



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1021 WRIT PETITION NO. 74 OF 2024

Sunil S/o. Vishwanath Jaybhaye,
Age : 44 years, Occu. : Service,
R/o. At present Vaibhav Nagar, Kandhar,
Ghodaj Road, Kandhar, Tq. Kandhar,
Dist. Nanded.

...Petitioner

Versus

1. The State Of Maharashtra
Through the Secretary of
Sports and Education Department,
Mantralaya, Mumbai.
2. The Director of Education,
412, E, Bahirat Patil Chowk,
Shivaji Nagar, Pune.
3. The Regional Deputy Director of Education,
Gandhi Chowk, Sawe Wadi, Latur.
4. The Education Officer (Secondary),
Zilla Parishad, Nanded.
5. Anusaya Sevabhavi Sansha, Kandhar,
Through its Secretary,
Having Official Address at
At Matoshri Anusaya Madhyamik Vidhyalaya,
Sonkhed, Tq. Loha, Dist. Nanded.

...Respondents

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Mr. Ganesh A. Gadhe a/w Mr. Kapil Morey - Advocate for the Petitioner
Mr. P. K. Lakhotiya - AGP for Respondent Nos. 1 to 4
Mr. Baliram B. Shinde Patil - Advocate for Respondent Nos. 5 and 6

...

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

DATED : 31ST JULY, 2025

ORAL ORDER [Per R. G. Avachat, J.] : -

1. Heard.

2. This Petition has been filed with the following prayers:-

“[A] By issuing writ of certiorari or any other appropriate writ like in nature or order under Article 226 of the Constitution of India this Hon’ble Court may kindly quash and set aside the order dated 04.10.2023 confirming the letter dated 17.03.2023 issued by the respondent No. 4 and denying the relief of unpaid salary to the petitioner and absorption in another school.

[B] By issuing writ of Mandamus or any another appropriate writ like in nature or order under Article 226 of the Constitution of India this Hon’ble Court may kindly direct the respondent No. 3 and 4 to take the steps for releasing the salary of the petitioner from July-2021 till this date and further may kindly be direct the respondent No. 3 to pass the order under Rule 25 A (2) of Maharashtra Employees of Private (Condition of Services) Rules, 1981 for absorption of services of petitioner in another aided school.

3. The Petitioner was appointed as an Assistant Teacher in the year 2002 with Respondent No. 5 – School. This Court, in one of the Writ Petitions, observed that there is a dispute between the members of the Management. The said fact has also been admitted by the Respondent / Education Officer. The Petitioner’s services are alleged to have been terminated with effect from 01.07.2017.

4. The learned AGP for Respondent Nos. 1 to 4 and the learned Advocate for Respondent Nos. 5 and 6 submit that since the

services of the Petitioner have been terminated, relying on Rule 16(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [hereinafter referred to as 'MEPS Rules'], the Petitioner has an alternative remedy to approach the School Tribunal in Appeal against his termination from service and hence, the Writ Petition is not maintainable. Both learned Advocates would further submit that, it was the Petitioner who is responsible along with the other staff for the mess created. It is also brought to our notice that the then In-charge Headmaster, namely, Kalidas Shivajirao Patil, was in fact terminated from service, and his termination has been confirmed by the learned School Tribunal. The Petitioner drew salary on the strength of the bills signed by the terminated Headmaster. The same suggests that the Petitioner and Kalidas Shivajirao Patil were hand in glove. It was further submitted that the School has been de-recognized after following the due procedure under the relevant Rules. The Petitioner had been heard before the order of de-recognition of the School was passed. Both learned advocates ultimately urged for dismissal of the Petition.

5. After having considered the submissions advanced and upon perusal of the documents on record, it would be crystal clear that there was dispute/rift between two groups/factions of the Management and even the then Headmaster.

6. The Petitioner's services are said to have been terminated on account of his continuous absence from duty. Rule 16(3) of the

MEPS Rules although speaks as regards termination of an employee on such count, there is material on record to indicate that the Petitioner to have served the School until 04.10.2023.

7. There is material on record which indicates that the Petitioner received the salary for the services rendered until 01.07.2021. The communications issued by the Education Officer (Secondary) dated 25.11.2022, 06.12.2022, and 21.12.2022 indicate him to have asked the Headmaster of the School to allow the Petitioner and others to render their services. There is also a record to indicate that, in March/April-2019, the Petitioner herein was assigned the job of Examiner of the answer-sheets of 10th std., examination conducted by SSC Board. It is true that the learned Advocate for Respondent Nos. 5 and 6 has brought to our notice that the then Headmaster, Kalidas Shivajirao Patil, was terminated from service. He was unsuccessful in his Appeal before the School Tribunal. It has already been admitted that the Writ Petition filed by him against the order passed by the School Tribunal is *sub judice* before this Court. During the pendency of his Appeal before the School Tribunal, there was interim relief granted in his favour. The same indicates him to have served as an In-charge Headmaster. During his such tenure, salary bills of the Petitioner were forwarded and approved as well. It is true that the final order in the Appeal before the School Tribunal went against the Petitioner. However,

by virtue of doctrine of *de facto*, the Petitioner is presumed to have rendered his services during the said period. Moreover, the documentary evidence referred to herein above reinforces the Petitioner's claim of having served until July-2023 and of having received salary until July-2021.

8. Admittedly, the School has been de-recognized by the Education Department, and proceedings in that regard were held. We do not come across a specific finding indicating the Petitioner to be directly responsible for the de-recognition of the School. Rule 25A of the MEPS Rules, therefore, comes into play. For better appreciation, the said Rule is reproduced below:

R. 25A. Termination of Services on account of abolition of posts:

- (1) The services of permanent employee may be terminated by the Management on account of abolition of posts due to closure of the school after giving him advance intimation of three months to the effect that in the event of closure of the school, his services shall automatically stand terminated. In the case of closure of school due to de-recognition, such advance intimation of three months shall be given by the Management to the permanent employees after receipt of a show cause notice from the Deputy Director.

Explanation: For the purpose of this sub-rule, the expression 'closure of the school' shall include,

- (i) voluntary closure by the Management of the entire school if it is imparting instruction through one medium or a part of the school comprising one or more media of instruction if

it is imparting instruction through more than one medium; and

- (ii) closure of the school due to de-recognition by the Department.

9. Sub-rule (2) of Rule 25A of MEPS Rules mandates that the employees of aided schools, whose services stand terminated in accordance with sub-rule (1) of Rule 25A on account of de-regonition, and who are not directly responsible for such de-recognition, shall be taken on a waiting list by the Education Officer. Such employees have to be accommodated in some other schools receiving 100% grant-in-aid.

10. Since there is nothing on record to indicate that the Petitioner was directly responsible for the de-recognition of the School, his right to have on the waiting list of surplus teachers gets crystallized in view of the provisions of Rule 25A(2) of the MEPS Rules. Thus, the Petition deserves to be allowed. Hence, we pass the following order :

ORDER

- [i] The Petition is allowed.
- [ii] The Respondent / Education Officer shall take the Petitioner on the waiting list of surplus teachers and provide him job as a teacher in a school receiving 100% grant-in-aid.
- [iii] The Petitioner shall not be entitled to salary for the period he has not rendered services or has not been paid salary by the earlier Management.

- [iv] The period from the Petitioner's alleged termination till the date of his absorption in a school shall be treated as continuity in service for all financial benefits in relation to the post held by him.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

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