

(2001) 06 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 1197 of 2001

Bal Shikshan Mandal and Another

APPELLANT

Vs

Poonam Rameshwar Joshi and Another

RESPONDENT

Date of Decision : 13-06-2001

Acts Referred:

Bombay University Act, 1974 — Section 42C
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 10(1), 8

Citation : (2001) 4 ALLMR 789 : (2002) 4 MhLj 848

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

**Advocate : A.H. Joshi, for the Appellant; A.D. Sugdare and N.B. Khandare,
A.G.P., for the Respondent**

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. Rule. Rule made returnable forthwith by consent.

3. The petitioners challenge the judgment and order dated 5-12-2000 passed by the School Tribunal, Solapur setting aside the order of dismissal dated 7-5-1997 issued by the petitioners against the respondent No. 1 dismissing him from services of the petitioners and further directing reinstatement of the respondent No. 1 with half backwages and continuity of services from the date of his dismissal till he is actually reinstated.

4. Though, various contentions are raised and the impugned order is sought to be assailed on various grounds, it is not necessary to address to all those grounds and suffice, to refer to only one ground i.e. failure on the part of the Tribunal to afford a proper opportunity to the management to lead further evidence in the matter in spite of the tribunal arriving at a finding that the

inquiry against the respondent No. 1 was vitiated. In that regard, the learned Advocate for the petitioners has placed reliance upon a decision of the learned Single Judge of this Court in the matter of Prahladrai Dalmia Lions College of Commerce and Economics, Bombay and Ors. v. A. M. Rangaparia and Ors. reported in 1988 Mah.L.J. 530. While interpreting Section 42 of the Bombay University Act, 1974 which deals with the jurisdiction of the College Tribunal under the said Act, it was held therein that a proper interpretation of the said section would be that the College Tribunal will have a jurisdiction to hold further enquiry if it comes to the conclusion that the enquiry held by the Enquiry Officer is vitiated on the ground of non observance of principles of natural justice. Perusal of the impugned order disclose that the order of dismissal passed against the respondent No. 1 was set aside on the ground that there was no proper opportunity afforded to the respondent No. 1 by the petitioners - management to submit his explanation as well as there was no compliance of the provisions of law contained in Rule 36 and 37 of the M.E.P.S. Rules, 1981. Those Rules deal with the procedure relating to the enquiry and requirement of adherence to the principles of natural justice while holding the enquiry. The Tribunal has held that due to non compliance of the said provisions, the enquiry has been vitiated. Once the enquiry is held to have been vitiated, obviously, the management should get further opportunity to produce evidence to prove the charges levelled against the delinquent. This is the broad principle of law which has been followed by the learned Single Judge of this court in A. M. Rangaparia's case (supra).

5. Law does not prohibit a second inquiry if for some technical or other good reasons, the first inquiry was found bad. Where the first inquiry is vitiated owing to technical defect, a second inquiry as on the same old charge can be held on merits. Even the reinstatement of the delinquent following the quashing of the reversion order based on the first inquiry, would not invalidate the second inquiry. The same rule was applied by the Apex Court in Anand Narain Shukla Vs. State of Madhya Pradesh, . Obviously, in each and every case where the first inquiry stands vitiated on technical grounds, it would not, invariably mean that the employee in each of those cases had not committed any misconduct, and therefore, it would still be open to the management to hold a fresh inquiry on the same charges of misconduct. But, as is observed by the learned Single Judge in Rangaparia's case, it would certainly amount to multiplicity of the proceedings to some extent, resulting in great hardship to the management, to obviate this situation, it would be necessary to hold that the School Tribunal will have jurisdiction to hold further inquiry if it comes to conclusion that the inquiry held by the Enquiry Officer is vitiated on the ground of non observance of any of the principles of natural justice.

6. It is then sought to be contended that there was no plea in the written statement of the petitioner reserving that right to lead further evidence in the matter, in case the inquiry was to be held as vitiated for non compliance of principles of natural justice. It is not in dispute that prior to the passing of the impugned order, the petitioners had no opportunity to know that the Tribunal

would hold that the inquiry is vitiated for non compliance of the procedural law in the matter of conduct of inquiry. Being so, merely because the petitioners had not stated in there written statement that they would be willing to lead further evidence in the matter in case the inquiry is held to have been vitiated, that by itself cannot be a justification to deny fair opportunity to the petitioners to prove their case.

7. Apparently, the Tribunal did not afford necessary opportunity to the management to produce further evidence in the matter in support of the charges alleged against the delinquent which has resulted in miscarriage of justice. Indeed, in view of the said decision in A. M. Rangaparia's case, there can be no difficulty in holding that the School Tribunal should also follow the same procedure which is required to be followed by the College Tribunal in terms of Section 42C of Bombay University Act.

8. Once, it is apparent from the records that the order of dismissal has been set aside solely on the ground of non compliance of the procedural law in relation to holding of the inquiry, the petitioners ought to have been held to be entitled to produce further evidence in the matter in support of the charges against the respondent No. 1 and the same opportunity having not been afforded to the petitioners, the impugned order cannot be sustained and is liable to be quashed and set aside and the matter remanded to the School Tribunal to afford proper opportunity to the petitioners to produce further evidence in the matter as well as to the respondent No. 1 to counter the same. The petition accordingly, succeeds and the impugned order is hereby set aside. The matter is remanded to the School Tribunal, to decide the matter afresh after affording opportunity to the parties to lead further evidence in the matter and bearing in mind the observations made hereinabove. Rule is made absolute accordingly with no order as to costs.