



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

Writ Petition No.111/2024

1. Lokayat Magaswargiya Shikshan Prasarak Mandal,
Keljara (Warthi), Taluka Arni, District Yavatmal,
through its Secretary Shri Kishor Bhagat.
2. Shivaji Maharaj Uccha Madhaymik Vidyalaya,
Ghati, Taluka Ghatanji, District Yavatmal
through its Principal and Headmaster
Dilip Manikrao Mohurle. Petitioners.

- Versus -

1. Sangeeta Vasantrya Yenorkar (Sangeeta Prakash Dhanjode),
aged about 39 years, Occ-Nil, Resident of 102,
Ankur Apartments, Mahalaxmi Society, Manish Nagar
Nagpur, District Nagpur.
2. Deputy Director of Education, Amravati Division,
Tope Nagar, Amravati. Respondents.

 Mr. A.A. Naik, Senior Advocate a/b Mr. R.R. Deo, Advocate for petitioners.
 Ms Prachi Joshi, AGP for respondent no.2.
 Mr. P.D. Meghe, Advocate for respondent no.1.

CORAM : R.M. Joshi, J.

Date : 15-07-2025.

JUDGMENT

By consent of both sides heard finally at the stage of admission.

2. This petition takes exception to the judgment and order dated 01-11-2023 passed by learned School Tribunal in Appeal No.14/2021 whereby the appeal filed by the respondent employee came to be partly allowed. Respondent was directed to

be reinstated in her service on her former post within a period of 30 days and failure thereto she was held to be entitled for full salary from the date of order. The learned School Tribunal however denied the prayer of backwages and direction in respect of the sanction of leave.

3. The employee has not challenged the order of rejection of backwages and denial of the sanctioned leave. The petitioner management sought to challenge the order to the extent of reinstatement granted to the employee.

4. Parties are referred to as the 'Management' and 'employee' for the sake of convenience.

5. The facts which led to the filing of the petition can be narrated in brief as under :-

The petitioner is a society administering petitioner no.2 school. Admittedly, respondent no.1 was serving as a Lecturer. The said appointment was effected pursuant to the advertisement published on 28-01-2014. Thus, after following due process of recruitment employee came to be appointed as Lecturer from 03-03-2014 to 02-03-2014. It is the case of both the petitioners that the employee served the petitioner only till

30-04-2018 and thereafter she did not report for duty. It is claimed that the petitioners several attempts to contact her went in vain. According to the petitioners, respondent no.1 employee tendered resignation dated 01-11-2018 and which fact fortified that she had abandoned her service. Since the employee had abandoned her service without informing the petitioner Management, Mr. D.A. Halwale was appointed on 03-03-2019. The petitioners claim that the said appointment was done in order to ensure that the students do not suffer due to lack of/want of availability of Lecturer. It is the case of the petitioners that since the petitioner Junior College started receiving grant in aid from October 2020 and as the employee got knowledge about the same, she issued letter to the petitioner no.2 indicating that she would like to join the duties from 28-06-2021. In response to the said letter petitioner no.1 issued communication to the employee informing that she has abandoned her services and apart from the said fact that she had already resigned w.e.f. 01-11-2018 and therefore she is no longer in the service of the petitioners.

6. It is further case of the petitioners that the respondent employee erroneously construed the communication

dated 29-06-2021 to be an order of termination and challenge the same by filing appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'MEPS Act') and sought relief of reinstatement with full backwages. The respondent employee claimed before the Tribunal that she never resigned on 01-11-2018 and had sought to justify her absence by giving reasons therefor. She further claims that after completion of her leave she intended to resume her service but could not do so due to the COVID-19 Pandemic situation. The petitioner Management by filing written statement has opposed the appeal. It is specifically contended that the employee did not submit any application for grant of leave and that she had already tendered her resignation and in any case she has abandoned her service. Reference is made to the provisions of Rule 16(3) of the Rules 1981 to contend that there is a deemed abandonment of service of the employee. Maintainability of the appeal was also sought to be challenged on the ground that subsequently appointed employee is not made party to the said appeal. Before the School Tribunal, the petitioner Management denied receipt of leave

application dated 11-09-2018 on the ground that the seal thereon so also the signature of Principal is not genuine. After hearing the parties, Tribunal partly allowed the appeal directing the reinstatement in service with continuity of service but without backwages. This petition is filed only to the extent of challenge to the order of reinstatement of the employee.

7. Learned Counsel for the petitioners submits that the School Tribunal has committed error in interpreting Rule 16(3) of MEPS Rules 1981. According to him, insofar as the deemed abandonment of service for the absence of three years, no inquiry is contemplated and as such the findings recorded by the Tribunal to the effect that this is a case wherein there is no inquiry conducted against the employee cannot sustain. To support this submission he has placed reliance on the judgment of Coordinate Bench of this Court in case of *Ku. Meena vs T.R. Patil Vidyalaya*, reported in *2014 SCC OnLine Bom 1541* and *Mustakimkhan Yawar Khan vs Azad Education Association and Social Welfare Sanstha, Khetri and others*, reported in *2018 SCC OnLine Bom 6019*. He also sought to make submission by relying upon judgment of the Hon'ble Supreme Court in case of *Aligarh*

Muslim University and others vs Mansoor Ali Khan, reported in (2000) 7 SCC 529 to contend that the concept of "useless formality" propounded therein would have application to the present case. It is his submission that once it is held that the employee was absent for three years, the deeming provision of abandonment of service would apply and in such case the question of conducting any inquiry does not arise. He further argued that the Tribunal has committed error in recording the findings that the period of absence during the Covid-19 pandemic and lock-down the same has been reasonably explained. It is his submission that the Tribunal has not accepted the case of the employee about having applied leave and therefore once it is held that there is absence of three years, there was no other option to the Tribunal to apply second part of the Rule 16(3). Without prejudice to his submissions he argued that in any case the employee has not raised such specific plea for exclusion of time for the computation of period of absence on account of Covid-19 Pandemic situation. He argued that even it was not the case of the employee that her services came to be terminated on appointment of D.A. Halwale in her place. On

these amongst other submissions he seeks interference in the impugned order and further dismissal of appeal.

8. Learned Counsel for the respondent employee supported the findings recorded by the Tribunal with regard to Rule 16(3) of the requirement of conducting an inquiry. To support his submissions he placed reliance on the judgments in case of Sudhakar Chindu Bhadane vs Niphad Taluka Education Society and others, reported in 2008 (1) Bom.C.R. 540 and Sant Kabir Shikshan Prasarak Mandal and another vs Azhar Azizurraheman Khan and others, reported in 2016 DGLS(Bom.) 324. He made further submission by pointing out the contention of the Management in the written statement and the finding recorded by the Tribunal that in the year 2019 itself in place of the respondent employee, another employee came to be appointed which fact is sufficient to indicate that there is termination of services of the respondent employee by way of abandonment much before the three years period of alleged absence was over. It is his submission that in the facts of the case wherein there is ample material on record to show that the application for leave was submitted and as the same was not

responded, it cannot become the ground for rejection of the appeal. To support this submission he placed reliance on *Dr. S.R. Ambedkar Samiti and another vs M.L. Lonkar and others*, reported in *2001 (1) L.L.N. 1131*.

9. At the out set, this Court finds it appropriate to deal with the issue as to whether in case of deemed abandonment of services on remaining absent without leave continuously for a period exceeding three years, as held by the Tribunal, the inquiry or even a show cause notice to the employee is necessary. The Tribunal held so by relying upon the judgment in case of *Sudhakar Chindu Bhadane* and *Sant Kabir Shikshan Prasarak Mandal and another* (supra). Perusal of the said judgments indicate that in those cases the issue was neither involved nor raised before the Court of deemed voluntary abandonment of service on continuously remaining absent without leave for a period of three years by an employee. Perusal of the said Judgments indicate that the claim of Management of the abandonment of service was not accepted and since there was termination of service, it was held that such termination without inquiry is not legal.

10. As against this the said issue has been decided by this Court in case of **Ku. Meena** (supra). In paragraph 8 to 11 this Court has held as under -

"8. The provisions of Rule 16(3) are in two parts. The former part treats failure of a permanent employee to apply for leave within 7 days from the date of absence without any sufficient cause as breach of discipline making such employee liable for suitable disciplinary action after due enquiry. In the latter part, there is a deeming fiction providing that a permanent employee who is absent from duty without leave continuously for a period of exceeding three years to have voluntarily abandoned his services. While the former part deals with a situation relating to failure to apply for leave, the latter part contains a deeming fiction relating to abandonment of service. The deeming fiction is, therefore, present only in the latter part of the sub rule (3) of Rule 16. In so far as a deeming provision is concerned, the same has the legal effect of presuming the state of affairs as stipulated to exist. Such deeming provision has to be given its full effect. In Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , the Supreme Court in para 33 observed as under:-

"33. The purpose and object of creating a legal fiction in the statute is well known. When a legal fiction is created, it must be given its full effect. In East End Dwellings Co. Ltd. v. Finsbury Borough Council Lord Asquith, J. stated the law in the following terms: (All ER p. 599 B-D)

9. *If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.*

10. *The said principle has been reiterated by this Court in M. Venugopal v. Divisional Manager, LIC of India. See also Indian Oil Corpn. Ltd. v. ADM, Allahabad and G. Viswanathan v. Hon'ble Speaker, T.N. Legislative Assembly.*

11. *It is, therefore, necessary to consider whether the deeming fiction of a permanent employee having voluntarily abandoned his services can be treated as having the effect of imposing a major penalty and hence, liable to be preceded by an enquiry. As noted above, in so far as the former part of Rule 16(3) is concerned, it stipulates the failure to apply for leave within 7 days from the date of absence without sufficient cause to be treated as breach of discipline. It further contemplates disciplinary action after due enquiry. As the latter part contains a deeming fiction of a permanent employee having voluntarily abandoned his services, it is obvious that the period of absence without leave continuously is for the period exceeding three years. Thus, two different consequences are provided for in sub-rule (3) of Rule 16. It is, therefore, clear that former part of sub rule (3) would apply only when there is failure to apply for leave*

without sufficient cause within seven days from the date of absence. In the latter part, continuous absence for period exceeding three years has the effect of the employee having deemed to have voluntarily abandoned his service."

Similar is the view taken in the case of ***Mustakimkhan Yawar Khan*** (supra).

11. At this stage it would be relevant to take note of Section 16(3) of the MEPS Rules, which reads thus :-

*"(1) *****

*(2) *****

(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty [without leave continuously for a period exceeding three years], or more, shall be deemed to have voluntarily abandoned his services."

A reading of the said provision clearly indicates that in case of a permanent employee who without sufficient cause fails to apply for leave within seven days from the date of absence it is to be treated as a breach of discipline and the same is liable for suitable disciplinary action after due inquiry. It is thus clear from the said part of the provision that it considers absence of an

employee beyond period of seven days without leave to be a breach of discipline and obviously in respect of breach of discipline, suitable disciplinary action of inquiry can be initiated. As against this, the later part of the said provision specifically deals about abandonment of service by an employee, and states that a permanent employee who is absent from duty without leave continuously for a period of exceeding three years is deemed to have voluntarily abandoned his services. The second part therefore cannot be construed as an act of breach of discipline in order to invite an inquiry against the employee. The deeming provision by itself is sufficient for the Management to conclude that the employee has abandoned the services. Once such deeming fiction is created, no further positive action is contemplated by the Management and as such the question of conducting the inquiry against the employee does not arise. This Court is in respectful agreement with the view taken by the Coordinate Benches of this Court in case of **Ku. Meena** and ***Mustakimkhan Yawar Khan*** (*supra*).

12. The Tribunal has also placed reliance on the judgments referred in paragraph 35 of the impugned order.

Perusal of the said judgments indicate that they were not pertaining to the provisions of MEPS Act and more particularly Rules 16(3) thereof. The judgments sought to be relied were involving the facts in which there was no provision of deeming abandonment of service and hence it is held that if the Management claims that the employee has abandoned the services the employer should give him notice calling upon resumption of duty. The said observations are made on the premise that at the time when employment is scarce, ordinarily abandonment of service by employee cannot be presumed. These observations however would not apply to the case wherein the law applicable to the parties provided for deeming fiction of abandonment. In view of the above discussion, the finding recorded by the Tribunal about termination being illegal on account of non conducting of inquiry cannot sustain. The Court however would be required to see as to whether on facts such deeming fiction of abandonment of service can be applied. This would depend upon facts of each case.

13. In the instant case, it was sought to be claimed by the petitioner Management that the employee had tendered

resignation on 01-11-2018. Apart from the fact that employee disputes tender of such resignation, admittedly, the resignation has not been accepted by the petitioner Management. There cannot be unilateral fact on the part of the employee to resign from service and unless the resignation has been accepted by the employer, the contract of employment cannot be treated as ceased.

14. In the written statement before the Tribunal it is categorically accepted by the petitioner Management that D.A. Halwale came to be appointed as Junior College Lecturer to place the appellant on 03-03-2019. Similarly, facts as appeared from the record demonstrate that the petitioner Management had presumed the abandonment of service by the employee within a year from the alleged date of absenteeism. There is nothing on record to indicate that the said appointment of Mr. Halwale was by way of stop gap arrangement and in fact it is candidly admitted by the petitioners that it was a replacement of the respondent employee. It is thus clear that as back as in the year 2019 itself it was assumed by the petitioner Management that the respondent employee has abandoned the services and appointment of fresh

candidate came to be made against the post held by her. This clearly amounts to an action of the Management of effecting termination of the employment of the respondent employee.

15. Though it is sought to be canvased on behalf of the counsel for the petitioners that no such ground was raised before the Tribunal, perusal of the record indicates that the facts are so obvious and clear that the only inference which can be drawn from the same is that the Management has claimed the abandonment even before the completion of three years of absenteeism and with appointment of the new employee, her services came to be terminated. Unlike civil proceedings, the strict rules of pleadings cannot be applied to the proceedings before Tribunal under the Act and on such technical defence, relief cannot be denied.

16. Learned Tribunal has considered the said aspect in paragraph 33 of the judgment. The purport of the said observations indicate that there was a termination of service of employee presuming her to have abandoned the service. Such assumption was not permissible before the completion of period of three years of absenteeism.

17. In the light of these facts, this Court is not inclined to cause interference in the findings recorded by the Tribunal with regard to the illegal termination of services of the respondent employee and any such interference would lead to miscarriage of justice.

18. As a result of above discussion, petition must fail and is dismissed accordingly.

(R.M. Joshi, J.)