

(2007) 08 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 4633 of 2003

Shri Dnyaneshwar Samaj Prabodhan Sasntha

APPELLANT

Vs

The Presiding Officer School Tribunal, Amravati Division and
Others

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Customs Act, 1962 — Section 129

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
28, 28(5), 35(4), 36, 36(1)

Citation : (2007) 3 ALLMR 893

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

**Advocate : K.R. Lambat, for the Appellant; Sunil Manohar and Kale, AGP for
Respondent Nos. 1 and 4, for the Respondent**

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—By the present petition, the petitioner has challenged the judgment and order dated 15.9.2003 in Appeal No: 77/1997 passed by learned Presiding Officer, School Tribunal, Amravati Division, Amravati, whereby the appeal preferred by Respondent No. 2 was allowed and the termination order dated 17.5.1997 was set aside with a further direction to reinstate Respondent No. 2 with continuity of service and full back wages.

2. The present petition relates to the year 2003 and for the obvious reason and, in normal course, it could not have been taken up for final hearing, but this Court noticed the order dated 8.1.2007 in Civil Appeal No. 180/2007 made by the Honourable Supreme Court of India for hearing of this Petition finally by the end of June 2007. On 19th June 2007 therefore, I made an order fixing the petition for final hearing at Sr.No. 1 on 9.7.2007 because, learned Counsel for the petitioner expressed his inability to argue the matter for want of the record of the petition. On 9.7.2007, Mr. K R Lambat appeared and sought adjournment on

the ground that he received the papers on the same day and hence it was adjourned to 1.8.2007.

FACTS OF THE CASE:

3. The petitioner society had put Respondent No. 2 in additional charge of the post of Headmaster of Dnyaneshwar Vidyalaya, Peth, with effect from 28.1.1994. On 6.9.1996, the petitioner-society served Respondent No. 2 with a show cause notice leveling as many as 17 charges against him, which pertained to the years 1985, 1993 and 1994. Having received the said show cause notice, Respondent No. 2 submitted a letter dated 17.9.1996 to the petitioner-society and demanded documents which were mentioned in Items 1 to 6 in the said letter. Respondent No. 2, however, issued him a letter dated 24.9.1996 refusing to supply any of the said documents on the ground that there was no such provision in the School Code. This letter dated 24.9.1996 is not on the record of this Petition but was shown to me as well as learned Counsel for Respondent No. 2, during the course of hearing by Mr. K.R. Lambat, learned Counsel for the petitioner and, at that moment itself, I had asked Mr.Lambat to supply xerox copy thereof to the learned Counsel for Respondent No. 2 and on the record of this Petition. However, I find at the time of writing of the judgment that the said copy is not placed on record. On 1.10.1996, Respondent No. 2 submitted his reply to the show cause notice. On 7.10.1996, the Executive Committee of the Society passed a resolution deciding to hold an inquiry against Respondent No. 2. Accordingly, on 10.10.1996, petitioner issued a communication to Respondent No. 2 informing him of such a decision and asking him to nominate his nominee on the Inquiry Committee and also to file a reply to the charge-sheet which was enclosed along with the said communication. (In this letter names of members of the Inquiry Committee to be nominated by the Management were not mentioned). Having received the said communication dated 10.10.1996, Respondent No. 2 submitted his reply to the charge sheet on 27.11.1996 and also informed that Shri N J Dandge would be his nominee. Thereafter enquiry was held and three-Member Inquiry Committee submitted its two reports. The members of the Inquiry Committee nominated by petitioner -Management submitted a majority report, holding that all the charges levelled against Respondent No. 2 were proved; whereas the nominee of Respondent No. 2 submitted his report holding that the charges were not proved. Accepting the findings of the majority report of the Inquiry Committee, petitioner"-society"s Executive Committee in its meeting held on 16.5.1997 resolved to terminate services of Respondent No. 2 with immediate effect and, accordingly on 17.5.1997, a termination order was issued to Respondent No. 2. Respondent No. 2 challenged that order of termination before the School Tribunal on various grounds. The School Tribunal heard the appeal. The appellant filed his written note of arguments on 15.9.2000 duly signed by him and appeal came to be decided on 15.9.2003. The petitioner-Management did not file any counter to the said written note of arguments despite lapse of about three years. The School Tribunal ultimately allowed the appeal. Hence this petition.

4. Mr. K.R. Lambat, learned Counsel for the petitioner, before the commencement of hearing, was asked to file a detailed written synopsis of arguments proposed to be advanced by him. Hearings were held on 9.7.2007, 1.8.2007 and 4.8.2007 respectively, but he did not file the same. Registry of this Court has been publishing a notice in the Cause List asking the Advocates to file written synopsis of the arguments as per the Practice Note issued by the Honourable the Chief Justice right since March 2007. Mr. Lambat is the Secretary of the Bar Association and was reminded by me of his status as a representative of the Bar to cooperate with the Bench since filing of a detailed synopsis of arguments is always helpful in curtailing long drawn arguments in the Court. But, right from the date of commencement of hearing till the case was closed for orders, he did not file the same though he had as many as 25 days to do so. Except expressing displeasure this Court does not desire to add and say anything further.

ARGUMENTS:

5. Mr. K.R. Lambat, learned Counsel for the petitioner, made the following submissions:

(i) The Tribunal wrongly held that the enquiry against Respondent No. 2 was not conducted in accordance with the Rules, namely, Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (in short "the Rules") and its finding about Rule 36 thereof in particular is vitiated. No ground to that effect was taken in the memo of appeal by Respondent No. 2 and, therefore, it was impermissible for the Tribunal to travel beyond the grounds taken in the memo of appeal.

(ii) The finding recorded by the Tribunal that under communication dated 10.10.1996 names of the members of the Inquiry Committee nominated by petitioner -Management were not communicated to the Respondent No. 2 is factually wrong because, under letter dated 2.12.1996 produced with this Petition at Annexure "D" names were communicated to Respondent No. 2.

(iii) At any rate, the Tribunal ought to have seen that respondent No. 2 had not raised objection to that effect before the Inquiry Committee and, therefore, it was impermissible to allow such a contention being raised in the appeal for the first time.

(iv) The findings recorded by the Tribunal that some pieces of newspapers were sent to the Respondent No. 2 by registered post, instead of sending summary of the enquiry proceedings and consequently there was breach of Rule 37 (4) of the Rules, is liable to be set aside because no such ground was ever raised in the memo of appeal.

(v) As regards supply of documents, it was not necessary to supply documents at the preliminary stage of show cause notice and, therefore, reply dated 24.9.1996 was correctly given to the Respondent No. 2 and at any rate, it is not the case of Respondent No. 2 that documents were not supplied to him along with charge

sheet. The supply of documents along with charge-sheet was the only requirement.

(vi) No ground regarding non-supply of documents was specifically taken in the memo of appeal. The pleadings or grounds raised in the written note of arguments cannot be considered in the absence of the same being raised in the memo of appeal.

(vii) The impugned judgment and order made by the Tribunal being illegal should be quashed and set aside by allowing the petition.

6. Per contra Shri S.V. Manohar, learned Counsel for Respondent No. 2 submitted as under:

(a) It is misnomer to call the School Tribunal as "Appellate Tribunal" as the proceedings of appeal before the Tribunal are, in fact, the original proceedings and, therefore, the same cannot be strictly construed as appellate proceedings.

(b) Memo of appeal if perused shows that by and large all the grounds have been raised therein even by referring to the violation of Rules 36 and 37 of the Rules, 1981.

(c) Respondent No. 2 had filed written note of arguments before the Tribunal during the course of the proceedings on 15.9.2000. Written note of arguments was duly signed by Respondent No. 2 in support of the grounds in the appeal memo. Detailed submissions were made in the written note of arguments. The appeal was decided on 15.9.2003 i.e. exactly after three years and, therefore, the petitioner had three years time to refute the submissions made in the written note of arguments but the petitioner did not choose to do so and, therefore, cannot be permitted now to make such a grievance.

(d) At any rate, even before this Court, the petitioner has failed to point out anything in rebuttal contained in the written note of arguments as incorrect nor any breach of principles of natural justice has been indicated to this Court on the said count.

(e) The School Tribunal being a fact-finding authority/Tribunal, dealing with original proceedings is entitled to go through the entire record and proceedings of the inquiry and also to consider the note of arguments that was filed by Respondent No. 2 for finding out the truth. In the instant case, the Tribunal has considered everything and then came to the conclusion that there was violation of the rules in the course of conduct of departmental enquiry and that is why the enquiry was vitiated.

(f) The letter dated 2.12.1996 relied upon by learned Counsel for the petitioner was never filed before the School Tribunal by the petitioner and the same is filed with this Petition for the first time. Even otherwise, the said letter was never received by Respondent No. 2. Respondent No. 2 has specifically averred in his return in para No. 3 about the said letter that the same was never received by

Respondent No. 2 and there is no counter affidavit to the said averment. The said letter dated 2.12.1996 appears to have been brought into existence to show that the names of the nominees of the petitioner-management were communicated to the Respondent No. 2 under the said letter dated 2.12.1996 and that the decision to hold inquiry against Respondent No. 2 was itself taken on 1.12.1996.

(g) The said letter dated 2.12.1996 clearly falsifies the earlier stand of the petitioner taken in the letter dated 10.10.1996.

(h) The Tribunal has rightly held that the names of the nominees of the management on the Inquiry Committee were not communicated to Respondent No. 2 which violated Rule 36 (3) of the Rules.

(i) The Tribunal found as a matter of fact that it was necessary to supply documents to the Respondent No. 2 along with show cause notice dated 6.9.1996 or at least after the demand made by Respondent No. 2 on 17.9.1996. Refusal to supply documents on 24.9.1996 by the petitioner, was obviously wrong and illegal.

(j) The Tribunal further found and rightly so that instead of sending of summary proceedings by RPAD to the respondent No. 2 what was sent was some newspaper clippings.

(k) Respondent No. 2 would have definitely objected to the inclusion of name of Shri K.Z. Deshmukh as Member of the Inquiry Committee because the entire dispute arose because of the litigation between the petitioner and Shri K.Z. Deshmukh.

Finally, he prayed for dismissal of the Petition. **CONSIDERATION:**

7. Full Bench of this Court in the case of Saindranath v. Pratibha Shikshan Sansthan reported in 2007 (3) Mh.L.J. 753, affirming the view taken by a Single Judge of this Court in the case of Pralhadrai Dalmia Lions College of Commerce and Economics, Bombay and Ors. v. A.M. Rangaparia and Ors. 1988 Mh.L.J. 530, held that nomenclature would not be a decisive factor in determining the jurisdiction and powers of the Tribunal.

Now, the Preamble of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 reads thus:

WHEREAS it is expedient to regulate the recruitment and conditions of service of employees in certain private school in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently;

AND WHEREAS, it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the

standard of education; AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions, it is hereby enacted in the Twenty-eighth year of the Republic of India as follows:.

In the following paragraphs, the Full Bench (cited supra), held thus:

28. It is also clear from the preamble of the Act that this Act has been enacted to regulate the recruitment and conditions of service of the employees, to provide such employees security and stability of service, to enable them to discharge their duties effectively and efficiently. The legislature has constituted School Tribunal which is presided over by a person who is judicial official not lower than the rank of the Civil Judge. The legislature has also conferred upon the School Tribunal the powers of the appellate authority under Civil Procedure Code, for the purposes of admission, hearing and disposal of the appeals before it, and even otherwise also being a quasi-judicial, if not a judicial authority, it would mean that it is inherent powers to pass appropriate orders in the list before it.

29. In the case of Union of India and another Vs. Paras Laminates (P) Ltd., , after referring to the provisions contained in Section 129 (c) of the Customs Act, 1962, the Apex Court observed in para -8 of its judgment as under:

There is no doubt that the Tribunal functions as a Court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, not because its jurisdiction is plenary, but because it is legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised.

30. Thus, it is clear that when the legislature expressly confers power, grant of that statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective.

8. From the above, it is clear that the Tribunal is the first Court / Tribunal which is required to examine correctness of otherwise of the termination order issued by the management on the original pleadings, facts, available on record, various documents, proceedings of Inquiry Committee, the evidence recorded during the enquiry as well as findings of the Inquiry Committee. It is also empowered to record oral evidence before it. It is, therefore, first fact finding Court / Tribunal which has to undertake investigation as to whether the action taken by the Management is in accordance with the Rules and the principles of natural justice. I do not think that such a fact-finding Tribunal for finding out the truth would not be able to look into the various points raised in the written note of arguments by a party to the appeal, more particularly in the instant case, because the written note of arguments was filed by Respondent No. 2 on 15.9.2000 and the petitioner had enough time of three years at its disposal to rebut the contentions raised in the written note of arguments even if the contentions were on facts or

on law. Having carefully gone through the memo of appeal as well as the contentions raised in the written note of arguments, I do not think that the mere absence of precise, pertinent and detailed narration in the ground of appeal would denude the School Tribunal of its power to look into the entire record of the enquiry as well as written note of arguments. The contention raised by Mr. Lambat that in the absence of specific grounds in the memo of appeal, the Tribunal could not have seen the written note and recorded any finding is, therefore, rejected.

9. Now coming to the refusal to supply the documents to Respondent No. 2 under refusal letter dated 24.9.1996, it appears that the Respondent No. 2 demanded documents as per the list vide his letter dated 17.9.1996 for furnishing reply to show cause notice dated 6.9.1996. Rule 36 (1) of the Rules, 1981 reads thus:

36. Inquiry committee: (1) If an employee is allegedly found to be guilty on (any of the grounds specified in Sub-rule (5) of Rule 28) and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorized by the management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the management) shall communicate to the employee or the Head concerned by registered post acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

Now perusal of the above provision shows that the procedure prescribed in rules pertaining to the inquiry into the major misconduct has been prescribed in minute details and step by step. Initially the show cause notice is required to be issued to the delinquent -employee and his explanation is required to be obtained for satisfaction of the Chief Executive Officer as to whether it is a fit case for holding departmental inquiry against such employee. If the explanation tendered by such employee is found to be satisfactory, the Chief Executive Officer himself has a authority to drop the show cause notice. If the Chief Executive Officer is not satisfied with the explanation tendered, he has to place the show cause notice as well as explanation of the employee with necessary documents before the Executive Committee of the Management which, in turn, would consider the show cause notice, explanation and documents and decide after applying its mind as to whether really a departmental inquiry is required to be held or not. It is, thereafter that further procedure is required to be followed. Now, this being the object, namely, to find out whether really inquiry is necessary or not by two authorities, in my opinion, this provision has been made with a view to have check as to whether frivolous, vexatious or biased inquiry is being proposed or a real and serious misconduct is not being allowed to be inquired. I have, therefore, no hesitation in holding that the requirement of Rule to obtain explanation to show cause notice by allowing the employee to have

proper opportunity of submitting effective explanation is mandatory.

10. Now in the instant case for furnishing a proper and effective reply to show cause notice, the petitioner demanded the documents as per list in his letter dated 17.9.1996. Looking to the nature of documents demanded by him, it clearly appears to me that the said documents were directly related to the allegations made in the show cause notice and in the absence of documents he could not have furnished a proper, effective and correct explanation to the show cause notice. Respondent No. 2 was, therefore, clearly handicapped due to the blanket refusal vide letter dated 24.9.1996 by the petitioner management to supply said documents. Non-supply of documents as demanded by the Res.No. 2 for giving reply to show cause notice dated 6. 9.1996, has resulted into deprivation of giving effective explanation and consequently is in violation of the said Rules and the principles of natural justice. The finding recorded by the Tribunal to that effect is, therefore, correct and is confirmed.

11. Having gone through the letter dated 10.10.1996 which was issued to Respondent No. 2 this Court finds that in the said letter there is a specific mention that on 7.10.1996 the Executive Committee had taken a decision to hold inquiry against Respondent No. 2 and he should furnish the name of his nominee within seven days and should also reply the charge-sheet enclosed with the said communication. In this communication, there is absolutely no mention about the names of the nominated representatives of the petitioner-Management on the Inquiry Committee. Had the names of nominee or members of Inquiry Committee been communicated by this communication, the respondent No. 2 would have an opportunity to comment upon those names or object to the names or inclusion of any particular person. That was however, not done and, therefore, the Tribunal has correctly recorded a finding about violation of Rule 36 (3) of the Rules, 1981. Now looking to the communication dated 2.12.1996 Annexure "D" with this petition, it is a fact that the receipt thereof has been denied by Respondent No. 1 as averred by him in the return and there is no rebuttal affidavit on record from the petitioner. Curiously enough, in this letter which is produced for the first time in this petition, there is a mention that on 1.12.1996 it was decided in the meeting of the Executive Committee to hold inquiry which is clearly contrary to what is stated in the letter dated 10.10.1996 that the said decision was taken on 7.10.1996. In this letter dated 1.12.1996, names of two nominees of management are mentioned. It appears to me that this letter dated 2.12.1996 was brought into existence and filed with this petition for the first time by the petitioner-management with a view to meet the finding of the School Tribunal that the names of the representatives of the management in the Inquiry Committee were not communicated under letter dated 10.10.1996. This attempt of the petitioner to introduce such a document in the Petition for the first time does not appear to be bona fide. The finding recorded by the Tribunal, therefore, is correct.

12. As regards finding regarding violation of Rule 35 (4), Mr. Manohar, learned

Counsel appearing on behalf of Respondent No. 2, drew my attention to the finding recorded by the nominee of respondent No. 2. Reading of Para Nos. 49, 49(1), 49(2) and 50 clearly show that by registered post acknowledgment due an envelope was sent by petitioner-Management which was opened for the first time before the Inquiry Committee under a Panchnama which was drawn in the absence of all persons present and opened the envelope and it was found that it contained piece of newspapers clippings. This finding recorded by the nominee of the respondent No. 2 has not been rebutted by the petitioner management anywhere. The Tribunal has, therefore, rightly found that instead of sending summary of the proceedings, the piece of newspaper was sent to the respondent No. 2. The said finding is also correct.

13. The upshot of the above discussion is that the Tribunal did not err in recording various findings and though the Tribunal has not recorded a detailed judgment, the conclusions are correct. I do not find any substance in the present Petition. The same is dismissed with costs which are quantified at Rs. 5,000 (Rupees five thousand) to be paid by the petitioner-Management to Respondent No. 2 within four weeks from today. The petitioner-Management is directed to comply with the order / directions issued by the School Tribunal within eight weeks from today.