

(2023) 11 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No.3350 Of 2007

Namdeo Nemaji Latpate

APPELLANT

Vs

Chief Executive Officer And Others

RESPONDENT

Date of Decision : 28-11-2023

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule (2)(a)(ii), 25(A), 36, 37, 37(6)(
Secondary School Code, 1998 — Rule 7(4)
Maharashtra Employees Of Private Schools (Conditions Of Services) Regulation Act, 1977 — Section 9
Indian Penal Code, 1860 — Section 34, 109, 110, 420, 468
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2023) 11 BOM CK 0020

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Prashant Bhavake, Vishwajit N. Sagare, V. S. Nimbalkar

Final Decision : Allowed

Judgement

Milind N. Jadhav, J

1. Heard Mr. Bhavake, learned Advocate for Petitioner, Mr. Sagare, learned Advocate for Respondent Nos.1 and 2 and Ms. Nimbalkar, learned AGP for Respondent Nos.5 and 6 – State.

2. This Writ Petition challenges the legality and validity of the judgment and order dated 06.03.2007 passed by the Presiding Officer, School Tribunal, Mumbai (for short 'Tribunal') in Appeal No.MUM/75/2002 filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (for short 'MPES Act, 1977') and Rules, 1981 (for short 'MPES Rules, 1981') framed thereunder dismissing Appeal of the Petitioner against the impugned order of his termination dated 19.08.2002 passed by the Respondents.

3. Briefly stated, such of the relevant facts necessary for adjudication of the Writ

Petition are as under:-

3.1. Petitioner was appointed as Assistant Teacher in the Private School i.e. Bhimjyoti Vidyalaya (i.e. Respondent No.3) on 13.06.1992. His services were terminated by Respondents namely Respondent No.1 – Chief Executive Officer of Bhimjyoti Vidyalaya on 19.08.2002 on the basis of the findings and enquiry report of the Enquiry Committee with effect from 23.09.2002. Petitioner served the Respondent No.3 – School for 10 years.

3.2. Petitioner belongs to the Nomadic Tribe – (III) 'Vanjari'.

3.3. Respondent Nos.1, 2 and 3 represent the Management of the School. They are collectively referred to as Respondents for the sake of convenience.

3.4. Respondent No.3 was set up in a backward area and therefore State Government of Maharashtra sanctioned aid to the said school with effect from the year 1994. Prior thereto payment of salary to the teachers was erratic but after the year 1994 staff members of the School sought and demanded salary to be paid as per regular pay scale.

3.5. It is Petitioner's case that he took the lead and agitated the above issue by submitting a joint representation on behalf of staff members to the Respondents for receiving full salary as per Rules and Regulations.

3.6. In the years 1997 – 1998, Government of Maharashtra sanctioned 50% grant-in-aid to Respondent No.3 – School. In the years 1998 – 1999, the grant-in-aid was initially increased to 75%, but thereafter it was increased to 100%. On learning that Respondent No.3 was receiving 100% grant-in-aid from the State Government of Maharashtra, staff members of Respondent No.3 – School once again rallied around Petitioner and they approached the Respondents with a request to consider their demand for regular payment of salary as per Rules.

3.7. According to Petitioner on 16.11.1997, a joint meeting was called by Respondents with staff members and certain arbitrary conditions were imposed upon them requiring them to work on consolidated wages for two years; that their salary would be receivable by them for the academic years 1997 – 1998, 1998 – 1999 and 50% of the salary for the academic years 1999 – 2000 and 2000 – 2001 should be returned by them to the Management; that from academic years 2001 – 2002, till the retirement of each employee the Management would be entitled to deduct 10% from their salary for retention and arrears of salary payable to all employees as per recommendations of Vth Pay Commission would be retained by the Management entirely. According to Petitioner, since the aforesaid conditions were not acceptable to the staff members, they demanded payment of their entire salary as per entitlement. The entire staff members therefore become united under the leadership of the Petitioner and made collective representation / complaint to the Management as also to the Respondent No.5 – Education Department.

3.8. Respondent No.5 – Education Department forwarded the complaint received

from the staff to the Respondents for redressal. Number of meetings were held thereafter between the parties but Respondents refused to release their regular salary. Due to this staff members resorted to agitation under the leadership of the Petitioner.

3.9. Due to the Petitioner taking lead in uniting the staff members, Respondent Nos.1 and 2 turned hostile against him and ultimately by order dated 19.05.1999 dismissed the Petitioner alongwith 7 other employees on the ground of indiscipline.

3.10. Petitioner and the 7 teachers filed Statutory Appeals before the School Tribunal against their dismissal order. During that time there was a lot of protest by the local people against the Respondents – Management of the School and one of the lady teacher namely Mrs. Usha Kamble consumed poison in the school premises in a bid to commit suicide and ultimately lost her life. Respondents – Management in view of the above incident, settled the issue in order to avoid any further complications with the Petitioner and 6 teachers and agreed for reinstatement in service. On 23.08.1999, Petitioner and 6 teachers were reinstated in service. Settlement to that effect was arrived at before the School Tribunal. It is Petitioner's case that Respondents – Management continued its hostility towards Petitioner as also the other staff members and did not give their service books to them. Hence by joint representation made by all staff members dated 09.12.2002 they demanded their respective service books from the Management. Since Management refused to give their service books to them, they approached the Respondent No.5 i.e. Education Inspector and filed complaint against the Management's refusal to give their service books to them.

3.11. In the above background, according to the Petitioner, in order to break the unity of the staff members i.e. teachers, Respondents – Management persuaded 5 teachers and made them lodge false complaints against the Petitioner before the Head Master / Secretary of the school. On 20.02.2002, a complaint was lodged against the Petitioner by 5 teachers. This complaint is at Exhibit-B, page No.35 to the Petition. The said complaint was a complaint against the Petitioner and the class IV staff members of the school. In so far as Petitioner is concerned, it is stated in the complaint that he would insult the 5 teachers, pass derogatory remarks and comment on their personal life. Major part of the complaint was against class IV staff of the school namely peons and safai kamgars. In the above background, Head Master of the school called the Petitioner and concerned teachers and tried to reconcile their differences.

3.12. However on 07.03.2002, show cause notice was issued to the Petitioner alleging many instances of indiscipline which according to the Petitioner had never taken place. According to the Petitioner, the Head Master of School was in fact forced by Respondent No.1 – Chief Executive Officer of the Management to sign the said show cause notice under duress and coercion at the residence of Respondent No.1 and thereafter it was issued to the Petitioner.

3.13. According to the Petitioner, the act of Respondent No.1 forcing the Head Master of the school to sign the show cause notice was brought to the notice of Respondent No.5 – Education Inspector by filing a report dated 29.04.2002.

3.14. A further second show cause notice dated 11.03.2002 was issued to the Petitioner alleging similar act of indiscipline against him. Both show cause notices were replied to by the Petitioner on 29.04.2002 denying the allegations made therein. Respondent – Management thereafter issued a charge-sheet under their letter dated 05.04.2002 alongwith a statement of allegations against the Petitioner which is at Exhibit-G, page No.53 of the Petition. Several charges were mentioned in the charge-sheet pertaining to the alleged behaviour on the part of Petitioner with the staff members. There are 5 charges which were stated in clause (6) which appear to be prima facie serious according to the Respondents – Management. These 5 charges against the Petitioner state that Petitioner had insulted the teachers verbally and used inappropriate language and that also if freely translated in English would suggest that Petitioner had through his words molested them. These charges are contained on page Nos.63 and 64 of the Petition and I would advert to them in my findings later.

3.15. On 16.04.2002, Petitioner filed a detailed reply to the charge-sheet however, Respondent – Management decided to hold enquiry against the Petitioner by constituting the Enquiry Committee under Rule 36 of MPES Rules, 1981. According to Petitioner, his explanation was not even placed before the Management in reply to the charge-sheet and the enquiry was ordered. On 15.06.2002, a letter was addressed to the Petitioner by the Management stating that Petitioner had lost the opportunity to co-operate with the Enquiry Committee.

3.16. The enquiry was held on 16.07.2002, 19.07.2002, 22.07.2002 and 01.08.2002. The representative of the Petitioner was pre-occupied on 01.08.2002 and addressed a letter dated 29.07.2002 requesting the Convenor of the Enquiry Committee for adjournment. The letter was delivered personally to the Respondent No.4, head of the Committee but he advised to submit the letter during enquiry on 01.08.2002. The said letter was also sent by registered post A.D. to the Convenor. However on 01.08.2002 in the absence of Petitioner's representative to represent him, the enquiry continued and was concluded in one single sitting on 01.08.2002 ex-parte without following the due process of law. The Enquiry Committee submitted its final report dated 16.08.2002, pursuant to which termination order dated 19.08.2002 was issued and services of Petitioner were terminated with effect from 23.08.2002.

3.17. Petitioner filed Statutory Appeal bearing No.MUM/75/2002 against the order of termination before the School Tribunal. In the meanwhile, Officers of the Anti Corruption Bureau raided the office of Respondent No.3 – School and residence of Respondent Nos.1 and 2 and seized incriminating material during the raid and lodged criminal case bearing case No.61 of 2002 under Sections 420, 468, 34 read with Section 109 of the Indian Penal Code, 1860 and Sections

13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in respect of offences of cheating, forgery and criminal misconduct. In view of the above, the Deputy Director of Education by exercising power vested in him under Rule 7(4) of the Secondary School Code, 1998 withdrew the recognition granted to the Respondent No.3 – School with effect from June, 2003 by passing order dated 15.02.2003. In view of this Respondent No.3 – School ceased to be 'school' in existence which order has been confirmed and upheld by this Court in its order dated 26.06.2003 passed in Writ Petition No.3838 of 2003 and by further order dated 28.07.2003 passed in Letters Patent Appeal No.87 of 2003 which was filed by Respondent Nos.1 and 2. As a result of this all teaching and non-teaching staff employed in the Respondent No.3 were absorbed in other schools by the Education Department as per provisions under Rule 25(A) of the MPES Rules, 1981. Respondents – Management challenged this action of Education Department also by filing a fresh Writ Petition being Writ Petition No.366 of 2005 in this Court which was consequentially dismissed by this Court by order dated 28.03.2005. This Court observed that Government had taken the necessary steps which it had to take to safeguard the interest of teachers.

3.18. Statutory Appeal No.75 of 2002 filed by the Petitioner was accordingly amended by the Petitioner. The amendment was allowed by the School Tribunal was unsuccessfully challenged by the Respondents – Management in this Court by filing Writ Petition No.2361 of 2005. The Letters Patent Appeal against the order of dismissal of Writ Petition was also unsuccessful. The amendment sought by the Petitioner was to the effect that he be declared as surplus teacher under the provisions of Rule 25(A) of MPES Rules, 1981 and absorbed in other aided schools.

3.19. By judgment and order dated 06.03.2007, the Presiding Officer of School Tribunal, Mumbai dismissed the Appeal and upheld the decision and findings of the Enquiry Committee and held that the Appeal was without merits and deserved dismissal. Hence being aggrieved, the Petitioner is before this Court in the present Writ Petition. Rule was issued on 13.07.2005.

4. Mr. Bhavake, learned Advocate appearing for the Petitioner at the outset would submit that enquiry proceedings before the Enquiry Officer were vitiated and in complete violation of the principles of natural justice. He would submit that the entire enquiry was completed before the Enquiry Committee in one day in the absence of the representative of the Petitioner and is admittedly an ex-parte decision. He would submit that before the Enquiry Committee the resolution of the School Committee recommending enquiry against the Petitioner has not been submitted. In that view of the matter, it is clear that the School Committee was not in existence in the Respondent No.3 – School and therefore all subsequent actions are rendered illegal and infructuous. He would submit that in the enquiry proceedings the list of Management witnesses were not given to the Petitioner and this is in violation of the mandatory requirement of sub Rule (2)(a)(ii) of Rule 37 of the MPES Rules, 1981. He would submit that the most critical and

crucial deposition of witness No.1 i.e. Head Master of the school was not considered at all before giving the final recommendations by the Enquiry Committee. He would submit that the Head Master who was witness No.1 of the Management had in fact deposed against the coercive actions of the Management with respect to his signature having been obtained by force on the show cause notice issued to the Petitioner. He would submit that there is complete violation of the procedure prescribed under Rule 37(6) of the MPES Rules, 1981 in the present case in as much as the decision of the Enquiry Committee taken on 01.08.2002 is in violation of the principles of natural justice and ex-parte.

5. He would next submit that the timeline in the present case would clearly show that Respondent – Management has favoured the 5 teachers in ensuring their accommodation at / in an alternative school pursuant to withdrawal of recognition and subsequent closure of Respondent No.3 – School. He would submit that the alleged charges contained in the charge-sheet in clause (6) thereof, inter alia, pertaining to molestation of the 5 teachers are cursorily framed and would show that none of these charges stand proved against the Petitioner in the enquiry. In reply and response to the charge-sheet the Petitioner has however not only refuted the charges but has given adequate explanation as to how Petitioner has being victimised by the Respondents – Management of the School. He has taken me through the entire timeline from the date of appointment of Petitioner till the filing of the present Petition and would submit that what transpired before the Enquiry Committee and what is reproduced in the Enquiry Committee report at Exhibit-U, page No.122 of the Petition are two completely different issues. He would submit that on reading Exhibit-U, it would appear that each and every charge of dereliction in duty, abuse and / or behavioural issue levelled against the Petitioner appears to have been allegedly proved but considering the fact that the entire enquiry was completed in one day on 01.08.2002, it is impossible to come to the above conclusion. He would therefore submit that the enquiry report which was presented on 16.08.2002 to the Respondents – Management by Enquiry Committee recommending termination of the Petitioner is a sham and concocted report which is prepared without any effective adjudication. Hence he would submit that the Petitioner has been clearly victimised in the present case. He has urged the Court to set aside the impugned order passed by the School Tribunal dated 06.03.2007 and restore parity to the Petitioner as teacher. Finally, Mr. Bhavake would submit that considering that the Respondent No.3 – School is no more in existence, in the interest of justice, the impugned judgment and order passed by School Tribunal be set aside and the name of the Petitioner be directed to be placed on the list of surplus teacher under Rule 25(A) of the MPES Rules, 1981 for absorbing him in other aided schools as per his turn. He would further conclude by urging the Court that in the case of Petitioner, continuity of service may be allowed so that he may be entitled to retirement benefits.

6. PER CONTRA Mr. Sagare, learned Advocate appearing for Respondent Nos.1 and 2 i.e. Management of the School has vehemently objected to the reliefs

prayed for in the Petition and grounds stated therein. He would submit that enquiry report by the Enquiry Committee has been comprehensively upheld by the School Tribunal. When read it clearly shows that the Petitioner has been indicted on several grounds of misdemeanor, issues relating to molestation, etc. as appearing therein. He would submit that Petitioner is guilty of repeated misbehaviour which is highlighted in the charges levelled against the Petitioner and therefore on considering the same, the School Tribunal has appropriately accepted it and upheld the termination of the Petitioner. He has drawn my attention to the impugned judgment passed on 06.03.2007 by the School Tribunal and issues framed therein and would submit that each and every issue has been considered by the School Tribunal and Petitioner is found guilty of charges of misconduct, moral turpitude, harassment and exploitation of his colleagues and therefore steps taken by the Respondents – Management for terminating his service has been upheld. He would submit that if it is Petitioner's case that he was agitating and espousing the cause of all staff members against the Management then it is incomprehensible to think that some lady teachers would make false allegations against his indecent behaviour against them. He would submit that charge-sheet issued to the Petitioner is a detailed charge-sheet alongwith charges and proof of the said charges. According to him, the said charges cannot be called as vague and insufficient and therefore mere denial of the Petitioner of the said charges cannot come to the aid of the Petitioner. He would further submit that the impugned judgment and order of the School Tribunal deserves to be accepted by this Court and upheld in the interest of justice.

7. I have heard Mr. Bhavake, learned Advocate for Petitioner, Mr. Sagare, learned Advocate for Respondent Nos.1 and 2 – School Management and Ms. Nimbalkar, learned AGP appearing for Respondent – State and with their able assistance, perused the charge-sheet at Exhibit-U, page No.122, the impugned judgment of the School Tribunal and pleadings in the case. Submissions made by the Advocates have received due consideration of the Court.

8. It is seen that the charge-sheet can be categorised into two parts. First part pertains to indisciplined behaviour of the Petitioner alleged by the Management against staff members and second part pertains to the charges levelled by the 5 teachers of Petitioner having inappropriately behaved with them. Perusal of all the charges reveal one thing namely that all interactions of the Petitioner in so far the charges are concerned, are on the basis of verbal interaction only. In so far as charges levelled by the 5 lady teachers are concerned, they are contained in clause (6) of the charge-sheet and are explained / dealt with in greater detail in clause (2) of the enquiry report. The Enquiry Committee report is at Exhibit – U, page No.122 of the Petition and I have perused the same. The major part of discussion in the Enquiry Committee report is with regard to attendance of the Petitioner as well as attendance of Management and its representative on the 4 dates of hearing before the Enquiry Committee. Coming to the charge with respect to misbehaviour of the Petitioner and more specifically with respect to his

inappropriate behaviour, molestation contained on internal page No.17 of the Enquiry Committee report it is seen that the Petitioner has been indicted on the basis of complaint given by 5 teachers to the Management and report given by Respondent No.1 thereon which was placed before the Enquiry Committee. It is stated in the said Enquiry Committee report that the Head Master is a responsible person and once he gives report then the same will have to be believed as true and correct. What I see from the charges which have been dealt with extensively by the Enquiry Committee is that the 5 teachers had complained about the Petitioner having abused them and therefore they had lodged Crime No.196 of 2002 under Section 110 against him in Pant Nagar Police Station at Ghatkopar. In that regard, the Petitioner was fined an amount of Rs.1,200/- which was paid by the Petitioner. On the basis of this, conclusion has been arrived at internal page No.18 by the Enquiry Committee that Petitioner has molested 4 lady teachers. There are 5 specific charges levelled against the Petitioner by 5 teachers, 4 lady teachers and one male teacher for using inappropriate language. However on noting their deposition before the Enquiry Committee which was completed within one day of the sitting of the Enquiry Committee on 01.08.2002 it is seen that certain inappropriate things have been recorded by the witnesses of the Management. However what is crucial to be noted is fact that the Petitioner has been denied the opportunity to cross-examine the Management witness on the allegations.

9. It clearly appears that Respondent – Management was in a great hurry to complete the hearing before the Enquiry Committee and considering the above timeline it is seen that the Respondent – Management has been successful in ensuring that Petitioner was not given adequate opportunity. That apart, it is clear that enquiry before the Enquiry Committee is completely vitiated as the principles of natural justice have been clearly violated in the present case. The timeline above clearly shows that Petitioner has been victimised by the Respondent – Management of Respondent No.3 – School. It is seen that at the time of hearing on the third date of hearing before the Enquiry Committee the file belonging to the Petitioner which was given to him by the Convenor of the Enquiry Committee was surreptitiously taken away by one Ms. Priti Karbhari Garge, the daughter of Respondent No.1 who was present and despite request made to her she did not return the said file to the Petitioner. The Petitioner had to file a complaint letter dated 19.07.2002 with the Convenor of the Enquiry Committee and only thereafter the Convenor noted the above incident and agreed to give a fresh set of xerox papers in the file which were given to the Petitioner on 22.07.2002. It is seen that immediately thereafter within 8 days on 01.08.2002, the entire enquiry was concluded ex-parte. The above incident clearly shows that not only the enquiry was ex-parte but Respondent No.4 – Convenor of the Enquiry Committee constituted to hold the enquiry against the Petitioner has not followed the principles of natural justice as also the procedure of enquiry as set out under Section 37 of MPES Act, 1977 and MPES Rules, 1981. Petitioner was not given any opportunity to prepare nor cross the witnesses of

the Management.

10. On the basis of the above observations and findings, I have no reason to conclude otherwise then raising serious doubt on the passing of the impugned judgment by School Tribunal while considering the Enquiry Report. Infact in paragraph No.10 of the impugned judgment the School Tribunal has clearly stated that despite giving intimation to the representative of the Petitioner, he remained absent and did not cross-examine and defend the charges faced by the Petitioner and therefore for this reason the enquiry proceedings cannot be termed to be vitiated. This finding in paragraph No.10 is not only arbitrary and high handed in the facts of the present case but a clear attempt to support the illegality of the Respondents – Management of Respondent No.3 – School. It has been documented and has come on record that the advance notice of unavailability of the representative of Petitioner was given to the Convenor of the Enquiry Committee in writing. It is borne out from the record that on 01.08.2002, the representative of the Petitioner was unavailable and therefore in such a case it was all the more reason for the Enquiry Committee to have considered the said Application. However, School Tribunal has completely glossed over the above fact and held that the Petitioner has not cross-examined the witnesses of the Management who have supported the allegations of the Management. Such a finding cannot be countenanced. The findings returned in paragraph No.10 of the judgment of School Tribunal are perverse and deserve to be quashed and set aside. A complete one sided enquiry has been conducted and wrongly upheld by the School Tribunal. For using temperate language the Petitioner has already been fined monetarily for insulting the 4 lady teachers. Considering the entire material evidence on record, it is clear that enquiry held by the Enquiry Committee is completely vitiated and Enquiry Committee report cannot be accepted as gospel truth. The Enquiry Committee report is quashed and set aside. Consequentially the termination order dated 19.05.1999 passed by Respondents – Management is also quashed and set aside. In view of the above observations and findings, the impugned judgment dated 06.03.2007 passed by the School Tribunal, Mumbai is quashed and set aside.

11. However, since Petitioner has not worked as Assistant Teacher during the date from which he was terminated till today, it is directed that he will not be entitled to any wages / allowances for that period on the principle of no work no pay. However for the purpose of continuity of service, Petitioner's service for the said period from the date of his termination till the date of this order shall be counted notionally for the purpose of his promotion, absorption and retirement benefits as may be applicable to him. Since Respondent No.3 - School, has been closed down and not in existence Respondent No.5 – Education Inspector is directed to include and register the name of the Petitioner as a surplus teacher in the register maintained by the Education Inspector, Brihanmumbai, North Zone under Rule 25(A) of MPES Rules, 1981 for absorption of the Petitioner in any other aided school as and when the vacancy would arise and until then name of the Petitioner shall be placed on the waiting list maintained by the Respondent

No.5. Needless to state that from date of this order, Petitioner shall be entitled to all such benefits of wages / allowances in accordance with law payable to surplus teacher on the waiting list.

12. With the above directions, Writ Petition is allowed.