



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

Writ Petition No. 2387 of 2021

ai Shikshan Sanstha, Pulgaon, Tah. Deoli, District Wardha through its President/Secretary and
anr. ..vs.. Vinodkumar S/o Gangaram Biyala (dead) through LRs. Smt. Mamta Wd/o Vinod Biyala
and ors.]

with

Writ Petition No. 3826 of 2021

[Vinodkumar S/o Gangaram Biyala (dead) through LRs. Smt. Mamta Wd/o Vinod Biyala
and ors. ..vs.. Lalitabai Shikshan Sanstha, Pulgaon, Tah. Deoli, District Wardha through its
President/Secretary and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. K. Bhoyar, Advocate for the petitioners in WP 2387/21
Mr. S. U. Ghude, Advocate for respondent nos. 1(a) to 1(c) in WP
2387/21 and for petitioners in WP 3826/21
Mr. H. D. Dube, AGP for the respondent no. 2 in WP 2387/21 and for
respondent nos. 3 and 4 in WP 3826/21

CORAM : ANIL L. PANSARE J.

DATED : 19-08-2024

The challenge is to the judgment dated 29-1-2021 passed by the School Tribunal, Chandrapur in Appeal STC No. 10/2017. The School Tribunal has allowed the appeal filed by the respondent no. 1. The Tribunal has set aside the oral termination dated 1-4-2017 terminating the services of respondent no. 1 as Clerk and has directed the petitioner – management to reinstate him on the post with 75% back wages.

2. The respondent no. 1 has also challenged the impugned judgment, restricting back wages to 75%. According to respondent no. 1, once the termination is found to be illegal, the School Tribunal ought to have granted 100% back wages.

3. Having heard both sides and having gone through the record, it appears that the respondent no. 1

was working with petitioner no. 2 – school run by petitioner no. 1 – management. It further appears that respondent no. 1 worked for almost 26 years and there was absolutely no complaint about his performance or behaviour prior to the year 2017. The dispute cropped up after the year 2015 and ultimately from 1-4-2017, the service of respondent no. 1 came to be terminated. The School Tribunal has assigned following reasons to quash and set aside the order of termination.

“19. Though respondent contended that the appellant did not restrain from signing muster-roll on 01.04.2017 and he did not attend the school since 02.11.2016 but, on perusal of muster-register of November 2016 it appears that he was on extra-ordinary leave without pay from 03.11.2016 to 10.12.2016. In the month of December 2016 he marked his presence on 13th December, 20th December and 21st December 2016. It shows that after 02.11.2016 he attended the school. The Muster-roll of March 2017 shows that he was on extra-ordinary leave from 20.02.2017 to 31.03.2017. In muster-roll of April-2017 there is no remark. The Headmistress has not put any remark of absence in muster-roll from 01.04.2017.

20. The appellant has produced on record letter dated 10.04.2017 issued to the Headmistress by post which shows that Headmistress restrained to the appellant from signing muster-roll on 01.04.2017. The Headmistress had given reply to said letter of the appellant on 12.04.2017. It means the Headmistress received letter of the appellant dated 10.04.2017 by which he complaint about restraining him from signing the muster-roll from 01.04.2017. The letters produced by the appellant shows that he tried to join duty from 01.04.2017. But, the Headmistress restrained him from signing

the muster-roll. The appellant also produced letter dated 27.06.2016 and 13.07.2016 issued to the Education Officer regarding alleged harassment caused at the hands of the school-committee and school management. On perusal of the said letters it appears that prior to 01.04.2017 dispute was going on between the appellant, school-committee and school management. There was no reason for the appellant to voluntarily remained absent from duty when he completed 26 years of his service. The management has not produced any document to show that prior to 2015 the performance and behaviour of the appellant was not good.

*21. The documents produced by the respondent management shows that the dispute started from December 2015 and thereafter, they issued several show-cause notices to the appellant. Because of their dispute, the appellant moved applications for leave on several occasions. The management rejected his applications for leave. However, the appellant continued to make application for leave. If the conduct and behaviour of the appellant was not proper and causing trouble to the school then it was within the jurisdiction of the school to inquire about the cause and take suitable action against the appellant. However, instead of taking action as per provisions of law it appears that they restrained to the appellant from signing the muster-roll and allowing to perform his duty. The appellant has completed more than 26 years of service. In such circumstances, services of the appellant cannot be terminated by oral order. The termination of the service is major penalty. It cannot be inflicted without following due process of law. In **VP. Ahuja V/s. State of Punjab and others (2000) 3 Supreme Court Cases 239** the Hon'ble Apex Court held that the probationer like a temporary servant is also entitled to certain protection. His services cannot be terminated arbitrarily or punitively without*

complying with the principles of natural justice. Termination order if stigmatic and punitive, departmental inquiry is necessary.

22. Though the respondent management contended that the appellant voluntarily absent from duty however, the communication made by the appellant dated 10.04.2017, 15.04.2017 and 18.04.2017 shows that he was restrained from joining the duty. By letter dated 10.04.2017 and 18.04.2017 issued to the Headmistress he informed about restraining him from joining on duty and signing on muster register on 01.04.2017 and 03.04.2017. On 15.04.2017 he informs the fact of restraining him from signing muster register on 03.04.2017 to the Education Officer. After making correspondence to the Education Officer and Headmistress, he diligently filed appeal before this Tribunal on 26.04.2017. This shows that the appellant was willing to join the duty and because of dispute between him and the school-committee, Headmistress restrained him from signing the muster-roll. There is nothing on record to show that after 01.04.2017 the respondent management issued any notice to the appellant and asked him to join the services. There is no material on record to show that, action has been taken as per Rule 16(3) of the M.E.P.S. Rules, 1981.

*23. Restraining the employee from signing muster register is otherwise termination. As per judgment of **Siddheshwar Kreedha Mandal, Sillod V/s Uttam s/o Kisanrao Shrikhande and others reported in 2009(2) Mh.L.J. 275 (supra)**, there cannot be oral termination. Therefore, view of the above discussion, I come to the conclusion that the appellant has proved that oral termination order dated 01.04.2017 is illegal and bad in law. Hence, I answer this issue in the affirmative.”*

4. As could be seen, though the petitioners claimed that respondent no. 1 remained absent of his own, the evidence led before the School Tribunal indicated his presence in November, 2016 and December, 2016. In March, he was on extra-ordinary leave. The evidence of oral termination finds place in muster roll of April, 2017 onwards. The School Tribunal noted that Headmistress has not put any remark of absence in muster roll from 1-4-2017.

5. It is worth mentioning here that respondent no. 1 has come up with a case that he was not allowed to sign muster roll with effect from 1-4-2017. The petitioners claimed that the respondent no. 1 himself remained absent. If what petitioners claimed is correct, there appears no reason why should the Headmistress not put up remark of continuous absence in muster roll of April 2017. If the Headmistress could take note of absence of respondent no. 1 prior to April, 2017, she ought to explain the reasons of absence by remark in April, 2017 and thereafter.

6. The School Tribunal has noted that respondent no. 1, in fact, made a grievance vide letter dated 10-4-2017 issued in favour of Headmistress that he is restrained from signing muster roll from 1-4-2017. The Headmistress has responded to the letter by refuting the claim so made by respondent no. 1. The fact, however, remains that respondent no. 1 made grievance that he is not allowed to sign the muster roll from 1-4-2017. The subsequent correspondence made by respondent no. 1 with the Education Officer would indicate that the

relations between the management and respondent no. 1 were strained. The School Tribunal has then noted that for 26 years, the respondent no. 1 rendered unblemish services and there appears no reason why should he voluntary remain absent from the service.

7. The petitioners alleged that the respondent no. 1 himself remained absent. The School Tribunal has rightly dealt with this allegation by noting that the management was at liberty to take appropriate action against respondent no. 1 which it did not.

8. Learned counsel for the petitioners has invited my attention to Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'MEPS Act') to contend that employee in a private school has a right to appeal to the Tribunal in a case he has been dismissed or removed or whose services are otherwise terminated etc. Learned counsel has then invited my attention to Rule 39 of the MEPS Rules which deals with procedure of filing appeal. Sub-rule (3) of Rule 39 provide that every memorandum of appeal shall contain, among others, a copy of order appealed against. Learned counsel for the petitioners submits that combined reading of Section 9 of the MEPS Act read with Rule 39 would show that order of termination has to be in writing.

9. In the present case, learned counsel for the petitioners submits that firstly, respondent no. 1 has come up with a case of he being not allowed to sign muster roll and secondly, the petitioners have never terminated the services of respondent no. 1 and, therefore, the appeal

itself is not maintainable and thirdly, that the termination has to be in writing.

10. I do not find substance in the aforesaid argument in as much as if the argument is to be accepted, it will give leeway to the management of the private school to get out of rigor of the provisions of MEPS Act and Rules made thereunder by orally terminating the services of the employee and then to challenge maintainability of appeal on the ground that there is no written order of termination. Such is not the purport of the provisions of the MEPS Act and Rules. Rather, the purposive interpretation of Section 9 read with Rule 39 is that the oral termination is not permissible at all. In other words, the management, by taking recourse to oral termination, cannot escape the ambit of Section 9 of the MEPS Act read with Rule 39 to contend that the appeal is not maintainable.

11. So far as the contention of the petitioners that the respondent no. 1 himself has come up with a case of not permitting him to sign muster roll is concerned, this aspect will have to be understood in the light of entire material placed before the Tribunal. When an employee approaches the School Tribunal with a grievance that he has been not allowed to sign muster-roll, his grievance can be considered to be of oral termination, if the facts otherwise indicate so. Like in the present case, the respondent no. 1 not only made grievance that he was not permitted to sign muster roll but has made a grievance in writing to the petitioner no. 2 – Headmistress, who had acknowledged grievance but refuted the allegations. The

respondent no. 1 has thereafter promptly lodged appeal contending therein that he was not permitted to sign muster roll with a prayer that his oral termination should be quashed and set aside. Thus, a case has been put up by the respondent no. 1 that the petitioners did not allow him to sign the muster roll which resulted into his oral termination. The School Tribunal has, after considering the entire material which has been noted in paragraphs cited above, rightly found substance in the case so put up by respondent no. 1. Thus the respondent no. 1 has proved that by not allowing him to sign muster roll, the petitioners have terminated his service. The Tribunal has assigned sound reasons in setting aside the oral termination.

12. In other words, there is no merit in the petition filed by the management. The petition viz. Writ Petition No. 2387/2021 is accordingly dismissed.

13. So far as Writ Petition No. 3826/2021 is concerned, I do not find any error in the findings rendered by the School Tribunal that respondent no. 1 is entitled to 75% back wages. The School Tribunal has noted that the respondent no. 1 has filed an affidavit of not in gainful employment in the intervening period. The management, however, has filed an affidavit stating therein that respondent no. 1 was earning from the business of mess. Respondent no. 1 failed to file counter affidavit denying the said fact. The School Tribunal accordingly observed that responded no. 1 was in employment but noted that actual income of respondent no. 1 is not on record and accordingly thought it proper to grant 75% back wages.

14. I do not find any reason to interfere in the said finding in the writ jurisdiction. The petition viz. Writ Petition No. 3826/2021 is accordingly dismissed.

15. Learned counsel for the petitioners – management makes a request to stay the effect and operation of the order on the ground that the management intends to take a chance before the Hon'ble Supreme Court and further that the Tribunal has directed to pay back wages.

16. There appears no reason to stay the order. The Tribunal has directed management to pay back wages within 60 days from the date of order. The time of 60 days shall commence from today, which should be sufficient to take necessary steps. The request is accordingly rejected.

(Anil L. Pansare, J.)