

(2024) 05 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 7482 Of 2022

President/Secretary And Others

APPELLANT

Vs

Sangale Raosaheb Narayan And Others

RESPONDENT

Date of Decision : 03-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Maharashtra Employees Of Private Schcols (Conditions Of Service) Rules, 1981 — Rule 33, 36(1), 36(1)(2), 36(2), 36(2)(a), 36(2)(3), 36(3), 36(4), 37(1), 37(2)(a)(ii), 37(2)(a)(iii), 37(2)(c), 37(2)(d), 37(4), 37(5), 37(6)

Citation : (2024) 05 BOM CK 0045

Hon'ble Judges : Shailesh P. Brahme, J

Bench : Single Bench

Advocate : A. B. Gatne, S. S. Jadhavar, Amar V. Lavte

Final Decision : Disposed Of

Judgement

Shailesh P. Brahme, J

1. Rule. Rule is made returnable forthwith. Heard litigating sides finally at the admission stage.

2. In both the petitions, judgment and order dated 25.04.2022 passed by the Presiding Officer, School Tribunal, Solapur in Appeal No.27/2017 is under challenge. I would refer to the papers of Writ Petition No.7482/2022 for the sake of convenience. It is preferred by the management against quashment of order of termination and direction to conduct fresh enquiry within six months by suspending respondent no.1. Writ Petition No.12561/2022 is filed by the respondent no.1/employee against direction to conduct fresh enquiry by suspending him, instead of granting him reinstatement with full back-wages.

3. Respondent no.1 was working as Kamathi in Ashram School run by the petitioner since 12.06.2006. He was permanent employee. He was found to be indulging into misconduct, negligence and absentees. He was issued with

statement of allegations and charge-sheet vide letter dated 29.11.2016. An enquiry committee was constituted comprising of four members. It submitted report on 10.07.2017 to the management. Respondent no.1 was terminated by order dated 17.07.2017 with effect from 03.09.2016. Being aggrieved, respondent no.1 preferred appeal no.27/2017 before school tribunal. It was contested by the petitioners. By the impugned judgment and order, it was allowed partly on 25.04.2022.

4. It is held by the School Tribunal that there was non-compliance of provisions of Rule 36 (2)(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation, Rules of 1981 (hereinafter referred to as Rules for the sake of brevity). It is further held that there was breach of Rule 33 of Rules. The procedure contemplated by Rule 37(2)(a)(ii) of the Rules was not followed. It is further held that no sufficient opportunity was extended to cross-examine the witnesses. The grievance of the respondent no.1 or his representatives was not considered. It has been recorded that there was breach of Rule 37(4) (5) and (6) of the Rules.

5. It is held that there was no discussion amongst the members of the enquiry committee before submitting the report. It is further held that there was no recommendation for specific action to be taken against the delinquent. Ultimately disciplinary action was found to be in utter breach of statutory procedure. Hence, instead of reinstating respondent no.1, matter was remitted to the disciplinary authority to the stage from which it was vitiated. Management is given direction to conduct fresh enquiry by suspending the delinquent.

6. Learned Counsel for the petitioners Mr. A.B. Gatne makes following submissions :

i. The facts recorded by the Presiding Officer in paragraph nos.20, 21 and 22 that certain material facts were admitted, are perverse. Management has not admitted anything.

ii. Statement of allegation was forwarded to the respondent no.1 by covering letter dated 29.11.2016 which was also treated to be charge-sheet. The respondent no.1 refused to accept the same. For the second time, copy of statement of allegations was sent to the respondent no.1 which was compliance of Rule 36 (1).

iii. The respondent no.1 was given opportunity to nominate his member. It was not availed of.

iv. Constitution of committee of more members than requirement of law would not be an illegality. There was sufficient compliance of Rule 36(3).

v. Respondent no.1 was supplied with 328 documents through Mrs. Manda Baban Pol, his representative vide letter dated 01.04.2017.

vi. Respondent no.1 was given opportunity to cross-examine the witnesses. Only

couple of witnesses were cross-examined and remaining witnesses though offered were not examined.

vii. There was due compliance of Rule 37(2)(d) and Rule 37(4)(5) and (6).

viii. It is further submitted that report of the enquiry committee bears specific recommendation and could not be faulted.

ix. It is further submitted that the finding recorded by the Tribunal that there is violation of Rule 36(3), 37(2)(a)(ii)(iii), 37(4)(5) are perverse.

x. School Tribunal committed error of jurisdiction in appreciating material pitted against delinquent.

xi. The respondent no.1 failed to aver and prove any prejudice caused to him due to non-compliance of statutory procedure.

7. Learned Counsel for the petitioners seeks to rely on judgments rendered in the matter of Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, (2008) 9 SCC 31, and in the matter of State of Uttar Pradesh and Others Vs. Rajit Singh, (2022)15 SCC 254.

8. Per-contra, learned Counsel Mr. S.S. Jadhavar for respondent no.1 opposes the submissions of the learned Counsel for the petitioners. He repels in following manners :

i. There was no decision and subjective satisfaction by the management as contemplated by Rule 36(1).

ii. It has been rightly held by the Tribunal that there was non compliance of Rule 36(1)(2).

iii. The constitution of the enquiry committee was illegal. Mrs. Manda Pol was nominated as a member but she was being treated as representative of the delinquent.

iv. There was non-compliance of Rule 36(3), 37(1), 37(2) (a)(ii)(iii) and 37(2) (c). It is further submitted that no procedure as contemplated by Rule 37(4)(5) (6) was followed.

v. Having quashed the termination, respondent no.1 should have been reinstated instead of keeping him under suspension and directing fresh enquiry.

vi. The operative part denying backwages and reinstatement is patently illegal and perverse.

9. Learned AGP Mr. Amar Lavte supports impugned judgment.

10. I have considered rival submissions of the parties and also gone through relevant papers of the enquiry committee, placed on record. It is settled legal position that judicial review of disciplinary action is confined to examine compliance of statutory procedure, adherence to principles of natural justice and

extending of opportunity of hearing. High Court under its jurisdiction of Articles 226 and 227 cannot embark an enquiry as to adequacy of material or to appreciate evidence or substitute view.

11. It reveals from record that no independent statement of allegations and the charge-sheet were served upon the delinquent in this matter. What is forwarded by the covering letter dated 29.11.2016 by the management to the delinquent was treated as statement of allegations as well as charge-sheet. The constitution of enquiry committee was of four members. The nominee of the delinquent was not included in it. Mrs. Manda Pol was treated to be his representative who cross-examined the witnesses, received the documents and acted on his behalf. Order of termination dated 17.07.2017 was given effect from 03.09.2016. The respondent no.1 was not suspended during disciplinary action by the management. Enquiry report was signed by four persons.

12. Compliance Of Statutory Procedure Contemplated By Rule 36 And 37 :

. It is contemplated by Rule 36(1) that statement of allegations should be communicated to employee by registered post demanding written explanation within seven days. Rule 36(2) contemplates satisfaction of the management after receiving explanation. There is no independent statement of allegations prepared and served by the management upon respondent no.1. It is the case of the management that the communication served vide letter dated 29.11.2016 is statement of allegations as well as charge-sheet. The stage of serving charge-sheet comes at later point of time.

13. Postal acknowledgments are pressed into service by petitioners to show that the statement of allegations was refused by the petitioner. It is further contended that again statements of allegations was independently served on demand. A copy of resolution passed on 08.01.2017 is pointed out to show satisfaction of the management to conduct enquiry.

14. Neither there are pleadings, nor evidence to show that petitioner/management after serving statement of allegations decided to conduct enquiry. Resolution dated 08.01.2017 indicates approval for establishment of enquiry committee. It is referable to stage of Rule 36(4) and not Rule 36(2). It refers to Resolution dated 13.11.2016, which is not on record. On 13.11.2016, management appears to have decided to conduct enquiry. If that is so, then there was no point in calling upon respondent no.1 vide letter dated 29.11.2016 to tender explanation. It was pre-decided to conduct enquiry. A letter dated 29.11.2016 was a farce. Learned Counsel for the respondent no.1 has rightly submitted that there is non-compliance of Rule 36(1) and (2) of the Rules.

15. No separate charge-sheet has been prepared by the management and served on the respondent no.1. Obviously the respondent no.1 had no opportunity to tender written explanation to charge-sheet. The stand of the management is that statements of allegations and charge-sheet were composite. That is in utter disregard to Rule 36(1), 37(1) and 37(2)(a)(i). Serving statement of allegations,

submitting explanation to it, serving charge-sheet and then replying the same are distinct stages which are hushed up in the present matter. Every stage has significance. It provides opportunity to delinquent to plan his defence or future line of action.

16. No material is placed on record to show that management ever tendered list of witnesses to be examined. On the contrary, it reveals that statements of 27 witnesses were recorded without there being any cross-examination on 12.02.2017. Later on couple of witnesses were permitted to be cross-examined by the representative of respondent no.1. However, it must be noted that the respondent no.1 failed to cross-examine other witnesses.

17. It transpires from the record that no independent charge-sheet was served on the respondent no.1. So also no documentary evidence was supplied to him. This particular requirement carries significance because it enables delinquent to formulate his defence, to lead evidence or to cross-examine the witnesses. A communication dated 01.04.2017 to Mrs. Manda Pol shows supply of 328 pages. On 29.05.2017 also documents were supplied. However, the documents appear to have been supplied subsequently and not immediately after tendering of charge-sheet. Rule 37(2) (a)(iii) reads as follows :

"37. Procedure of Inquiry :

(1)

(a)

(iii) If the Management desires to tender any documents by way of evidence before the Inquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the document relied upon by the Management is a register or record of the school it shall permit the employee or the Head as the case may be, to take out relevant extracts from such register or record. The employee or the Head as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence."

18. It is relevant as to at what stage documents have been supplied to the delinquent. Petitioners are also obliged to demonstrate the nature of documents which are supplied. No endeavour is made by petitioners that relevant documents were supplied to delinquent, before recording evidence. I have no hesitation to hold that there is non-compliance of Rule 37(2)(a)(iii).

19. It further reveals that Mr. Bapusaheb Rupnar participated in enquiry being member of the committee. He is signatory to the enquiry report also. Surprisingly he acted as a witness of the management also. His statement was recorded on 12.02.2017. A member of the enquiry committee has to be impartial and cannot act as a witness. There is gross violation of principles of natural justice.

20. I have already recorded that there is breach of statutory procedure

contemplated by Rule 36(1), 36(2)(a) and 37(1) as well as 37(2)(a)(iii). Resultantly, there is violation of Rule 37(2)(c) which is as follows :

"37. Procedure of Inquiry :

(1)

(2)

(c) The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case."

21. I have no iota of doubt that there is breach of mandatory statutory procedure as contemplated by Rule 36(1), 36(2), 37(1) and 37(2)(a)(iii). The Tribunal has rightly recorded finding that there is breach of statutory procedure and no interference is called for to that extent.

22. The Composition of Enquiry Committee :

. My attention is invited to the manner in which enquiry committee was constituted. Respondent no.1 was not intimated names of the members to be nominated by the management. He was called upon to convey his nominee vide letter dated 23.12.2016. It does not spell out names of nominees of the management. By communication dated 08.01.2017, he was informed that committee comprising of four members was constituted. The manner in which the committee was constituted is against Rule 36(3).

23. Enquiry committee should be of three members only as per Rule 36(2)(a). It is the case of the petitioner that four members were appointed as per the instructions of Social Welfare Officer. The nominee of respondent no.1 was not included in it. The composition of the enquiry committee of more than three persons is per-se violative of Rule 36(2)(a). It is well-settled principle that if a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner. A useful reference can be made to the matter of Chandra Kishor Jha Vs. Mahavir Prasad and Others, AIR 1999 SC 3558. It is preposterous to contend that due to instructions of Social Welfare Officer, committee of more than three members was constituted. It has been rightly recorded by the Tribunal that composition of the enquiry committee is bad in law.

24. It is a case of the respondent no.1 that Mrs. Manda Pol was being nominated by him as his member to enquiry committee. Record reveals that she conducted cross-examination of the witnesses of the management. She was being treated as a representative of the respondent no.1. It is incomprehensible as to why the respondent no.1 did not object this. He could have insisted the disciplinary authority or the management to treat her as his nominee. The respondent no.1 is stopped from contending that she was his nominee. Anyway as I have held the composition of the enquiry committee to be illegal, status of Mrs. Manda Pol loses its relevance.

25. Learned Counsel for the petitioner vehemently urged that the management and persons who are at the helm of affairs of disciplinary action, had no adequate legal knowledge. They were influenced by instructions of Social Welfare Officer. They bonafide followed a procedure of disciplinary action. Entire procedure for disciplinary action in a private school is relegated by relevant act and rules. There is uniform procedure prescribed for the disciplinary action against employees of the schools covered by relevant acts. Ignorance of law cannot be said to be an excuse. I am not inclined to approve the submissions of learned Counsel in this regard.

26. It is vehemently argued by Mr. A.B. Gatne that respondent no.1 is unable to satisfy that any prejudice is caused to him due to procedure of disciplinary action. He relies on judgment rendered by the Supreme Court in the matter of Haryana Financial Corporation and Another (supra). I have carefully gone through the principles set out in paragraph nos. 21 to 24 and 44. In that matter, the punishment was set aside merely on the ground of non supply of report of enquiry officer to the delinquent. After considering various decisions on the point of principles of natural justice, it was concluded in paragraph no.44 which is as follows:

"44. From the aforesaid decisions, it is clear that though supply of report of Inquiry Officer is part and parcel of natural justice and must be furnished to the delinquent-employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show 'prejudice'. Unless he is able to show that non-supply of report of the Inquiry Officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent- employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

27. In the present matter fact situation is different. There is blatant violation of statutory procedure and composition of the enquiry committee is also illegal. The lapses on the part of the petitioner/ management are so fundamental that there is no need for the respondent no.1 to make out any case for prejudice or miscarriage of justice. The judgment is not applicable to the present case.

28. Sustainability of Direction of Conducting Fresh Enquiry by Suspending Delinquent :

. The Tribunal has recorded that there is breach of statutory procedure adopted by the petitioner and the composition of the enquiry is bad in law. After setting aside order of termination, directions have not been issued for reinstatement and to pay back-wages. Learned Counsel for the petitioner relies on the judgment of the Supreme Court in the matter of State of Uttar Pradesh and Others (supra). The relevant paragraph no.12 and 13 are as under :

12. In the case of Chairman Life Insurance Corporation of India and Ors. Vs. A.

Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:

"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])."

13. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in the case of A. Masilamani (supra) to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the Disciplinary Authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated, i.e., after the issuance of the charge sheet, is unsustainable.

29. In the present matter, there is non-compliance of Rule 36(1) and 36(2) and the composition of enquiry committee was also not in accordance with law. Therefore, it would be in the fitness of things to grant liberty to management to conduct enquiry afresh from the stage of Rule 36(1). The submission of learned Counsel for the petitioners that the matter should have been relegated to stage of Rule 37(4) cannot be accepted.

30. It is the prerogative of the management to conduct enquiry denovo if the earlier conducted enquiry is found to be against the statutory procedure or against the principles of natural justice. The petitioners in present matter shall have liberty to conduct enquiry denovo, if they so desired. In that case, the respondent no.1 would be treated under suspension by issuing appropriate order to that effect. However, disciplinary action since inception is found to be dehors the statutory procedure. No fault as such can be attributable to the respondent no.1/employee. In such a scenario, when termination is quashed, the petitioners are bound to reinstate the respondent no.1.

31. The petitioners are to be blamed for not following due procedure of law in conducting disciplinary action against respondent no.1. The respondent no.1 was not under suspension till his termination. Order of termination was passed on 17.07.2017 which is to take effect from 03.09.2016. Such back dated termination order is unsustainable. Thus from 17.07.2017 till pronouncement of impugned judgment and order on 25.04.2022, he was deprived of employment.

The termination was quashed due to the lapses on part of the petitioners. There is no evidence on record that employee was in gainful employment during this period. I find that he is entitled to 75% of the back-wages.

32. Mr. S.S. Jadhavar relies on judgment in the matter of Vijaysingh s/o Bhaidas Patil Vs. Dhanorkar Adhunik Gram, 2015(6) Bom.C.R.292, to buttress that not permitting delinquent to cross-examine the witnesses would vitiate enquiry. However, in that matter, copies of depositions were demanded but not supply, before conducting cross-examination. Such is not the case in the present matter. On the contrary, in the present matter delinquent failed to conduct cross-examination of the witnesses. The ratio cannot be made applicable to the present matter.

33. Further reliance is placed on judgment in the matter of Bhagwanrao Vishwanath Vyawhare & Anr. Vs. Sunita Gopinath Palve & Anr., 2007(6) Bom.C.R. 275. In that matter, disciplinary action was held to be vitiated resulting in direction of reinstatement with full back-wages. It was recorded that there were malafides in conducting enquiry against delinquent and liberty to conduct enquiry denovo was refused. The facts of the case in hand are different. The ratio cannot be made applicable to the present case.

34. A sequitur of discussion is that the Presiding Officer of the School Tribunal has rightly recorded that the termination is bad in law but I propose to modify impugned judgment and order by passing following order :

ORDER

- (a) Order of termination dated 17.07.2017 is quashed and set aside.
- (b) Petitioners/Management shall reinstate the respondent no.1 and shall pay 75% of the back-wages to him.
- (c) Petitioners/Management shall be at liberty to conduct enquiry denovo from stage of Rule 36(1) of the Rules and to conclude the same within a period of four months from today.
- (d) If petitioners/Management decide to conduct denovo enquiry, then they shall pass order of suspension and shall pay subsistence allowance to respondent no.1 which shall be condition precedent for conducting further enquiry.
- (e) The petitioners/Management shall take decision of conducting denovo enquiry within a period of three weeks failing which they shall be bound by directions of reinstatement and back-wages.

35. Both the petitions are disposed of. Rule is discharged accordingly.