

(2016) 11 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 11310 OF 2016

Khan Imran Khan Umar

APPELLANT

Vs

Gulshan Shikshan Prasarak Mandal

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 36(2)(a)

Citation : (2017) 1 BCR 819 : (2017) 2 MhLJ 277

Hon'ble Judges : V. Ravindra Ghuge, J.

Bench : Single Bench

Advocate : Shri N.T. Bhagat AGP, for the Respondent No. 3; Shri Deshpande Ajay S, Advocate, for the Petitioners; Shri Ali Zeeshan Zaidi, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Disposed Off

Judgement

V. Ravindra Ghuge, J. (Oral) - Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. All these Petitioners are identically placed teachers working with Respondent Nos.1 and 2/ Management. All of them have raised a common grievance while challenging the judgments of the School Tribunal, Aurangabad, all dated 30.08.2016, in Appeal Nos.39/2015, 32/2015, 31/2015, 38/2015. Though all these Petitioners have succeeded before the School Tribunal and their Appeals have been partly allowed by setting aside the orders of termination dated 16.11.2015, 19.09.2015, 19.09.2015 and 16.11.2015, respectively, the Respondent/ Management is directed to conduct a de-novo enquiry as per Rule 36(2)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "the MEPS Rules, 1981") and all the Petitioners are deemed to be placed under suspension from the dates of their termination. They are held entitled for suspension allowance strictly in accordance with the rules and their termination orders have been set aside. Even then the Petitioners are

aggrieved for the reasons which have been dealt with in this judgment.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and the learned AGP on behalf of the Respondent/ Education Officer (Secondary), Zilla Parishad, Aurangabad.

4. The Petitioners are aggrieved by the direction of the Tribunal by virtue of which the Management is permitted to reconstitute the Enquiry Committee and conduct a de-novo enquiry. It is pointed out from the impugned judgments, which have not been challenged by the Respondent/ Management in this Court, that an impostor was permitted by the Management to be a part of the Enquiry Committee, meaning to say that a person, who was not authorised to be a part of the Enquiry Committee, was permitted to impersonate as a valid member of the Enquiry Committee, who was actually a different person altogether.

5. The Petitioners were not allowed to nominate their nominees on the Enquiry Committee in accordance with the rules on the ground that they should produce "no objection" of the Education Officer and the Headmaster and only then such a nominee would be allowed to be a member of the three members Enquiry Committee. The School Tribunal has concluded that this was aimed at mounting pressure so as to restrain and preclude the Petitioners from nominating their representatives. Consequentially, as the Petitioners failed to obtain such no objection, the State Awardee teacher proceeded with the enquiry in the absence of the nominees of the Petitioners.

6. It is also pointed out that the School Tribunal has concluded that besides the State Awardee teacher, the nominee of the Management on the Enquiry Committee was an impostor. Though the Respondent/ Management has vehemently denied these contentions and though the learned Advocate for the Respondent/ Management before this Court strenuously denies that this has happened, the fact remains that the School Tribunal has arrived at a specific conclusion on this count and the Management has not challenged the impugned judgments.

7. It is in these extremely peculiar facts and circumstances of these cases that Shri Deshpande, learned Advocate for the Petitioners, notwithstanding the law laid down by the Honourable Supreme Court in paragraphs 8 and 9 of the judgment delivered in Vidya Vikas Mandal and another v. Education Officer and another, 2007(3) Mh.L.J. 801 (SC), places reliance upon the judgment of this Court in the matter of Bhagwanrao s/o Vishwanath Vyawhare v. Sau.Sunita w/o Gopinath Palve, 2008(1) Mh.L.J. 417, to contend that where the malafides and dishonesty of the Management is writ large upon being exposed, it would be extremely dangerous and risky to remit the Petitioners to the Enquiry Committee to be constituted by the Management and thereby, leave the Petitioners/ Employees to the mercy of the Management.

8. It is strenuously submitted by Shri Deshpande that the Management has decided to dispense with the services of these Petitioners by following any

strategy and as such, with the backdrop in which the enquiries have been vitiated by the School Tribunal and the factum of the Enquiry Committee being illegally constituted, directing the Petitioners to appear before such a Committee which would be newly constituted by the same Management, would be too hazardous. He, therefore, strenuously submits that considering the view taken by this Court in Bhagwanrao Vyawhare case (supra) wherein similar peculiar circumstances have been recorded, the School Tribunal can be directed to conduct a de-novo enquiry by directing the Management to lead evidence before the School Tribunal, which is not impermissible in the light of the ratio laid down by the learned Full Bench of this Court in the matter of Saindranath s/o Jagannath Jawanjal v. Pratibha Shikshan Sanstha, 2007(3) Mh.L.J. 753.

9. The learned Advocate for the Respondent/ Management, though has vehemently refuted the contentions of the Petitioners, submits that the impugned judgments have not been challenged by the Management which is prepared to conduct a de-novo enquiry. He submits that the Management has no prejudice or bias against these Petitioners. It has no antipathy towards these employees and as such, is willing to conduct a de-novo enquiry. He further submits that even if this Court directs the School Tribunal to conduct a de-novo enquiry, the Management is willing to lead evidence before the School Tribunal and since the Management has bona fide intention, it would have no difficulty if a judicial officer conducts an enquiry.

10. Paragraph 65 of the judgment delivered by the learned Full Bench of this Court in Saindranath Jawanjal case (supra) reads as under:-

"65. But this should not be understood as placing fetters on the powers of the Tribunal. It is always open to the Tribunal to exercise its powers on the peculiar facts and circumstances of each case as it deems just and necessary in the interest of justice. Take a case where the management is not in a position to hold enquiry because of the situation brought about by the employee himself making it impossible for the management to hold enquiry before taking punitive action against him, in such contingency, the School Tribunal is not powerless to permit the School management to lead evidence to prove the act of misconduct before it to support its action. This legal sanction in law is implicit in Sub-rule (b) of Rule 27 Order 41 of Civil Procedure Code which reads as "...for any other substantial cause" This clause gives wide discretion to the Tribunal, which, no doubt, is required to be exercised judiciously for the reasons to be recorded. But, exercise of such powers in every case; in a routine manner would take away the very object of the legislation meant to provide the employees security and stability of service to enable them to discharge their duties effectively and efficiently. Therefore, such power is available for being exercised only in the extremely exceptional cases and in compelling circumstances and not in a routine manner in every case."

11. The Honourable Supreme Court in Vidya Vikas Mandal (supra) has concluded in paragraphs 8 and 9 as under:-

"8. As rightly pointed out by the learned counsel for the appellants, Rule 37(6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9. In view of the order now passed by this Court, the Rule 36(2)(a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with sub-Rules (i), (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution."

12. It is settled law that if the enquiry is vitiated for any reason, the Management is to be directed to conduct a de-novo enquiry from the stage at which it was vitiated and the Tribunal as well as this Court should be extremely cautious and should refrain from issuing directions of reinstatement during the pendency of such enquiries. The law is equally well settled that if the enquiry is set aside on being vitiated, the same has to be relegated back to the Management for conducting a de-novo enquiry.

13. It cannot be ignored that if such circumstances are pointed out and are substantiated which would indicate that the directions to conduct a de-novo enquiry may not meet the ends of justice on account of certain acts or omissions and commissions committed by the Management, the Tribunal or this Court would have to ponder on the aspect as to whether, justice would be done by directing the Management to conduct an enquiry before the Tribunal itself. It requires no debate that this Court is obliged to ensure that a de-novo enquiry is not rendered farcical and the intention and object of the law is not defeated by permitting an unscrupulous Management to reduce such a de-novo enquiry into a mockery. It ought not to lead to a miscarriage of justice.

14. In the instant cases, though Shri Deshpande has vehemently contended that this is a fit case for preventing the Management from conducting a de-novo enquiry on the lines of the view taken by this Court in Bhagwanrao Vyawhare case (supra), I have not accepted the said submission for two reasons. Firstly, that the judgment of the Honourable Supreme Court in Vidya Vikas Mandal case (supra) was not cited before this Court in Bhagwanrao Vyawhare case (supra). Secondly, because the Respondent/ Management has expressed that it would prove it's bona fide by consenting to conduct a de-novo enquiry before the School Tribunal. Had the Management not been agreeable on this aspect, the submissions of Shri Deshpande in the light of Bhagwanrao Vyawhare case (supra) could have been considered in the backdrop of the fact that an impostor was permitted to sit by proxy in the enquiry posing to be that member of the Enquiry Committee who actually did not participate in the enquiry, as is the conclusion of the School Tribunal.

15. In the light of the above, the view expressed by this Court in Bhagwanrao Vyawhare case (supra) in paragraphs 5 and 6 needs to be reproduced as under:-

"5. The reference to the Full Bench was made on account of the divergence of views between the two Benches of this Court in the matter of whether evidence could be allowed to be led before the School Tribunal to supplement the respective case of the parties before it. The appellant teacher in the said case was accused of offence of rape on his student. In view of the situation that had arisen on account of allegation against the appellant in that case, his services were terminated without holding an enquiry. The appellant had challenged the said termination before the School Tribunal. The School Tribunal had set aside the termination on the ground that it was illegal as no enquiry was held against him. The Management had, therefore, sought to prove misconduct of the Appellant before the Tribunal. It is in the context of the said facts that the Full Bench held that the legal sanction to lead evidence before the School Tribunal is implicit in Sub Rule (b) of Rule 27 Order 43 of the Code of Civil Procedure which reads as "for any other substantial cause". But exercise of such power in every case in routine manner would take away the very object of the legislation to provide the employees the security and stability of service to enable them to discharge their duties effectively and efficiently. Therefore, such power is

available for exercise only in extremely exceptional cases in the compelling circumstances and not in a routine manner in every case.

6. I have given my anxious consideration to the rival contentions. It is significant to note here that the enquiry has been found to be vitiated on three counts namely; that the person competent to issue the statement of allegations i.e. the President of the Management has not issued the said statement of allegation, secondly, the constitution of the Inquiry Committee was not proper as the President was not part of the Inquiry Committee and did not act as the Convener and thirdly that the termination order has been issued by a person incompetent to issue it. The question as indicated herein should the Management be permitted to hold a de novo enquiry against the Respondent No.1. For consideration of the said question, the observations of the Full Bench in para 65, in my view, are relevant. The Full Bench has taken into consideration the judgment of the Apex Court in the matter of State of Punjab and others v. Dr. Harbhajan Singh Greasy and others (supra) [(1996) 9 SCC 322] and the Judgments cited before it and thereafter it has concluded in the manner it has done in paragraph 65 of the said judgment. The question that begs an answer is, is the present case an exceptional case to warrant a de novo enquiry into the charges levelled against the Respondent No.1. Looking to the background of the conspectus of facts prior to the issuance of the statement of allegations issued to the Respondent No.1, in my view, the course of action of allowing the petitioners to hold a de novo enquiry is not warranted in the instant case."

16. It is thus apparent that in Bhagwanrao Vyawhare case (supra), this Court has taken a view, which is, no doubt, required to be taken in the rarest of rare case and thus has prevented the Management from holding a de-novo enquiry. In the instant cases, as the Management is willing to conduct an enquiry before the School Tribunal and since the learned Full Bench of this Court has laid down the law in Saindranath Jawanjal case (supra), I find it equitable to order the conducting of a de-novo enquiry before the School Tribunal at Aurangabad.

17. In the light of the above, these Writ Petitions are partly allowed and the impugned judgments of the School Tribunal are modified only to the extent of the direction issued to the Management to conduct a fresh enquiry and to complete the said enquiry within four months. The said direction shall stand replaced by the direction that the School Tribunal shall hold an enquiry before itself.

18. As such, all the Appeals are relegated to the School Tribunal at Aurangabad on the following conditions:-

(a) The litigating sides shall appear before the School Tribunal on 16.12.2016.

(b) The charge sheets issued to these Petitioners by the Respondent/ Management shall be placed before the School Tribunal on the date of appearance.

(c) The Petitioners/ Employees would be at liberty to submit their detailed explanations to the said charges within three weeks from the date of appearance.

(d) Both the litigating sides are permitted to produce such documents on which they place reliance, before the School Tribunal within three weeks from the date of appearance.

(e) In the event, there is any controversy about any of the documents being in the custody of Jinsi Police Station, Aurangabad, the litigating sides are at liberty to file an application for production of such documents and the School Tribunal shall consider the same and if need be, issue necessary directions to the Jinsi Police Station to produce such documents for the purpose of conducting the enquiry.

(f) In the light of paragraph 9 of the Vidya Vikas Mandal judgment (supra), the Management shall deposit the entire subsistence allowance as per Rule 34 of the MEPS Rules, 1981 which mandates 50% of the gross salary for the first four months and 75% for the remaining period, within three weeks from the date of appearance before the School Tribunal, as a precondition for conducting the enquiry.

(g) If the subsistence amount as directed above is not deposited, the School Tribunal shall refuse permission to the Management to lead evidence and shall thereafter, conclude that no de-novo enquiry has been conducted.

(h) In the event, the subsistence allowance is deposited as directed above, the School Tribunal shall permit all these Petitioners to withdraw the said subsistence allowance without conditions.

(i) During the conducting of the enquiry, the Management shall continue to deposit the monthly subsistence allowance before the School Tribunal and the Petitioners shall be at liberty to withdraw the same without conditions.

(j) The litigating sides shall extend cooperation to the School Tribunal and shall refrain from seeking adjournments on unreasonable or trivial grounds.

(k) Notwithstanding the fact that the MEPS Rules, 1981 prescribe the period of four months for conducting the enquiry, I am granting SIX MONTHS time from the date of appearance, to the School Tribunal to conclude the said enquiry, as there are 04 cases.

19. Rule is made partly absolute in the above terms.