



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

**WRIT PETITION NO.4168 OF 2022**

Vimal D/o Namdeorao Kurwade  
Age: 51 years, Occu.: Service as  
Head Mistress at Vasantrya Bhagwat  
Primary Ashram School, Soni-Moha,  
Tq. Dharur, Dist. Beed,  
R/o. Laxmi Nagar, Adat Road,  
Kille Dharur, Tq. Dharur, Dist. Beed.

**.. PETITIONER**

**VERSUS**

1. The State of Maharashtra  
Through its Secretary,  
Department of Social Justice and  
Special Assistance,  
Mantralaya, Mumbai-32.
2. The Director for Welfare of  
VJNT, OBC & SBC,  
Maharashtra State, Pune.
3. Regional Deputy Commissioner,  
Social Welfare Department,  
Aurangabad.
4. The Assistant Commissioner,  
Social Welfare, Beed,  
District Beed.
5. Late Pandit Shyamprasad Mukharjee  
Shikshan Sanstha, Kille Dharur,  
Tq. Dharur, District Beed,  
Through its Secretary.

**.. RESPONDENTS**

...  
Mr. V. D. Salunke, Advocate h/f Mr. P. G. Rodge, Advocate for the petitioner.  
Mr. K. S. Patil, AGP for respondent Nos.1 to 4 – State.  
Mr. V. V. Bhavthankar, Advocate for respondent No.5.  
...

**CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 19<sup>th</sup> MARCH, 2024.  
PRONOUNCED ON : 2<sup>nd</sup> APRIL, 2024.**

**JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-**

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. The factual matrix leading to the present petition are that the petitioner came to be appointed as Assistant Teacher from 12.07.1999 after following due procedure of law by respondent No.5. Her services have been permanently approved. She came to be promoted to the post of Head Mistress of the school run by respondent No.5 in 2005. Permanent approval was also granted to her post as Head Mistress by District Social Welfare Officer, Beed. She is in continuous service on the said post. She was doing her job honestly and sincerely, however, she alleges that the Secretary and the other office bearers of respondent No.5 were interfering with her in day to day working and attempting to dislodge her from services. A detailed representation was made by her on 11.10.2018 to respondent No.3 and requested for an inquiry in respect of her harassment. By pressurizing the petitioner, her signatures were got on the typed copy of application/notice for her voluntary retirement on 02.08.2019. It was shown to be the advance notice of voluntary retirement of three months. Petitioner had no

intention to resign from her post and service. By representation dated 29.08.2019, she requested to cancel the said application for voluntary retirement. Respondent Nos.3 and 4, who are the controlling and supervising authorities over respondent No.5, ought to have taken appropriate actions against respondent No.5 for not to pass any orders/resolutions, however, respondent Nos.3 and 4 had not taken any action. She had made a representation again on 24.10.2019 to respondent No.5 before the Diwali Vacations of the school stating that she is willing to continue to serve as Head Mistress till the age of attaining superannuation, however, during Diwali vacations, respondent No.5 had passed resolution dated 31.10.2019 resolving to permit her to retire voluntarily on the so called application dated 02.08.2019. No opportunity of being heard was given to her. Respondent No.5 hurriedly and illegally shown appointment of one Pradip Madhavrao Kulkarni as Head Master of the school in place of petitioner. Immediately on 11.11.2019 she made a representation to respondent No.4 giving all those details and to direct respondent No.5 to cancel the orders. However, no response was given. Petitioner had preferred Writ Petition No.13908 of 2019 before this Court challenging both the orders. The said writ petition is still pending, however, in view of further development, the said writ petition has become infructuous. The respondent No.4 treated the representation of the petitioner dated 29.08.2019 as complaint as per Clause (1) of

Government Resolution dated 03.10.2017 and after issuing notice to respondent No.5 and hearing the petitioner as well as respondent No.5 cancelled the order dated 31.10.2019 issued by respondent No.5, on 24.12.2019. When the order of acceptance of retirement of the petitioner was cancelled, the respondent No.5 has been directed by respondent No.4 to allow the petitioner to join the post of Head Mistress with immediate effect. The respondent No.5 preferred Writ Petition No.550 of 2020 challenging the said order dated 24.12.2019, however, later on respondent No.5 withdrew the said writ petition to avail alternate remedy of appeal. Respondent No.5 filed Appeal No.1 of 2020 before respondent No.3 appellate authority. The appellate authority by order dated 17.12.2020 quashed and set aside the order dated 24.12.2019 passed by respondent No.4 and remitted the matter back to respondent No.4 for giving the fresh decision. After the matter was remitted, respondent No.4 again by judgment and order dated 30.07.2021 cancelled the order passed by respondent No.5 treating the petitioner as voluntary stood retired; directing respondent No.5 to reinstate the petitioner to the post of Head Mistress and release her salary as per rules.

3. Respondent No.5 filed appeal again challenging the said order of respondent No.4 dated 30.07.2021. The respondent No.3 is not deciding the said appeal within the stipulated period. In fact, respondent No.5 has not followed M.E.P.S. Rules while passing the

resolution and acceptance. Hence, the petitioner has filed present petition to direct respondent No.5 to reinstate the petitioner to the post of Head Mistress and release of salary.

4. Affidavit-in-reply has been filed on behalf of respondent Nos.1 to 4 i.e. by one Ravikant Maroti Shinde, Assistant Commissioner, Social Welfare Department, Beed. He submits that Government Resolutions dated 03.10.2017, 21.03.2018 and 10.02.2022 have been promulgated for giving speedy relief to the employees of the Ashram schools as well as institutions which are receiving grant-in-aid from the State Government. The petitioner has filed writ petition as well as contempt petition and still one more i.e. this writ petition has been filed and therefore, on this ground also, he prays for dismissal of the petition.

5. Affidavit-in-reply has been filed on behalf of respondent No.5 by one Deepak Vasudeorao Dube, the Secretary of respondent No.5. In the nutshell, he says that the resignation letter given by the petitioner is voluntary i.e. the notice that was given on 02.08.2019. The petitioner had sent the representation dated 24.10.2019 by R.P.A.D. on 01.11.2019 and it was received by respondent No.5 Society on 04.11.2019, which is beyond the period of the three months notice and, therefore, the resolution was passed by respondent No.5 to accept her voluntary retirement. The alternative remedy as given in

Government Resolution dated 03.10.2017 of appeal is available to the petitioner and, therefore, no case is made out to exercise the writ jurisdiction of this Court.

6. Heard learned Advocate Mr. V. D. Salunke holding for learned Advocate Mr. P. G. Rodge for the petitioner, learned AGP Mr. K. S. Patil for respondent Nos.1 to 4 – State and learned Advocate Mr. V. V. Bhavthankar for respondent No.5. In order to cut short it can be said that all of them have made submissions in support of their respective contentions.

7. Learned Advocate Mr. V. D. Salunke holding for learned Advocate Mr. P. G. Rodge reiterating the same facts harps upon the Section 7 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977, read with Rule 40 of the Rules made thereunder and submits that if any employee contends to resign from his post in any private school, then such employee may give 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. In this case, the impugned notice dated 02.08.2019 does not bear the acknowledgment and respondent No.5 wants to show that it was received personally on the same day by the Secretary. Further, on 24.10.2019 the petitioner had given representation stating that the said application should be

cancelled, however, in the alleged resolution dated 31.10.2019, there is no reference to the letter dated 24.10.2019. Twice respondent No.4 has decided the matter in favour of the petitioner and asked respondent No.5 to reinstate the petitioner, however, respondent No.5 is adopting delaying tactics.

8. It has been tried to be submitted that the Government Resolution dated 03.10.2017 cannot create an appellate authority, as it is a resolution and not a statutory enactment. Learned Advocate for the petitioner relied on the decision of this Court in **Swati Shivaji Lawhare Vs. State of Maharashtra and others, [Writ Petition No.940 of 2018 decided on 07.05.2021]**, wherein it is observed that "it is well settled that the appellate authorities can be created only by statute and not by an executive order. Tribunals with adjudicatory powers can be created only by statute and not by executive powers or by passing government resolution". Reliance was then placed on the decision in **Secretary, A.P.D. Jain Pathshala Vs. Shivaji Bhagwat More and others, [(2011) 13 SCC 1999]**, wherein it is held that "Apart from constitutional provisions, tribunals with adjudicatory powers can be created only by Statutes. Such Tribunals are normally vested with the power to summon witnesses, administer oath and compel assistance of witnesses and examine them on oath, and receive evidence. Their powers are derived from the statute that created them and they have

to function within the limits imposed by such statutes..... Creation, continuance or existence of a judicial authority in a democracy must not depend on the discretion of the executive but should be governed and regulated by appropriate law enacted by legislature.” Learned Advocate for the petitioner therefore submits that though the petitioner had approached the respondent No.4 under Government Resolution dated 03.10.2017, the further clauses i.e. creation of appeal, is illegal.

9. The learned Advocate for respondent No.5 submits that the alleged representation dated 24.10.2019 by the petitioner was received by respondent No.5 Secretary on 04.11.2019. Therefore, in the resolution dated 31.10.2019, there is no mention or there was no occasion for the committee to decide the same. Respondent No.5 relied on the application given by the petitioner intending to tender resignation and treating the application dated 02.08.2019 to be the notice for voluntary retirement. Even another person is then appointed in her place. The decision taken by respondent No.5 has been duly communicated to the petitioner. He relies on the decisions in **Karachi Education Society, Pune and others Vs. Pruthviraj R. Merchant and another**, [2005 (4) Mh.L.J.], **Honorary Secretary, Talini Imadadiyah Committee, Mistry High School, Ratnagiri and another Vs. Wasif Pasha Tajoddin Jagirdar**, [2005(4) Mh.L.J. 1064] and **Kushappa Mahadeo**

**Kamble Vs. State of Maharashtra and others, [2010 (4) Mh.L.J.]**, wherein the Hon'ble Single Judges of this Court have held depending upon the earlier decisions of this Court that the resignation not forwarded by registered post need not be considered as invalid. Irrespective of the surrounding circumstances, what is necessary is to decide whether the resignation is voluntary having regard to the surrounding circumstances and the fact that the resignation was in the mode which has been statutorily prescribed, would be a material consideration. In **Kushappa Mahadeo Kamble (Supra)**, it is held that the resignation can be tendered personally, therefore, no fault can be found in the procedure undertaken by respondent No.5.

10. Here, in the present case, it is firstly required to be seen as to whether the alleged resignation letter dated 02.08.2019 was voluntarily given by the petitioner or not. The view taken by the Hon'ble the Single Bench in the above three matters need not be disputed, but the core of the three judgments is that such voluntary resignation should be really voluntary and is not out of the forced circumstances or obtained by fraud, misrepresentation etc. The mode of tendering the same to the employer may not have been then strictly adhered to. Here, it appears from the record that even before the alleged resignation dated 02.08.2019 could be acted upon by respondent No.5, the present petitioner had informed the respondent

No.4 by communication dated 29.08.2019 that the petitioner was called at the house by the President/Secretary of the Institute on 02.08.2019 along with her husband. They were threatened and her signature on the said letter of voluntary retirement was forcibly taken. The said communication has been received by the office of respondent No.4 on the same day and the copy of the same was given to respondent No.3. In fact, when such serious incident or circumstance was brought to the notice of respondent No.4, yet it appears that there was no inquiry by respondent No.4. Then the action of the petitioner is followed by letter dated 24.10.2019 addressed to respondent No.5 stating that her said letter dated 02.08.2019 regarding voluntary retirement be cancelled. Copy of the same is also given to respondent Nos.3 and 4. Here, the present petitioner has not filed the acknowledgment on behalf of respondent Nos.3 to 5 to the said letter dated 24.10.2019. According to respondent No.5 the said letter was received by respondent No.5 on 04.11.2019. In the affidavit-in-reply, it is stated that the said letter dated 24.10.2019 was received by him on 04.11.2019 by post. However, except bare statement, there is nothing on record. In the affidavit-in-reply, it is also stated that the conduct of the petitioner while in service was not appropriate and even the Social Welfare Department had issued show cause notices to her in respect of misconduct. However, along with the affidavit-in-reply there is absolutely no evidence. It ought to have

been then shown by proper evidence by respondent No.3 that prior to 02.08.2019 such notice was issued to the petitioner and, therefore, instead of facing inquiry, she opted for voluntary retirement.

11. The resolution regarding acceptance of said communication dated 02.08.2019 came to be passed on 31.10.2019, however, as aforesaid, in absence of evidence, it will have to be presumed that the letter dated 24.10.2019 ought to have been received by respondent No.5 prior to 31.10.2019. All these facts were not at all considered by the Committee. It can be spelt out from the record that the relationship between the management and the petitioner was not good, but that does not mean that respondent No.5 would be permitted to act in derogation of the procedure. Much before the resignation letter was accepted by resolution dated 31.10.2019, the petitioner had informed to respondent No.4 that the said letter dated 02.08.2019 has been taken from her by pressurizing her and, therefore, it cannot be said that the said communication dated 02.08.2019 was voluntary in nature. Respondent No.5 has taken objection regarding the maintainability of the writ petition in view of the alternative remedy available in view of Government Resolution dated 03.10.2017. It is also not in dispute that the petitioner had approached respondent No.4 to challenge the acceptance of the alleged resignation letter. Whether respondent No.4 had the power to

deal with the said complaint or not, is different question, but he had given hearing to the Secretary of respondent No.5 and the petitioner on 27.11.2019. He had then directed respondent No.5 to reinstate the petitioner on the post of Head Mistress by cancelling her voluntary retirement. Respondent No.5 had then filed Appeal No.01 of 2020 before respondent No.3, who had heard the matter and remanded the matter back to respondent No.4 for taking fresh decision. That decision of respondent No.3 was then challenged before respondent No.2 by the petitioner. Perusal of the appeal memo would show that it was as per Clause (3) of the Government Resolution dated 03.10.2017 challenging the order passed by respondent No.3 herein dated 17.12.2020 and it appears that the said appeal is still pending, but in the meantime respondent No.4 had passed order dated 30.07.2021, which is again in favour of the petitioner, thereby cancelling the decision taken by respondent No.5 to allow the petitioner to take voluntary retirement. Thus, it can be seen that either petitioner or respondent No.5 had tried to exhaust the remedy under Government Resolution dated 03.10.2017, but now the petitioner is challenging the said Government Resolution to the extent of making the appellate forum available.

12. Learned Advocate for respondent No.5 as well as learned AGP points out that there are several decisions of this Court in **Writ Petition**

No.1200 of 2021 decided on 06.08.2021 and Writ Petition No.1001 of 2019 with companion matters decided on 11.03.2020, wherein the petitioners were directed to approach the forum that has been created under the Government Resolution dated 03.10.2017. In this respect, we would like to say that if a person / litigant in ignorance of law approaches a forum, that does not mean that he has submitted itself to the jurisdiction of the said forum and would be estopped from taking proper legal recourse. Wrong assumption of jurisdiction will not create any kind of estoppel as against the person approaching the said forum. We are in agreement with the decision of this Court in **Swati Shivaji Lawhare (Supra)**, as it is based on the decision of the Hon'ble Apex Court in **Secretary, A.P.D. Jain Pathshala (Supra)**, wherein it has been clearly stated in paragraph No.30 by the Hon'ble Apex Court that :-

"30. Therefore, we hold that constitution of a Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. Secondly, the High Court cannot in exercise of judicial power interfere with the jurisdiction of the civil courts vested under Code of Civil Procedure. Any such Grievance Committee created by an executive order, either on the direction of the High Court or otherwise, can only be fact finding bodies or recommending bodies which can look into the grievances and make appropriate recommendations to the government or its authorities, for taking necessary

actions or appropriate reports to enable judicial Tribunals to render decisions.”

Therefore, this Court in **Swati Shivaji Lawhare (Supra)** observed that :-

“23. These observations of the Hon’ble Supreme Court clearly spell out that adjudicatory authorities can be created only by statutes and not by an executive order of the Government. If such a course is permitted there is every likelihood of tribunals being created without appropriate provisions in regard to the constitution, functions, powers, appeals, revisions and enforceability of their orders, leading to chaos and confusion. Rights of employees are likely to be adversely affected by such ad hoc authorities exercising judicial functions, who are not independent nor competent to adjudicate disputes and render binding decisions. Therefore, the executive power of the State cannot be extended to creating judicial tribunals or authorities exercising judicial powers and rendering judicial decisions.”

We fully agree to the said position of law. In view of this legal position, respondent Nos.2 and 3 had no legal appellate powers and therefore, the decision taken by them in this case cannot be allowed to sustain. We therefore hold that no alternative efficacious remedy of appeal was available to the petitioner.

13. Petitioner had approached respondent No.4 by way of complaint and then respondent No.4 had given directions to reinstate the

petitioner. Respondent No.5 has not raised any objection regarding the jurisdiction of respondent No.4 to deal with the complaint filed by the petitioner and, therefore, when the said order is not obeyed by respondent No.5, we hold that she can approach this Court under its writ jurisdiction.

14. For the aforesaid reasons, case is made out for interference and exercising of our constitutional powers under Article 226 of the Constitution of India. Hence, the following order :-

**ORDER**

- I) The Writ Petition stands allowed.
- II) It is declared that the further remedies from clause No.(2) onwards of Government Resolution dated 03.10.2017 were not available to the petitioner, as the State Government by way of Government Resolution was not empowered to create appellate forum by issuing the said Government Resolution.
- III) It is also declared that the alleged resignation letter by the petitioner dated 02.08.2019 is not voluntary and the action taken by respondent No.5 as per resolution dated 31.10.2019, is illegal.
- IV) Respondent No.5 is directed to reinstate the petitioner forthwith on the post of Head Mistress of Vasantrao Bhagwat

Primary Ashram School run by it and release the arrears of her salary.

V) The judgment and order passed by respondent No.3 on 25.05.2022 in Appeal No.04 of 2021 is hereby quashed and set aside.

VI) Rule is made absolute in the above terms.

**[ S. G. CHAPALGAONKAR ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm