

(2009) 12 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 2277 of 1996

Shri Chandrashwar Shikshan Sanstha

APPELLANT

Vs

Ramesh Dagdurao Deshmukh and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 36, 36(2), 37, 37(6)

Citation : (2010) 2 ALLMR 218 : (2010) 3 MhLj 203 : (2010) 4 SLR 516

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : S.P. Kshirsagar, for the Appellant; A. Shelat, C.A. Joshi and I.L. Bodade, AGP for Respondent Nos. 2 to 4, for the Respondent

Judgement

C.L. Pangarkar, J.—This writ petition is preferred by the Management of the School feeling aggrieved by the order of School Tribunal directing reinstatement of respondent No. 1.

2. Facts giving rise to the petition are as follows The petitioner runs a school known as Narbadabai Agrawal Vidyalaya at Dongarkinhi. Respondent No. 1 was initially appointed as Physical Training Instructor on 23/6/1986. He worked as such till 1993. With Effect from 1/7/1993, he came to be appointed as a Headmaster of the school. It is alleged that the behaviour of respondent No. 1 was not proper. He was not following the direction issued by the Management. These acts of the respondent were that of insubordination. It is also alleged that respondent No. 1 as a Headmaster of the School misappropriated large sums of money. Since it was found that respondent No. 1 had misappropriated money and his behaviour was not proper, it was decided by the Management to hold a departmental enquiry against him. Accordingly, a Committee was constituted to hold the departmental enquiry. The President of the institution was the convener of the said Committee while two others were the teachers, one of whom was a

State Awardee teacher. The Convener submitted the report to the Management of the Committee. After holding the enquiry, he recommended the dismissal of respondent No. 1. Accordingly, resolution was passed by the Management deciding to terminate the services of respondent No. 1. The services of respondent No. 1 were accordingly terminated w.e.f. 28/10/1994.

3. Feeling aggrieved by this termination, respondent No. 1 preferred an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to the School Tribunal. The School Tribunal found that the termination was improper and directed the reinstatement of respondent No. 1. Feeling aggrieved thereby, this writ petition is filed.

4. I have heard the learned Counsel for the petitioners as well as the respondents.

5. The main ground upon which respondent No. 1 had challenged his termination before the School Tribunal was that enquiry was not held properly. Opposing this contention of respondent No. 1, the petitioner in the written statement before the School Tribunal made following averments .

It is respectfully submitted that the respondent society conducted an enquiry strictly in terms of the provisions contained in Rules 36 and 37 of Rules 1981.

That when the enquiry has been conducted strictly in accordance with the law, rules of natural justice and by affording all possible and reasonable opportunities to the appellant. Therefore, no interference at the hands of this Hon''ble Court is called for nor necessary in respect of the impugned termination order of the appellant which is perfectly legal, valid and justified.

6. Now, the very same management i.e. the petitioner makes a submission to set aside the finding of enquiry and makes a request to remit the matter back to the Inquiry Committee for fresh enquiry.

7. Shri Kshirsagar, learned Counsel for the petitioner/ Management submits that the enquiry report submitted by the convener of the Committee is vitiated as the same is not in accordance with the mandate of the Supreme Court in a decision reported in 2007 (3) Mh.L.J. 801 (Vidya Vikas Mandal and Anr. v. Education Officer and Anr.). He submits that there is only one report of convener which the petitioner Society had acted upon and the Society had not at all received the other two reports. He also submits that there ought to be a combined report of all three members as is mandated by the Supreme Court in Vidya Vikas Mandal's case. The Supreme Court in the said decision observes as under

8. As rightly pointed out by the learned Counsel for the appellants, Rule 37(6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37(6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report

within the time prescribed under Rule 37(6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). 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. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37(6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9. In view of the order now passed by this Court, the Rule 36(2)(a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with Sub-rules (i), (ii) and (iii) of Rule 36(2)(a) to go into the matter afresh. The Respondent No. 2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.

8. As observed, the argument of Shri Kshirsagar, learned Counsel for the petitioners, is twofold; first that the other two members did not submit the report at all to the management of school and the second is that the report of all three should be combined. Shri Kshirsagar submits that since the Management did not receive the other two reports, it had acted upon only one and that cannot be done by the Management and therefore, it is necessary to direct a fresh enquiry in the matter. The submission does not appear to be correct at all, since it appears to be against pleadings and the record. I may reproduce here paragraph No. 7 of the written statement of the petitioner before the school Tribunal.

7. In reply to Sub-ground, it is submitted that the respondent No. 1 management has already considered the enquiry reports of the convenor and two other members and after judging the pros and cons and after taking the most

reasonable view, it has resolved to terminate the services of the appellant.
Contents of Sub-ground

(5) are emphatically denied. It is submitted that the opportunities provided under the law were afforded to the appellant. The termination order has been properly issued by the President of the Respondent No. 1 in terms of the Resolution passed by the management. Hence, rest of the contents of Sub-ground

(6) are hereby emphatically denied. It is strictly denied as alleged in Sub-ground

(7) that the enquiry was in any way illegal and the charges were not sufficient to impose the major penalty of termination. It is denied that the termination is in any way illegal and deserves to be quashed but on the contrary, the termination being perfectly legal and valid, the same is to be confirmed and deserves to be confirmed at the hands of this Hon"ble Court. In reply to Sub-ground

(8) it is submitted that the grounds which have not been urged in the appeal Memo, cannot be argued directly by the appellant. Contents of Sub-ground

(9) are also denied.

9. Not only there is such pleadings, there is also a resolution of the society by which services were decided to be terminated. The relevant portion of resolution No. 2 dated 27/10/1994 is as follows

Proposal - In today's meeting, Shri G.H. Agrawal, the Secretary of the Society has proposed that the findings and decisions given by the Enquiry Committee constituted under Rule 36 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 after completing the work of enquiry into the charges levelled against Shri R.D. Deshmukh, the Headmaster in Smt. Narmadabai Agrawal Vidyalaya run by the Society are given different by three persons. Today's meeting is of the opinion that the findings and decision given by the convener/observer of the Enquiry Committee are more reasonable. On the contrary, the findings and decisions given by other two members of the Enquiry Committee do not seem to be proper at all. However, the findings and decision given by the State Award Winner Headmaster Shri Dahibhate are not coherent. Similarly, the findings and decision given by Shri Lahore, the representative of Headmaster Shri Deshmukh are one sided and not based on the merits and demerits.

10. This resolution is also filed on record of the School Tribunal. If the pleadings and the above resolution are read as they are, it cannot lie in the mouth of the petitioner to say that it did not receive the reports of the other two members of the Inquiry Committee. The Resolution clearly says how and why the conclusions arrived at by the other two members cannot be accepted and how they are wrong. The Resolution clearly suggests that both the reports of Shri Dahibhate and Shri Lahore were considered word by word and were rejected. This clearly indicates that the other two reports were received by the Management. They were placed before the Managing Committee. The Managing Committee

considered the findings in those reports and then passed a resolution. For this reason, the above submission of Shri Kshirsagar needs to be rejected and it must be held that the Management did receive the report and they were duly considered.

11. The next submission that is made on the basis of Vidya Vikas Mandal's Case is that the report is not in accordance with the mandate of the Supreme Court, in as much as, it is not a combined report. He interprets the word "combined" to mean that there ought to be single report of all three together. The Supreme Court nowhere says that there ought to be single report at all. In fact, in the instant case, the report can strictly be said to be combined. It appears from the report of the convener that he received other two reports and after taking stock of those two reports, he incorporated those findings of other two reports in his report and submitted his report to the Management. The report of the convener discusses the report of the other two and he even observes why the finding in the other two reports should not be accepted. Thus, what the convener does is that he submits a report which also contains a finding recorded by the other two. The report in the instant case is certainly a combined report. Even if the word combined report is to be interpreted in that sense, the mandate is certainly followed. Shri Kshirsagar, learned Counsel, placed before me the following decision to urge that the High Court cannot distinguish the judgment of the Supreme Court and refuse to follow the mandate.

1. (2007)14 SCC 165 Special Deputy Collector (LA) v. N. Vasudeva Rao and Ors.
2. Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another,
3. J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others,

12. I have not tried to distinguish the Supreme Court judgment at all nor have I tried to interpret it. I find that the mandate of the Supreme Court is, in fact, followed in the present case.

13. The other two members have clearly exonerated respondent No. 1 and the convener as disagreed with them. The convener is in minority. His report and findings, therefore, could not have been accepted. On the other hand the report and findings of the other two members, who exonerate respondent No. 1 being in majority, should have been accepted by the management. The School Tribunal has rightly allowed the appeal of respondent No. 1. There is no substance in the writ petition. The same is, therefore, liable to be dismissed. Costs quantified at Rs. 5000/to be paid by the convener of the Enquiry Committee personally.