

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 209 OF 2022

Rajendra Maruti Patil

...Petitioner

Versus

The State Of Maharashtra Thr.
Secretary School Education Dept. And
Ors.

...Respondents

Mr.B.A. Rajeshirke a/w Gautam Kulkarni for the Petitioner.

Ms. A.A. Purav, AGP for the Respondent Nos. 1, 2 and 5.

Mr. S.S. Patwardhan i/b Bhushan Mandlik for Respondent Nos. 3
and 4.

**CORAM : NITIN JAMDAR AND
M.M.SATHAYE, JJ.**

DATE : 18 JANUARY 2024

P.C. :

. Heard the learned counsel for the parties.

2. The Petitioner has sought a declaration that voluntary retirement of the Petitioner dated 1 August 2019 had become effective on 30 October 2019. The consequence of this declaration is that thereafter since the relationship between the Petitioner and Respondent/Management had ceased, no further inquiry could have been held by the Respondent/Management.

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4. The contention of the Petitioner is that after the Petitioner had given the application for voluntary retirement specifying the date therein, the response was given by the then Headmaster that application for voluntary retirement is not being accepted because the departmental inquiry is pending. It is further contended that subsequently on the ground that the Headmaster did not have the authority, the letter and the inquiry was withdrawn. We note that there was no interim order restraining the Respondent/Management from proceeding further with the inquiry.

5. On the other hand, the learned counsel for the Respondent sought to contend that the show cause notice was issued on 26 April 2019 and thereafter the Petitioner was placed under suspension on 26 April 2019 and it is on 1 August 2019 that the Petitioner had given the letter of voluntary retirement. Therefore, the questions would arise about authority of the Headmaster, letter for voluntary retirement, whether accepted or rejected by the Management, and the effect of subsequent conduct of the Respondent/Management thereon.

6. This petition was filed on 14 December 2021 and has remained pending without there being any interim order. Thereafter the inquiry had gone ahead and it was concluded on 13 April 2022 and on the recommendation of the inquiry committee, the Petitioner was removed from the service. Therefore, the *sequitur* of the declaration sought by the Petitioner is that the order removing the

Petitioner from service dated 13 April 2022 would be declared as ineffective. The contention of the Petitioner that since the voluntary retirement had come into effect and the Petitioner could not have been terminated is a ground of challenge to the order of termination. This is not a pure question of law even assuming it can be considered for the first instance in writ jurisdiction but a mixed question of law and fact. Under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, a specific forum is created to decide the dispute between the Management and its employees. Nothing is shown to us as to why the Petitioner cannot take recourse to this remedy specifically provided by the Statute where all contentions can be raised.

7. We observe that if the Petitioner files appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 within a period of 4 weeks from today, the Tribunal will make an endeavour to decide the appeal within a period of 3 months thereafter. The learned counsel for the Respondent/Management states that the Management will co-operate with the early disposal of the appeal.

8. Keeping all contentions of the parties open, Writ Petition is disposed of.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)