

(2010) 06 BOM CK 0150

In the Bombay High Court

Case No : Writ Petition No. 4593 of 2006

Abdul Karim Sadruddin Makandar

APPELLANT

Vs

The Chairman/Secretary, Talimi Adara-E-Mubarakya and
Others

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 4A

Citation : (2010) 127 FLR 446 : (2011) 1 SLR 406

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

**Advocate : S.S. Pakale, for the Appellant; A.P. Vanarse, AGP for Respondent
Nos. 2, 3 and 5, for the Respondent**

Judgement

Nishita Mhatre, J.—The Petition challenges the order passed by the School Tribunal on 19.4.2006, dismissing the appeal filed by the petitioner.

2. The petitioner was appointed as an Assistant Teacher in the Anglo Urdu High School at Aurwad w.e.f. 12.6.1972. This school was being run by the Respondent No. 1 institution. The petitioner was promoted as Headmaster w.e.f. 1.3.1989. On his promotion as a Headmaster, the petitioner was deputed as an examiner or moderator for the SSC examination. In March 2000, the petitioner was appointed as a Moderator for subject of English subject in respect of Urdu medium students. The examiner who was appointed under the Petitioner was required to submit the answer books assessed by him to the Petitioner, who in turn was required to check these answer books randomly. It appears that some answer books were not submitted to the petitioner by the examiner and, therefore, the petitioner failed to moderate the answer books in accordance with the directions of the SSC Board, Kolhapur. A preliminary enquiry was conducted and the petitioner admitted that he had been negligent in performing his duties as a Moderator. The SSC Board, Kolhapur therefore, permanently debarred the petitioner from moderating or examining the answer books. By a letter dated

10.11.2000, the SSC Board, Kolhapur directed the institution to hold an enquiry against the petitioner in respect of the allegations made by it and suggested that a minor penalty be imposed on him.

3. According to the petitioner on 20.10.2001, the respondent-institution issued a notice reducing him in rank by demoting him the post of Headmaster to the post of Assistant Teacher without holding an enquiry. Aggrieved by this decision of the institution, the petitioner preferred an appeal before the School Tribunal, Kolhapur in Appeal No. 103 of 2001. An application filed by the Petitioner for stay of the impugned order was rejected. On 22.8.2005, the appeal was allowed by the School Tribunal. The Institution therefore preferred a writ petition being Writ Petition No. 7532 of 2005 in this Court. The parties signed consent terms disposing of the writ petition on 19.12.2005. Under these consent terms, in view of certain judgments the parties agreed that the respondent institution be permitted to lead evidence before the Tribunal for proving the misconduct against Respondent No. 1. The parties agreed that the difference in the salary between the post of Assistant Teacher and the Headmaster for the period commencing from the date of the order till the decision of the appeal would be paid to the petitioner. The parties thereafter appeared before the School Tribunal and an application was made on behalf of the institution to permit them to produce certain documents on record. These related to the enquiry conducted by the SSC Board, Kolhapur regarding the moderation work allotted to the petitioner. On the basis of these documents, the School Tribunal concluded that the enquiry officer appointed by the SSC Board had held the petitioner guilty of the negligence in respect of the work allotted to him. The Tribunal also recorded that the appellant i.e. the Petitioner herein had admitted that he was negligent while moderating the papers in his explanation dated 6.8.2005. The Tribunal did not accept the contention of the institution that it had conducted an enquiry in accordance with Section 4A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, (for short, "MEPS Act"). However, the Tribunal on the basis of the proceedings which were held by the enquiry officer of the SSC Board, Kolhapur held that the petitioner was not entitled to the reliefs claimed in the appeal.

4. Taking exception to the impugned judgment of the School Tribunal, Mr. Pakale, appearing for the Petitioner, submits that the Tribunal has committed a manifest error by dismissing the appeal when the management had failed to hold an enquiry as required under the MEPS Act. He submits that no chargesheet had been issued to the petitioner and therefore, it was difficult for the petitioner to defend himself as he did not know the charges which were levelled against him. He further submits that despite the consent terms being filed and an opportunity being given to the management to lead evidence before judgement it has not done so. According to him, mere reduction of the proceedings held by the enquiry officer of the SSC Board would not constitute leading of evidence. He submits that there being no chargesheet, the petitioner was gainfully prejudiced as he did not have any opportunity to put forth his own case before the Tribunal.

He further submits that the reliance placed by the School Tribunal on the enquiry proceedings is incorrect as the same has not been proved before the Tribunal.

5. Despite service on the respondent institution and the school, they are not represented.

6. The institution in the present case had not held an enquiry in accordance with the provisions of the MEPS Act and Rules framed thereunder, before imposing a punishment on the petitioner. The provisions of the MEPS Act and the Rules framed thereunder do not provide an opportunity to the management of the school to justify its action for the first time before the School Tribunal if no enquiry is held by it to prove a misconduct alleged against an employee. The School Tribunal cannot permit the management to lead evidence to prove or establish its case against the employee if no enquiry has been held. This issue has been put at rest by the judgment of the Full Bench of this Court in the case of Saindranath Jawanjal Vs. Pratibha Shikshan Sanstha and The Presiding Officer (Additional), School Tribunal, . However, in the present case, the petitioner himself had agreed in the consent terms filed on 19.12.2005 before this Court that the management should be permitted to lead evidence to prove the misconduct alleged against him. He was aware at that point of time that no chargesheet was issued to him. He was also aware that he would be prejudiced while answering the charges. Therefore, in the present case, it is necessary to proceed on the assumption that the management could have led evidence to prove the misconduct against the workman. This was so despite there being no chargesheet against the employee.

7. The only step adopted by the institution on remand was to produce certain documents. There can be no manner of doubt that mere production of documents would not absolve the management from proving the same. When the management had specifically sought permission to lead evidence in the matter it was necessary for it to produce the documents and to prove them by leading cogent evidence before the School Tribunal. This has not been done in the present case. The Tribunal has, in my view, erred by concluding that the enquiry held by the SSC Board was sufficient to indicate that the petitioner was guilty of a misconduct.

8. The SSC Board while directing the management to hold an enquiry in accordance with the MEPS Act by its letter dated 10.11.2000, had recommended that a minor penalty of stoppage of increments should be imposed on the petitioner after holding an enquiry. However, in the present case, instead of imposing a minor penalty, the institution has imposed a major penalty of reduction in rank.

9. In my opinion, the contention of Mr. Pakale that the documents have not been proved by the management by holding cogent evidence must be accepted. Once it is held that the documents have not been proved then it must further be held that there was no evidence before the Tribunal to conclude that the petitioner

had committed any misconduct. That being so, the question of reverting the petitioner as an Assistant Teacher could not have been upheld.

10. The impugned order of the School Tribunal is set aside. By the consent terms the parties have agreed that the petitioner would be entitled to the difference between the salary of an Assistant Teacher and Headmaster for the period commencing from the date of the order i.e. 19.12.2005 till the decision in the appeal. Admittedly, the petitioner has retired on 31.5.2008, after the appeal was decided and during the pendency of this writ petition. Therefore, the petitioner would be entitled to the difference in the salary between that of an Assistant Teacher and a Headmaster from the date on which he was demoted as Assistant Teacher till the date of his retirement, less any amount which may already have been paid to him under the consent terms of 19.12.2005.

11. Rule made absolute accordingly. No order as to costs.