

15. Heard the learned Advocate for the Petitioners, the learned Advocate for Respondent No.1, the learned Advocate for Respondent No.3 and the learned Advocate for Respondent No.4.

16. The learned Advocate for the Petitioners assailed the impugned order, contending that Respondent No.1 proceeded on unauthorized leave without filing proper application and without leave having been sanctioned to him. He has remained unauthorizedly absent for a period of almost three years and therefore, he has abandoned the service. He submits that from time to time, public notices were issued to Respondent No.1 calling upon him to join the duty, however, he has failed to do so. He was in jail in respect of criminal case between 30-04-2014 to 13-05-2014. Because of the criminal cases, he was not in a position to join the duty. According to him, Respondent No.1 has created a record by approaching the Education Officer to show that the Petitioners were not permitting him to join the duty. He submits that the School Tribunal has failed to take into consideration all these relevant aspects and has erroneously allowed the appeal filed by Respondent No.1. He, therefore, seeks quashing of the impugned judgment and order by allowing the present petition.

17. The learned Advocate for Respondent No.1, on the other hand, strenuously supported the impugned order. According to him,

the termination of Respondent No.1 is in clear violation of Rule 16(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the said Rules'). The leave of Respondent No.1 was sanctioned by the Vice-President of trust, who was in the Management and Respondent No.1 was granted long leave by the said order. He submits that whenever Respondent No.1 went to join the duty, the Management did not permit him to resume the duty on one pretext or other. Hence, he was constrained to approach before the Education Officer seeking direction to the Headmaster and Management to allow him to resume the duty. In spite of clear directions of the Education Officer, the Management has not permitted him to join the duty. It appears that the Management wanted to terminate the service of Respondent No.1 by taking recourse to latter part of Rule 16(3) of the said Rules and therefore, they did not allow Respondent No.1 to join the duty.

18. According to him, Respondent No.1 was constrained to approach this Court by filing Writ Petition No.12740/2016, wherein directions were given to the Deputy Director of Education. The Deputy Director of Education after hearing the Management has passed the order in favour of Respondent No.1. He submits that though the said order is challenged by the Management, there is no

stay granted by the Division Bench in favour of the Management. He submits that there is a dispute in the Management. The Management has challenged the order passed in favour of Respondent No.1, whereas the other Management has supported the case of Respondent No.1. According to him, the Tribunal has given cogent reasons while allowing the appeal. He further submits that Rule 16(3) of the said Rules is correctly interpreted by the Tribunal, therefore, he submits that no case is made out by the petitioners to interfere in the order passed by the School Tribunal. He submits that there is no substance in the petition and the petition is liable to be dismissed.

He further submits that Respondent No.1 has reached the age of superannuation on 30-06-2022 and therefore now, only question remains is about back-wages and consequential benefits.

19. In support of his submissions, he relied on unreported decision of Co-ordinate Bench of this Court in Writ Petition No.515/2004 and a reported decision in **Sudhakar Chindu Bhadane Vs. Niphad Taluka Education Society and Others** reported in **2008(1) Mh.L.J. 448**.

20. The learned Advocate for Respondent No.3 also supports the impugned order.

21. The learned Advocate for Respondent No.4 who is appointed in place of Respondent No.1 also adopted the arguments of the Petitioners. According to him, the impugned order of the School Tribunal is unsustainable.

22. It is apposite to consider Rule 16(3) of the said Rules, which reads thus;

"16.

(1)

(2)

(3) *In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty [without leave continuously for a period exceeding three years] or more, shall be deemed to have voluntarily abandoned his services."*

23. This Court is not inclined to go into the reasons behind the absence of Respondent No.1 for two years. The Management should have conducted inquiry in respect of the absence of Respondent No.1, in terms of Rule 16 of the said Rules. Admittedly, no such inquiry is conducted.

Instead the Management waited for completion of three years period of absence of Respondent No.1 and then terminated the service of Respondent No.1 by relying upon latter part of Rule

16(3) of the said Rules. This action of the Management is unsustainable, as it is clear from the documents on record that the Management has not permitted Respondent No.1 to join duty though, he repeatedly approached, the Management with a request to allow him to resume duty.

24. The communications issued by the Education Officer which are placed on record dated 20-08-2014 and in communication by Respondent No.1 to the Education Officer dated 01-12-2014, a statement is made by Respondent No.1 that he had forwarded his explanation to the public notices issued by the Petitioners on 23-02-2014 through his lawyer. The explanation was also forwarded through along registered post to the Headmaster. The same was refused by the Headmaster and it was returned to Respondent No.1. Thereafter, again he went to the School on 07-07-2014 and 01-12-2014 with a request to permit him to join the duty, however, the Headmaster has not allowed him to join. The Respondent No.1 therefore, vide representation dated 12-12-2014 approached before the Deputy Director of Education making a grievance that when he went to join duty on 07-07-2014 and 11-12-2014, he was not permitted to join the duty. By letter dated 21-06-2015, the Deputy Director of Education asked Education Officer (Respondent No.3) to inquire into the grievance of Respondent No.1 and submit a report.

The Education Officer again by communication dated 31-01-2015 directed the Headmaster (Petitioner No.2) to allow Respondent No.1 to join. Similar communication is issued by the Education Officer on 29-08-2016 also.

25. The documents placed on record therefore indicate that Respondent No.1 remained absent in the School from 19-01-2012 and he was absent for a period of more than two years. However, there is a dispute on the point whether Respondent No.1 went to join and whether the Petitioners did not allow him to join; considering these facts, the Tribunal has recorded a finding that there is violation of Rule 16(3) of the said Rules. The Tribunal has held that service of Respondent No.1 was terminated by order dated 24-01-2015, as per Rule-16 of the said Rules. The said termination is without inquiry. The Tribunal has observed that latter part of Rule 16(3) states that a permanent employee who is absent from duty without leave continuously for a period of exceeding 3 years shall be deemed to have voluntarily abandoned his services. The Tribunal has noted that Respondent No.1 was absent on duty since 19-01-2012 and the Management has issued notice to him in '*Daily Lokmat*' on 16-02-2014. Though Respondent No.1 replied the same and presented himself on 16-02-2014 in the School and requested to allow him to join duty, he was not allowed to join.

Therefore, he was required to make correspondence with the Education Officer. In spite of directions given by the Education Officer, the Management has not permitted Respondent No.1 to join the duty. The Tribunal, therefore, has recorded a finding that "by not allowing the appellant to join the duty since 2014 till 2015, the Management cannot rely on Rule-16(3) of the said Rules.

26. The Tribunal has further noted that if the Management has grievance that Respondent No.1 was absent without sanctioned leave and violated the provisions of Rule-16 of the said Rules, a notice should have been given to Respondent No.1 and inquiry should have been conducted, as contemplated in sub-section 6 of Section 4 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'the said Act') and there was no inquiry at all in the case in hand. The Tribunal has further noted that though the Petitioners in the say at Exhibit-25 contended that Respondent No.1 had under gone Police Custody remand and Magistrate Custody remand in the offence of cheating, no notice was issued to Respondent No.1 in that behalf and no inquiry is conducted by the Management. The Tribunal, therefore, came to a conclusion that termination order dated 24-01-2015 is illegal and bad-in-law.

27. It is clear from Rule 16 that if a permanent employee without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. If at all the contention of the Management is to be accepted that Respondent No.1 without sufficient cause failed to apply for leave within 7 days from the date of absence and it was in breach of discipline, the Management ought to have conducted disciplinary inquiry against Respondent No.1 for his unauthorized absence and ought to have passed appropriate order after conclusion of the disciplinary inquiry. The same is not done. Therefore, the Management cannot rely on the first part of sub-rule 3 of Rule 16 of the said Rules.

28. The second part of sub-rule 3 of Rule 16 of the said Rules, contemplates that a permanent employee who is absent from duty without leave continuously for a period exceeding three years or more, shall be deemed to have voluntarily abandoned his services. For completing period exceeding three years in the present case, Respondent No.1 ought to have remained absent for the period beyond 18-01-2015. The documents placed on record indicate that Respondent No.1 has repeatedly approached in the year 2014 to the Education Officer making a grievance that the Management is

not permitting him to joint duty and the Education Officer has directed the Management to allow Respondent No.1 to join duty. He has also approached this Court seeking a direction to the Management to allow him to join the duty. Thus, he has tried his level best to join duty within a period of three years and therefore, latter part of sub-rule 3 of Rule 16 of the said Rules is not attracted in the present case and therefore, the Management could not have terminated the services of Respondent o.1 by taking recourse to latter part of Sub-rule 3 of Rule 16 of the said Rules. The Management cannot take advantage of its own wrong of not permitting Respondent No.1 to resume the duty and then, terminate his services on the ground that he has remained absent for a period exceeding three years and therefore, his services are liable to be terminated.

29. The Tribunal has rightly interpreted the provisions of Sub-section 6 of Section 4 of the said Act as well as Rule-16 of the said Rules. The impugned termination order of Respondent No.1 was in utter violation of Sub-section 6 of Section 4 of the said Act and Sub-rule 3 of Rule-16 of the said Rules. On this ground also, the Tribunal is right in setting aside the impugned termination order.

30. This Court is not inclined to go into the aspect of dispute in the Management. The impugned termination order of Respondent

No.1 is found to be unsustainable in law and facts of the case and the Tribunal was justified in setting it aside. There is no merit in the challenge raised by the Petitioners in the present petition. The petition, being devoid of merit, is dismissed. No costs.

31. It is made clear that this Court has expressed opinion about the merits of the termination order only and the Petitioners are entitled to contest their petition filed before the Division Bench on its own merits. The issue of approval of Respondent no.4 shall be decided on its own merits.

[NITIN B. SURYAWANSHI, J.]

Sameer