

(2006) 04 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 1375 of 2006

Pralhad Madhoba Ruikar Trust and Others

APPELLANT

Vs

Director of Education (Secondary Schools) and Another

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 37(6), 4A

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 37(6)

Citation : (2006) 4 ALLMR 499 : (2006) 4 BomCR 764 : (2006) 5 MhLj 64

Hon'ble Judges : Sinha D.D., J; Chavan R.C., J

Bench : Division Bench

Advocate : U.S. Dastane, for the Appellant; Joshi, A.G.P., for the Respondent

Judgement

Sinha D.D., J.—Rule made returnable forthwith.

2. Heard Shri Dastane, learned Counsel for the petitioners and Smt. Joshi, learned A.G.P. for respondent/State.

3. The learned Counsel for the petitioners states that in the instant case departmental enquiry was initiated against respondent No. 2 for charges involving moral turpitude, however, the Committee, which was constituted to conduct inquiry consisted of three members, out of which two members have exonerated respondent No. 2 and one found her guilty of the charges. It is contended that the management in such situation has invoked power u/s 4A of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "M.E.P.S. Act"), by approaching Director of Education to take appropriate decision in this regard.

4. Shri Dastane, learned Counsel for the petitioners has submitted that by impugned communication dated 22.10.2005 the Director has returned the papers submitted by the management and also informed the petitioner management to take appropriate decision in the matter.

5. In the backdrop of the above referred facts, particularly in view of Sub-rule (6) of Rule 37 of the Maharashtra Employees of Private Schools Rules, 1981 (hereinafter referred to as M.E.P.S. Rules.), the Inquiry Committee is required to complete the inquiry and communicate its finding on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee. Sub-rule (6) further contemplates that the Inquiry Committee shall also forward copy of the same by Registered Post Acknowledgment Due (R.P.A.D.) to the employee. A copy of the findings and decision shall also be endorsed to the Education Officer, or Deputy Director of Education, as the case may be, by R.P.A.D. Sub-rule (6) further contemplates that decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee by R.P.A.D. The Management is also required to endorse a copy of the order to the Education Officer or the Deputy Director, as the case may be.

Plain reading of Sub-section (6) of Section 37 clearly demonstrates that once findings are recorded and decision is taken in respect of charges against the employee by the Inquiry Committee such decision appears to be binding on the management and the management is only required to implement the same.

6. In the instant case, so far as report of the Inquiry Committee is concerned, it is divided. The Inquiry Committee consists of three members, out of which two have exonerated respondent No. 2 and one member has found her guilty. The learned Counsel for the petitioner has categorically submitted that the charge involves moral turpitude and the majority decision of the committee exonerating respondent No. 2 from the said charge is unreasonable and therefore, the Director is required to examine record and proceedings of such inquiry 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 Inquiry Committee to make further inquiry for taking such additional evidence as he may deem necessary or he may himself take or authorised any other officer, not below the rank of Education Officer, to take such additional evidence and while making order under Sub-clause (a) of Section 4A, if the Director is satisfied that the charges of serious misconduct, misbehaviour, or of moral turpitude, as the case may be, 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 hearing. In view of Section 4A of M.E.P.S. Act and in view of the facts and circumstances involved in the present case, it is for the Director to consider the issue as to whether the majority members of the Committee have exonerated respondent No. 2 from the charges of moral turpitude without any justification and whether the said decision is unreasonable, the Director of Education without considering the provisions of Section 4A of the M.E.P.S. Act as well as provisions of Rule 37(6) of M.E.P.S. Rules merely returned

the papers to the petitioner management for necessary action vide communication dated 22.10.2005 which is not sustainable in law.

7. For the reasons stated hereinabove the impugned communication dated 22.10.2005 is hereby quashed and set aside. Respondent No. 1 is directed to consider the findings recorded by majority members of Inquiry Committee exonerating respondent No. 2, whether unreasonable or otherwise, and to find out whether the charges involve moral turpitude or misbehaviour of serious nature and after examining the record and proceedings of inquiry, if the Director is satisfied, in that event, appropriate action as per procedure prescribed u/s 4A of M.E.P.S. Act be taken against respondent No. 2.

Rule made absolute in the above terms.

No order as to costs.