



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 720 OF 2025

1. Nasirullah S/o Pirmohammad
Pathan (Senior Citizen)
Aged about 77 yrs, Occ. Advocate,
R/o 403, Pushpkamal Apartment,
Nandanwan Main Road, Opp.
Jaiswal School, Nehru Nagar,
Nagpur.

... **PETITIONER**

...VERSUS...

1. State of Maharashtra,
Hour Secretary of Educational
Minister (School & Krida,
Madhyamik), Madam Kama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400032,
through Chief Secretary,
Education Minister (School & Krida,
Madhyamik)
2. Accountant General,
Maharashtra (Account and
Establishment) II, Nagpur -440001,
Through Chief Account Officer,
Account Officer/PR-9 Civil Lines,
Nagpur.
3. Nagpur Zilla Parishad, Nagpur,
Through Chief Executive Officer,
Education Officer, Zilla Parishad,
Nagpur, Civil Lines, Nagpur.

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4. Deputy Director of Education
Nagpur, Division Nagpur, Office
Dhantoli, Nagpur.
5. Education Minister (School & Krida,
Madhyamik) of State of
Maharashtra, through Deputy
Secretary, Madam Kama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400032.
6. Sevadal Shikshan Sanstha, Om
Nagar, Nagpur, through Head
Master of Vidarbha Buniyadi High
School, Omnagar, Nagpur.

...RESPONDENTS

Petitioner in person.
Mr. N. R. Patil, AGP for respondent(s)/State.

**CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

RESERVED ON : 16th MARCH, 2026.
PRONOUNCED ON : 02nd APRIL, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the learned counsel for the parties.

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2. The petition challenges the order dated 23.09.2019 passed by the respondent no. 1, State of Maharashtra, thereby rejecting the claim of the petitioner for grant of pension by placing reliance on Section 45 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "***MCS Pension Rules 1982***").

3. The facts, as can be seen from the petition, are as under:-

a) The petitioner was appointed as an Assistant Primary Teacher in a school run by the respondent no. 6 on 15.07.1968. Thereafter, he was promoted as an Assistant High School Teacher in another school run by the same management on 01.07.1969 up to 30.07.1983. Thus, the petitioner served as an Assistant Teacher for 15 years and 15 days on a permanent sanctioned post.

b) Thereafter, he was charge-sheeted and a departmental inquiry ensued against the petitioner on charges of misconduct. The inquiry committee thereafter, on 23.07.1983, submitted an inquiry report to the management, which was accepted by the management on 27.07.1983. The management, i.e., the respondent no. 5 herein, Shubham

thereafter, by passing an order, terminated the services of the petitioner w.e.f. 30.07.1983, the order being passed on 27.07.1983. The petitioner, being aggrieved by the said order of termination, challenged the same before the School Tribunal by filing an appeal as contemplated under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short, "***the MEPS Act***"). However, the said appeal was rejected by the School Tribunal vide judgment dated 07.12.1984.

c) The petitioner further states that though his appeal before the School Tribunal was dismissed, he was in continuous service from 15.07.1968 till 30.07.1983 and is therefore entitled to pension benefits. He, therefore, made representations from time to time to various authorities and more particularly the respondents. It is his contention that the management sent a proposal of pension to the Zilla Parishad on 31.12.2016 which in turn forwarded the said proposal to the Accountant General (II), respondent no. 2. However, thereafter the respondent no. 1, by placing reliance on Section 45 of the MCS Pension Rules, 1982, has rejected the claim

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of the petitioner. It is this order which is challenged in the present petition on the various grounds as stated in the petition.

4. We have heard the petitioner in person, who has stated that the reliance placed by the authority, i.e., the respondent no. 1, on Rule 45 of the MCS Pension Rules, 1982, is entirely misconceived as the said Rule is not applicable. It is his contention that the said Rule would come into picture only when the employee is dismissed or removed from service but would not be helpful in the case of the petitioner as he was terminated from service. He further submits that the respondent No. 1 has ignored the provision of Rule 30 and its sub-clause while rejecting the proposal of pension and has ignored the fact that there was permanent and continuous service of more than 10 years entitling him to pension. He, therefore, prays that the order of the respondent no. 1 is liable to be quashed and set aside.

5. The Petitioner has relied on the judgment passed by the Hon'ble Apex Court in the case of *U.P. Co-operative Federation Ltd. v. Ram Singh Yadav and others* reported in AIR 1998 Supreme

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Court 413. He has also relied on the judgment in the case of *Regional Manager, Bank of Baroda v. Anita Nandrajog* reported in AIR 2009 SC (Supp) 1978.

6. Per contra, Mr. N. R. Patil, the learned AGP, appearing for the respondent nos. 1 to 4, by taking us through the various rules, submits that there is no difference under the scheme of the MEPS Act between dismissal, removal, and termination of service and, in fact, the petitioner was removed from service. He relies on the judgment of Co-ordinate Bench of this Court in **Writ Petition No. 3468 of 2024, *Nalini W/o Nathhuji Shende v. State of Maharashtra*** and others to buttress his submissions. He, therefore, supports the impugned order. Paragraph nos. 22 and 23 are reproduced as under:-

“22. Rule 31 of the MEPS Rules does not use the expression “dismissal”. The expression employed is “termination”. The statutory scheme is that the maximum punishment which can be imposed on an employee, who is held guilty of serious misconduct including misconduct involving moral turpitude, is termination. In the context of the statutory scheme of the MEPS Rules, no distinction can be

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drawn between termination and dismissal or removal of service, if an employee is held guilty of serious misconduct.

23. *Dismissal is perceived as termination of employment by an employer against the will of the employee in contradistinction with the voluntary leaving or quitting of employment. In the context of the MEPS Rules, the expressions "removal" and "termination" (dismissal) may be used in the punitive order with same significance and effect. No distinction can be drawn between "termination" on proved charge of serious misconduct and dismissal from service. We are not persuaded to accept the submission of Mr. Akhilesh Potnis that the punishment of "dismissal" is not envisaged, and as a sequitur, the dismissal of the petitioner must be construed as plain and simple termination which has the effect of snapping the employer-employee relationship."*

7. We have considered the contentions canvassed by the parties and also gone through the record with their able assistance. The fact that the petitioner was working as an Assistant Teacher in the schools of the respondent no. 4 for 15 years and 15 days is not in dispute. It is also not a matter of dispute that his services came to an end after a regular departmental inquiry was held against him for misconduct. It can also be seen that the challenge to the said removal from service proved unsuccessful since the appeal before the School Tribunal was rejected. It is also a matter of record that

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the judgment of the School Tribunal has attained finality in as much as the petitioner did not choose to challenge the same further. As can be seen from these facts, the appeal challenging termination was rejected on 07.12.1984. As can further be seen from the averments in the petition, that after a huge delay, the petitioner chose to agitate the issue of pension being applicable to him. The first representation for claiming pension seems to be made in the year 2016, i.e., more than 30 years from the dismissal of the appeal before the School Tribunal. The Petitioner nowhere spells out any cause for delay. Thus, in our view, the petition suffers from inordinate delay.

8. Furthermore, on perusal of the impugned order removing the petitioner from service, it would reveal that the said order was passed in pursuance of the resolution of the management, which accepted the findings of the inquiry officer. It is the contention of the petitioner that the said order is of termination, while the respondents contend that this is a removal from service.

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9. Rule 45 of the MCS Pension Rules, 1982, would be relevant, which is reproduced as under:-

“45. Forfeiture of service on dismissal or removal.

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.”

10. This Court had an occasion to consider the controversy in the backdrop of the scheme of the MEPS Act and Rules, 1981. The said judgment is passed in Writ Petition No. 3468 of 2022 referred to supra, on which support has been placed by the learned AGP. In the said judgment, by taking into consideration the entire scheme of the MEPS Act and Rules, this Court held that in the context of the statutory scheme of the MEPS Act and Rules, no distinction can be drawn between termination and dismissal or removal from service if an employee is held guilty of serious misconduct. We entirely agree with the view taken by the coordinate Bench of this Court.

11. Furthermore, dismissal is perceived as termination of employment by an employer against the will of the employee in

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contradistinction to the voluntary leaving of employment. In the context of the MEPS Act and Rules, the expressions “removal” and “termination” (dismissal) may be used in a punitive order with the same significance and effect. No distinction can be drawn between “termination” on a proved charge of serious misconduct and dismissal from service. Furthermore, Rule 45 of the MCS Pension Rules, 1982, cannot be read in isolation and has to be read in conjunction with the other Rules and more particularly Rule 19, 26, 27, and 101, which are reproduced:-

“19. Removal or compulsory retirement from service for misconduct, insolvency or inefficiency.

A competent authority may remove any Government servant subject to these rules from Government service, or may require him to retire from it, on the ground of misconduct, insolvency or inefficiency:

Provided that before any such order is issued, the procedure referred to in rules 8 to 15 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, shall be followed.

Note 1 - In the case of police Officers of Subordinate ranks a competent authority in the Police Department can exercise his discretion under this rule after observing the procedure laid down in Chapter XIII of the Bombay Police Manual,

1959, Volume I and Section 26 of the Bombay Police Act, 1961.

Note 2- Except where it is expressly stated otherwise, 'removal' includes the case of a government servant who has been asked to retire under this rule."

"26. Pension subject to good conduct.

(1) Future good conduct shall be an implied condition of every grant of [pension or family pension]. Government may, by order in writing, withhold or withdraw a [pension or family pension] or part thereof, whether permanently or for a specified period, if the [pensioner or family pensioner] is convicted of a serious crime or is found guilty of grave misconduct:

Provided that where a part of [pension or family pension] is withheld or withdrawn the amount of remaining ¹[pension or family pension] shall not be reduced below the minimum [pension or family pension] as fixed by Government.

(2) Where a [pensioner or family pensioner] is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if Government considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under sub-rule (1), follow the procedure as laid down in rules 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for imposing a major penalty.

(4) The Maharashtra Public Service Commission shall be consulted before an order under sub-rule (1) is passed in respect of Officers holding posts within their purview."

“27. Right of Government to withhold or withdraw pension.

- (1) *[Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it whether permanently or for a specified period, and also order the recovery, from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:*

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- (2) (a) *The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.*
- (b) *The departmental proceedings, if not instituted while the Government servant was in service,*

whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of [Appointing Authority],

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.*
- (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.*
- (5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-*

third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

“101. Grant of Compassionate Pension in deserving cases by Government.

(1) A Government servant who is removed from service shall forfeit his pension and gratuity:

Provided that if the case is deserving of special consideration, Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.

(3) A dismissed Government servant is not eligible for Compassionate Pension.”

12. Rule 29 and 31 of the MEPS Rules would also be relevant, which are reproduced as under:-

“29. Sharing of pension between Consolidated Fund and Local Fund.

When part of the pensionable service of a Government servant qualifies for pension from the Consolidated Fund and part from a Local Fund the amount of his pension shall be chargeable to Government and the Local Fund in proportion of the length of service. If the share of pension chargeable to one account does not exceed one rupee, no charge shall be made to that account and the share shall be borne by the account chargeable with the greatest share.

Note - Service for which pension contribution has been recovered or for which the recovery of pension contribution has been waived should be regarded as service paid by government for purpose of this rule.”

“31. Conditions subject to which service qualifies.

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression ‘service’ means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable

establishment unless such service is treated as qualifying service by Government.

- (3) *In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:*

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.”

13. Thus, a conjoint reading of all these rules would lead to a conclusion that only because the petitioner has completed qualifying service, would not *ipso facto* entitle him for pension.

14. The reliance placed by the petitioner on the judgment of ***U.P. Co-operative Federation*** (supra) turns on the facts of the case since in the said matter there was no departmental inquiry. Furthermore, the judgment of the Hon'ble Supreme Court in ***Regional Manager, Bank of Baroda*** (supra) had entirely different facts and is in the light of the service Rules applicable to the concerned employee. Thus, when there is an authoritative announcement in the backdrop

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of the MEPS Act and Rules, which admittedly would govern the present situation, there is no need to go to the other judgments which differ in factual context.

15. In that view of the matter, we are of the considered opinion that the petition, apart from it being highly belated, lacks merits and deserves dismissal.

16. The Writ Petition is rejected with no order as to costs.

17. Rule stands discharged.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)