

(1999) 12 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 985 of 1988

Gopal Damduji Shelwatkar	Vs	APPELLANT
Gramin Uddhar Society, Kamptee and Another		RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9

Citation : (2000) 3 ALLMR 223 : (2000) 102 BOMLR 595 : (2000) 2 MhLj 786

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Heard Shri Deshpande, learned Counsel for the petitioner, Shri S.P. Palshikar, learned Counsel for respondent No. 1 and Shri A.G. Mujumdar, A.G.P. for the respondent No. 2.

2. The present Writ Petition is directed against the judgment and order dated 27th August, 1987 passed by the Presiding Officer, School Tribunal, Nagpur in Appeal No. S.T.N./30 of 1987 preferred by the petitioner against his order of termination, which came to be dismissed by the Presiding Officer, School Tribunal.

3. The petitioner was working as a Head Master in the school run by the respondent No. 1 Society. The petitioner was initially appointed as an Assistant teacher with effect from 10.7.1980 and was promoted to the post of Head Master with effect from 1.9.1982. The petitioner's services came to be terminated vide order dated 26.3.1987. Being aggrieved by the order of termination, the petitioner preferred an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the Presiding Officer, School Tribunal, Nagpur and the same came to be dismissed on 27th August, 1987. Hence the present Writ Petition.

4. The petitioner, in the present petition, has challenged the impugned judgment

of the School Tribunal as well as the order of termination passed by the respondent-Management. Shri Deshpande, the learned Counsel for the petitioner contended that the petitioner was served with the statement of allegations on 1.7.1986 by the President of the respondent No. 1 Society Shri D.S. Radke. The petitioner again was served with the statement of allegations dated 23.8.1986 by the Secretary of the respondent No. 1 Society Shri S.M. Radke. It is submitted that under the relevant Rules, the Secretary, acts as a Presenting Officer or Chief Executive Officer of the Management to prove the charges against the delinquent employee and can never be a member of the Inquiry Committee. It is contended by the learned Counsel that Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 provides for Inquiry Committee, its constitution and composition. Sub-rule (2) of Rule 36 lays down the manner of conducting inquiry; and the composition of the Inquiry Committee is set out in Sub-rule 2(b). It is contended that the Inquiry Committee to be constituted while inquiring into the alleged misconduct of the Head Master shall consist of:

- (i) one member who shall be the President of the Management;
- (ii) one member to be nominated by the Head from amongst employees of any private school; and
- (iii) one member chosen by the President from the Panel of Masters on whom State/National Award has been conferred.

5. It is contended that as the rule provides for composition of the Inquiry Committee, no change therein could be effected by the Management, which prejudicially affects the interest of the employee. It is submitted that in the instant case, the Chief Executive Officer of the Management, i.e. Secretary Shri S.M. Radke was included in the Inquiry Committee in addition to the 3 members i.e. the President, nominee of the Head and member chosen from the panel of State/National award winner Head Masters and, therefore Inquiry Committee, which was constituted for the purposes of going into the misconduct of the petitioner consisted of 4 persons instead of 3 persons, which is against the constitution of the Inquiry Committee contemplated under Sub-rule (2)(b) of Rule 36. Similarly, Secretary S.M. Radke who could not even be the member of the Inquiry Committee, came to be designated as convener of the committee which is not permissible in view of Sub-rule (2)(b) and is also not contemplated by Sub-rule (5) of Rule 36.

6. Shri Deshpande, the learned Counsel, further contended that in the instant case, the President alone shall be the convener of the Inquiry Committee constituted in view of Sub-rule (2)(b) of Rule 36 and the action of the President appointing Secretary S.M. Radke as convener of the Inquiry Committee is violative of Sub-rule (2)(b) of Rule 36 which changes the very composition of the committee and, therefore, the entire proceedings of inquiry stands vitiated.

7. In order to substantiate the contention, the learned Counsel for the petitioner placed reliance on the judgment of this Court in the case of Kankuhai

Shraaikashram Trust and Ors. v. Kamal Dattatraya Khajurkar and Ors. 1992 Mh. L.J. 216 .

8. Shri Palshikar, the learned Counsel for the respondent-management contended that in view of Sub-rule (5) of Rule 36, the President had nominated S.M. Radke as convener of the Inquiry Committee. It is contended by the learned Counsel that in the instant case, the President is competent to nominate the convener in addition to the 3 member committee contemplated under Sub-rule (2)(b) of Rule 36 in view of Sub-rule (5). It is further contended that the constitution of the committee by virtue of nomination of S.M. Radke by the President would not change the very composition of the Inquiry Committee as suggested by the petitioner and, therefore, proceedings of the Inquiry Committee cannot be said to be vitiated for want of proper constitution of the Inquiry Committee. The learned Counsel, therefore, contended that action of the President is just and proper and is not violative of Sub-rule (2)(b) of Rule 36. On the other hand, it is consistent with the provisions enumerated in Sub-rule (5) of Rule 36.

9. It is further contended by the learned Counsel that the nominee of the President i.e. S.M. Radke was not the part of the Inquiry Committee constituted to go into the misconduct of the petitioner, but was nominated only to maintain the records pertaining to the Inquiry Committee. The learned Counsel, therefore, supported the action taken by the President as well as the impugned order passed by the School Tribunal.

10. Since Shri Deshpande, the learned Counsel for the petitioner, primarily challenged the order of termination as well as the impugned order passed by the Presiding Officer, School Tribunal on the above referred ground alone, it is not necessary to consider the other challenges raised by the petitioner in the instant petition.

11. I have considered the contentions raised by the learned Counsel and perused the impugned order passed by the Presiding Officer, School Tribunal.

12. Before I consider the controversy in question, it will be appropriate to consider the relevant provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Rule 36 deals with the various aspects of Inquiry Committee. Sub-rule (1) of Rule 36 reads thus:

(1) If an employee is allegedly found to be guilty of any of the grounds specified in Sub-rule (5) of Rule 28 and the Management decides to hold an inquiry; it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such case where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

13. The aspect of Sub-rule (1) of Rule 36 has already been considered by the Division Bench of this Court in the above referred judgment relied on by the petitioner. In para 8 of the judgment, it has been observed as under:

...For this purpose, Sub-rule (1) of Rule 36 makes a distinction between an "employee" of the institution and the "Head" of that institution. The "employee" is defined under Clause (7) of Section 2 of the Act and it means a member of teaching and non-teaching staff of a recognised school. The "Head" is defined under Clause (9) of Section 2 means the person by whatever name called in charge of academic and administrative duties and functions of a school conducted by the management and recognised or deemed to be recognised under the Act and includes a Principal, Vice Principal, Head Master, Headmistress, Assistant Head Master, Assistant Head Mistress or Superintendent of the school. The two categories are separated only with a view that either of them are judged by persons appointed in Enquiry Committee, and each of the two members appointed by the management is superior to them. Insofar as an "employee" is concerned, the Chief Executive Officer, duly authorised by the management, can communicate the statement of allegations and demand his or her explanation. But in case of a "Head" who is also a Chief Executive Officer, it will be the President of the institution who is competent to communicate the statement of allegations and demand the explanation....

14. Similarly in para 9 of the above referred judgment, it has been specifically observed:

...The President of the institution alone will be competent to issue to the "Head" the statement of allegations and none else.

15. In the instant case, the inquiry was required to be instituted against the Head Master i.e. the "Head" of the institution and, therefore, in view of Sub-rule (1) of Rule 36, it was the President alone who was competent to issue the statement of allegations to the petitioner and demand from him a written explanation within 7 days from the date of receipt of the statement of allegations by him.

16. In the instant case, the statement of allegations was issued to the petitioner by the President as well as by the Secretary S.M. Radke and both have sought his written explanation. The Inquiry Committee has considered the allegations made in the statement of allegations issued by both the authorities. It is, therefore, contended that the issuance of statement of allegations by the Secretary was beyond the scope of Sub-rule (1) of Rule 36 and the act of the management is, therefore, violative of Sub-rule (1) of Rule 36.

17. Shri Palshikar, learned Counsel for the respondent No. 1 has not disputed that the Secretary had also issued statement of allegations to the petitioner and also sought his explanation in writing in addition to the President.

18. A perusal of Sub-rule (1) of Rule 36 as well as observations made by the

Division Bench of this Court in above referred judgment makes abundantly clear that, since the inquiry was contemplated against the "Head of the institution i.e. the Head Master in the instant case, the President alone was competent to issue statement of allegations to the petitioner in order to sought explanation in writing within the stipulated period from the petitioner and it is on the basis of such explanation alone, the President could have proceeded further as per Sub-rule (2) of Rule 36. However, the action on the part of the Secretary of the school issuing statement of allegations and seeking explanation from the petitioner, in my opinion, is beyond the scope of Sub-rule (1) of Rule 36 and similarly the further proceedings initiated on the basis of such explanation would also, therefore, stands vitiated.

19. In order to appreciate the second contention raised by the learned Counsel for the petitioner in regard to the constitution of the Inquiry Committee contemplated in Sub-rule (2) of Rule 36, it is necessary to consider said rule which reads thus:

(2). If the Chief Executive; Officer or the President, as the case maybe, finds that the explanation submitted by the employee, or the Head referred to in Sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say ?

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in Sub-rule (1) ?

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.

20. Sub-rule (2) of Rule 36 contemplates that if the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in Sub-rule (1) is not satisfactory, it should be placed before the Management within a stipulated period and the Management

shall decide within a stipulated period, whether an inquiry be conducted against the employee or the Head by constituting Inquiry Committee for that purpose, Sub-clause (a) of Sub-rule (2) deals with the constitution of the Inquiry Committee for the purposes of conducting inquiry against an employee and Sub-rule (2)(b) deals with the constitution of the Inquiry Committee to conduct the inquiry against the Head referred to in Sub-rule (1). In the instant case, the inquiry is in respect of Head of the institution and, therefore, we are concerned with the Inquiry Committee contemplated under Sub-rule (2)(b). Sub-rule (2)(b) contemplates three member Inquiry Committee to be constituted for the purposes of conducting the inquiry against the Head. Those are:

- (i) one member who shall be the President of the Management;
- (ii) one member to be nominated by the Head from amongst employees of any private school;
- (iii) one member chosen by the President from the Panel of Head Masters on whom State/National Award has been conferred.

21. As per Sub-rule 2(b) of Rule 36 the Inquiry Committee shall consist of only above referred 3 members and none else. It is a statutory requirement of Sub-rule (2)(b) and any change in regard to the composition of committee either by the Management or by the President would vitally affect the very composition of the Inquiry Committee as contemplated by Sub-rule (2)(b) of Rule 36. In the instant case, the act of the President nominating S.M. Radke as a convener of the Inquiry Committee, in my opinion, would change the very composition of the committee contemplated under Sub-rule (2)(b) which in fact is neither permissible in law nor the President is competent to do so. The composition of the Inquiry Committee referred to above, does not contemplate any other person other than the 3 members referred to in Sub-rule (2)(b) and, therefore, any addition to the Inquiry Committee, either by the management or by the President would change the very composition of the committee and in my opinion, is not permissible in law.

22. It is difficult for me to accept the contention raised by Shri Palshikar, learned Counsel for the respondents that the nomination has been done by the President in view of Sub-rule (5) of Rule 36. For the purposes of construing Sub-rule (5), it is necessary to consider this rule in the context of Sub-rule (2) of Rule 36. As referred to above, there are 2 independent inquiry committees contemplated under Sub-rule (2) and their composition is also given in the said rule. The composition of Inquiry Committee to conduct inquiry against an employee is given in Sub-rule 2(a).

Similarly, Sub-rule 2(b) of Rule 36 deals with the composition of the Inquiry Committee to be constituted for the purposes of holding inquiry against the Head. Sub-rule 2(b)(i) contemplates that one member shall be the President of the Management. When we consider Sub-rule (5) in the context of the provisions of Sub-rule (2), then it is evident that the word "Convener" contemplated in this

rule will have to be construed as the member nominated by the President as per Sub-rule (2)(a)(i) as the convenor of the Inquiry Committee which is constituted as per Sub-rule (2)(a) for the purposes of conducting inquiry against an employee only and it will have to be further held that the convenor of the Inquiry Committee constituted as per Sub-rule (2)(b) would be the President himself. Sub-rule (5) does not indicate that the President has an independent power to nominate the convenor of the Inquiry Committee in addition to the composition of the respective committees contemplated in Sub-rule (2) of Rule 36. Sub-rule (5), therefore contemplates that in the case of Inquiry Committee constituted for the purposes of conducting Inquiry against an employee, the convenor would be the nominee of the President as contemplated under Sub-rule 2(a)(i) and in case of Inquiry Committee constituted as per Sub-rule 2(b), the convenor will be the President himself. In that view of the matter, the contention raised by the learned Counsel for the respondent No. 1 in this regard, must fail.

23. In view of the above referred facts and circumstances and as per the relevant provisions of the Rules, the action of the Management is violative of Sub-rules (1) and (2) of Rule 36 and hence the same is bad in law and cannot be sustained.

24. The learned Counsel for the petitioner submitted that the petitioner was gainfully employed from 16.11.1987 to 30.4.1988 and during this period, the petitioner had worked as an Assistant teacher in Bhartiya Vidyalaya, Zingabai Takli and received a total salary of Rs. 7560/- and the petitioner has not earned a single paise from 1.5.1988 till today. The learned Counsel submitted that the respondents be directed to pay back wages to the petitioner from the date of his termination till today after deducting an amount of Rs. 7560/-.

25. The respondent has not pleaded that the petitioner was gainfully employed in some other school from the date of his termination till today. There is no evidence brought on record by the respondent in this regard and failed to make out a case to deviate from the normal rule for grant of back wages.

26. In these circumstances, the termination order dated 26.3.1987 as well as the impugned judgment dated 27.8.1987 passed by the School Tribunal, Nagpur in Appeal No. S.T.N./30 of 1987 are hereby quashed and set aside. The respondents are directed to reinstate the petitioner in service and pay full back wages and consequential benefits after deducting an amount of Rs. 7560/-.

27. Rule is made absolute in above terms with no order as to costs.