

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

WRIT PETITION NO. 1262 OF 2022

Swatantraveer Sawarkar Bahu-
uddeshiya Sanstha, Babupeth,
Chandrapur, Tah. & Dist. Chandrapur,
through its Secretary

Swatantraveer Sawarkar Prathamik
Shala, Babupeth, Chandrapur, Tah and
Dist. Chandrapur, through its Head
Mistress

...Petitioners

// VERSUS //

1. Chetankumar Rajhans Nandeshwar,
Age 34 Years, Occ. Nil
R/o 1-B/177, Waigaon, Tahsil Umred,
Dist. Nagpur
2. The Education Officer (Primary), Zilla
Parishad, Chandrapur

... Respondents

Shri A.D.Mohgaonkar, Advocate for the petitioner.
Ms. Mugdha Chandurkar, Advocate for the respondent no.1.

CORAM : ANIL S. KILOR, J.

DATED : 31st MARCH, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. In the present writ petition the judgment and order dated 17th
December, 2021 passed by the Additional School Tribunal, Chandrapur
in STC Appeal No. 9 of 2018, allowing the appeal and thereby setting
aside the otherwise termination of the respondent no.1 and directing to

reinstate the respondent no.1 on the post of Assistant Teacher with continuity of service w.e.f 24th September, 2018, is under challenge.

3. The respondent no.1 filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (herein after referred as “MEPS Act”) challenging his otherwise termination. It is the case of the respondent no.1 that the petitioner no.1 is a registered society who runs respondent no.2 recognized primary school.

3. In the first week of June, 2010 the petitioners invited applications for filling up the post of Assistant Teacher in petitioner no.2 School. In response to the same, he made an application and thereupon the interviews were held on 15th June, 2010.

4. The respondent no.1 was found to be qualified and eligible. Accordingly, appointment order dated 15th June, 2010 was issued in favour of the respondent no.1. The respondent no.1 joined the petitioner no.2 school w.e.f. 26th June, 2010. The respondent no.2 Education Officer granted approval to the appointment of the respondent no.1.

5. The respondent no.1 was interested in improving his qualification and therefore he requested for permission to acquire the higher qualification, B.Ed which was permitted by the petitioners. However, after completion of B.Ed though the petitioners promised to allow the respondent no.1 to join duties, he was asked to clear T.E.T. examination which also was acquired by the respondent no.1. However,

even thereafter the petitioners did not fulfill the assurance given to the respondent no.1 and on 4th September, 2018 first time the petitioners denied the request of the respondent no.1 to allow him to join the services. Accordingly, the appeal was filed against the otherwise termination.

6. Learned School Tribunal after examining and scrutinizing the evidence available on record allowed the appeal and by setting aside the termination reinstated the respondent no.1 in service vide impugned judgment and order dated 18th March, 2021. The same is the subject matter of the present writ petition.

7. I have heard learned counsel for the respective parties.

8. Shri Mohgaonkar, learned counsel for the petitioners submits that the respondent no.1 left the service by tendering resignation on 25th March, 2011 and thereafter the appeal was filed in the year 2018 as such there was inordinate delay in approaching the Tribunal. It is pointed out that the application moved by the respondent no.1 for condonation of delay was rejected and despite the same the appeal was decided on merit in favour of the respondent no.1.

9. It is submitted that the learned School Tribunal has not at all taken into consideration the case of the petitioners as regards the resignation of the respondent no.1. It is further submitted that only after the reply Exhibit 10 was filed and the fact of resignation was brought on record, the application for condonation of delay was moved. However,

without any sufficient cause, the learned School Tribunal proceeded in this matter to decide the case on merit.

10. Shri Mohgaonkar, learned counsel for the petitioners submits that the petitioner no.2 is a primary school and the respondent no.1 was holding a prescribe education qualification, therefore, there was no question to allow the respondent no.1 to improve his qualification by acquiring B.Ed. qualification. It is submitted that the documents filed on record by the respondent no.1 particularly the documents which show that the petitioners granted permission to the respondent no.1 for pursuing B.Ed course, are the fabricated one and those documents cannot be relied upon.

11. It is submitted that the petitioners could not get sufficient opportunity to defend their case because it has come on the record that the learned counsel who was representing the petitioners, filed a pursis withdrawing Vakalatnama. He therefore submits that the matter needs to be remanded back to the School Tribunal for proper adjudication of all the issues including the issue of resignation.

12. Shri Mohgaonkar, learned counsel for the petitioners submits that after the resignation by the respondent no.1 another person Shri Deepak Karmarkar was appointed in place of respondent no1 and without joining him as a party to the appeal, the impugned judgment and order was passed. It is submitted that the school is on grants and the person who was appointed in place of the respondent no.1 was already

paid salary from the public exchequer. He therefore submits that as there are many issues which have not touched by the School Tribunal and which are necessary to be considered, remand is necessary.

13. On the other hand, Mrs. Chandurkar, learned counsel for the respondent no.1 vehemently argued that the respondent no.1 was never tendered any resignation and the document namely resignation letter was never brought on record by the petitioner before the School Tribunal and it is not a part of the record. It is submitted that the alleged resignation is not valid. In support of her contention, she has placed reliance of this Court in the case of Bahujan Vikas Mandal, Akola and another Vs. Manda Vithalrao Parsutkar and another¹

14. Learned counsel for the respondent no.1 has drawn attention of this court to the documents granting permission to the respondent no.1 by the petitioners to pursue B.Ed course and relieving letter issued by the petitioner no.1, for said course. It is argued that the said documents clearly shows that the respondent no.1 was never tendered any resignation or left the services but with the permission of the petitioners, he was first pursuing higher studies.

15. She further submits that, considering the date of otherwise termination, the School Tribunal has arrived at a conclusion that there was no delay in filing the appeal and while holding so, the learned Tribunal was of the view that no application was necessary for condonation of delay and in that background the Tribunal said that the

¹ 203 2011(2) Mh.L.J

application is rejected. However, though the order depicts that the application is rejected, it was in a sense that the application itself was not necessary as there is no delay.

16. In light of rival submissions of the parties, I have perused the record and the impugned judgment and the order.

17. It is evident from the record that the matter was not argued on behalf of the petitioners.

18. In the above referred backdrop to examine whether the defence raised by the petitioners was considered by the School Tribunal, it is necessary to consider the reply Exhibit 10 filed by the petitioners.

19. In the reply Exhibit 10 the petitioners raised a point of limitation and to substantiate the same it was pleaded that the respondent no.1 resigned from the post of Assistant Teacher with effect from 25th March, 2011 and as such the cause of action mentioned in the appeal memo is false.

20. The petitioners further pleaded that when the respondent no.1 was appointed, the school was on no grant-in-aid basis. The respondent no.1 was temporary employee, after the resignation he did not attend the services.

21. It is further the case of the petitioners that they appointed one Shri Deepak Damodar Karmarkar, as Assistant Teacher from 26th June,

2012 in place of respondent no.1 and the said appointment was approved by the respondent no.3 Education Officer.

22. The petitioners further categorically denied that the respondent no.1 approached to them with a request to join him after obtaining the B.Ed degree and the petitioners asked him to clear T.E.T. examination.

23. Thus, it is clear that the petitioners come up with the case that the respondent no.1 resigned with effect from 20th July, 2012 and from 26th June, 2012 one Shri Deepak Karmarkar was appointed in place of the respondent no.1.

24. After the said stand was taken by the petitioners and the fact of resignation was pleaded, the respondent no.1 filed an application for condonation of delay and in the said application it is stated by the respondent no.1 that without admitting the resignation and in order to avoid technical objection the application for condonation of delay was filed.

25. The learned Tribunal while passing the order on the application for condonation of delay, has observed that the respondent no.1 has challenged termination order dated 24th September, 2018 and the appeal was filed on 28th September, 2018, hence, the appeal is filed within limitation. The learned School Tribunal has further observed that the respondent no.1 has not challenged the alleged resignation dated 25th March, 2011. The School Tribunal further observed that the respondent

no.1 has not sought any relief in respect of the alleged resignation and accordingly, it is held that the appeal is well within limitation.

26. It is interesting to note that while recording the operative part of the order, the Tribunal has observed that the application is rejected.

27. Be that as it may, in view of the findings recorded in the order dated 18th March, 2021 passed on application for condonation of delay, the School Tribunal proceeded to decide the appeal. Accordingly, following issues were framed by the learned School Tribunal :

1. Whether the school is recognized school as defined under M.E.P.S. Act ?
2. Whether the appointment of the appellant is made as per Section 5 of the M.E.P.S. Act and Rules made thereunder ?
3. Whether the appellant proves that his otherwise termination order dated 24/09/2018 is illegal and bad in law ?
4. Whether respondent No.1 and 2 proved that the appellant has resigned from their service ?
5. Whether the appellant is entitled for reinstatement with continuity in service and full back-wages ?
6. What order ?

28. From the issues framed by the School Tribunal, it is evident that knowing well the defence of the petitioners that the respondent no.1 has resigned on 25th March, 2011, no issue was framed in that regard. Whereas, while deciding the application for condonation of delay, the Tribunal has categorically observed that whether the resignation is as per the provisions of law or not, cannot be decided while considering the application for condonation of delay. Therefore, the learned School Tribunal ought to have framed the said issue. However, the Tribunal failed to do so.

29. It is further evident that though it was pleaded by the petitioners in reply Exhibit 10 that one Shri Deepak Karmarkar was appointed in place of the respondent no.1, on 26th June, 2012, the said issue was not dealt with by the Tribunal.

30. If the case of the appellant is considered, it is pleaded that he successfully passed the B.Ed. Examination in summer 2013 and after the completion of B.Ed. Course he went to the school for joining the duty but he was asked to meet the Secretary of the petitioner no.1 society who orally directed the respondent no.1 to clear T.E.T. examination.

31. The respondent no.1 has nowhere in the appeal memo made any statement that after he was relieved for improving the qualification, no one was appointed on temporary or permanent basis, in his place and the post is vacant. The silence of the respondent no.1 in this regard ought

to have taken into considered by the Tribunal while granting reinstatement.

32. It is obligatory on the part of the respondent no.1 to make a categorical statement that on the date of filing of the appeal the post is vacant and reinstatement could be granted.

33. If the case of the petitioners is accepted that one Deepak Karmarkar was appointed with effect from 26th June, 2012, with the lapse of time of six years thereafter i.e. till the date of filing of appeal in 2018, the rights in favour of Deepak Karmarkar have got crystallized and despite the specific case of the petitioners about appointment of Shri Deepak Karmakar, he was not joined as party to the appeal.

34. The learned School Tribunal has also not considered the effect and the consequences of order of reinstatement of respondent no.1, on the person who is already working on the post which the respondent no.1 was holding prior to his termination.

35. Thus, even if the appeal was not argued on behalf of the petitioners, the School Tribunal ought to have taken into account the above referred important factors which the School Tribunal failed to take into consideration. In the circumstances, I am of the opinion that the matter needs to be remanded back to the School Tribunal to decide the matter afresh.

36. Moreover, the relieving letter and certificate dated 20th July, 2012 which are relied upon by the respondent no.1 to establish his case that he was permitted to go for improving his educational qualification and accordingly he was relieved on 20th July, 2012 bears same outward No. 193 dated 20.07.2012, which creates prima facie doubt about its genuineness. Therefore, the same needs to be proved and established in evidence. However, the learned Tribunal has relied upon both the said documents while allowing the appeal.

37. The judgment cited by the learned counsel for the respondent no.1 in the case of *Bahujan Vikas Mandal, Akola* (supra) on the point of resignation, is of no help to the respondent no.1 as the learned Tribunal has not dealt with the said issue. Accordingly, I pass the following order:

- i. The writ petition is partly allowed;
- ii. The order dated 17th December, 2021 passed by Additional School Tribunal, Chandrapur in STC Appeal No. 09/2018 is hereby quashed and set aside;
- iii. The learned Additional School Tribunal is directed to decide the appeal expeditiously and in any case not beyond **31st July, 2023**.
- iv. The parties are hereby directed to appear before the Additional School Tribunal, Chandrapur on **10th April, 2023**.

[ANIL S. KILOR, J.]

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