

(2012) 06 BOM CK 0132

In the Bombay High Court

Case No : Letters Patent Appeal No. 200 of 2012

Late Gulabsingh Naik Bahu-Uddeshiya Shikshan and Vikas
Mangal and Another

APPELLANT

Vs

Vilas Baliram Pawar and Others

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5

Citation : (2012) 6 ALLMR 619

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : V.M. Deshpande, for the Appellant; Radhika Jaiswal Advocate for
Respondent No. 1 and Mrs. Taiwade, AGP, for the Respondent

Judgement

A.B. Chaudhari, J.—Admit. Heard finally with the consent of learned counsel for the respective parties. This appeal is directed against the judgment and order dated 12.3.2012 passed by learned Single Judge in W.P. No. 701 of 2007, by which the learned Single Judge allowed the writ petition filed by respondent no. 1 herein.

2. In support of the appeal, Mr. Deshpande, learned counsel for the appellants, forcefully relied on the decision in the case of Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, and argued that the learned Single Judge ought not to have over turned the finding recorded by the School Tribunal that the appointment of respondent no. 1/employee was not in accordance with Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, since such a preliminary issue was rightly framed by the School Tribunal and was answered accordingly in terms of the dictum in the case of Anna Pethe, supra. He further argued that the misconduct committed by respondent no. 1/ employee was of such a serious nature that the appellants ought to have been given an opportunity to prove the same either before the Tribunal or by allowing the management to proceed with the enquiry in

accordance with rules. He then argued that the learned Single Judge erred in remitting the appeal for deciding the question of back wages.

3. Per contra, Ms. Jaiswal, learned counsel for respondent no. 1, opposed the appeal and argued that the management having not held the enquiry contemplated by the rules against the employee when admittedly a stigma was cast under the termination order, no occasion for allowing the management to hold the enquiry arises. It is the management which has taken the risk of not holding the enquiry before slapping the order of termination with stigma and therefore no such permission can be granted, as claimed by the management.

4. We have perused the judgment recorded by the learned Single Judge so also the Tribunal. We have heard Mr. Deshpande as well as Ms. Jaiswal, the learned counsel for the rival parties. By termination order dated 20.6.2000 the services of the employee/ respondent no. 1 were terminated because the employee was found to have indulged into unfair practice of allowing one Janardhan to appear for Marathi paper in place of the student Ajay Jeswani from the school where the respondent no. 1 was working as a clerk. The original identity card of the student was prepared by respondent no. 1 in his hand writing. Thus, by casting stigma on respondent no. 1, by the said order his services were terminated. The termination order does not at all refer to the legality or illegality of initial appointment of respondent no. 1 nor there is any charge about it. It is thus clear that there was no dispute about the appointment of respondent no. 1, that too in accordance with Section 5 of the MEPS Act. The learned Single Judge was therefore fully justified in holding that the appeal could not have been dismissed on such a frivolous ground when the said issue did not arise at all. We, therefore, uphold the said finding recorded by the learned Single Judge. As stated earlier, the charge against respondent no. 1 was really serious and in fact the charge relates to the moral turpitude. It was essential to have the said charge tried but the appellant/management did not avail of the opportunity for claiming permission to hold enquiry. The Tribunal has a power to allow the management to hold enquiry. It is true that in exceptional cases the Tribunal can allow the management to hold enquiry. In our opinion, the charge against the respondent no. 1 being of serious nature involving moral turpitude also, the Tribunal ought to consider the issue whether the management should be allowed to hold enquiry into the charges levelled against respondent no. 1 before it; or to permit the management to hold enquiry against respondent no. 1 in accordance with law. But for finding out whether the Tribunal should give opportunity of proving misconduct before the Tribunal or for holding of enquiry by the management itself, an opportunity to oppose such permission will have to be given to respondent no. 1. In view of the above, in our opinion, the judgment of the learned Single Judge requires modification in part. Hence, we make the following order.

ORDER

(i) LPA No. 200/12 is partly allowed.

(ii) The impugned judgment and order made by the learned Single Judge is modified in part in the following terms -

(a) The order of reinstatement made by the learned Single Judge is hereby set aside.

(b) The proceedings in Appeal No. 71 of 2000 are remitted to the School Tribunal, Amravati, The appellant/management shall have an opportunity to file an application for permission to hold enquiry before the Tribunal in the appeal and the respondent no. 1 shall have an opportunity to oppose such application. The Tribunal shall then decide the said application and also the issue whether the respondent no. 1 shall be placed under suspension pending enquiry.

(c) The Tribunal shall decide the appeal and at that time shall also decide the question of reinstatement, back wages and continuity of service.

C.C. expedited.