

(2009) 04 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 1347 of 2001

Ku. Sudarshani

APPELLANT

Vs

The Presiding Officer, Additional School Tribunal and Others

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 4(1), 4(4), 4(6), 4A, 4A(1)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 31, 33, 34, 35, 36

Citation : (2009) 3 BomCR 9 : (2009) 4 BOMLR 1406 : (2009) 122 FLR 567 : (2009) 4 MhLj 210

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : B.H. Shambharkar, for the Appellant; A.R. Taiwade, A.G.P. for respondent Nos. 1 and 7, R. M.Ahirrao, for the Respondent

Judgement

J.H. Bhatia, J.—Heard learned Counsel for the parties. The petitioner was, admittedly, working as Head Mistress of Savitribai Fule Vidyalaya, at Masod, dist. Wardha. The School is run by respondent No. 2-Savitribai Fule, Shikshan Prasarak Mandal. An enquiry was initiated by the Management against the present petitioner and in all twenty two charges were levelled against her. Enquiry Committee was constituted consisting of representative of Management, representative of delinquent Head Mistress and a State Awardee Head Master. After enquiry, report was submitted by said Committee. As per that report, representative of the Management on the enquiry committee held that out of twenty two charges, one charge was not proved while twenty one charges were proved. As per finding of the State Awardee Head Master, out of twenty two charges, only nine charges were proved while according to representative of the delinquent employee, no charge was proved. On the point of punishment also members of the enquiry committee could not come to any unanimous decision while representative of the Management recommended that major penalty

should be imposed, the State Awardee Head Master recommended that minor penalty should be imposed and consistent to his own finding, representative of the delinquent employee came to the conclusion that no penalty should be imposed. As such, majority of enquiry committee members had agreed that nine charges were proved. As the enquiry Committee could not prescribe any punishment unanimously, report was submitted to the Management and after looking into the report, the Management passed an order, reducing the petitioner's rank i.e. from the post of Head Mistress to the post of Assistant Teacher. That order was challenged by the petitioner before the School Tribunal in Appeal No. STN 26/1999. After hearing the parties, the School Tribunal dismissed the appeal by impugned judgment dated 31.10.2000. That order is challenged in the present petition.

2. Section 4 (6) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (For short the Act.) provides that no employee of the private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management except in accordance with the provisions of the Act and Rules made in that behalf. The penalties are classified as minor penalties and major penalties in Rule 31 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (For short the Rules.). Minor penalties are; (i) reprimand (ii) warning (iii) censure (iv) withholding of an increment for a period not exceeding one year (v) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Institution by negligence or breach of orders. The major penalties are (i) reduction in rank (ii) termination of service.

3. For inflicting the major penalties, the procedure is laid down under rules 33 to 37 of the Rules. Rule 37 (6) provides that after obtaining explanation of delinquent employee and after completion of enquiry, the enquiry committee shall communicate its findings on the charges against the employee and its decision on the basis of those findings to the Management for specific action to be taken against the employee or the Head as the case may be. It also provides that the decision of the enquiry committee shall be implemented by the Management by issuing necessary orders within seven days from the date of receipt of decision of the enquiry committee. From this, it is clear that the decision about the penalty, on the basis of the findings, has to be taken by the enquiry committee itself and that decision has to be communicated to Management. The Management has to implement that decision. The Act and the Rules do not give powers to the Management to take decision as to what punishment or penalty should be imposed on the basis of finding of the enquiry committee.

4. In the present case, as indicated above, there was no unanimity amongst the members of the enquiry committee in respect of findings as well as penalty. The representative of the Management found that twenty one charges were proved

while State Awardee Head Master held that nine charges were proved. Admittedly those nine charges were also included in the twenty one charges, which were found to be proved by representative of the Management. Therefore, it can be held that out of three members of the enquiry committee, two members were unanimous that those nine charges were proved. So it may be held that, by majority of two against one it was held by the enquiry committee that nine charges are proved. About the other charges, which were proved according to the representative of the Management, it must be held that the findings were defeated by two against one. The members of the enquiry committee also did not come to a decision about penalty, which could be given. According to representative of Management, major penalty should be given but it was not acceptable to the other two members. The State Awardee Head Master found that minor penalty should be imposed. In view of this, the Management took upon itself to decide what penalty should be imposed. Accordingly, punishment of reduction in rank from the post of Head Mistress to the Assistant Teacher was awarded but this could not have been done by the Management in view of the Rules.

5. In *Kashiram Kathane Vs. Bhartiya R.B. Damle Gram Sudhar Tatha Shikshan Prasar Society and Others*, , the Division Bench of this Court in para 6, observed as under:

6. In this case, a reading of Rule 37 (6) would show that the Committee constituted was the enquiring authority as well as the final decision making authority in the sense that the management's role was only to implement the decision of the enquiry Committee. Therefore, the role of the Committee cannot be treated as only recommendatory. Thus, the Committee really is the decision making authority who was to take evidence and adjudicate the matter. When the nature of character of the Committee is so understood, the whole proceeding must be consistent with the principles of natural justice.

From this, it is clear that the enquiry committee is not only the enquiring authority but also final decision making authority and the decision of that enquiry committee has to be implemented by the Management. The Management has no other role in the enquiry.

6. Section 4A of the Act, which is helpful in resolving the controversy involved in the matter, reads as follows:

4A. (1) Notwithstanding anything contained in subsection (6) of Section 4 or any other provisions of this Act or the rules made thereunder, where in any case of alleged misconduct or misbehaviour of a serious nature or moral turpitude of an employee-

(a) an enquiry is held by an enquiry Committee into such allegations and the Director is of the opinion that the enquiry Committee has unreasonably exonerated the employee, he may call for and examine the record and proceeding of such enquiry for the purpose of satisfying himself as to the

correctness of the decision on the basis of its findings, and may either annul, revise, modify or confirm the said decision or may direct the Enquiry Committee to make further enquiry for taking such additional evidence as they may think necessary or he may himself take or authorise any other officer not below the rank of the Education Officer to take such additional evidence; and while making an order under this clause, if the director is satisfied that the charges of serious misconduct, misbehaviour or as the case may be, moral turpitude have been substantially proved, he shall direct the Management to impose on such employee any of the penalties as specified in Sub-section (4):

Provided that, the Director shall not record any order under this Sub-section without giving the party affected thereby and the Management an opportunity of being heard.

(b) the Management has either neglected or refused to hold an enquiry against such employee in accordance with the provisions of this Act and the rules made in that behalf, the Director shall direct the Management to initiate action within thirty days from the receipt of such directions for holding enquiry into the allegation against such employee and to complete the same in accordance with such provisions and rules.

(2) Where there is a failure on the part of the Management to initiate action as directed under Clause (b) of Sub-section (1) to hold an enquiry and to complete the same within the period prescribed under the rules the Director may himself hold or direct any officer not below the rank of Education Officer to hold, such enquiry.

(3) While holding an enquiry the Director or the officer authorised by him shall follow the same procedure as is followed by the enquiry Committee under the rules made under this Act as if the Director or the officer so authorised were an Enquiry Committee for the purpose of holding such enquiry.

(4) On holding such enquiry by the Director himself or on receipt of the report of the Enquiry officer, if the Director is satisfied that the charges of serious misconduct, misbehaviour or, as the case may be, moral turpitude have been substantially proved, he shall, by an order in writing, direct the management that a penalty of dismissal, removal from service, termination of service, or as the case may be, reduction in rank as he may, in the circumstances of the case deem fit, be imposed on the employee concerned:

Provided that, no such order shall be passed by Director unless the employee and the Management concerned are given a reasonable opportunity of showing cause against the proposed order.

(5) The order of the Director under Clause (a) of Sub-section (1) or Sub-section (4) shall be binding on both the Management and the employee and the same shall be complied with by the Management within such period as may be specified by the Director.

7. From Clause (a) of Sub-section (1) of Section 4A, it becomes clear that where there are allegations of misconduct or misbehavior of serious nature by an employee and an enquiry has been held and enquiry committee has unreasonably exonerated the employee, the Director of Education may call the record and if necessary give directions to the enquiry committee to make further enquiry by taking additional evidence or he may himself take additional evidence or may direct the Education Officer to take additional evidence and if he finds that the charges of serious misconduct misbehaviour or moral turpitude have been substantially proved, he shall direct the Management to impose on such employee any of the penalties as specified in Sub-section (4). Proviso to Sub-section (4) also provide that no such order shall be passed by Director unless employee and the Management are given reasonable opportunity of showing cause against the proposed order. Sub-section (5) provides that the order passed by Director shall be binding on both, Management as well as employee and that order has to be complied with by the Management.

8. Admittedly nine charges viz. charge Nos. 2, 6 (6.2), 7 (7.1 & 7.2), 10, 11, 12, 13, 18, 21 (21.2, 21.3, 21.4, 21.5, 21.6, 21.7 and 21.8) are proved as per the majority decision and according to the opinion of representative of the Management, these charges are so serious that major penalty of reduction in rank should be awarded. In my considered opinion, when the enquiry committee could not come to any conclusion and could not decide as to what penalty should be imposed, it is a fit case where Director should invoke his powers u/s 4A of the Act and after hearing the Management as well as the employee, he shall take a decision and the penalty may be awarded. ? Learned Counsel for the parties inform that powers of the Director are delegated to the Deputy Director of Education. Learned Counsel for both the parties agree that this will be the only appropriate direction in the given circumstances. It appears that the School Tribunal did not consider this aspect and dismissed the appeal. In my considered opinion, the School Tribunal was not right in dismissing the appeal straightway without considering this legal position and, therefore, it is necessary to set aside the order passed by the Management as well as the impugned judgment passed by the School Tribunal.

9. For the aforesaid reasons, writ petition is allowed. The impugned order passed by the Management reducing the petitioner in rank i.e. from the post of Head Mistress to Assistant Teacher, is hereby set aside. The impugned judgment passed by the School Tribunal in appeal No. STN 26/1999 dated 31.10.2000 is also hereby set aside. The matter be referred to the Director of Education to take a decision about penalty to be awarded to the petitioner as per provisions of Section 4A of the Act, in the light of above observations. ? The Director/Dy. Director of Education, shall take a decision about penalty on the basis that nine charges, enumerated above, have been proved by majority of two against one by the enquiry committee. No other point shall be allowed to be raised by any of the parties before the Director/Dy. Director.

The Director/Deputy Director shall take decision within two months from the date when the parties appear before him. The parties shall appear before the Deputy Director at Nagpur on 20.04.2009.

The petitioner is presently working as Assistant Teacher in view of the penalty imposed by the Management. She shall continue to discharge her functions as such till the decision of Deputy Director and the decision of the Deputy Director shall be binding on both the parties.

Rule made absolute accordingly. No order as to costs.