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

WRIT PETITION NO. 4284 OF 2024

Sanjay Jilajeet Tiwari

.. Petitioner

Versus

Through its President,
Bhartiya Department Sabha and Ors.

.. Respondents

-
- Mr. Rahul Kadam a/w. Mr. Vedant Babar, Advocates for Petitioner.
 - Mr. Shailendra S. Kanetkar, Advocate for Respondent Nos.1 to 3.
 - Mr. P.J. Gavhane, AGP for Respondent No.4 – State.

.....
CORAM : MILIND N. JADHAV, J.

DATE : JUNE 24, 2025.

P.C.:

1. Heard Mr. Kadam, learned Advocate for Petitioner; Mr. Kanetkar, learned Advocate for Respondent Nos.1 to 3 and Mr. Gavhane, learned AGP for Respondent No.4 – State.

2. Present Writ Petition challenges the judgment and order dated 07.11.2023 passed by the Presiding Officer, School Tribunal, Pune in Appeal No.11 of 2020 rejecting the Appeal filed by Petitioner – Teacher under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (for short '**MEPS Act**').

3. The Appeal was filed by Petitioner – Teacher challenging the resignation dated 02.09.2018 and its acceptance by Resolution dated 29.09.2018 by the Management of the School namely Hindi

Madhyamik Vidyalay Landewadi, Bhosari, Pune. Respondent Nos.1 to 3 represent the Management of the School and Respondent No.4 is the Education Officer duly represented by the learned AGP.

4. To determine the controversy and challenge to the judgment, the following relevant facts are necessary for consideration:-

4.1. Petitioner was appointed as Assistant Teacher in the School run by Respondent Nos.1 to 3 w.e.f. 14.11.2005 on a clear and permanent vacancy by following the due process of law by recruitment. Petitioner served the School as Assistant Teacher since then.

4.2. On 30.04.2012, Respondent No.4 – Education Officer accorded approval to the Petitioner's appointment approving his services w.e.f. 15.06.2007 and conferring the designation of Assistant Teacher to him w.e.f. 15.06.2007. Approval granted by Respondent No.4 – Education Officer is appended at Exhibit "A" – page No.19 of the Petition.

4.3. According to Petitioner despite he working to the utmost satisfaction of his superiors, he was paid less salary and the salary which was paid to him was not in consonance and at par with the approval order. It is Petitioner's case that between 14.11.2005 to December 2017, Petitioner was not communicated any adverse remarks for more than 2 years and therefore as per Rule 15 of the Maharashtra Employees of Private Schools (Conditions of Service)

Rules, 1981 (for short '**MEPS Rules**') his services were satisfactory.

4.4. Pursuant to his approval in 2012 with retrospective effect from 15.06.2007 Petitioner repeatedly demanded his salary, rather the deficit (differential) salary and arrears of deficit salary which was not paid to him by the Management. In that view of the matter, the Management held a grudge against Petitioner and even for petty mistakes compelled him to tender apology letters time and again.

4.5. On 13.01.2018, Respondent No.3 – Head Mistress of the School passed a suspension order / letter suspending services of Petitioner from the School on the ground that he had failed to submit school fees amounting to Rs.78,600/-. The suspension order / letter is appended at Exhibit "B" – page No.21 of the Petition. The said suspension order / letter reads as under:-

"जा. क्र.: H.M.V.L./105/2018

दिनांक : 13/01/2018

To

*Mr. Sanjay Tiwari
Asst. Teacher*

Subject – Suspension Letter

This letter is to confirm that you are being suspended from 13-01-2018. This action is being taken due to failure in submitting the school fees in the amount of Rs. 78,600/- you shall remain suspended while a full investigation is carried out.

*Sd/-
Principal"*

4.6. Save and except the aforesaid, there is nothing whatsoever stated in the suspension order / letter issued by Respondent No.3 – Head Mistress to Petitioner so as to indict his role in collection of fees, retention of fees, period during which the fees were collected by him, whether he was authorized to collect fees etc.

4.7. One of the other grievance raised by Petitioner pursuant to this letter is that he was not even paid suspension allowance to the extent of 50% of his salary during the suspension period despite he having been suspended while a full investigation was carried out and he repeatedly requesting the Management to pay the same in accordance with law.

4.8. Record shows that Petitioner was kept suspended pending enquiry as per the suspension order / letter for a period of more than 1 year. Petitioner repeatedly asked Respondent Nos.1 to 3 to pay him the suspension allowance during his suspension or reinstate him in the services, but to no avail. By letter dated 06.02.2019 Petitioner demanded arrears of his salary as per his pay scale which was sanctioned and approved by Respondent No.4 – Education Officer for the period 15.06.2007 to 2018, but that letter of the Petitioner was also not responded to by the Management.

4.9. According to Petitioner, on 12.02.2019 Respondent Nos.1 to 3 called Petitioner to the School for resolving the *inter se* dispute

between them. Petitioner went to the School where Respondent No.3 – Head Mistress alongwith 7 – 8 persons locked him in one room and pressurized him at gun-point to sign on blank papers and succeeded in getting two undated resignations drawn on behalf of Petitioner and two apology letters compelling him to withdraw the letter dated 06.02.2019 which he had written to the Management demanding his arrears of salary.

4.10. According to Petitioner, in February 2019 the resignation letter of the Petitioner was ante-dated by the Management and he was handed over letter dated 20.10.2018 by which he came to know that he had resigned from services of the School by giving his resignation letter dated 02.09.2018.

4.11. Petitioner was also informed the fact that his alleged resignation dated 02.09.2018 was accepted by the Management of the School by passing a Resolution dated 29.09.2018. Petitioner being confronted with the above situation immediately approached the Police Station and lodged a complaint on the same day i.e. 12.02.2019. Copy of the said complaint is appended at Exhibit “D” – page No.24 of the Petition.

4.12. In the above circumstances, Petitioner filed Statutory Appeal No.11 of 2020 before the Presiding Officer, School Tribunal, Pune to challenge the resignation dated 02.09.2018 and its acceptance by the

Management by passing Resolution dated 29.09.2018.

4.13. Learned School Tribunal by its judgment and order dated 07.11.2023 dismissed the Appeal. Resultantly leading to filing of the present Writ Petition.

5. Mr. Kadam, learned Advocate appearing on behalf of Petitioner would submit that in the first instance it is Petitioner's case that he has not submitted the alleged resignation dated 02.09.2018 by his own free consent and therefore it cannot be called or construed as a valid resignation. He would submit that the said resignation is required to be declared as invalid in view of the fact that it was obtained under coercion and force by threatening the life of the Petitioner at gunpoint by Respondent No.3 and other 7 – 8 persons present.

5.1. He would submit that the resignation is deemed to be invalid since it is not tendered as per the prescribed procedure contemplated under the provisions of Section 7 of the MEPS Act nor it is in consonance with Rule 40 of the MEPS Rules and as such it can have no legal effect and its acceptance is also of no legal consequence whatsoever.

5.2. He would submit that if at all any resignation is required to be given by an Assistant Teacher, it is required to be sent by registered post A.D. in accordance with the statutory provisions and three months

advance notice is also required to be given as per the prescribed provisions.

5.3. He would submit that facts in the present case are *prima facie* gross in as much as services of the Petitioner were admittedly suspended by suspension letter dated 13.01.2018 which itself states that full investigation would be carried out but admittedly no enquiry under Rules 36 and 37 of MEPS Rules was conducted, neither Petitioner was paid the suspension allowance during the period of suspension by the Management of the school.

5.4. He would submit that if it is the Management's case that Petitioner has tendered resignation in the month of September 2018 there was no reason for Management to wait until February 2019 to inform the Petitioner about his resignation and hence the conduct of the Management in the present case is not above board. He would submit that the Management has followed dubious means to remove the Petitioner from service primarily because after confirmation of the Petitioner, he immediately kept pursuing the Management to pay him arrears of his deficit salary and also to pay him salary of Assistant Teacher as due and payable to him every month which did not go down well with the Management.

5.5. He would submit that in the written statement filed by the Management before the School Tribunal appended at page No.46, the

Management has admitted the fact that Petitioner was appointed as Assistant Teacher in the school of the Management w.e.f. 14.11.2005 against clear and permanent vacancy by following the due process of law. If that be the case then according to the Petitioner he is entitled to the salary due and payable to an Assistant Teacher after his confirmation and sanction by Respondent No.4 – Education Officer w.e.f. 15.06.2007.

5.6. In so far as the issue of misappropriation of school fees to the tune of Rs.78,600/- is concerned, it is Petitioner's case that the said amount was demanded by the School from him and he paid the said amount to the School by cheque No.84083 dated 16.01.2018 only in order to protect his services because he was wrongfully suspended without any reason on 13.01.2018. It is Petitioner's case that the ground that the said amount pertained to school fees is innocuous since Petitioner was employed as Assistant Teacher in the school to teach Hindi subject and he was nowhere concerned with acceptance of school fees from the students of the school and in that view of the matter, if the Management had conducted an appropriate enquiry the real truth would have been unearthed. He would submit that deposit of amount of Rs.78,600/- by Petitioner cannot be considered as acceptance of his guilt of he having misappropriated any funds belonging to the Management unless the Management has proved in enquiry that Petitioner indeed collected the alleged amount from the

students as school fees which was not proved at all. Rather the enquiry was never conducted despite the Petitioner remaining suspended for more than one year.

5.7. He would submit that the allegation made by the school with respect to misappropriation of funds or his resignation is a completely concocted story which has not been established by Respondent – Management. He would submit that Respondent – Management also failed to conduct the enquiry which would have otherwise exposed their conduct. He would submit that the entire written statement of the Management before the School Tribunal is replete with mere denials without Respondents’ answering the question as to whether they conducted the enquiry and what transpired in the said enquiry.

5.8. In that view of the matter, he would persuade the Court to consider the case of the Petitioner and set aside the impugned order and allow his Appeal.

6. *PER CONTRA*, Mr. Kanetkar, learned Advocate for Respondent Nos.1 to 3 – School would submit that the impugned order has been correctly passed in the facts and circumstances of the present case. He would draw the Court’s attention to the written statement / reply filed by the school appended at Exhibit “G” – page No.46 of the Petition and contend as under:-

6.1. He would submit that Appeal filed by Petitioner was itself not maintainable as he voluntarily tendered his resignation. He would submit that Petitioner has given his resignation voluntarily and therefore question does not arise about hypothetical possibilities as alleged by Petitioner. He would submit that Petitioner has to prove his case with cogent evidence and cannot shift his burden upon the shoulder of Respondents. He would submit that Petitioner has not filed or put up his alleged grievances in respect of demand of salary which is alleged to be less than that was approved before the Competent Authority and no such evidence is filed on record. Therefore his allegations are baseless, unwarranted and an after thought with an intention to defame the Management. He would submit that Respondent No.3 – Head Mistress had given a show cause notice to Petitioner about his misconducts and as he was aware about the same he has put up a false narrative.

6.2. He would submit that Petitioner has himself admitted his mistake of misappropriation of the amount of Rs.78,600/- regarding failure in non-submitting school fees. He would submit that Petitioner had tendered apology to the Management on many occasions in the past for mistakes committed by him and therefore tendered his resignation.

6.3. He would submit that Respondent Nos.1 and 2 have never given any kind of suspension order on or before 13.01.2018 to Petitioner either in writing or orally. He would submit that Respondent No.3 – Head Mistress directed Petitioner to deposit the school fee of Rs.78,600/- or face consequential action, but immediately on 14.01.2018 Petitioner admitted his guilt and deposited the amount of Rs.78,600/- by cheque No.840837 dated 16.01.2018 in the name of Respondent No.3 from his Savings Account. Therefore question did not arise about suspension of Petitioner as he had paid amount and also Respondent Nos.1 and 2 never filed any proposal for prior permission of Respondent No.4 – Education Officer and did not inquire any further in the matter.

6.4. He would submit that Petitioner intentionally remained absent in school and never served his duties thereafter. He would submit that Petitioner after commencement of academic year 2018-2019 Petitioner did not resume his duties in Respondent No.3 – School, therefore question does not arise about calculation of 120 days for the inquiry and payment of suspension allowance / amount to him. Therefore this is not a case of illegal termination as alleged by Petitioner.

6.5. He would submit that Respondents intimated the decision of Management Committee vide letter dated 20.10.2018 through

registered post A.D. on 25.10.2018 to Petitioner after which he approached the office of Respondent No.3 on 19.11.2018 and inquired about his resignation and at the relevant time Respondent No.3 for the sake of information gave letter dated 20.10.2018 and copy of resolution No.16 and Petitioner acknowledged the same. He would submit that allegation in respect of suspension by the Management is therefore absolutely false.

6.6. He would submit that to create false cause of action Petitioner made an attempt to create evidence which is an absolute afterthought. He would submit that Petitioner himself admitted that on 20.10.2018 he came to know about acceptance of his resignation dated 02.09.2018 vide resolution dated 29.09.2018 and therefore Appeal filed by Petitioner is an afterthought and without cause of action.

6.7. He would submit that Petitioner is not entitled for any relief or any consequential service benefits as sought by him and if such relief is granted then the grave prejudice would be caused to Respondents. In view of his above submissions he would urge the Court to dismiss the Writ Petition and uphold the order dated 07.11.2023.

7. I have heard Mr. Kadam, learned Advocate for Petitioner; Mr. Kanetkar, learned Advocate for Respondent Nos.1 to 3 and Mr. Gavhane, learned AGP for Respondent No.4 – Education Officer and

with their able assistance perused the record and pleadings of the case. Submissions made by them have received due consideration of the Court.

8. In the present case it is seen that resignation of the employee which is referred to and relied upon by the Management of the School of the Educational Institute is the key issue argued by both sides. It is an admitted position in law that procedure for resignation of employees of private schools is prescribed as contemplated by Section 7 of the MEPS Act. Section 7 of the MEPS Act reads as follows:-

“7. Procedure for resignation by employees of private schools.

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.

In terms of Section 7 reproduced above, 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.*

The further requirement is of forwarding one copy of it to the Management by registered post and keeping the other copy by an employee, intending to tender his resignation.”

9. It is seen that in terms of Section 7 intention to tender resignation has to be made clear by drawing up of resignation in duplicate, signing both copies and putting of date therein and most importantly facet being that of forwarding one copy of it to the

Management by registered post and keeping the other copy by the employee, intending to tender his resignation.

10. There is also a reason as to why the requirement to draw a letter of resignation should be construed to be in the handwriting of the employee concerned intending to resign from the post. A judicial notice of the same has been taken in several cases coming before the Court whereby a complaint is made against Management of the Educational Institute having obtained signature of the employee on a blank paper which is subsequently typed upon and printed as a letter of resignation, which the employee never intended to give.

11. Keeping the aforesaid legal position and requirement to tender resignation by employee of a private school, the other circumstances which *prima facie* govern the case need to be considered. In the present case, it would be seen that the Petitioner was working with the Educational Institute from 2005 onwards on a permanent sanctioned post. Admittedly his sanction and approval as Assistant Teacher was given in the year 2012 w.e.f. retrospective effect from 2007 onwards (15.06.2007). Case of the Educational Institute is that in the year 2017, he filed his resignation Application with the Educational Institute.

12. *Prima facie*, it is seen that normally there could be no reason for Petitioner who is confirmed in service to tender resignation unless

he has secured better employment elsewhere or has engaged himself in any other business or occupation or has become physically or mentally unfit to carry out his duties. There may be several other reasons also. The question before the Court is whether the letter of resignation given by Petitioner has been consciously given to the Management, knowing full well its consequences.

13. The second prime requirement for tendering resignation is that it is to be sent by registered post A.D. and to retain a copy thereof with the employee. In the present case, it is seen that this particular facet is absent. Even according to Respondent No.1 – Educational Institute, Petitioner had himself tendered his letter of resignation to the Management, but admittedly it was not by registered post A.D.

14. That apart, Petitioner has proved and pleaded that he has signed the letter of resignation under coercion on a blank paper and was pressurised by the Head Mistress and 7 – 8 persons when he was called for negotiations by them. This fact is also fortified due to the Petitioner immediately filing a police complaint on the same day itself when the alleged resignation of the Petitioner was taken forcefully by Respondent No.3 – Head Mistress alongwith 7 – 8 persons. The complaint given by Petitioner to the Police Station is appended at page No.64 of the Petition and it precisely describes the manner in which signatures of Petitioner were obtained after he having been threatened.

15. It is seen that the above incident occurred on 12.02.2019. It concerns events namely incident of resignation letter allegedly given on 02.09.2018 by Petitioner. If this was the case, there was no reason for the Management to wait until February 2019 to intimate to the Petitioner about his resignation in September 2018. That apart, it is Management's case in pleadings that charge as per suspension notice dated 13.01.2018 against Petitioner was for misappropriation of Rs.78,600/-, the amount of school fees which he had allegedly collected from students. According to Management of the school, no specifics or details of this have been placed on record. Further, whether and how did the Petitioner have authorisation to collect fees as Assistant Teacher is not placed on record to believe the narrative of the Management. Despite suspension, according to Management, because Petitioner returned back the amount of Rs.78,600/-, the inquiry against him was dropped. No details of this are placed on record. If that be so, further Petitioner remained suspended for more than one year during which Management never conducted the investigation as per the suspension letter nor any inquiry and admittedly did not pay the suspension allowance to Petitioner.

16. The aforesaid facts *prima facie* do not inspire any confidence of the Court in believing the Management's case. It is equally unbelievable in the first instance as to why a confirmed employee serving the Management / School from 2005 to 2018 will

hand over his resignation letter in the manner in which it is alleged in the present case. Case of the Respondents – Management of the school is *prima facie* on the face of record unbelievable and not supported by any cogent evidence for consideration. Neither the Management has shown to the Court that it has paid salary of the Petitioner as per his sanction and approval in accordance with law until 2018 to even *prima facie* believe the Management's case.

17. For all the above reasons on facts and law concerning the resignation letter as per the provisions of the MEPS Act, 1977, the impugned order not only needs to be interfered with and is set aside and quashed comprehensively. The order dated 07.11.2023 passed by the School Tribunal in Appeal No.11 of 2020 is set aside. Resultantly the Appeal No.11 of 2020 filed by Petitioner succeeds and is allowed in the following terms:-

- (i) Show cause notice issued by the School is set aside;
- (ii) Resolution dated 29.09.2018 passed by the Management is set aside;
- (iii) Resignation dated 02.09.2018 purportedly tendered by Petitioner is declared as null and void and set aside;
- (iv) Respondent Nos.1 to 3 – School Management are directed to reinstate Petitioner as Assistant Teacher with full backwages;
- (v) Arrears of salary to Petitioner be paid alongwith interest

@ 9% per annum simple interest until payment; and

(vi) Petitioner is entitled to all consequential benefits in accordance with law.

18. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

19. After the aforesaid order is pronounced in Court, Mr. Kanetkar, learned Advocate appearing for Management would persuade the Court to stay the order for a period of 8 weeks from today. His request for stay of order is granted by the Court. Present order is stayed for a period of 8 weeks to enable the Respondents to approach the Superior Court.

[MILIND N. JADHAV, J.]

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