

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

MISC. CIVIL APPLICATION NO. 586 OF 2021
IN
LETTERS PATENT APPEAL NO. 305 OF 2010
IN
WRIT PETITION NO. 2796 OF 2006

Shriramchandra Samaj Seva Samiti,
Bramhanwada [Kasba]
Post. Talegaon, Tq: Chandur Bazar,
Dist: Amravati,
Through its Secretary.

..... **APPLICANT**

...VERSUS...

1. Sanjay Annaji Pohokar,
Aged about 55 years,
Occupation – Service,
R/o Belora, Tq: Chandur Bazar,
Dist: Amravati
2. The Education Officer [Secondary]
Zilla Parishad, Amravati,
Tq : & Dist: Amravati
3. Shri R.L. Loharkar,
Aged about Major, Occ. Retired,
R/o. Gajanan Colony, Near
Gajanan Maharaj Mandir,
Morshi, Tq. Morshi,
Distt. Amravati 444905
4. The Headmaster,
Dnyandeep Vidyalaya,
Bramhanwada [Kasba]
Post: Talegaon, Tq: Morshi
Dist: Amravati,

... **RESPONDENTS**

Shri M. G. Bhangde, Sr. Adv. a/b Shri S. Sarda, Advocate for applicant
Shri V. A. Kothale, Advocate for respondent No.1
Shri. P. A. Kadu, Advocate for respondent No. 4
Shri N. R. Rode, AGP for State.

WITH
MISC. CIVIL APPLICATION NO. 587 OF 2021
IN
LETTERS PATENT APPEAL NO. 418 OF 2010
IN
WRIT PETITION NO. 5232 OF 2006

Shriramchandra Samaj Seva Samiti,
Bramhanwada [Kasba]
Post. Talegaon, Tq: Chandur Bazar,
Dist: Amravati,
Through its Secretary

..... APPLICANT

..V E R S U S..

1. Sunita Madhavrao Mohod
Aged about 55 years,
Occupation:- Service
R/o Belora, Tq. Chandur Bazar,
District:- Amravati
2. The Education Officer [Secondary]
Zilla Parishad, Amravati,
Tq : & Dist: Amravati
3. Sau. Madhuri W/o. Bhaskar Kale
Occ. Gradulate Teacher,
Sharda Kanya Vidyalaya and
Junior College, Shikshak Colony,
Near Dreams Park, DP Road,
Amravati- 444605
4. The Headmaster,
Dnyandeep Vidyalaya,
Bramhanwada [Kasba]
Post: Talegaon, Tq: Morshi
Dist: Amravati.

...

RESPONDENTS

Shri M. G. Bhangde, Sr. Adv. a/b Shri S.S. Sarda, Advocate for applicant
Shri V. A. Kothale, Advocate for respondent No.1
Shri N. R. Rode, AGP for State.

CORAM : A. S. CHANDURKAR AND
G. A. SANAP, JJ.
RESERVED ON : 01/07/2022
PRONOUNCED ON : 19/07/2022

JUDGMENT : (PER : G. A. SANAP, J)

1. Heard. ADMIT. Heard finally by consent of learned counsel for the parties.

2. Both these applications can be disposed of by the common judgment. The applicant has prayed for review of the judgment and order dated 17.08.2021 passed in Letters Patent Appeal No. 305 of 2010 and Letters Patent Appeal No. 418 of 2010. These Letters Patent Appeals were disposed of by common judgment and order.

3. The Letters Patent Appeals filed by the respondents (Shri Sanjay Annaji Pohokar and Sau Sunita Madhavrao Mohod) have been allowed and the applicant has been directed to reinstate the respondents with effect from 30.04.2000 and to pay 50 % of backwages from 30.04.2000.

4. According to the applicant, the documentary evidence available on record has not been taken into consideration. The documents placed on record clearly indicate that the acceptance of the resignation of the respondents was communicated to them on 02.02.2000. The acknowledgment of the communication was placed on record. It is submitted that the same has not been taken into consideration. It is stated that the stand of the respondents on the point of resignation is self contradictory. On the basis of the documentary evidence, it has been proved that the respondents had voluntarily resigned from the service. It is stated that in the appeal filed before the School Tribunal there was no specific pleadings as regard the applicability of Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (For short 'MEPS Act') and Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (For short 'MEPS Rules'). It was, therefore, not permissible to apply the provisions of Section 7 of the MEPS Act and Rule 40 of the MEPS Rules in the absence of the pleadings. It is further stated that as far as the backwages are

concerned, there is no pleading and evidence to establish that the respondents remained unemployed till the decision of the Letters Patent Appeals. The submission advanced by the Advocate for the parties, admitting a particular fact, cannot be made the basis to award the backwages. It is therefore submitted that the error apparent on the face of the record has occurred in this case. The error is required to be corrected by setting aside the judgment and order dated 17.08.2021 in both the Letters Patent Appeals.

5. The respondents have filed the reply and opposed the applications. It is stated that no error, as sought to be contended, has occurred in this case. The evidence on record is sufficient to accept the case of the respondents. In short, the respondents have supported the judgment and order.

6. The learned Senior Advocate Shri. M. G. Bhangde for the applicant made the submissions consistent with the facts pleaded in the applications. The learned Senior Advocate took us through the record and proceedings of the appeal filed before the School Tribunal. The learned Advocate for the respondents has

also made submissions consistent with the pleadings in the reply. The learned Advocate for the respondents has also taken us through the record and proceedings.

7. On the basis of the evidence on record in the Letters Patent Appeals finding has been recorded that the letter dated 02.02.2000 sought to be relied upon as a communication of the decision of the acceptance of the resignations, was not received by the respondents on 02.02.2000. The learned Senior Advocate for the applicant, on the basis of this letter, submitted that the finding recorded by this Court that there was no communication of the acceptance of resignations, on 02.02.2000, is contrary to the record. In our opinion, this letter has been taken into consideration. The remaining documents relied upon by the respondents to substantiate their case that their resignations were either created on blank papers with their signatures or got forcibly written from them. It is to be noted that apart from the other documents, the most important document taken into consideration is the application made by the respondents on

10.07.2002 thereby calling upon the applicant to produce the acknowledgment regarding communication dated 02.02.2000. In the application dated 10.07.2002, at Sr. No. 11, the reference has been made to this document. This application was replied. As far as this document at Sr. No. 11 is concerned, it was categorically stated by the applicant that for this purpose the applicant would prove its case that there was valid resignation and, therefore it was not necessary to call the applicant (respondents in the appeal) to produce the documents. It is to be noted that this application was made on 10.07.2002. The document was neither produced on record nor provided to the respondents. It is to be noted that after three years, i.e. on 08.07.2005, the applicant produced the photocopy of this document on record with the list at Exh. 30. The applicant herein took three years to disclose the so called communication dated 02.02.2000 to the respondents. The learned Advocate relying upon this document submitted that the respondents acknowledged the receipt of this document. We are not prepared to accept this submission for the reasons recorded in the main Judgment. There is no substance in the submission that

this document was not taken into consideration while deciding the Letters Patent Appeals. It is to be noted on appreciation of this document and remaining documents placed on record, we have recorded a finding that decision of the acceptance of the resignation was not duly communicated to the respondents, as sought to be made out, on 02.02.2000. A bare perusal of the document would show that there are signatures of the respondents on the left side bottom of the document. There is no date below the signatures. There is no specific acknowledgement of the receipt of this letter. Similarly, the outward number of the letters in both the appeals filed before the School Tribunal by the respondents herein is same. It is a specific case of the respondents that their signatures were obtained on the blank papers. On the basis of the material and documents placed on record, the respondents have made their stand probable and acceptable. We have recorded a finding that the respondents were informed in writing about the acceptance of their resignations vide letter dated 27.04.2000 received by them on 29.04.2000. A perusal of record would show that there are separate outward

numbers to the separate letters sent by post to the respondents. It is to be noted that though the respondents had called upon applicant to produce and provide the acknowledgements of the communication of the acceptance of their resignations on 02.02.2000 by application dated 10.07.2000, the same was suppressed from the respondents for three years. It is therefore seen that there is no substance in the submissions advanced by the learned Senior Advocate on this point. No error, as sought to be made out, has occurred while recording the finding on this issue.

8. The learned Senior Advocate submitted that in the pleadings of the respondents there is no specific mention of Section 7 of the MEPS Act and Rule 40 of the MEPS Rules. The learned Senior Advocate submitted that in the absence of such pleading the same could not have been invoked in this case. The learned Advocate for the respondents submitted that the respondents have pleaded the material facts. It is the contention of the respondents that they have not resigned from the service. It is further submitted that it is specific case of the respondents that

by making use of the blank signed papers the so called resignations were prepared.

9. While dealing with this point, we have held that the provisions of Section 7 of the MEPS Act are mandatory. We have held that any act proved to have been done contrary to the mandate of Section 7 of the MEPS Act needs to be declared as void-ab-initio and illegal. We have considered the two decisions of the learned Single Judge of this Court in the case of *Bahujan Vikas Mandal, Akola and Another .v/s. Manda Vithalrao Parsutkar and another*¹ and *Sayyed Maksood Ali Sayyed Roshid Ali .v/s. Uruj-E-Urdu Education Society, Kalamb and Anr.*². We have taken the proposition of law laid down in these two decisions into consideration. We have held that the first part of Section 7 of the MEPS Act contains three requirements namely; (i) drawing up a letter of resignation in duplicate; (ii) signing both the copies of that letter; and (iii) putting in the date thereon. We have held that the requirement of Section 7 MEPS Act are mandatory and its

1 2011 (2) Mh.L.J. 203

2 2011(4) Mh.L.J.952

non compliance would render the resignation illegal and involuntary. It is to be noted that Section 7 of the MEPS Act has been enacted with a particular intention and object. The object and intention behind this provision is to put a check on the whims and caprice of the management of the Private aided or un-aided Schools. The compliance of mandate of Section in a letter and spirit is necessary to establish the voluntary nature of the resignation.

10. The submission advanced by the learned Senior Advocate that in the absence of specific pleading of the application of either Section 7 of the MEPS Act or Rule 40 of the MEPS Rules, the same would not have been relied upon while deciding the appeals, cannot be accepted. It is cardinal rule of law of pleadings that only material facts must be pleaded. Law is not required to be pleaded. The provisions of law need to be applied to the facts obtained on record in each and every case. In this case the basic foundation of the case of the respondents was that they did not resign. Their resignation letters were prepared by misusing the

blank signed papers. In our view by applying any standard to this pleading, it would show that the respondents have stated that they did not resign voluntarily. We are, therefore, not prepared to accept the submissions advanced by the learned Senior Advocate Shri. M. G. Bhangde.

11. The next important point is with regard to the backwages. It is true that there is no pleading by the respondents to substantiate this point. The relief of backwages was granted as a consequential relief. It is to be mentioned that during the course of argument in the Letters Patent Appeals the learned Advocate for the respondents had pointed out that from the date of relieving from the service they have been unemployed. The learned Advocate who argued on behalf of the applicant at that time did not counter this submission. The learned Senior Advocate Shri Bhangde submitted that based on the submissions of the Advocate appearing for the party such a substantive relief cannot be granted. In order to substantiate his submission that in the absence of pleading and proof the consequential relief of

backwages cannot be granted, the learned Senior Advocate has placed reliance on decision in the case of ***Mahadeorao Ramchandra Khadatkar .v/s. The President, Dr. Punjabrao Deshmukh Memorial Education Society, Nagpur and ors.***¹ In this case, it has been held that for the purpose of awarding the backwages there must be specific pleading and on the basis of the pleading and evidence it must be proved that the employee concerned is not gainfully employed anywhere. In our opinion, as far as this point is concerned, there is error apparent on the face of the record.

12. In the appeal memo, preferred by the respondents herein, there are no averments that they were without any employment and hence, were not gainfully employed. Similarly, there are no such pleadings in the writ petitions preferred by them as well as in the Letters Patent Appeals, as filed. For seeking the relief of backwages it was necessary for the respondents to have pleaded that they were not gainfully employed from the date of their otherwise termination. Though the learned counsel for the

¹ *LPA No. 438 of 2012 decided on 23.12.2021*

respondents invited attention to paragraph 5 of the appeal memo and the averment that “Appellant has no reason to abandon the employment in the days of unemployment”, to urge that these pleadings were sufficient to grant backwages, we find that the same are not sufficient to hold that the respondents were not gainfully employed. The decision in the case of ***Pradeep S/o. Rajkumar Jain .v/s. Manganese Ore (India) Limited & ors.***¹ relied upon by the learned counsel for the respondents is distinguishable, since in that case the appellant therein had clearly stated that he had not been working which was taken into consideration for awarding backwages. We, therefore, find that while awarding backwages this Court in its judgment and order dated 17.08.2021 had relied upon the oral submissions of the learned counsel for the respondents. In our view, there was an error committed in accepting such oral statement, in the absence of any pleading for grant of backwages. Therefore, to the extent of the backwages the judgment and order is required to set aside. As far as the remaining aspects are concerned, we are of the

1 2022 ALL SCR 566

opinion that there is no error apparent on the face of the record.

We, therefore, proceed to pass following order.

ORDER

- 1] The applications are partly allowed.
- 2] The judgment and order dated 17.08.2021 only to the extent of awarding backwages is reviewed and recalled.

The applications are **disposed of**, accordingly.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)

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