



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No. 1872/2022

- PETITIONERS** : 1 Shri Prabhu Rajaraji Shaikshanik and
Sanskrutik Sanstha Shankarpur,
A Society registered under Societies
Registration Act, 1860 having its office
at Shankarpur, Tahsil Chimur, District
Chandrapur (MS) through its
Secretary
- 2 The President, Shri Prabhu Rajaraji
Shaikshanik and Sanskrutik Sanstha
Shankarpur, Tahsil Chimur, District
Chandrapur
- 3 The Secretary, Shri Prabhu Rajaraji
Shaikshanik and Sanskrutik Sanstha
Shankarpur, Tahsil Chimur, District
Chandrapur

Vs.

- RESPONDENTS** : 1. The Presiding Officer, Additional
School Tribunal, Chandrapur
2. Shri Prabhakar Vithalrao Kardekar,
Aged about 49 years,
occupation : Service,
R/o Chimur, Tah. Chimur, District
Chandrapur
3. The Education Officer (Secondary)
Zilla Parishad, Chandrapur
4. The Education Officer (Secondary),
Zilla Parishad, Gadchiroli.

Mr. S.P. Bhandarkar, Advocate for the Petitioners
Mrs. Prachi Joshi, AGP for Respondent Nos.1, 3 and 4
Mr. P.P. Thakare, Advocate for Respondent No.2

CORAM: SACHIN S. DESHMUKH, J.

DATED : 11th AUGUST, 2025

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The transfer of the Headmaster, who had been working from 2006 was effected by the petitioner management. Transfer was subject matter of litigation in civil Court. Eventual appeal has been allowed by directing the management to pay the arrears of unpaid salary to the employee as per the pay-scale admissible to the employee at the time of effecting transfer.

3. Preceded by same, the management served the notice, terminating the employee in the wake of voluntary absenteeism referring to Rule 16(3) of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 (For short, "Rules of 1981"). The order of termination was subject matter of challenge before the School Tribunal in an appeal presented by the employee. The School Tribunal considered the length of service of the employee as Headmaster, pending litigation in relation to the transfer before the Civil Court, eventual appeal and the final order therein. So also, after considering Rule

16(3) of the Rules of 1981, the Tribunal has recorded the finding that Rule creates presumption of voluntary abandonment of service, however, it does not authorize the management to terminate the services on the presumption, without holding departmental enquiry.

4. The Tribunal has taken into account the provisions of Rules 28, 29, 31 and 33 of the Rules of 1981, those are in the shape of statutory protections to the employee as against the penalty to be imposed by the management and charge of unauthorized absenteeism entailing disciplinary enquiry. On the anvil of Rule 16(3) provides, where an employee remains absent without leave for more than ten days, the management must issue a notice calling upon the employee to resume duty and explain absence within seven days thereafter. If the employee fails to respond, management must hold an enquiry before terminating services. Resultantly, the School Tribunal has quashed and set aside the termination order of the employee with further direction to confer the retirement benefits and other terminal benefits immediately upon the employee as per the Rules with effect from 21.11.2017, treating the employee in

continuity of service.

5. Mr. S.P. Bhandarkar, learned counsel for the petitioners while assailing the order of the School Tribunal has vehemently submitted that the employee has voluntarily abandoned services on account of the transfer effected by the school management and has not reported the place of transfer. It is further contention it is a case of voluntary abandonment by the employee, as such, the Tribunal ought not to have allowed the appeal of the employee. In the process, Mr. Bhandarkar, learned counsel has placed reliance on the judgments of this Court reported in *2014 SCC OnLine Bom 1541, Ku. Meena Vs. T.R. Patil Vidyalaya, 2019(4) Mh.L.J. 160, Mustakimkhan Yawar Khan Vs. Azad Education Association and Social Welfare Sanstha, Khetri and others* and order in *Writ Petition No. 147/1998, Acharya Donde Shikshan Prasarak Mandal & others Vs. Vitthal D. Kamble and Others*.

6. Per contra, Mr. P.P. Thakare, learned counsel for the respondent No.2 has supported the order of the School Tribunal submitting that perusal of the order of termination unequivocally establishes that the termination of the employee is with the charge of abandonment of

services, which is not permissible in the wake of operation of Rule 16(3) of the Rules of 1981. It is further submitted that the charge of unauthorized absenteeism has been levelled before issuing the termination order, therefore, the disciplinary enquiry, as mandated by the MEPS Act and Rules, necessarily ought to have been initiated since the status of the employee is a Permanent Teacher. Statutory protection cannot be annihilated as has been done by the petitioner-management while terminating the services of the petitioner. It is also submitted that management has acted with predetermination to terminate services of employee, nonetheless in utter violation of statutory protections.

7. Having considered the rival submissions and the documents on the record, it is a matter of record that the employee was appointed as Headmaster in the year 2006. The issue of transfer of the employee is adjudicated by the Civil Court, wherein the order of entitlement to the unpaid salary for the period specified therein has been awarded in favour of the employee. Pertinently, perusal of the termination order refers to absenteeism of the employee and eventual abandonment of the services by

the employee, which has entailed the issuance of the order of termination. Although there is presumption of voluntary abandonment of service, the same does not authorize the management to terminate the services on that presumption without holding the departmental enquiry.

8. Admittedly notice of terminating services issued by management does not satisfy requirement of Rule 16(3) in its letter and spirit. The respondent-management has not extended an opportunity to employee to offer an explanation as no inquiry was ever held. The counsel for petitioner fairly concedes that no inquiry was conducted. The management has not complied with Rule 16(3) before treating the absence as voluntary abandonment by defying it. Admittedly, statutory provisions recognises absence may be on account of personal, medical or unavoidable circumstances and fairness warrants that such explanation is to be heard and taken into account before initiating drastic action of terminating services.

9. Perusal of the provisions of the MEPS Act and Rules, more particularly, Rules, 28, 29, 31, 33 read with 36 and 37 are relevant in context of the controversy,

raised in the present petition. Rule 28(5) of the Rules of 1981, provides punishment to be imposed upon the employee on the grounds of misconduct includes wilful and persistent negligence of duty which entails imposition of major penalty. Importantly the presumption of absenteeism is refutable and no opportunity in that regard is ever extended to employee. Abandonment amounts to charge of unauthorized absenteeism.

10. Therefore, employee having charged for abandonment, resulting into termination of the services essentially has to be preceded by a disciplinary enquiry. Admittedly, no enquiry is conducted by the petitioner-management. The MEPS Act and Rules, are predominantly aimed to confer the statutory protection to the employee before imposing penalty, much less a major penalty of termination from the services. Reliance placed by Mr. Bhandarkar on the judgment in the case of ***Ku. Meena Vs. T.R. Patil Vidyalaya*** (supra) is concerned, this Court has considered the distinction between the action of the employer, terminating the services of an employee and wilful abandonment of the services by the employee while considering the principles laid down by the Hon'ble

Supreme Court reported in *(2013) 10 SCC 253, Vijay S. Sathaye Vs. Indian Airlines Limited*. Further observation in para 18 in case of *Ku. Meena* (supra), are significant to decide the issue involved in the present petition. Para 18 of the said judgment reads as under :

“The provisions of Rule 28(5)(c) make an employee liable for being punished for wilful and persistent negligence of duties. If a penalty on account of wilful and persistent negligence of duty is to be imposed, then the procedure as prescribed by Rule 33 would have to be undoubtedly followed. Where, however on account of continuous absence without leave for a period exceeding three years a permanent employee is deemed to have voluntarily abandoned his services, there is no question of holding any enquiry as there is no termination of service on account of wilful and persistent negligence of duty. The deeming fiction operates when the situation as contemplated by the latter part of Rule 16(3) is shown to exist. Hence, “if there is no termination of service on account of the wilful and persistent negligence of duty and a permanent employee is deemed to have voluntarily abandoned service under Rule 16(3) of the Rules of 1981”, the same need not be preceded by an enquiry as contemplated by Rules 36 and 37 of the Rules of 1981.”

11. Admittedly, the perusal of the termination order establishes that the charge of voluntary abandonment by the employee has been levelled, which is in the absence of disciplinary enquiry in that regard. Therefore, necessary opportunity ought to have been

extended to the employee in the form of disciplinary enquiry, is not adhered in the present case by the petitioner-management.

12. Thus the Rule 16(3) is rather aimed to prevent arbitrary and unfair termination. It ensures the employee, especially a permanent employee, has every right and opportunity to defend it's absenteeism, is made available only in an inquiry, therefore, same cannot be rendered redundant in the manner it has been done by the management, while terminating services.

13. The School Tribunal considering the issue in its entirety and applying the statutory protections to a permanent employee has rendered a finding of fact in favour of the employee. In absence of any opportunity, much less in accordance with the statutory rules those operate as a statutory protection for the permanent employee cannot be annihilated in the manner as has been done by the present petitioner.

14. As such impugned termination order is unsustainable being dehors the statutory rules. The same has been rightly quashed and set aside by the Tribunal while appreciating the material placed in its proper

perspective on record, the same does not warrant any interference by this Court in the present petition. The petition is dismissed.

Rule is discharged. No order as to costs.

(SACHIN S. DESHMUKH, J.)

MP Deshpande