
(2004) 04 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 218 of 2004

Hamid Khan Nayyar

APPELLANT

Vs

Education Officer and Others

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 33(1), 35(4), 37(2)

Citation : (2004) 6 BomCR 871 : (2004) 4 MhLj 513

Hon'ble Judges : D.Y. Chandrachud, J; A.H. Joshi, J

Bench : Division Bench

Advocate : R.P. Joshi, A.M. Ghogare and P.A. Rajukar, for the Appellant; Mujumdar, A.G.P. for Respondent No. 1, M.K. Paithan, D.T. Shinde for Respondent No. 3 and R.S. Shivalkar, for the Respondent

Final Decision : Allowed

Judgement

1. Rule, returnable forthwith. Learned Counsel for the respective respondents waive service. By consent taken up for hearing and final disposal.

2. The petitioner is in the service of the Anjuman Urdu High School at Nandgaon Peth in the district of Amravati. The school is run by the Anjuman Mufid-ul-Awam Welfare Society, which is a trust registered under the Bombay Public Trust Act, 1950. The school is recognised and is in receipt of grant-in-aid from the State. The petitioner was appointed as a Head Master and his services were approved w.e.f. 1976 by the Education Officer (Secondary) Zilla Parishad Amravati. There is a serious dispute inter se amongst the trustees and members and rival groups from amongst the trust have filed respective change reports before the Charity Commissioner u/s 22 of the Bombay Public Trusts Act, 1950, which are pending. Change Report No. 391/2001 has been filed by the 3rd respondent while Change Report No. 534/2001 has been filed by the 4th respondent. According to the petitioner, Schedule I in relation to the aforesaid trust recognises inter alia the 3rd respondent as the Secretary of the Trust.

3. On 6th May, 2003 an order of suspension was passed against the petitioner by the 4th respondent. According to the petitioner, the order of suspension was signed by the 4th respondent claiming to be the Secretary of the Trust and one Sayyed Mohammad Afsar Jani claiming to be the President of the Trust. The petitioner has stated that the aforesaid Sayyed Mohammad Afsar Jani is not shown even as an ordinary member of the trust in Schedule I or in the records of the Trust. The prior approval of the Education Officer was not taken to the order of suspension as provided in Rule 33(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

4. The grievance of the petitioner is that from 6th May, 2003, until date he has received neither a show cause nor a notice for an inquiry or a statement of allegations, charge sheet or notice of any kind. The petitioner had initially instituted a suit before the Joint Civil Judge, Junior Division, Amravati in order to challenge the authority of the management to suspend him. That suit has been withdrawn whereupon these proceedings have been instituted under Article 226 of the Constitution. The Civil Court had passed an order dated 23rd June, 2003, making an interim arrangement for the appointment of an acting Head Master. However, it has been stated that the aforesaid in-charge Head Master has also been suspended by an order dated 29th October, 2003. It has been stated that Sayyed Mohammed Afsar Jani, posing himself to be the President of the Trust, has appointed one Mr. M. K. Ansari, as Head Master, though the services of the petitioner have not been terminated. In the circumstances, the order of suspension has been challenged on the ground that no prior approval was taken to the suspension. In the alternative, it has also been submitted that by and as a result of the provisions contained in Rule 37(2)(f) of the Rules, the order of suspension, in any event, stands revoked since the inquiry has not been completed within a period of 120 days.

5. In the present case affidavits have been filed by the 3rd respondent as well as by the 4th respondent. Insofar as the 3rd respondent is concerned, he admits that there have been disputes in the trust since 2001. He claims that in accordance with Schedule-I in the Public Trust Record, he still continues to work as Secretary. The 3rd respondent contends that the petitioner is a member of a group led by Syed Mohammed and one Shri Patel, by whom the petitioner has been suspended and that he himself has no connection with the order of suspension. The 4th respondent has also filed an affidavit in reply. In the additional affidavit that has been filed before the Court on 31st March, 2004, the 4th respondent has alleged that on the very day of the order of suspension, the petitioner was furnished with a statement of allegations which was forwarded by registered post, but that the postal packet came back with an endorsement "Not Claimed". According to the 4th respondent, it was the petitioner who was not cooperating in the inquiry, as a result of which the inquiry has not been completed.

6. From the material which has been placed on the record it does appear that

there are serious disputes between the trustees inter se amongst the members of the trust and that there are rival factions. The change reports submitted by the rival groups are pending consideration before the Charity Commissioner. In the present case, the first ground of challenge is that the order of suspension must stand invalidated in the absence of the prior permission of the Education Officer, This issue is not res integra but is covered by the decision of the Full Bench in Awdhesh Narayan K. Singh Vs. Adarsh Vidya Mandir Trust and Another, . The Full Bench while interpreting the provisions of Sub-rule (1) of Rules 33 and 35 laid down the following propositions.

"(i) Normally, an employee of a recognised school may be placed under suspension by the management after obtaining prior permission/approval of an authority in accordance with Sub-rule (1) of Rules 33 and 35 of the Rules;

(ii) In extraordinary circumstances and emergent situations, where an employee is alleged to be guilty of grave charges and there is reason to believe that in the event of the guilt being proved against him/her, he/she is likely to be reduced in rank or removed from service and the management decides to hold an inquiry, he/she may be placed under suspension under Sub-rule (4) of Rule 35 without obtaining prior approval of education authority;

(iii) Where an employee of a recognised school is placed under suspension with prior approval as required by Sub-rule (1) of Rules 33 and 35, Sub-rule (3) of Rule 35 will operate and subsistence allowance will be paid in accordance with the said provision;

(iv) Where an employee of a recognised school is placed under suspension without approval, Sub-rule (4) of Rule 35 will apply and subsistence allowance will be paid by the management as laid down in the said provision.

7. The decision of the Full Bench establishes that normally an employee of a recognised school can be placed under suspension only after obtaining prior permission of approval of the authority concerned as specified in Rules 33 and 35. In the present case it has been stated that an application was moved before the Education Officer on 28th March, 2003, to which there was no reply. Be that as it may, in the second proposition it has been enunciated by the Division Bench that in extraordinary circumstances and in emergent situations, where an employee is alleged to be guilty of grave charges and there is reason to believe that he will be subjected to a major penalty in the event of guilt being established he may be placed under suspension without obtaining the prior approval of the authority. In the present case, the statement of allegations has been placed on the record together with the additional affidavit dated 30th March, 2004. A perusal of the allegations would reveal that the allegations essentially relate to the period 2000-01. There is no material before the Court to indicate that there were any extraordinary circumstances or an emergent situation that warranted an order of suspension without taking recourse to the approval of the authority as contemplated in the judgment of the Full Bench. No

such circumstances of an extraordinary or emergent nature have been drawn to the attention of the Court. Nothing has been placed on the record before the Court to indicate any extraordinary or emergent circumstances between 26th March 2003 when the Education Officer is stated to have been moved and the order of suspension. The Full Bench has laid down that where an employee of a recognised school is placed under suspension without approval, Sub-rule (4) of Rule 35 will apply and the management shall be liable to pay subsistence allowance as laid down in the said provision. This direction must apply in the present case.

8. The next ground of challenge on behalf of the petitioner is with regard to Rule 37(2)(f) which provides as follows :

"Rule 37(2)(f) -- The inquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employees, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is not completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties; without prejudice to continuance of the inquiry."

9. Rule 37(2)(f) postulates that the inquiry has to be ordinarily completed within a period of 120 days from the date of the first meeting of the Committee or from the date of the suspension of an employee. The word "ordinarily" indicates that the period of 120 days is not an inflexible rule. The inquiry shall not stand vitiated upon the expiry thereof. Power has been conferred by the rule to allow the inquiry committee in "special circumstances of the case under inquiry", to extend the period for the completion of inquiry with the prior approval of the Deputy Director of Education. However, it has been spelt out that in case the inquiry is not completed within a period of 120 days or within the extended period, the employee shall cease to be under suspension and shall be deemed to have rejoined duties without prejudice to the continuance of the inquiry. In view of the provisions of this Rule, the learned counsel appearing on behalf of the petitioner has fairly stated that it is not his submission that the inquiry stands invalidated upon the expiry of 120 days. After the expiry of the period of 120 days the consequence that has been laid down in Rule 37(2)(f) in regard to the suspension necessarily comes into force. In that view of the matter, the suspension ceases to operate and the employee is deemed to have rejoined his duties without prejudice to the continuance of the inquiry. Hence, we are of the view that there is merit in the contention of the petitioner. The petitioner is entitled to the benefit of the provisions of Rule 37(2)(f). In the present case the management has not convened even the Enquiry Committee. The attention of the Court is not drawn to any steps having been taken for progressing with the Enquiry. Save and except for a bald averment there is nothing to show that the

conduct of the petitioner is the reason for the failure to hold and complete the enquiry.

10. The learned counsel appearing on behalf of the 4th respondent has made a statement before the Court that the inquiry shall be concluded within a period of 3 months from today.

11. The petition is accordingly disposed of by directing that the suspension of the petitioner shall upon the expiry of 120 days cease to be in operation; that the petitioner should be deemed to have rejoined duties and that he shall be entitled to consequential benefits that would flow out of the aforesaid direction in terms of Rule 37(2)(f). The payment of the arrears shall be the liability of the management in view of the decision of the Full Bench and shall be effected within a period of three months from today. There shall be an order in these terms. No costs.