

(2015) 09 BOM CK 0274

In the Bombay High Court

Case No : Writ Petition No. 3640 of 2000

Krishnakumar Parasram Ujaone and Others

APPELLANT

Vs

The Presiding Officer, Additional School Tribunal and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

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

Citation : (2015) 09 BOM CK 0274

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : P.P. Thakre, Advocate, for the Appellant; S.S. Jachak, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—Heard Shri P.P. Thakre, learned Advocate for the petitioners, Smt. S.S. Jachak, learned Assistant Government Pleader for the respondent No. 1, Shri S.C. Mehadia, learned Advocate for the respondent Nos. 2 and 3 and Shri A.M. Deshpande, learned Assistant Government Pleader for the respondent No. 4.

2. The services of the original petitioner-Krishnakumar Parasram Ujaone were terminated by the respondent No. 2-society pursuant to the report of the enquiry committee. Shri Krishnakumar Parasram Ujaone had filed appeal before the School Tribunal challenging the order of the respondent No. 2-society terminating the services. The appeal came to be dismissed. Shri Krishnakumar Parasram Ujaone filed this petition challenging the order passed by the School Tribunal. During the pendency of the petition, Shri Krishnakumar Parasram Ujaone died and his legal representatives are brought on the record.

3. It is undisputed that Shri Krishnakumar Parasram Ujaone was appointed as Head Master of the school administered by the respondent No. 2-society after following the due procedure. Shri Krishnakumar Parasram Ujaone was earlier working in the school administered by the Zilla Parishad and when he came to be

appointed in the school administered by the respondent No. 2-society, he resigned from the employment of Zilla Parishad and joined the school administered by the respondent No. 2-society. It is undisputed that the appointment of Shri Krishnakumar Parasram Ujaone, Head Master of the school was approved by the Education Officer.

4. On 11-10-1995, the President of the respondent No. 2- society issued the communication styled as charge-sheet. According to the respondent No. 2-society, this was the statement of allegations and not charge-sheet. Shri Krishnakumar Parasram Ujaone gave reply, however, the respondent No. 2-society was not satisfied and therefore, the charge-sheet was issued on 01-11-1995 and enquiry came to be conducted and two members of the enquiry committee i.e. President of the respondent No. 2-society (convener of the enquiry committee) and State Awardee Head Master submitted the enquiry report proposing that Shri Krishnakumar Parasram Ujaone be removed from service. The respondent No. 2-society accordingly issued the termination order on 04-05-1996. Shri Krishnakumar Parasram Ujaone filed appeal before the School Tribunal challenging the termination order. The School Tribunal, by the impugned order, dismissed the appeal.

5. Shri P.P. Thakre, learned Advocate for the petitioners has submitted that the document dated 11-10-1995 is in fact charge-sheet and not the statement of allegations. It is submitted that the statement of allegations was not issued. It is submitted that the charge-sheet dated 11-10-1995 was issued by the President of the respondent No. 2-society, in contravention of the provisions of Rule 37(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the Rules of 1981"). The submission is that as per Rule 37(1) of the Rules of 1981, the charge-sheet has to be issued by the management and it cannot be issued by the President of the society. It is further submitted that the President of the society was biased against Shri Krishnakumar Parasram Ujaone which is reflected even during the the enquiry inasmuch as the President of the society had put questions to the delinquent. It is pointed out that the Secretary of the respondent No. 2-society issued the second charge-sheet on 01-11-1995, adding some more charges. The learned Advocate has submitted that the second charge-sheet could not have been issued and as the enquiry is conducted on the basis of two charge-sheets, the enquiry is vitiated and the consequential termination of services of Shri Krishnakumar Parasram Ujaone is unsustainable.

6. It is pointed out that the enquiry was fixed on 18-04-1996 for recording the statements of witnesses, however, Shri Krishnakumar Parasram Ujaone was required to attend the work entrusted to him regarding the examinations of Divisional Board and therefore, an application was moved on 17-04-1996 requesting for an adjournment on 18-04-1996, however, the adjournment was refused and two witnesses Shri Zode and Shri Uparikar were examined on 18-04-1996. It is submitted that as Shri Krishnakumar Parasram Ujaone could

not attend the enquiry on 18-04-1996, he was deprived the opportunity of cross-examining these two witnesses. It is pointed out that Shri N.Y. Turkar-the State Awardee Head Master had not signed the enquiry report initially and had submitted the letter dated 30-04-1996, stating that the enquiry report was already prepared before the meeting was held and he was not given opportunity to place on the record his views. It is submitted that the President of the respondent No. 2-society had subsequently gone to the village of Shri N.Y. Turkar and had obtained the signature on the enquiry report. In support of the submission, the learned Advocate for the petitioners has relied on the affidavit of Shri N.Y. Turkar filed on the record of the writ petition, in which it is stated that he had not initially signed the enquiry report. It is further submitted that Shri Krishnakumar Parasram Ujaone was not given the copies of daily proceedings of the enquiry committee. Relying on the averments made in the reply of the society filed before the Tribunal, it is submitted that the enquiry committee was constituted by the school committee and not by the management as required by the Rules. The findings recorded by the School Tribunal in paragraph No. 56 of the impugned order have been assailed on the ground that it was not proper on the part of the Tribunal to observe that the allegations of misappropriation made against Shri Krishnakumar Parasram Ujaone appear to be sustainable. The learned Advocate has submitted that the termination order issued by the respondent No. 2-society is illegal and has to be quashed. It is submitted that the order passed by the School Tribunal also is bad in law inasmuch as the Tribunal has not considered the challenges raised by Shri Krishnakumar Parasram Ujaone regarding the illegalities committed in the enquiry proceedings. It is submitted that the petitioners are entitled for the benefits which would have been received by Shri Krishnakumar Parasram Ujaone and the petitioners will also be entitled for the family pension.

7. Shri S.C. Mehadia, learned Advocate for the respondent Nos. 2 and 3 has submitted that the challenges raised in the petition are not substantiated by any legal submission. As far as the holding of the meeting of the enquiry committee on 18-04-1996 is concerned, the learned Advocate has pointed out from the order-sheet of 18-04-1996 the reasons because of which the enquiry was not adjourned on that date. It is submitted that the Deputy Director had granted time to the respondent No. 2-society to complete the enquiry till 30-04-1996 and looking to the time bound schedule, it was not possible to adjourn the enquiry on 18-04-1996. It is further submitted that Shri Krishnakumar Parasram Ujaone endeavoured to prolong the enquiry beyond 05-05-1996, as reflected in the order-sheet. As far as the contention of Shri Krishnakumar Parasram Ujaone regarding the letter sent by Shri N.Y. Turkar on 30-04-1996 is concerned, it is submitted that the letter was not produced before the School Tribunal and no challenge was raised before the School Tribunal relying on the letter dated 30-04-1996. It is submitted that the affidavit of Shri N.Y. Turkar is also dated 25-11-1999 and has been filed on the record of the writ petition and there is no explanation as to why Shri N.Y. Turkar was not impleaded as party to the appeal

and why such affidavit was not placed on the record of the Tribunal. It is submitted that the nominee of Shri Krishnakumar Parasram Ujaone remained absent on 30-04-1996 inspite of the knowledge that the meeting of the enquiry committee was fixed on 30-04-1996. It is submitted that the nominee of Shri Krishnakumar Parasram Ujaone could have submitted his individual report if at all he was of the view that the report of other committee members of the enquiry committee was not proper. It is prayed that the petition be dismissed with costs, maintaining the order passed by the School Tribunal and upholding the termination order.

8. The challenge raised on behalf of the petitioners relying on the provisions of Rule 37(1) of the Rules of 1981 on the ground that the charge-sheet is issued by the President of the respondent No. 2-society, is misdirected. The document dated 11-10-1995, though styled as charge-sheet, the tenor of it shows that it is statement of allegations. Rule 36(1) of the Rules of 1981 lays down that in the case of enquiry against the head of the school, the president of the management shall communicate to the head, the allegations and demand from him a written explanation. This Court in the judgment given in the case of Gopal Damduji Shelwatkar Vs. Gramin Uddhar Society, Kamptee and Another, , has dealt with the provisions of Rule 36(1) of the Rules of 1981 and has held that the statement of allegations in the case of enquiry against the head of the school has to be issued by the President of the management. The charge-sheet dated 01-11-1995 is signed by the Secretary of the respondent No. 2-Society. The employee has nowhere raised the ground that the charge-sheet is not prepared by the management as required by Rule 37(1) of the Rules of 1981. The contention on behalf of the employee is that the charge-sheet dated 11-10-1995 (which in fact is the statement of allegations) has been issued by the President of the respondent No. 2-society which is not in accordance with the rules. The employee has not been able to make out any ground pointing out violation of either Rule 36(1) or Rule 37(1) of the Rules of 1981. As recorded earlier the challenge is based on the misconception that the document dated 11-10-1995 is a charge-sheet when in fact it is the statement of allegations as is clear by its tenor.

9. As the document dated 11-10-1995 is statement of allegations, the argument that two charge-sheets are issued to the employee, is also misconceived. There is only one charge-sheet dated 01-11-1995, the earlier document dated 11-10-1995 being the statement of allegations.

10. The submission made on behalf of the employee that the refusal on the part of the enquiry committee to adjourn the enquiry on 18-04-1996, prima facie, is appealing, however, on examining the facts in details, the argument does not support the employee. The employee had sought adjournment on 18-04-1996 on the ground that he was required to attend the work entrusted to him by the Divisional Board regarding examinations. In normal course, it would have been appropriate that the enquiry committee accommodated the employee on

18-04-1996 by adjourning the enquiry for 19-04-1996. However, in the facts of the present case, it cannot be said that the refusal by the enquiry committee to adjourn the enquiry proceedings on 18-04-1996 has vitiated the enquiry. On 18-04-1996 statements of two witnesses Shri Zode and Shri Uparikar are recorded. The employee has not been able to establish on the record that as the employee could not cross-examine Shri Zode and Shri Uparikar, his defence is substantively prejudiced. The management has examined thirteen witnesses and the employee cross-examined ten witnesses. The witnesses have been examined to prove various charges. It is not the case of the employee that the charges levelled against him have been proved only on the basis of the statements of Shri Zode and Shri Uparikar. As the employee has not been able to establish any prejudice, the challenge that he is deprived of opportunity of cross-examining Shri Zode and Shri Uparikar cannot be considered in the facts of the present case.

11. The submission on behalf of the petitioners, relying on the letter alleged to have been sent by Shri N.Y. Turkar on 30-04-1996 and relying on the affidavit of Shri N.Y. Turkar filed before this Court, also cannot be accepted. The enquiry report shows the signature of Shri N.Y. Turkar and below his signature date "30-04-1996" is recorded. It goes unexplained as to why Shri N.Y. Turkar was not impleaded as party before the Tribunal and steps were not taken before the Tribunal to raise challenge in this regards and to substantiate the challenges. The Tribunal while deciding appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 has the powers to record the evidence so that the disputed questions can be adjudicated properly. The employee has not taken the opportunity to substantiate his claim. The challenges raised by the employee for the first time in the petition, involving disputed facts, cannot be considered by this Court.

12. The submission made on behalf of the petitioners that the employee was not given the copies of daily proceedings, is not supported by any provision. The Rules of 1981 do not require giving of copies of daily proceedings to the delinquent. Rule 37(2)(e) of the Rules of 1981 requires that all the proceedings of the enquiry committee shall be recorded and shall be endorsed by both the parties in token of its authenticity. It is undisputed that the employee had signed on the daily proceedings which is in conformity with the rules.

13. The submission made by the learned Advocate for the petitioners, relying on the averments in the reply filed by the management before the Tribunal, that the enquiry committee was constituted by the school committee, is misconceived. The management has stated that the enquiry committee was constituted by school management. It is not stated that the enquiry committee was constituted by school committee. As per the Rules, the enquiry committee has to be constituted by the management and it was properly constituted and no fault can be found regarding the constitution of the enquiry committee. Moreover, the employee has not raised any such challenge either before the enquiry committee or before the School Tribunal and even in the writ petition.

14. Shri P.P. Thakre, learned Advocate for the petitioners has submitted that if it is to be accepted that the charge-sheet dated 01-11-1995 is issued by the Secretary of the respondent No. 2-society, then the enquiry is vitiated as the Secretary of the respondent No. 2-society has cross-examined the witnesses. Again this submission is misdirected. The charge-sheet dated 01-11-1995 has been only signed by the Secretary of the respondent No. 2-society and the employee has not raised any ground that the charge-sheet dated 01-11-1995 has been prepared by the Secretary of the respondent No. 2-society. There is no challenge to the legality of the charge-sheet except the submission that it is issued by the President of the respondent No. 2-society. The signing of the charge-sheet by the Secretary of the respondent No. 2-society does not mean that it is not prepared by the society. In these facts, it cannot be said that only because the Secretary has cross-examined the delinquent, the enquiry is vitiated.

15. After considering the material on the record, I do not find any illegality in the order passed by the Tribunal. The petitioners have not been able to substantiate the challenges raised by the employee.

The petition is dismissed. In the circumstances, the parties to bear their own costs.