



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10463 OF 2016**

1. Shri Vidyadevi Shikshan Prasarak Mandal
Joshi-Sangvi, Tq: Loha, Dist: Nanded.
Through its President -
Atmaram s/o Vyankoba More,
Age: 60 years, Occu: Agri.,
R/o: Joshi-Sangvi, Tq: Loha, Dist: Nanded.
2. Shri Balbrahmachari Vairagi Maharaj Madhyamik
Vidyalaya, Joshi-Sangvi, Tq: Loha, Dist: Nanded.
Through its Head Master -
Shri Govind S/o Shankarrao Gaikwad,
Age: 40 years, Occu: Service,
R/o: As above. ..Petitioners

Versus

1. Ramrao s/o Nivrutti Suryawanshi
Age: 38 years, Occu:
R/o: Hasul, Post: Bolaka,
Tq: Kandhar, Dist: Nanded.
2. The Education Officer (Secondary),
Zilla Parishad, Nanded. ..Respondents

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Mr. U. B. Bondar and Mr. V. C. Patil, Advocate for Petitioners.
Mr. N. D. Raje, AGP for Respondent No.2.
Mr. R. K. Ashtekar, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th JUNE 2024.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioners impugn the order dated 28.07.2016 passed by the School Tribunal, Latur in Appeal No.07/2010.

3. The respondent no.1 had filed Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'MEPS Act, 1977') contending that he was qualified and eligible for appointment as an Assistant Teacher. The management of the school invited applications from the eligible candidates to fill up vacancy. After going through the selection process, vide order 20.06.2005, he was appointed with petitioner no.2-school against clear, vacant and permanent post of Assistant Teacher. He has been terminated from service without following due procedure of law w.e.f. 18.01.2010. Initially he raised his grievance before the Education Officer vide communication dated 11.02.2010. However, he was advised to approach the Tribunal.

4. The petitioners refuted the contentions of respondent no.1. They pleaded that neither advertisement was issued by them for filling up the vacancies, nor had respondent no.1 undergone any selection process. Since the respondent no.1 is relative of the key person in the management, he was allowed to work on school establishment for experience purpose only. Since, respondent no.1 was not interested in serving with petitioner no.2-school, he remained absent from 24.08.2009 by submitting leave applications and finally tendered resignation dated 01.09.2009. The said resignation was forwarded by the Headmaster to petitioner no.1, which has been accepted by management on 13.09.2009. The respondent no.1 prepared false documents and filed Appeal based on fictitious cause of action to make a case of otherwise termination. The management relied on inspection report to contend that on 03.12.2009 or thereafter in month of January 2010, no signatures on muster roll can be seen depicting presence of

respondent no.1 in the school. The post of Assistant Teacher has been duly filled in after resignation by respondent no.1.

5. The Tribunal framed issues, recorded evidence of the parties and concluded that respondent no.1 was appointed against clear, vacant and permanent post and he is illegally terminated on 18.01.2010. Consequently, directed reinstatement of respondent no.1 with continuity of service and full back-wages from the date of termination. Consequential directions were also issued to the Education Officer.

6. Mr. Bondar and Mr. Patil, learned Advocates appearing for the petitioners vehemently submit that there is nothing on record to indicate that respondent no.1 was appointed by following due process of law. He was allowed to work on establishment of the school on his request to gain experience. However, he stopped attending school on his own accord and tendered the resignation in his own hand writing that has been accepted by the school management. The Appeal before the Tribunal was filed with fictitious cause of action dated 18.01.2010. However, the Tribunal failed to appreciate the pleading and material in proper perspective and arrived at erroneous conclusion directing respondent no.1's reinstatement with continuity of service and full back-wages.

7. Mr. Ashtekar, learned Advocate appearing for respondent no.1 would submit that there is voluminous evidence in the form of muster rolls, inspection report, experience certificate that supports the contention of respondent no.1 that he served during the period from 20.06.2005 to 15.01.2010. He would submit that so called resignation was taken when respondent no.1 joined his services

and after inserting the date, the same has been used. No sanctity can be attached to such resignation.

8. Having considered submissions advanced on behalf of the learned Advocates appearing for the respective parties and after perusal of the record tendered into service, it can be observed that respondent no.1 was appointed as an Assistant Teacher on permanent basis vide order dated 20.06.2005. The copy of the experience certificate dated 15.01.2010, inspection report dated 10.09.2008 and Resolutions passed by the management dated 20.09.2009 and 13.09.2009 are enough to conclude that respondent no.1 was duly appointed as an Assistant Teacher on the establishment of petitioner no.2-school. Pertinently, the petitioners are coming with the case that respondent no.1 has voluntarily resigned from the service and resignation tendered by him has been duly approved and accepted by the management. Such a stand of the management is sufficient to accept the contention of respondent no.1 that he was duly appointed by order dated 20.06.2005, which is fortified by the aforesaid documentary evidence available on record. Pertinently, the school was unaided. Later on grant-in-aid was conferred upon the school. It is also admitted fact that respondent no.1 is close relative of the President of the school and some matrimonial disputes in the family, resulted into discord in the relationship.

9. So far as the stand of the petitioners-management regarding resignation tendered by respondent no.1 is concerned, it can be observed that it is in hand writing of respondent no.1. However, the date on resignation appears to be in different hand writing. Section 7 of the MEPS Act, 1977 deals with the procedure for

resignation by the employees of the private schools, which reads as under:

“7. 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.”

10. The aforesaid provision has been further elaborated by insertion of Rule 40 in the Rules of 1981 framed under MEPS Act, 1977. Rule 40 of the Rules 1981 reads as under:

“40. Resignation

- (1) A permanent employee may leave service after giving three calendar months notice and a non-permanent employee may leave service after giving one calendar month's notice. The management may, however, allow an employee to leave service on payment of pay (excluding allowance) 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 or the period by which the notice 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.”*

11. The provisions of Section 7 with Rule 40 would depicts that the employee shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put date thereon and forward one copy to the management by registered post while retaining another with him. Apparently, the provision is made to safeguard

the interest of the employee postulating the possibilities that employee may be forced to sign the resignation. In the present case, although the resignation is in the hand writing of respondent no.1, the Tribunal has rightly observed that there is no evidence to indicate that respondent no.1 has personally tendered such resignation or it was bearing the date endorsed by respondent no.1. Further there is no compliance regarding sending resignation by registered post.

12. It is true that this Court interpreted Section 7 of the MEPS Act, 1977 and observed that sending of resignation by registered post is not mandatory, when resignation tendered personally, which is also recognized as valid mode in law. However, the fact remains that the date of resignation is suspicious and possibility of its manipulation cannot be ruled out. Further there is nothing to show compliance of procedure contemplated under Rule 40. The management failed to produce any record showing that resignation, which was preceded by the notice to leave the service or deposit of three months salary in lieu of notice. It can be observed that respondent no.1 immediately approached the Education Officer vide an application dated 11.02.2010 raising grievance of oral termination. In case of his voluntary resignation, he would not have approached the Education Officer complaining oral termination. The Tribunal has rightly considered the aforesaid aspects in great detail and rejected the theory of the petitioners regarding resignation by respondent no.1.

13. The learned Advocate appearing for the petitioners endeavours to suggest that the Appeal before Tribunal was barred by limitation, since it is based on false and fictitious cause of action. The Tribunal has considered the aforesaid submission and

observed that the Appeal is presented within a period 30 days from the date of cause of action as pleaded in the Appeal Memo. It is also observed that respondent no.1 had immediately approached the Education Officer and raised the grievance of oral termination. The experience certificate issued to respondent no.1 shows that he was serving till 13.01.2010. Thereafter, he submitted representations dated 18.01.2010 and 11.02.2010 to the Education Officer raising grievance of oral termination and filed Appeal before Tribunal on 17.02.2010. The sequence of events clearly depicts that cause of action pleaded by respondent no.1 is correct and Appeal has been instituted within the statutory limitation period of 30 days. As such, no case is made out to cause interference in the impugned order in exercise of Writ jurisdiction of this Court under Article 227 of the Constitution of India.

14. Resultantly, Writ Petition stands dismissed.

15. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE