

WRIT PETITION NO.9989 OF 2016

V/s.

Suresh Popat Theurkar & Others ... Respondents

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GANESH
KULKARNI

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Mr. Prabhakar M. Jadhav for respondent No.4.

DATED : OCTOBER 12, 2026

P.C.:

2. According to the Petitioner, the facts which led to the filing of the present Petition are as follows. Respondent No. 1, Mr. Theurkar, was appointed as an Assistant Teacher at Late Ganpatrao Govind Thite Primary Vidyalaya on 23 June 2002. On the same date, he was selected for the post of Headmaster. As per the prescribed procedure, the School Management was required to

submit a proposal for approval along with its Resolution. However, Respondent No. 1 submitted the proposal to the Education Officer without the knowledge or consent of the School Management. Thereafter, the Education Officer made an inquiry with the School Management as to why the required Resolution had not been submitted along with the proposal for approval. When Respondent No. 1 was questioned about this matter on 17 July 2009, he admitted his mistake and submitted his resignation to avoid action against him. However, the School Management took a lenient view and gave him an opportunity to correct his conduct. It did not accept his resignation and allowed him to continue as Headmaster after obtaining the necessary approval from the Education Officer. On 16 September 2009, Respondent No. 1 submitted a written apology for his conduct. He continued to work as Headmaster until 2013. According to the Petitioner, on 29 June 2013, Respondent No. 1 committed serious irregularities in maintaining records relating to the implementation of the Central Government's Mid-Day Meal Scheme for students. The Management issued a show-cause notice to him. Instead of explaining the irregularities and lapses pointed out in the notice, Respondent No. 1 again submitted his resignation from the post of Headmaster on 29 June 2013 to avoid action against him.

3. Considering the serious lapses committed by Respondent No. 1, the School Management accepted his resignation in its meeting held on 10 August 2013. However, he was permitted to sign the salary bills until the Education Department granted approval to the appointment of a new Headmaster. This arrangement was made

because the salary bills required the signature of the Headmaster for the release of salary grants. The next senior-most teacher, Smt. Khavale, declined to accept the post of Headmaster due to personal reasons. Therefore, the School Management appointed Shri Gavade as Headmaster by an order dated 31 August 2013. On 1 September 2013, Respondent No. 1 handed over charge of the post of Headmaster to Shri Gavade. On 3 September 2013, the School Management submitted a proposal to the Education Department seeking approval for Shri Gavade's appointment as Headmaster. Along with the proposal, the Management submitted a letter dated 11 August 2013 written by Smt. Khavale. It is relevant to note that Smt. Khavale appeared before the Education Officer in connection with this matter, and the Education Officer made an endorsement to that effect on the said letter. On 12 September 2013, Respondent No. 1 submitted a complaint to the Education Officer alleging that his resignation had been obtained by force and that he did not accept the same. Thereafter, by a communication dated 17 October 2013, the Education Officer, while considering the proposal seeking approval for the appointment of Shri Gavade as Headmaster, called upon the School Management to obtain written no-objection letters from the senior-most teachers personally, in respect of the proposed appointment.

4. On 1 March 2014, Respondent No. 1 filed Appeal No. 4 of 2014 before the School Tribunal, Pune. He alleged that the School Management had orally prevented him from signing documents as Headmaster and from performing his duties as Headmaster with

effect from 1 February 2014. According to the Petitioner, Respondent No. 1 filed the appeal without disclosing important facts. In particular, he did not disclose that he had submitted his resignation after the show-cause notice was issued by the Management and had handed over charge of the post of Headmaster to Shri Gavade on 1 September 2013. The Administrative Officer, Education Department, Primary Section, Pune Municipal Corporation, filed a reply on 19 April 2014. In support of the reply, reliance was placed on two letters dated 17 September 2013 and 17 October 2013, which were stated to have been served on the School Management in connection with the approval of the appointment of the new Headmaster. However, the letter appearing at page 92 of the record does not contain any outward number or date. The Petitioner relies on these circumstances to question the manner in which the concerned officer maintained and produced the record. The Petitioner School Management filed a detailed reply on 19 June 2014, denying the allegations made by Respondent No. 1. The Management stated that Respondent No. 1 had voluntarily submitted his resignation on 29 June 2013. After the resignation was accepted and Shri Gavade was appointed as Headmaster, Respondent No. 1 handed over charge of the post to him. Thereafter, on 10 October 2014, Respondent No. 1 amended his appeal and sought a declaration that the resignation allegedly obtained from him under coercion was illegal and not binding upon him. On 12 December 2014, the School Management filed a detailed reply to the amended appeal. The Management pointed out that Respondent No. 1 had

repeatedly submitted his resignation whenever disciplinary action was proposed against him for his misconduct. On earlier occasions, the Management had taken a lenient view and permitted him to continue in service on his assurance that he would improve his conduct. However, this time, the Management decided to accept his resignation. The Management stated that, after Shri Gavade was appointed as Headmaster, Respondent No. 1 voluntarily handed over charge of the post to him without raising any objection. According to the Management, Respondent No. 1 made an incorrect complaint before the Education Officer as an afterthought. It was alleged that he deliberately suppressed the fact that he had handed over charge to the newly appointed Headmaster while pursuing his appeal before the School Tribunal. By the impugned order dated 23 April 2015, the School Tribunal, Pune, allowed Appeal No. 4 of 2014. The Tribunal held that the School Management had not followed the mandatory requirements of Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Tribunal recorded that Respondent No. 1 had neither sent his resignation by registered post nor submitted his resignation from the post of Headmaster in his own handwriting before the Education Officer. Being aggrieved by this order, the Petitioner has filed the present Writ Petition.

5. Mr. Dhumal, learned Advocate appearing for the Petitioner, submitted that the main question which the School Tribunal was required to decide was whether Respondent No. 1 had submitted his resignation voluntarily or whether he had been forced or

compelled to do so. According to him, except for making an observation that Respondent No. 1 had lodged a complaint before the Education Officer, the Tribunal had not properly examined the circumstances in which the resignation was submitted or the other material facts placed before it. He submitted that the Management had pointed out in its reply that Respondent No. 1 had admitted submitting his resignation but had raised an objection about coercion only after about three months. The Tribunal was required to consider this delay, along with the other circumstances relied upon by the Management. However, instead of deciding whether the resignation was voluntary, the Tribunal mainly examined whether the prescribed procedure for submitting a resignation had been followed. Mr. Dhumal submitted that the principal issue had not been properly decided and that the matter should be sent back to the School Tribunal for fresh consideration.

6. On the other hand, Mr. Pakale, learned Advocate appearing for Respondent No. 1, submitted that the material placed before the School Tribunal was sufficient to establish that the resignation had been obtained from Respondent No. 1 by force and coercion. According to him, the complaint made to the Education Officer was not the only material available on record. There were other circumstances and documents which supported the conclusion that the resignation was not voluntary, even though the Tribunal may not have referred to each of them in its order. Mr. Pakale invited the Court's attention to paragraphs 17, 19 and 20 of the impugned judgment. He submitted that, upon reading these paragraphs, it would be clear that the School Tribunal had considered whether

Respondent No. 1 had submitted his resignation voluntarily.

7. Mr. Pakale relied upon the judgment of a coordinate Bench of this Court in *Neminath Jain Brahmacharya Ashram (Jain Gurukul) & Others vs. Rajendra Sitaram Nikam & Others, 2004 (2) Mh.L.J. 909*. He submitted that the Court had emphasised in that case that, when an employer relies upon an employee's resignation and the employee claims that the resignation was not voluntary, the Tribunal must decide the issue on the basis of the evidence available on record. He relied upon the judgment of a coordinate Bench of this Court in *Siddheshwar Kreedha Mandal vs. Uttam Kisanrao Shrikhande & Others, 2009 (1) All MR 78*, to contend that an employee cannot be terminated orally. According to him, the fact that Respondent No. 1 was permitted to continue working even after the alleged resignation, until February 2014, supported his case that the resignation was not voluntary. Mr. Pakale submitted that the Education Officer had called upon the Management to explain the circumstances in which Respondent No. 1 had been reduced in rank. According to him, the appointment of another person as Headmaster amounted to a reduction in the rank of Respondent No. 1. He submitted that the main grievance of Respondent No. 1 was that he had been reduced in rank without following the prescribed procedure. Mr. Pakale placed reliance upon the judgment of the Supreme Court in *Shriram Manohar Bande vs. Uktranti Mandal & Others, 2024 SCC OnLine SC 647*, in support of his submissions.

REASONS AND FINDINGS:

8. I have heard Mr. Dhumal, learned Advocate appearing for the Petitioner School Management, and Mr. Pakale, learned Advocate appearing for Respondent No. 1. The main question is whether the School Tribunal properly examined the circumstances in which Respondent No. 1 submitted his resignation. It is necessary to consider whether the Tribunal could grant relief without first deciding whether Respondent No. 1 had resigned willingly or whether he was made to resign by force or pressure.

9. Mr. Dhumal submitted that the School Tribunal mainly examined whether the procedure under Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, had been followed. According to him, the Tribunal did not properly examine the main dispute between the parties. He pointed out that Respondent No. 1 submitted his resignation on 29 June 2013, the Management accepted it in its meeting held on 10 August 2013, and Respondent No. 1 handed over charge of the post of Headmaster to Shri Gavade on 1 September 2013. He pointed out that Respondent No. 1 complained to the Education Officer about the alleged force and pressure only on 12 September 2013. These circumstances are important and the School Tribunal was required to examine them properly. If Respondent No. 1 had given his resignation willingly and the Management had accepted it according to law, the consequences would have to be decided on that basis. However, if the resignation was obtained by force or pressure, the mere fact that Respondent No. 1 had submitted a resignation would not

decide the dispute. The Tribunal was required to examine the circumstances in which the resignation was given, the conduct of both sides before and after it, and the evidence available on record. The matter could not be decided only because a resignation letter was available.

10. The Petitioner Management has relied upon an earlier incident dated 17 July 2009. According to the Management, Respondent No. 1 had then admitted his mistake and submitted his resignation to avoid action against him. The Management did not accept that resignation. Instead, it allowed him to continue as Headmaster after he submitted a written apology on 16 September 2009. The Management has relied upon this incident to show that Respondent No. 1 used to submit his resignation whenever disciplinary action was likely to be taken against him. However, this argument of the Management cannot be treated as final proof that the resignation dated 29 June 2013 was given willingly. The earlier incident may help in understanding the background between the parties. But the resignation given in 2009 and the resignation given in 2013 are separate matters. Merely because Respondent No.1 had submitted a resignation earlier, it cannot be said that he had submitted the later resignation willingly. The School Tribunal must consider this argument along with the other evidence and circumstances. It must consider any explanation given by Respondent No. 1 regarding the resignation submitted by him in 2013.

11. The Management has relied upon the fact that Respondent No. 1 handed over charge of the post of Headmaster to Shri

Gavade on 1 September 2013 without raising any objection at that time. According to the Management, this conduct supports its case that the resignation was voluntary. On the other hand, Mr. Pakale submitted that Respondent No. 1 was permitted to continue working even after the alleged resignation. According to him, this circumstance supports the case of Respondent No. 1 that the resignation was not voluntary.

12. Both these arguments require proper consideration. The fact that Respondent No. 1 handed over charge is relevant. However, the Tribunal must examine the circumstances in which charge was handed over, the nature of the work performed by him and why he was permitted to sign salary bills until approval for the appointment of the new Headmaster was received. At the same time, merely because Respondent No. 1 was permitted to sign salary bills, it cannot be said that he legally continued to hold the post of Headmaster. The Management has explained that he was allowed to sign the salary bills because the Headmaster's signature was required for the release of salary grants. The Tribunal must examine whether the record supports this explanation and what effect it has on the dispute. Another important circumstance is that Respondent No. 1 made a complaint to the Education Officer on 12 September 2013, alleging that his resignation had been obtained by force. The Management has relied upon the time taken by Respondent No. 1 to make this complaint. According to the Management, the allegation of force was raised as an afterthought, after the resignation had been submitted and accepted. Mr. Pakale submitted that the material available before the Tribunal was

sufficient to show that the resignation had been obtained by force.

13. In my view, the delay in making the complaint is relevant, but it cannot decide the issue. The Tribunal must examine whether Respondent No. 1 has explained the delay and whether the other circumstances support his allegation. At the same time, the allegation of force cannot be accepted merely because a complaint was made to the Education Officer. Respondent No. 1 must establish his allegation on the basis of the material available on record. Therefore, the Tribunal must consider the complaint dated 12 September 2013 along with the circumstances relied upon by the Management and give a clear finding on whether the resignation was voluntary.

14. Mr. Dhumal submitted that the School Tribunal had not properly considered these important circumstances. According to him, the Tribunal mainly examined the requirements of Section 7 of the Act but did not decide the main question of whether Respondent No. 1 had given his resignation willingly. He submitted that the matter should be sent back to the School Tribunal for fresh consideration. Mr. Pakale opposed this argument. He drew my attention to paragraphs 17, 19 and 20 of the impugned judgment and submitted that the Tribunal had considered whether the resignation was voluntary. According to him, the material available on record was sufficient to support the Tribunal's decision, even though every circumstance may not have been discussed in the judgment.

15. I have considered both arguments. Merely because a

judgment does not discuss every argument, it cannot be said to be wrong. The judgment must be read as a whole. However, when the parties raise an important dispute which affects their rights, the judgment must show that the dispute has been examined on the basis of the relevant material. In the present case, the question whether Respondent No. 1 gave his resignation willingly is the main issue. The question of whether he was reduced in rank depends upon the circumstances in which the resignation was given and acted upon.

16. Mr. Pakale's reference to paragraphs 17, 19 and 20 of the impugned judgment does not remove the need to examine whether the important circumstances were properly considered. The Tribunal was required to consider the Management's case that Respondent No. 1 submitted his resignation after a show-cause notice was issued, that the resignation was accepted on 10 August 2013 and that he handed over charge on 1 September 2013. It was equally necessary to consider Respondent No. 1's case that his resignation was obtained by force or pressure. The finding on this question must be based on an overall examination of the evidence. It cannot be based only on the fact that a complaint was made or that a particular procedure was not followed.

17. Mr. Pakale relied upon the judgment of this Court in *Neminath Jain Brahmacharya Ashram (Jain Gurukul) & Others*. According to him, this judgment says that when an employee claims that his resignation was not voluntary, the Tribunal must decide the issue on the basis of the evidence before it. This argument itself shows why the evidence relating to the resignation

must be properly examined. The Tribunal must decide whether the resignation was voluntary after considering the material placed by both sides. The principle relied upon by Mr. Pakale does not permit the Tribunal to avoid this exercise. Rather, it requires the Tribunal to carry it out properly.

18. The question of reduction in rank must be examined. Respondent No. 1 claims that he was deprived of the post of Headmaster. The Management says that he had voluntarily resigned from that post and that Shri Gavade was appointed as Headmaster thereafter. The legal position will depend upon the finding regarding the resignation, the relevant service record and the provisions of law applicable to the case. Merely because another person was appointed as Headmaster, it cannot be said that Respondent No. 1 was unlawfully reduced in rank. Equally, the appointment of another person cannot establish that there was no reduction in rank. The Tribunal must examine the nature of the action taken by the Management and its effect on Respondent No. 1, on the basis of the facts established before it.

19. Mr. Pakale relied upon the judgment of the Supreme Court in *Shriram Manohar Bande*. He cited this judgment in support of his arguments. However, any judgment relied upon by a party must be considered in the context of the facts and legal issues involved in the case. A judgment cannot be applied merely because a party has cited it. The Tribunal must examine the relevant legal principles laid down in the judgments relied upon by both sides and apply them to the facts established on record. At this stage, I do not consider it necessary to give a final finding on the applicability or

effect of this judgment, because the matter requires fresh consideration by the School Tribunal on the main factual issue.

20. There is the question of compliance with Section 7 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The School Tribunal allowed the appeal on the ground that Respondent No. 1 had neither sent his resignation by registered post nor submitted his resignation from the post of Headmaster in his own handwriting before the Education Officer. The legal requirements relied upon by the Tribunal cannot be ignored. However, their effect must be examined in the proper legal context and in the light of the facts of this case. The question is not whether the requirements of Section 7 can be ignored. If that provision applies to the facts of this case, its requirements must be followed. The question is whether the Tribunal properly examined these requirements along with the main dispute about whether the resignation was voluntary and the other important circumstances placed before it. The finding regarding the resignation must be based on the applicable law and the evidence on record. The procedural requirements and the allegation of force must both be examined in their proper context. Neither issue should be decided by ignoring the other.

21. The letters exchanged with the Education Officer are part of the background of the dispute. The Management has questioned the letter appearing on the record because it does not contain an outward number or date. It has referred to the letters dated 17 September 2013 and 17 October 2013 regarding approval for the appointment of Shri Gavade. These documents may be relevant for

examining the approval process and the steps taken by the Education Department. However, merely because a letter does not contain a number or date, it cannot, without examination, establish whether the resignation was voluntary or was obtained by force. The Tribunal must examine the contents of the documents, their source, their value as evidence and their connection with the issues which have to be decided.

22. After considering the arguments of both sides as a whole, I am of the view that the matter requires fresh consideration by the School Tribunal. I am not holding that the resignation submitted by Respondent No. 1 was voluntary. I am not holding that it was obtained by force or pressure. These questions must be decided by the Tribunal on the basis of the evidence available before it and after considering the important arguments made by both sides. The present Petition can be disposed of without giving a final finding on these disputed questions. The matter must be sent back because the question of whether the resignation was voluntary affects the later grievance of Respondent No. 1 regarding reduction in rank. If the resignation was voluntary and was acted upon according to law, the consequences must be examined on that basis. If the resignation was obtained by force or pressure, the Tribunal must examine the legal consequences of that finding and decide whether Respondent No. 1 was unlawfully deprived of the post of Headmaster. The Tribunal must consider all relevant material and give reasons for the findings it reaches.

23. The Tribunal shall consider the delay in raising the allegation of force, the handing over of charge on 1 September 2013, the

permission given to Respondent No. 1 to sign salary bills, the appointment of Shri Gavade, the complaint made to the Education Officer and the requirements of Section 7 of the Act. It shall consider the judgments relied upon by both sides, to the extent that they are relevant to the issues before it. No single circumstance should be treated as final proof without examining it along with the other material available on record.

24. I am aware that this dispute has remained pending for a long time. The impugned order was passed on 23 April 2015, and the present Petition has remained pending for about a decade. The parties should not be required to continue this litigation indefinitely over the post of Headmaster. Therefore, while sending the matter back, it is necessary to fix a definite period for deciding the appeal. The School Tribunal shall decide the matter on its own merits and according to law. It shall not treat any observation made in this judgment as a final finding on the disputed issues. These observations are made only to explain why fresh consideration is necessary.

25. In view of the above discussion, the following order is passed.

- i) The order dated 23 April 2015 passed by the Presiding Officer, School Tribunal, Pune, in Appeal No. 4 of 2014 is set aside. Appeal No. 4 of 2014 is restored to the file of the School Tribunal, Pune, for fresh consideration;
- ii) The School Tribunal shall reconsider whether the resignation submitted by Respondent No. 1 was voluntary or

whether it was obtained by force or pressure. While deciding this question, the Tribunal shall consider the relevant evidence and the important arguments made by both sides, including the circumstances discussed in this judgment. After recording its finding on the resignation, the Tribunal shall decide, according to law, whether Respondent No. 1 was reduced in rank;

iii) The parties shall appear before the School Tribunal, Pune, on 26 October 2026;

iv) As the dispute has remained pending for about a decade, the School Tribunal shall make every effort to decide Appeal No. 4 of 2014 within three months from the date on which the parties appear before it. Both sides shall cooperate with the Tribunal so that the appeal can be decided without delay;

v) The School Tribunal shall decide the appeal independently, on the basis of the material available before it and according to law. The observations made in this judgment shall not be treated as final findings on whether the resignation was voluntary or whether Respondent No. 1 was reduced in rank.

26. The Writ Petition is disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)