

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

928 WRIT PETITION NO.5738 OF 2024

Kamini Ratan Chaudhari

VERSUS

The State Of Maharashtra Through Secretary And Others

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Shri. Ajay D. Pawar, Advocate for the Petitioner

Ms. P. J. Bharad, AGP for the Respondent / State.

Shri. N. E. Deshmukh, Advocate for Respondent No.3

Shri. Chetan T. Jadhav, Advocate for Respondent Nos.4 and 5

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CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : JUNE 27, 2025

PER COURT :-

. This Petition has been filed for the following main reliefs:

“B) To quash and set aside order dated 19.01.2021 passed by the respondent No. 3 Education Officer (Primary), Zilla Parishad, Jalgaon, thereby accepting the resignation letter of petitioner dated 31.12.2020 by way of resolution dated 01.01.2021 passed by the respondent No. 4 Management, by issuing writ of certiorari or any other appropriate writ or direction as the case may be;

C) To quash and set aside the resolution dated 01.01.2021 passed by the respondent No. 4 Management since the same is without outward number and accepted within 24 hours and without following the mandatory provisions of Section 7 of the MEPS Act and Rule 40 of MEPS Rules by issuing necessary writ or any other appropriate directions as the case may be;

D) To hold and declare that the resignation dated 31.12.2020 is not voluntary one since the same is created document by the respondent No. 4 Management and the respondent No. 5 School, by issuing necessary writ or directions as the case may be;

E) To direct respondent No. 3 Education Officer (Primary), Zilla Parishad, Jalgaon, to decide and consider the proposal dated 13.12.2017 and 15.07.2019 in respect of granting

permanent approval in favor of petitioner along with the consequential benefits of payment of salary; arrears of salary and other benefits in favor of petitioner from the date of initial appointment till the date, by issuing necessary writ or directions as the case may be.

F) To hold and declare that petitioner is in continuous service from the date of initial appointment dated 01.10.2015 and also as a deemed permanent teacher in view of Section 5 of MEPS Act and entitled for the service benefits like payment of salary from the Education Department since the respondent No. 5 School is receiving grant-in-aid of 20% from the year 2020-21 and 40% from the year 2021-22, by issuing necessary writ or directions as the case may be.

G) Respondent No. 4 Management and respondent No. 5 School may kindly be directed to pay the arrears of salary from 01.10.2015 till the respondent No. 5 School received grant-in-aid. And also pay the difference of 80% & 60% from which the respondent No. 5 School received the grant of 20% & 40%, by issuing necessary writ or directions as the case may be.

H) Any other suitable and equitable relief may kindly be granted in favour of the Petitioner.”

2. The Petitioner joined the service with Respondent No.5 – School as Assistant Teacher way back in 01.10.2015. Respondent No.3 - the Education Officer has granted approval to her appointment. It, however, appears that the Petitioner is said to have put in papers of her post on 31.12.2020. The Management of the Respondent No.5 – School in its meeting dated 01.01.2021 resolved to accept the Petitioner's resignation and even accordingly intimated to Respondent No.3 – the Education Officer.

3. The learned Advocate for the Petitioner would submit that signature of the Petitioner was obtained on blank paper while she was required to submit some papers for grant of approval to her

appointment. According to him, the Petitioner had never voluntarily tendered resignation of her post. He adverted our attention to Section 7 of the Maharashtra Employees of Private Schools (Condition of Service) Act, 1977 (for short 'MEPS Act') and Rule 40 of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (for short 'MEPS Rules') thereunder. He would further submit that, since the said resignation was not voluntary and as per mandate of Section 7 of the MEPS Act, the same is null and void. He would further submit that the Petitioner has been serving with the Respondent No.5 – School since the next day after she allegedly put in her papers.

4. The learned Advocate for Respondent No.5 – School would submit that, in view of the change in Respondent No.4 - Management, there is a change in the stand. He concedes the Petitioner to have been in continuous service since the day on which she is said to have resigned. He submits to pass the necessary orders in the light of the facts and circumstances of the case and mandate of Section 7 of the MEPS Act.

5. The learned Advocate for Respondent No.3 - Education Officer submits that the Management of the Respondent No.5 - School appears to have not complied with the mandate of Section 7 and as a result, so called resignation is *non est*.

6. We have considered the submissions advanced.

7. Section 7 of the MEPS Act reads thus:

“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.”

8. Rule 40 of the MEPS Rules reads thus:

“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 earlier on payment of pay (excluding allowances) 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.”

9. If at all the Petitioner had really put in her papers, there would have been a second copy of it. However, no such copy of the alleged resignation has come forth. Moreover, the resignation is not handwritten. Furthermore, it has to be sent by R.P.A.D. There is no evidence, the Management to have received it by post. The issue is no longer *res integra*. The Division Bench of this Court in the case of *Sanjay Annaji Pohokar vs. Shriramchandra Samaj Seva Samiti, Bramhanwada (Kasba) and others*, [2022 (2) Mh.L.J.] has observed thus :

“14] In these appeals grievance has been made about the non compliance of provisions of Section 7 of the Act of 1977 and Rule 40 of the Rules of 1981. The learned Single Judge in the case of Bahujan Vikas Mandal, Akola and Another .v/s. Manda Vithalrao Parsutkar and another reported in 2011 (2) Mh.L.J. 203 has considered the provisions of Section 7 of the Act of 1977. In this case, it is held that an intention to tender resignation has to be made clear by, (i) drawing up a letter of resignation in duplicate; (ii) signing both the copies of that letter; and (iii) putting the date thereon. It is further held that the first step in the process is, to draw up a letter of resignation in duplicate. The phrased verb "draw up" used in Section 7 connotes the process of handwriting as against the process of typing or printing. The next requirement in the process of resignation, is to sign both the copies of letter of resignation. The requirement of putting signature and the date on the letter of resignation by an employee in his own handwriting, has to be held as mandatory requirement.

15] In the case of Sayyed Maksood Ali Sayyed Roshid Ali .v/s. Uruj-E-Urdu Education Society, Kalamb and Anr. Reported in 2011(4) Mh.L.J.952, the learned single Judge has considered the mandate of Section 7. It is held that the Section 7 is in two parts namely execution and mode of dispatch or delivery. It is held that the first part contains 3 requirements namely (i) drawing up a letter of resignation in duplicate; (ii) signing both the copies of that letter; and (iii) putting the date thereon. It is held that these requirements of Section 7 are mandatory and its non compliance would render the resignation illegal and involuntary.

16] In the case of Shri Sant Sawatamali Shikshan Prasarak Mandal, Tembhurni v/s. State of Maharashtra and Oths. Reported in 2008 (6) Mh.L.J. 529, it is held that unless and until it is proved that the resignation is voluntary the same cannot be acted upon.”

10. In view of the aforesaid legal position and considering the fact that the so called resignation is not in duplicate and has also not been in the handwriting of the Petitioner and more so not sent by R.P.A.D. and furthermore, when the Petitioner has admittedly been serving with the Respondent No.5 - School even from the date on which she is alleged to have resigned, the

so called resignation given by the Petitioner is required to be held *non est*.

11. In view of the above, the Petition succeeds and the same is, therefore, allowed in terms of prayer clause 'B', 'C' and 'D'.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

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