
(2016) 01 BOM CK 0102

In the Bombay High Court

Case No : Letters Patent Appeal No. 107 of 2007 in Writ Petition No. 2616 of 1996 and Letters Patent Appeal No. 115 of 2007 in Writ Petition No. 2616 of 1996

P.M. Ruikar Trust Yavatmal and Others

APPELLANT

Vs

Punjaram and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 22(ii)

Citation : (2016) 2 AIRBomR 459 : (2016) 2 BCR 369 : (2016) 2 MhLJ 783

Hon'ble Judges : B.R. Gavai and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : U.S. Dastane, Advocate, for the Appellant; R.S. Parsodkar, Vikas Kulsange and D.A. Mahajan, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—1. These two appeals are filed by the employer as well as the employee. L.P.A. No. 107/07 is filed by the employer Trust being aggrieved by the judgment and order passed by the learned Single Judge dated 21.12.2006 in Writ Petition No. 2616/96, thereby allowing the appeal filed by the employee, setting aside the termination and granting reinstatement with continuity and 25% of the back wages from the date of his termination.

2. The employee has filed L.P.A. No. 115/07 being aggrieved by the denial of 75% of the back wages and also some of the findings as recorded by the learned Single Judge which according to him, are against him. For the convenience, the parties hereinafter are referred to as "the employer" and "the employee".

3. The employee came to be appointed as Headmaster on 9.7.1983. He was confirmed on the said post from 1987. The appointment of the employee as Headmaster was approved by the Education Officer. The School was initially run on no-grants basis. However, it started getting grants from 1991-1992. The

employer decided to conduct an enquiry against the employee and as such, by a resolution passed by the management, his services came to be suspended from 2.1.1993. At the conclusion of the departmental enquiry, vide the order dated 30.5.1993 the services of the employee were terminated. Being aggrieved thereby, the employee filed an appeal before the learned School Tribunal, Amravati being Appeal No. 97/93. The appeal was dismissed. Being aggrieved thereby, a Writ Petition was filed before the learned Single Judge. The learned Single Judge by the impugned order allowed the appeal and passed an order of reinstatement with continuity and 25% of back wages. Being aggrieved thereby, the aforesaid two appeals.

4. Shri U.S. Dastane, learned Counsel for the appellant employer, submits that the learned Single Judge has erred in holding that it was necessary for the President to have recorded his dissatisfaction with regard to the written explanation submitted by the employee and that such non-satisfaction ought to have been forwarded to the management. The learned Counsel further submits that the finding of the learned Single Judge that since the management had already taken a decision on 18.12.1992 to hold the departmental enquiry against the employee and that since the President was party to the said decision, he had disqualified himself from participating in the further proceedings, is also not sustainable. He submits that the learned Single Judge while arriving at the said finding has failed to take into consideration the provisions of Rule 33 of the said Rules. The learned Counsel further submits that the learned Single Judge has further erred in holding that appointing Shri Ballal, who was an award winning teacher was not in accordance with law, since he was not on panel maintained by the Education Officer. It is submitted that no such panel is maintained by the Education Officer and as such, the requirement is only to have a third person on a Committee, who is an award winner. The learned Counsel further submits that the learned Single Judge has also erred in holding that prejudice was caused to the employee, inasmuch as he was denied a legal assistance. The learned Counsel submits that unless there is a provision in the relevant Rules which permits a legal assistance to be provided, the legal assistance cannot be provided to an employee in the departmental proceedings.

5. The learned Counsel in this respect relies on the judgments of the Apex Court in the case of N. Kalindi and others vs. M/s. Tata Locomotive and Engineering Co. Ltd., Jamshedpur reported in , AIR 1960 SC 914(1), D.G. Railway Protection Force and others vs. K. Raghuram Babu reported in , (2008) 4 SCC 406 and National Seeds Corporation Limited vs. K.V. Rama Reddy reported in , (2006) 11 SCC 645.

6. Per contra, Shri R.S. Parsodkar, learned Counsel for the employee, submits that the learned Single Judge has erred in holding that no prejudice was caused to the employee by not forwarding him a copy of the findings on the charges by the Enquiry Committee. The learned Counsel further submits that the learned Single Judge has also erred in holding that no prejudice was caused to the

employee even if the findings of all the members of the Enquiry Committee were not made available to him. The learned Counsel in this respect relies on the judgment of the Apex Court in the case of Vidya Vikas Mandal and another vs. The Education Officer & another reported in , 2007(2) ALL MR 461. The learned Counsel further submits that the learned Single Judge has also erred in holding that since the enquiry was vitiated, it was not necessary to go into the merits of the matter. The learned Counsel in this respect relies on the judgment of the Apex Court in the case of Anant R. Kulkarni vs. Y.P. Education Society and others reported in , (2013) 6 SCC 515.

7. The learned Single Judge has found it not necessary to go into the merits of the allegations, inasmuch as the learned Single Judge was of the view that the appeal deserves to be allowed on the ground of violations of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the said Rules"). As such, we also do not find it necessary to go into the merits of the allegations of misconduct, inasmuch as we are also of the considered view that the appeal can be decided on the merits of the interpretation of the provisions of the said Rules, as has been done by the learned Single Judge.

8. With the assistance of the learned Counsel for the parties, we have examined the material on record. The undisputed factual position is thus:--

"That on the basis of the allegations made against the petitioner/employee, the management of the employer had held a meeting on 18.12.1992 and in that meeting the report given by the Chief Executive Officer was considered and it was resolved that since prima facie the petitioner had committed misconduct punishable with severe punishment, an enquiry should be conducted against him and it was also resolved to suspend him with effect from 2.1.1993. Accordingly, on 29.1.1993 a communication was sent to the employee along with draft charges for indiscipline and misconduct in respect of which enquiry was decided to be conducted. Not only that, said communication also includes the Statement of Allegations as well as List of Documents relied upon and the List of Witnesses, through whom the charges were to be proved. Employee was given seven days" time to file his reply in defence and it was also specified that the enquiry would be restricted only to the charges not acceptable to him. It was further informed to him that if no reply in writing was received, ex-parte enquiry would begin. Undisputedly, in response to the communication dated 29.1.1993, an explanation was submitted by the employee. In the meeting of the management dated 18.2.1993 a resolution was passed by the management to the effect that the explanation of the employee was considered suitably and it was decided to appoint Enquiry Committee as per Rule 36 of the Rules. The Resolution further states that the Enquiry Committee was also to consist of Shri Suresh Shankarrao Ballal, the Headmaster of Samarth High School as a member, on whom State/National award has been conferred. The employee named one Shri Pandurang Krishnarao Tonge as the nominee of the employee. Since it was an enquiry in

case of a head, a third member is required to be the President of the management. It further appears that thereafter an application was made by the employee to permit him to engage the services of a lawyer to assist him. The said application was rejected on 30.3.1993. Thereafter, additional charge-sheet was also served upon the employee on 9.3.1993 in view of the resolution of the management dated 8.3.1993. The employee replied to it on 15.3.1993. The explanation submitted by the employee was received by President on 20.3.1993 and it was considered by the Managing Committee on 21.3.1993 in which the management found the reply to be not satisfactory and hence, decided to forward the same to Enquiry Committee already constituted. Thereafter it appears that the enquiry proceeded in absence of the employee, as he chose not to appear. The Enquiry Committee submitted its summary of the proceedings as required under sub-rule (4) of Rule 37, which were sent to the employee on 10.5.1993 and which were received by him on 14.5.1993. Employee submitted his explanation on 18.5.1993 as required under sub-rule (5) of the said Rules. Upon completion of the enquiry, the Convenor communicated the findings of the Enquiry Committee to the management on 26.5.1993. The management passed a Resolution to terminate the services of the petitioner on 29.5.1993 and accordingly, the termination order was issued by the President of the management on 30.5.1993 which was served on the employee on 31.5.1993."

9. The learned Single Judge has reproduced the provisions of Rules 36 & 37 of the Rules in entirety. The decision in the present case will have to be on the basis of the interpretation of the Rules. The learned Single Judge has also reproduced the law as laid down by the Apex Court in the case of *State Bank of Patiala vs. S.K. Sharma* reported in , AIR 1996 SC 1669, which elaborately considers the legal position with regard to the departmental enquiry. Their Lordships of the Apex Court in the said case have held that the Regulations which are of substantive nature have to be complied with and in case of said provisions the theory of substantial compliance would not be available. Their Lordships have further held that the provisions which are of fundamental nature are required to be complied with and in such cases the theory of substantial compliance would not be available. Further, it has been held that in respect of procedural provisions other than of fundamental nature, the theory of substantial compliance would be available and in such cases, the test of prejudice would be a relevant test.

10. The learned Single Judge in paragraph No. 13 has observed that the management had already resolved on 18.12.1992 itself, to hold departmental enquiry against the petitioner in which meeting the President was also present and, therefore, had disqualified himself to perform the duty under Rule 36. It appears that the provisions of Rule 33 were not brought to the notice of the learned Single Judge by either of the parties. It will be relevant to refer to sub-rule (1) of Rule 33 of the said Rules, which reads thus:--

"33. Procedure for inflicting major penalties:--

(1) If an employee is alleged to be guilty of any of the grounds specified in sub-

rule (5) of rule 28 and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employees under suspension and if it decided to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such orders.

(2) "

It could thus clearly be seen that if an employee is alleged to be guilty and if there are reasons to believe that in the event of guilt being proved against him, he is likely to be reduced in rank or removed from service, the management is required to decide whether it will hold an enquiry and is also required to decide as to whether it will place the employee under suspension. Only after the management takes such decision to suspend the employee, it can authorize the Chief Executive Officer to do so, after obtaining permission of the Education Officer. It can thus clearly be seen that before deciding to hold a departmental enquiry against an employee and before deciding to put him under suspension, the management is first required to take a decision in that regard. The decision of the management dated 18.12.1992 is taken in view of the provisions of sub-rule (1) of Rule 33 of the said Rules. When a law itself requires the management to first take a decision as to whether it decides to hold an enquiry against an employee when there are reasons to believe that in the event of guilt being proved against him, he is likely to be reduced in rank or removed from service, the management is bound to follow the said provision. In that view of the matter, we find that the finding recorded by the learned Single Judge to the effect that since the management had taken a decision on 18.12.1992 to hold departmental enquiry against the employee and since the President was party to that decision, he had disqualified himself to perform the duty under Rule 36(1), would not be sustainable in law.

11. The next ground on which the learned Single Judge has found the departmental enquiry to be vitiated is that the President of the management had not recorded his dissatisfaction to the explanation of the employee dated 19.1.1993 and also not forwarded his dissatisfaction to the management and as such, there is non-compliance with the provisions of Rule 36(2) of the said Rules.

12. The perusal of sub-rule (2) of Rule 36 would reveal that after the explanation is received from an employee or a head under sub-rule (1) of Rule 36 and if the Chief Executive Officer or the President as the case may be finds such explanation not to be satisfactory, he is required to place the same before the

management within 15 days from the date of receipt of explanation. In the present case, undisputedly, prior to calling the explanation of the employee, the President had while communicating the decision to hold enquiry against employee, not only forwarded draft charge-sheet but also statement of allegations, the material sought to be used against him in respect of each of the allegations and also the names of the witnesses proposed to be examined. An explanation to the said communication dated 29.1.1993 was given on 9.2.1993. After receipt of such explanation, if the President finds that the explanation of the employee is not satisfactory, the only thing that he is required in law, is to place it before the management within 15 days from the date of receipt of explanation. Thereafter, the management is required to decide within 15 days whether an enquiry is to be conducted against an employee and only after such a decision is taken, the further proceedings of the enquiry would commence. It could thus be seen that if the explanation of the employee is not found to be satisfactory, the only requirement which the President or Chief Executive Officer is required to comply is to place the same before the management within 15 days. If the view of the learned Single Judge is to be accepted, the rule has to be read by adding certain provisions in the said rule. We find that if the interpretation as placed by the learned Single Judge is to be accepted, sub-rule (2) will have to be read by adding the words which are emboldened to the said provision, which read as under:--

"36(2). If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, the President or the Chief Executive Officer shall record his reasons for dissatisfaction in writing and he shall place the explanation and his reasons for dissatisfaction before the Management within fifteen days from the date of receipt of the explanation. "

We are of the considered view that while interpreting a statutory provision, it will not be permissible for the Court to add the words to the provision. It is also not a case that the rule is ambiguous in nature and so as to save it, it is necessary to read down the same. The test of prejudice applied by the learned Single Judge with regard to the said Rules also, in our view, is not correct. The President is not required to communicate the reasons for his dissatisfaction to the employee, against which an employee has a right to make a representation to management or so. Upon plain and literal interpretation of the Rules, the only thing that the President or the Chief Executive Officer is required to do after he finds the explanation of the employee to be not satisfactory, is to place the same before the management. In that view of the matter, we find that the finding given by the learned Single judge in that regard is also not tenable.

13. The third reasoning given by the learned Single Judge is that the member chosen by the President, i.e. Shri Ballal, though was a person on whom State and National award had been conferred, he was not from the panel of award winning teachers. There is no provision in the Rules which requires the Education

Officer to maintain any panel of award winning teachers. Shri Parsodkar, learned Counsel appearing for employee, also fairly concedes that no such panel is maintained by the Education Officer. Undisputedly, the said Shri Ballal was a teacher/Headmaster on whom State/National award was conferred. In that view of the matter, we find that the reasoning given by the learned Single Judge to the effect that the enquiry stood vitiated, since Shri Ballal was not from a panel of award winning teachers, though was a person on whom State/National award was conferred would not be sustainable.

14. That leaves us with the finding of the learned Single Judge with regard to prejudice being caused to the employee on account of denial of an opportunity to engage services of lawyer. The learned Single Judge in this regard has held that the President was himself a lawyer and that Presenting Officer was also holding a law degree and as such, it was necessary for the Committee to have allowed the employee to engage the services of a lawyer. Though Shri Dastane has relied on various judgments, we will refer to the judgment of Their Lordships in the case of National Seeds Corporation Limited vs. K.V. Rama Reddy reported in , (2006) 11 SCC 645 (cited supra), wherein Their Lordships had an occasion to consider the issue with regard to engagement of a legal practitioner. Their Lordships were considering Rule 37(7) of the National Seeds Corporation (Conduct, Discipline and Appeal) Rules, 1992. It will be relevant to reproduce the following observations of the Apex Court, wherein Their Lordships have also considered the earlier judgments on the issue:--

"6. The rival submissions have to be tested in the background of Rule 31(7) of the Rules. The same reads as follows:

"Rule 31(7) - The employee may take the assistance of any other employee working in the particular unit where the employee is working/was working at the time of happenings of alleged charges to which the inquiry relates or where the inquiry is being conducted to present the case on his behalf but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits."

7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation (See N. Kalindi v. Tata Locomotive & Engg. Co. Ltd. (, AIR 1960 SC 914), Dunlop Rubber Co. (India) Ltd. v. Workmen (, AIR 1965 SC 1392), Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi (, 1993 (2) SCC 115), and Indian Overseas Bank v. Indian Overseas Bank Officers' Association and Another (, 2001(9) SCC 540).

8. "27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service

Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway Establishment Code provides as under:

"The accused railway servant may present his case with the assistance of any other railway servant employed on the same railway (including a railway servant on leave preparatory to retirement) on which he is working."

28. The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.

29. Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control & Appeal) Rules 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee.

30. In N. Kalindi's case (supra) a three-Judge Bench of this Court observed as under : (SCR pp. 409-10)

"Accustomed as we are to the practice in the courts of law to skilful handling of witnesses by lawyers specially trained in the art of examination and cross-examination of witnesses, our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember however in the first place that these are not enquiries in a court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered, and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily help to elicit the truth. It may often happen that the accused workman will be best suited, and fully able to cross examine the witnesses who have spoken against him and to examine witnesses in his favour.

It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise

fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance."

31. In another decision, namely, Dunlop Rubber Company's case (supra), it was laid down that there was no right to representation in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

32. The matter again came to be considered by a three-Judge Bench of this Court in Crescent Dyes's case (supra), Ahmadi, J. (as he then was) in the context of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, as also in the context of domestic enquiry, upheld the statutory restrictions imposed on delinquent's choice of representation in the domestic enquiry through an agent.

33. The earlier decisions in N. Kalindi's case (supra); Dunlop Rubber Company's case (supra) and Brooke Bond India (P) Ltd. v. Subba Raman (S.) and another, (1961 (2) LLJ 417), were followed and it was held that the law in this country does not concede an absolute right of representation to an employee as part of his right to be heard. It was further specified that there is no right to representation as such unless the Company, by its Standing Orders, recognises such a right. In this case, it was also laid down that a delinquent employee has no right to be represented in the departmental proceedings by a lawyer unless the facts involved in the disciplinary proceedings were of a complex nature in which case the assistance of a lawyer could be permitted.

34. We have seriously perused the judgment of the High Court which, curiously, has treated the decision of this Court in Crescent Dyes's case (supra) as a decision in favour of the respondent No. 1. The process of reasoning by which this decision has been held to be in favour of respondent No. 1 for coming to the conclusion that he had a right to be represented by a person who, though an office-bearer of the Trade Union, was not an employee of the appellant is absolutely incorrect and we are not prepared to subscribe to this view. Consequently, we are of the opinion that the judgment passed by the High Court in so far as it purports to quash the order of the Appellate Authority, by which the Draft Standing Orders were certified, cannot be sustained."

The position as afore-noted was reiterated in Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union & Ors. (, JT 1998 (8) SC 487).

9. Though it is correct, as submitted by learned counsel for the respondent, that even if the presenting officer is not a legal practitioner, the disciplinary authority having regard to the circumstances of the case may permit engagement of a legal practitioner. But it would depend upon the factual scenario.

10. Learned counsel for the appellant-Corporation has brought to our notice office memorandum dated 21.11.2003 by which the prayer to engage a legal practitioner to act as a defence assistant was rejected. Reference was made to the rules, though no specific reference has been made to the discretion available to be exercised in particular circumstances of a case. The same has to be noted in the background of the basis of prayer made for the purpose. The reasons indicated by appellant for the purpose are (a) amount alleged to have been misappropriated is Rs. 63.67 lakhs (b) number of documents and number of witnesses are relied on by the respondent, and (c) the prayer for availing services of the retired employee has been rejected and the respondent is unable to get any assistance to get any other able co-worker. None of these factors are really relevant for the purpose of deciding us as to whether he should be granted permission to engage the legal practitioner. As noted earlier, he had to explain the factual position with reference to the documents sought to be utilized against him. A legal practitioner would not be in a position to assist the respondent in this regard. It has not been shown as to how a legal practitioner would be in a better position to assist the respondent so far as the documents in question are concerned. As a matter of fact, he would be in a better position to explain and throw light on the question of acceptability or otherwise and the relevance of the documents in question. The High Court has not considered these aspects and has been swayed by the fact that the respondent was physically handicapped person and the amount involved is very huge. As option to be assisted by another employee is given to the respondent, he was in no way prejudiced by the refusal to permit engagement of a legal practitioner. The High Court's order is, therefore, unsustainable and is set aside."

It could thus be seen that in the said case the Rules itself permitted a legal practitioner to be engaged when the Disciplinary Authority was a legal practitioner or the circumstances of the case so permitted. As such, the High Court had held that it was necessary to provide assistance to the employee by engaging a legal practitioner. However, in spite of the Rules permitting, Their Lordships of the Apex Court found that the judgment of the High Court was not sustainable. In the present case, the Rules do not provide the services of the legal practitioner to be engaged. We, therefore, find that in the absence of there being any provision in the Rules permitting the services of a legal practitioner to be engaged, the finding of the learned Single Judge could not be sustainable.

15. In that view of the matter, we find that the findings as recorded by the learned Single Judge with regard to the enquiry being vitiated on the four grounds would not be sustainable.

16. That leaves us with the appeal of the employee. The learned Single Judge has come to a finding that though the findings of the Enquiry Committee as required under sub-rule (6) of Rule 37 are not communicated to the employee, no prejudice would be caused to the employee, inasmuch as the findings of the Enquiry Committee are binding upon the management and they have no option

but to implement the same. It is the specific case of the employee that the enquiry report was only signed by two members and not by all the three members. In any case, the Hon"ble Apex Court in the case of Vidya Vikas Mandal and another.vs. The Education Officer & another reported in , 2007(2) ALL MR 461 (cited supra) upon interpretation of the Rules has held thus:--

"..... 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..... "

It could thus be seen that Their Lordships of the Apex Court have held that the report to be valid has to be signed by all the three members. Undisputedly, in the present case, the report is not signed by the three members. We, therefore, find that the report would be vitiated only on this ground and it will not be necessary for us to go into the correctness or otherwise of the view taken by the learned Single Judge that non-forwarding of the findings under sub-rule (6) of Rule 37 caused prejudice or not.

17. In normal course, on account of the enquiry proceedings being vitiated on non-compliance of procedural aspects, the matter would have been required to be remitted to the Enquiry Committee. However, the employee has retired long back in 2008. We find that remanding enquiry proceedings at this stage would not be in the interest of justice. Though the learned Single Judge has refused to go into the merits of the matter but has in detail reproduced the charges which are levelled against the employee. Perusal of the charges would reveal that there is not a single charge of misappropriation or embezzlement or a charge which may cause a doubt upon the integrity of the appellant or a charge which may be said to have been concerning moral turpitude. In that view of the matter, we find that remitting the matter for fresh enquiry at this stage would be dragging the employee to further sufferance. He has already suffered a lot being out of employment for a considerable period. The learned Single Judge while granting him continuity and reinstatement has restricted the claim of back wages only to 25%. The learned Single Judge has given sound and cogent reasons in paragraph 17 while restricting the claim of back wages only to 25%. We, therefore, find that it will be in the interest of justice to maintain the order of the learned Single Judge in so far as it grants reinstatement with continuity but restricts the claim of back wages to 25%. We are fortified in the view that we are taking in view of judgment of Apex Court in the case of Anant R. Kulkarni.vs. Y.P. Education Society and others reported in , (2013) 6 SCC 515 (cited supra).

18. In the result, though we find that the grounds as raised in the appeal of the employee are well-merited, however, since we find that on account of the grounds raised in the appeal of the employee, the operative part of the order of the learned Single Judge warrants no interference. The appeals filed by the employer as well as the employee are dismissed. There will be no order as to costs.

19. Needless to state that the amount which was deposited in this Court by the employer is permitted to be withdrawn by the employee. The balance back wages as per the order passed by the learned Single Judge shall be paid by the employer within a period of three months from today. Needless to state that as a corollary to the order passed by the learned Single Judge, the employee who is already terminated is entitled to all the terminal as well as retiral benefits, so also the pensionary benefits.