

(2000) 02 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 776 of 1986

Ayyappa Bharamappa Kadiwal

APPELLANT

Vs

President, Local Governing Council, Arts and Commerce
College, Ambad, Dist. Jalna and Others

RESPONDENT

Date of Decision : 25-02-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 34, 417, 420

Citation : (2000) 02 BOM CK 0011

Hon'ble Judges : V.K. Barde, J

Bench : Single Bench

Advocate : S.S. Kazi for K.G. Khader, for the Appellant; M.Y. Deshmukh for Vilas Dhorde Patil and N.B. Khandare for Respondents Nos. 1 to 3, S.P. Deshmukh for P.R. Deshmukh for respondent No. 5 and S.K. Tambe, Asstt. Government Pleader, for the Respondent

Judgement

V.K. Barde, J.—The case of the petitioner is that he was appointed as teacher for the subject English in Junior College of Respondent No. 2 Institute as per the order dated 27-6-1976 and, since then, he was in continuous service. For the H.S.C. Examination of March 1985, the petitioner was appointed as Moderator for English subject by the H.S.C. and S.S.C. Board, Respondent No. 5. On 13-6-1985, the petitioner received a message from the Board that he was called in the office of the Board. He accordingly went to the office of the Board. Shri Akbar Khan, Superintendent of the Board, H.S.C. Section, placed before him the answer book of Roll No. 23611 and asked him why there was correction in the marks. The petitioner explained that in his capacity as Moderator, he reduced the marks of the student by three; and then considering that it was a border case, again increased the marks by three. However, the Superintendent forced him to give a writing as per his dictation. Because of the compulsion and pressure brought upon him, the petitioner gave the writing as directed by the Superintendent. He, therefore, mentioned that because of the pressure brought by the student and relative of the student, though he had reduced the marks by

3, again gave 35 marks. He is retracting that statement. The petitioner has contended that, as per the rules, he was entitled to reduce or increase the marks given by the examiner in his own discretion and he had acted accordingly while moderating the answer book of Roll No. 23611.

2. Respondent No. 1, the President of Respondent No. 2 - Institute, by his letter dated 1-7-1985 ordered the suspension of the petitioner on the ground of malpractices committed while working as Moderator for the said examination; and also on the ground that this fact had been published in the newspaper, which caused defamation of the institute. The petitioner was directed to submit his say within seven days. Accordingly, by his letter dated 6-7-1985, he submitted that no preliminary enquiry was held before keeping him under suspension and the allegations of malpractice committed by him were false. Thereafter, the petitioner received one more letter from the Principal, Respondent No. 3, dated 30-7-1985 and his explanation regarding the alleged malpractices was sought.

3. The petitioner by his letter dated 3-8-1985 requested Respondents Nos. 1 to 3 that he had not received any statement of allegations from the S.S.C. Board and he was not knowing the exact charges levelled against him. So, the relevant documents be supplied to him. He also sought extension of time for submitting his explanation.

4. The Secretary of the Local Governing Council by his letter dated 10-8-1985 informed the petitioner that no extension of time could be granted. The enquiry committee was formed and the petitioner was directed to nominate his nominee on the enquiry committee. The petitioner by his letter dated 21-8-1985 took the stand that the constitution of the enquiry committee was illegal and he again requested for the documents to make him able to file explanation. However, the petitioner also nominated Shri V.T. Wadje as his nominee on the enquiry committee as per his letter dated 24-8-1985.

5. The petitioner has contended that the formation of the enquiry committee was not according to Rule 36 of the Maharashtra Employees of Private Schools Rules, 1981, framed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter respectively referred to as "the said Rules" and "the said Act").

6. The petitioner has further contended that he did not receive a specific charge sheet. If he had received a specific charge sheet, then it would have been possible for him to defend his case. In the letter dated 2-9-1985, by the Convenor of the enquiry committee, there is reference to the charge framed, but that is very vague. The petitioner by his letter dated 6-9-1985 to Shri Gaikwad, Convenor of the enquiry committee, requested for supply of documents and the preliminary enquiry report and also raised his contentions regarding the formation of the enquiry committee. The petitioner requested for list of witnesses. However, the petitioner received the letter dated 7-9-1985 with Xerox copies of three letters received from the Board and nothing more. The petitioner

by his letter dated 11-9-1985 denied the vague charges and also contended that the so-called statement given by him before the Superintendent of the Board cannot be admitted in evidence. The petitioner, time and again, communicated to the enquiry committee for extension of time for proper defence and he also requested that he be allowed to engage a lawyer for his defence, because the convener of the enquiry committee was a practising lawyer.

7. On 3-11-1985, the petitioner received summary of the proceedings of the enquiry committee. It appeared that Principal Shri Hazare participated in the committee as nominee of the management; while in the previous letter addressed to the petitioner, Shri Awdhal was shown as nominee of the management. It was stated in the report that the petitioner got answers written afterwards from some of the candidates. This allegation appears to have been taken from the cyclostyled letter from the Board. This allegation was not proved. No evidence was brought before the enquiry committee with respect to this allegation. The enquiry committee relied upon the letter received from the S.S.C. Board and did not take trouble to verify the allegations. The petitioner by his letter dated 5-11-1985 submitted his say to the report of the enquiry committee and on 8-11-1985, the petitioner received the letter of termination of his services from the President, Local Governing Council.

8. Being aggrieved by this termination order, the petitioner filed appeal before the School Tribunal, Aurangabad, bearing Appeal No. 45 of 1985. However, the learned Member, School Tribunal, Aurangabad, by his judgment dated 24-7-1986, dismissed the appeal. Hence, the present writ petition.

9. The petitioner has mentioned other facts with respect to allegations made against him regarding answers inserted in the answer book for the Roll No. 23611 and has contended that no proper enquiry was held with respect to that allegation and even then, he is held guilty for the same by the disciplinary committee, the management and the School Tribunal. It was altogether illegal approach by all of them.

10. It is also contended that the SSC Board had filed criminal proceedings against him and the charge sheet was submitted in the Court of the Judicial Magistrate, First Class, Ambad; but till the date of filing of the petition, the petitioner had not received any summons and copy of the charge sheet from the learned Judicial Magistrate.

11. The petitioner has, therefore, contended that the enquiry was not properly held as per the Rules. He was not given proper opportunity to defend himself. The charges were vague. No evidence was recorded before the enquiry committee and, therefore, the order of termination is illegal. He has prayed that the order of termination be set aside; so also the judgment of the School Tribunal be set aside; and he be reinstated in service with full back wages and other service benefits.

12. On behalf of Respondents Nos. 1 to 3, the President of the Local Governing

Council, Arts and Commerce College, Ambad, where the petitioner was working, has filed affidavit in reply and it is contended that the enquiry committee was formed as per the rules. Shri Hazare was acting as member of the management, as being the Principal of the College, since beginning and it is denied that he was acting as member of the enquiry committee. The charge sheet was served upon the petitioner. The relevant documents were also supplied to him. The enquiry committee held numerous sittings and sufficient opportunity was given to the petitioner to make out his defence before the enquiry committee. The committee had recorded the statement of the petitioner; as well as of the Principal of the College, Shri Hazare on 30-9-1985. On 3-11-1985, at the time of fourth sitting of the enquiry committee, the previous reports were reviewed and the enquiry committee decided to inform the same to the petitioner and gave again seven days time to him. The written statement of Shri Wadje, the representative of the petitioner, was also recorded. The fifth and last sitting of the enquiry committee took place on 7th November, 1985 and the Committee took the decision that it should be recommended that the petitioner be discharged from service for the misdeeds committed by him. The report of the enquiry committee was placed before the local Governing Council. The Local Governing Council in its meeting dated 8th November 1985 resolved that the petitioner's services be terminated with immediate effect; and, accordingly, the termination order was issued. So, it is contended that all proper procedure was followed before issuing the order of termination.

13. It is also contended that a complaint was lodged at Ambad Police Station on 11th August 1985 against the Petitioner by the Divisional Board of S.S.C. Board - Respondent No. 5 - for offences under sections 120-B, 417, 420, 465, 471, 468, 109 and 34, all of Indian Penal Code, being Crime No. 114/1985. It is contended that as the misconduct of the petitioner was of very serious nature, his services were terminated. The punishment imposed upon him is quite legal and proper. So, writ petition be dismissed.

14. Heard the respective learned Counsel for the parties.

15. The petitioner has taken the stand that the formation of the enquiry committee was not as per rule 36 of the 1981 Rules. However, on going through the documents filed on record, especially Exhibits E and H, the annexure filed with the writ petition, it clearly indicates that the enquiry committee was of three persons; one was the representative of the institute, one was the representative of the college committee and the third was the representative of the delinquent employee. Shri Hazare, Principal of the College, was not a member of the enquiry committee, but he was the Chief Executive Officer for the enquiry committee. So, the allegations regarding formation of the enquiry committee made by the petitioner are without any basis.

16. The main contention of the petitioner is that there was no proper charge framed against him and, therefore, it was not possible for him to defend himself and I find much substance in this contention.

17. The Respondents had not served a separate charge sheet on the petitioner specifying the charge framed against him; no statement of allegation and documents along with the charge sheet were served on the petitioner. Exhibit H is the only document, which may indicate the charge framed against the petitioner; and the charge reads as follows :

Illegal acts committed at the time of examining the answer books of H.S.C. March, 1985 Examination.

18. Obviously, this charge does not explain anything. It is really a vague charge. What illegal acts were committed, is not there. With reference to which answer book the illegal activities were committed, is not there. So, on the basis of this allegation, it was not possible for the petitioner to make out his defence.

19. The Respondents have taken a stand that in response to the demand made by the petitioner, other documents were supplied to him. Those are along with Exhibit J. Exhibit J is the letter from the Respondents to the petitioner informing him that copies of the relevant documents were being supplied to him. Exhibit J-1 is the letter addressed to the Respondent - Institute by the Divisional Secretary of the S.S.C. Board dated 24-6-1985 and it mentions that the petitioner while working as a Moderator for English subject for H.S.C. March 1985 Examination, had purposely increased marks of some students and had inserted answers unauthorisedly in the answer books and thus, he committed objectionable acts and his behavior was outside the rules. It was further directed to the Institute to hold a departmental enquiry against him as per the rules. Exhibit J-2 is the so-called statement made by the petitioner and submitted to the Secretary of the SSC Board. Exhibit J-3 is again a letter from the Secretary to the Principal of Ambad College of the Institute whereby the Secretary has informed the Principal that the petitioner had admitted that he committed misconduct by increasing the marks of three students illegally and along with this letter dated 6-7-1985, the writing submitted by the petitioner (Exhibit J-2) was forwarded by the Board to the Institute.

20. If these are the documents on which Respondents Nos. 1 to 3 were relying for holding departmental enquiry against the petitioner, then it was absolutely necessary to mention in the charge that the petitioner had committed misconduct while acting as Moderator for English subject in HSC March, 1985 examination, by allowing the specifically named students to write answers in the answer books; and by specifying the names or roll numbers of the students in whose cases the petitioner had improperly increased the marks of the students. Unless and until such specific charge had been framed, it was not possible for the petitioner to make out his defence.

21. The wording of the letter from the Secretary, Exhibit J-1, is very vague. It mentions with respect to some students that illegality was committed. How anyone can understand, what is meant by some students? That may be the letter from the Secretary of the S.S.C. Board; but, then it was the duty of the

management to frame specific charge, when the petitioner was called upon to face this allegation. Even by supplying the copies of these letters to the petitioner, there was no proper compliance regarding framing of the specific charge and bringing to the notice of the delinquent petitioner what charge he had to face.

22. If the letters, Exhibits J-1 and J-3, are taken in to consideration, then it will appear that the S.S.C. Board was alleging that the petitioner had committed misconduct while examining the papers of more than one student. But, in the so-called statement of admission made by the petitioner, as per Exhibit J-2, there is reference to only one answer book, that is, of Roll No. 23611. Even if for the sake of arguments, it is accepted that this was a voluntary statement made by the petitioner, how that statement can be considered as admission given by the petitioner that he had committed misconduct with respect to answer books of more than one student and that he admitted that he had allowed the students to write the answers in the answer books by going out of way. Exhibit J-2 makes reference only with respect to the answer book of the student, whose Roll Number was 23611, wherein the petitioner has stated that even though he had tried to reduce the marks from 35 to 32, he was forced not to do so and, so, he again corrected the marks from 32 to 35. He has also made the statement that he had not accepted any money for doing this, but he had received telephone calls from the candidate and his brother-in-law. and he had done that under the pressure brought by them.

23. So, this so-called admission pertains to only one answer book and there is nothing in this admission indicating that he had allowed anybody to write answers in the answer books, which had been given to him for the purpose of moderation.

24. It is worth noting that at the time of enquiry, the petitioner had contended that he gave said admission in writing before the Board because of the pressure brought on him. So, he was denying that it was a voluntary act on his part. In such circumstances, it was necessary at the time of enquiry to bring sufficient evidence on record to show that the admission given by the petitioner was voluntary and after understanding all the circumstances. No such attempt was made by the enquiry committee. Only the so-called admission received from the S.S.C. Board was taken on record. So, practically, there was no evidence before the enquiry committee to hold that the petitioner had given such admission or that it was a voluntary admission or that the petitioner had committed actual misconduct by changing the marks in the answer book. Neither of these three aspects could be established before the enquiry committee by proper evidence. In fact, there was no evidence in this respect.

25. It does not appear that any evidence was produced before the enquiry committee that the petitioner allowed any student to write answers in the answer books when those were received by the petitioner for the purpose of moderation. The Respondents have not produced anything on record to indicate that any such

evidence was led before the enquiry committee, either by producing the original answer books by examining any witness from the S.S.C. Board, or, by examining first examiner of the answer books, or, the invigilator, who was present when the answer books were written by the candidates, or, by examining the candidates concerned.

26. When no such evidence was before the enquiry committee, in the letter dated 8-11-1985 the President of the Local Governing Council has made the statement that the petitioner had unauthorisedly allowed the students to write answers in the answer books; and on that ground, the services of the petitioner were being terminated.

27. The documents produced on record indicate that there was only one circumstance against the petitioner that he first reduced the marks of the candidate, Roll No. 23611, from 35 to 32; and then again increased those from 32 to 35. When only that much evidence was before the enquiry committee and a finding was recorded with that much evidence, on the basis of the letters received from the Secretary of the S.S.C. Board, how Respondent No. 1 came to the conclusion that the petitioner had allowed the students to write the answers in the answer books? So, this letter of termination of service is based on altogether different contentions than the allegations, which were made against the Petitioner and for which he had to face the enquiry. In such circumstances, it cannot be said that the services of the petitioner were terminated by the letter dated 8-11-1985 in consequence of the departmental enquiry held against him under the rules.

28. In this respect, the most important document is Exhibit L along with the writ petition, which is the report of the enquiry committee, submitted by Shri Gaikwad, the Convener, and copy of the same was addressed to the petitioner. This report makes reference to only one incident of increasing marks of a student, i.e. Roll No. 23611; and there is no reference to the allegations that the answers were got written in the answer books by the petitioner with respect to more than one student and the marks were given thereafter. So, the enquiry committee report does not make any reference to those allegations. However, in the order of dismissal, the reference is made to the other allegations, which were not brought before the enquiry committee and for which there was no report of the enquiry committee.

29. The learned Presiding Officer, School Tribunal, has rejected the appeal filed by the petitioner by judgment and order dated 24-7-1986. He failed to take into consideration the basic points as to whether a proper charge sheet was served on the petitioner; and as to whether there was evidence before the enquiry committee to draw the conclusion that the petitioner's behavior was objectionable while working as a moderator for the March, 1985 H.S.C. Examination. He failed to take into consideration that it was the duty of the management to place proper evidence against the petitioner before the enquiry committee. However, he has observed that the petitioner had not come before

the Court with clean hands. He has observed in his judgment,

It appears, the Appellant did not increase only three marks or decrease three marks of the student bearing Seat No. 23611 of the examination held in March 1985, but he wrote the answer book of Question No. VII on Page No. 16 of the answer book and increased 15 marks of the said student. The first information report filed by the Divisional Secretary, H.S.C, clearly shows this act of the Appellant. The certified copy of the charge sheet will also show the same thing. The record of the Board in respect of this case will also make it clear all the facts and, therefore, the Board has written confidential letter to the Management.

30. It clearly appears that the learned Presiding Officer of the School Tribunal has taken into consideration the documents, which were not before the enquiry committee. There was no charge that the petitioner had got answers written in the answer book of the student, Roll No. 23611. The F.I.R. was also not before the enquiry committee and there is no reference to the F.I.R. in any of the documents forwarded by the enquiry committee to the management or the petitioner. So, when that was not the evidence before the enquiry committee, how the School Tribunal looked into that evidence to come to the conclusion that the petitioner had not come before the Court with clean hands and that the petitioner had committed alleged misconduct? The School Tribunal was not expected to rely on the documents, which were not before the enquiry committee and which were not the subject matter of the enquiry before the enquiry committee. Thus, the Tribunal has committed grave error by referring to the documents, which were not relevant.

31. The circumstances brought on record clearly show that the so-called charge framed against the petitioner was very vague; the documents which were supplied to the petitioner in support of the charge were also very vague; there was no evidence in support of the charge; and the last act of the management, i.e., order of termination is based on altogether different allegations than the allegations which were made against the petitioner for him to face the enquiry. In such circumstances, the order of termination of service cannot be upheld. So also, the judgment and order of the School Tribunal cannot be upheld.

32. There is a reference that F.I.R. was lodged against the petitioner with respect to the misconduct committed by him while acting as Moderator. But, on the basis of the statements made at the Bar, it is clear that the proceedings were quashed by the High Court when the petitioner had moved for the quashing of the proceedings. So, nothing has come out from the complaint lodged with the police by the S.S.C. Board and, from that point of view also, the Respondents have failed to make out the case against the petitioner.

33. It is really regrettable that, when some serious charges were made against the petitioner, no proper enquiry was held against him by Respondents Nos. 1 to 3. Not only that, when the S.S.C. Board had taken the steps of filing the complaint against the petitioner with the Police, that matter was also not

properly proceeded with either by Respondents Nos. 1 to 3, or by the Board, or by the Police; and the petitioner was allowed to be let off even after such serious charges.

34. Whatever it may be, considering the provisions of the said Act and the said Rules, by which the petitioner and Respondents Nos. 1 to 3 are governed, as the provisions were not followed, the order of termination of service has to be set aside and the petitioner has to be reinstated in service.

35. The petitioner has claimed full back wages. However, there is nothing on record to indicate that the petitioner has not tried to obtain any alternate service, since the date of his dismissal. It cannot be said that the petitioner was not earning anything during the last 15 years to maintain himself and his family. The learned Counsel for the petitioner has argued that the wife of the petitioner is in service and, therefore, she is maintaining the petitioner and the family. However, it was necessary for the petitioner to show that he was not earning anything and, in the given circumstances, it is not acceptable that he was not earning anything during the last 15 years. The Respondents have taken the stand that the petitioner was taking private tuitions during this period; and, therefore, was earning his livelihood. Considering all these circumstances, I do not think that the petitioner is entitled to full back wages. In this respect, the facts of the present case are similar to the facts appearing in the decision given by the Apex Court in the matter of Management Of MCD Vs. Prem Chand Gupta and Another, , with respect to delay in disposal of the matter, not because of any fault on the part of the parties, but because of the pendency in the Court. So, taking into consideration the observations made by the Apex Court in the said judgment, I think that, from this point of view also, the petitioner is not entitled to full back wages, but he should be paid 50 per cent back wages.

36. Hence, the order of termination of service of the petitioner dated 8-11-1985 issued by Respondent No. 1 is hereby quashed and set aside. So also, the judgment and order dated 24-7-1986 of the School Tribunal, Aurangabad, in Appeal No. 45 of 1985 is set aside. The petitioner be reinstated in service with continuity of service and he be paid 50 per cent back wages within three months from the date of this Judgment.

37. Rule made absolute accordingly. There will, however, be no order as to costs.