

(2018) 08 BOM CK 0093
In the Bombay High Court
Case No : Writ Petition No. 851, 951 OF 2009

South Indian Education Society & Ors.

APPELLANT

Vs

Ms. G. Shanta & Ors.

RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2018) 08 BOM CK 0093

Hon'ble Judges : S.C. GUPTE, J

Bench : Single Bench

Advocate : Arvind G. Kothari, Varsha Palav, Amar Mishra

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.Â These two crosspetitions, one by the teacher and the other by the school management, challenge an order

passed by the School Tribunal at Mumbai in an appeal under Section 9 of the MEPS Act.Â The appeal was filed by the teacher challenging her

termination from service.Â By the impugned order, the School Tribunal quashed the termination and ordered her reinstatement with continuity of

service and 50% of back wages.Â This order has been challenged by the school management in its entirety, whilst the teacher is aggrieved by denial

of 50% of back wages to her. Her appeal pertains to such denial.Â The crossÂpetitions are being disposed of by this common order.Â The

nomenclature of the parties for the purposes of this orderÂ is taken from the management's writ petition, namely, Writ Petition No.951 of 2009.

2. Respondent No.1 had been working in the Petitioner School, first as an assistant teacher since 1989 and later, as the headmistress of the school

since 1998. On 9 April 2001, a statement of allegations was issued to her, followed by a charge sheet, which was replied by her. Enquiry proceedings were, thereafter, conducted against her. The three member enquiry committee consisted of a convener from the management side and a State awardee as an independent member and a nominee of Respondent No.1. Two separate reports with findings were submitted by the committee - one jointly by the convener and the State awardee and the other by the nominee of the Respondent. In pursuance of the findings and reports, on 7 April 2002, Respondent No.1 was terminated from service. Respondent No.1 challenged her termination by the present appeal (Appeal No.58 of 2002). The Tribunal allowed the appeal and granted reinstatement with continuity of service and 50% back wages. That order, as noted above, has been challenged both by the headmistress and the school management.

3. It is mainly submitted by Mr. Kothari, learned Counsel appearing for the Petitioner, that the School Tribunal has, in the present case, without holding the findings of the enquiry committee as perverse, independently applied its mind to the material on record and has come to its own conclusion. Learned Counsel submits that important evidence in the matter has been missed out by the Tribunal whilst arriving at its conclusion. Learned Counsel submits that though the Tribunal itself found some charges against the Respondent teacher as proved, it has improperly held the punishment to be disproportionate to the charges proved and set it aside. Lastly, it is submitted that despite the teacher in the present case not having discharged her initial onus to prove want of gainful employment on her part between the date of her termination and the order of her reinstatement, the Tribunal has incorrectly awarded 50% of back wages to her.

4. The School Tribunal has been constituted as an appellate authority, having all powers as are vested in the appellate court under the Code of Civil Procedure, 1908. It not only has jurisdiction to look into the question as to whether or not the domestic inquiry is proper, but also to satisfy itself, as much as a court or tribunal does under any labour legislation, that on the evidence before it the disciplinary action taken against the employee is justified. It is the first court of appeal where the findings of the enquiry committee and the action of the school management based thereon are

challenged. It is very much open to the Tribunal to go over the entire material and see if the charges held as proved against the delinquent teacher by the committee were really proved on the basis of the material produced before the enquiry committee. This is particularly so in the present case in the light of the fact that there was no unanimous report or finding submitted by the enquiry committee; the committee was divided in its analysis of, and conclusion on, the material produced before it. The School Tribunal was of the view that the charges were not proved before the enquiry committee on the basis of the material. The Tribunal went into each of the eight charges levelled against the headmistress (and which were pressed by their advocate) for this purpose.

5. The first charge against the headmistress was that she had remained absent without a written application for leave on a couple of occasions, to be specific, from 3 March 2001 to 9 March 2001 and on 4 April 2001. The headmistress herself deposed to these incidents as also two management witnesses, including the Secretary of the school management. As for the first period, i.e. from 3 March 2001 to 9 March 2001, the Tribunal agreed with the findings of the enquiry committee that since her casual leave for this particular period was communicated by her in advance to the S.S.C. Board, since it was exam time, she could very well have submitted a similar leave application to the school management and got the same sanctioned, and that accordingly, she was at fault. As for her absence on 4 April 2001, the Tribunal noticed that there was evidence on record that on the earlier day, i.e. on 3 April 2001, at about 5.15 p.m., the Secretary of the school management had telephoned the headmistress and abused her and as a result, she even had to file a non-cognizable complaint against the Secretary with Matunga Police Station. On the next day, she came to the school with her relative under fear and handed over keys to her deputy, Rukmini Govind and wrote a note to the school office narrating the incident of the day before. Considering the circumstances on record, the School Tribunal was of the view that it could not be said that she was on unauthorised leave on 4 April 2001. The Tribunal observed that she could not, under the circumstances, work in the school on that day; she was practically prevented from discharging her duties on that date.

6. The second charge against the headmistress was that despite the decision of

the academic council of the school to start advance coaching programme for 9th Standard students going to 10th from 1 April 2001, the headmistress actually started the coaching programme a couple of days before the appointed date, i.e. from 28 March 2001, and, therefore, was guilty of insubordination. The headmistress's case, on the other hand, was that it was not the advance coaching programme for the entrants to 10th Standard, which was started by her, but the students were called for sports and training in first aid and physical exercise. Based on the evidence before it, the Tribunal observed that on 28 March 2001, advance coaching programme was not started by the headmistress but the students appeared to have been called for some physical training. The Tribunal was of the view that in her capacity as the headmistress of the school, she could very well have called the students for undergoing physical exercise, and, in the premises, she ought not to be held guilty of insubordination for that reason. Besides, the Tribunal was of the view that this could not be termed as a serious charge of misconduct against the headmistress.

7. On the charge of her being absent for S.S.C. examination to be conducted in the school, it has come on record that since the headmistress had realized that she had to go out of Mumbai, she had written to the S.S.C. Board and made an alternative arrangement to depute Rukmini Govind as Chief Conductor of Examinations; the S.S.C. Board in fact went ahead and appointed Ms. Govind as Chief Conductor; and the examinations went on smoothly. The only possible grievance that the management could have in this behalf was that the management was not informed about this change. The Tribunal held that this was really a matter between the S.S.C. Board and the headmistress of the school. The S.S.C. Board had no objection to appoint Ms. Rukmini Govind and the examinations anyway went ahead smoothly and merely for want of a formal intimation to the management in this behalf, no conclusion of misconduct or insubordination could be drawn against the headmistress.

8. On the charge of not conducting the requisite number of school committee meetings in an academic year, which was said to have been proved before the enquiry committee, the Tribunal did not offer any particular comment; it did not though find anything wrong about the conclusion of the enquiry committee in this behalf.

9. The next allegation was about a number of students having been squeezed in a particular class room. It was alleged that there was no planning done in advance for the class rooms or division expansion. It was alleged that when a committee was constituted to assist the headmistress, she was on leave and by the time she resumed duties, there was no time to initiate corrective measures and, as a result, the students suffered. The School Tribunal noted that there was no evidence in this behalf before the enquiry committee and the charge was not brought home.

10. The next allegation concerned absence of one particular peon on duty for a particular period. It was alleged that despite long absence, he was not put under suspension and, as a result, the working of the school had suffered. Evidence of the headmistress was that this particular person had met with an accident and could not come to the school; that memos were issued to him in relation to his absence but they were returned back to the school; and that later he had informed the school and even submitted his resignation to the headmistress. The resignation was even forwarded by her to the Secretary of the school management, which was thereafter sent to the Education Department. The Department incidentally rejected the resignation. The Tribunal noted that though absence of a permanent employee for a long period requires initiation of disciplinary action, such action had to be initiated by the school management and not by the headmistress. The duty of the headmistress was to inform the management about the absence. The Tribunal observed that from the record it appeared that she did not inform the management separately about the absence of the peon.

11. The other charge against her was that whereas she had instructed students of the school against going out during lunch time, she herself went to her house for lunch and remained out of school for about 2½ hours at a stretch. There was no evidence led by the management in this behalf.

On the basis of the headmistress's admission that on a few occasions she had gone to her house for lunch, the committee held that the charge of going home for lunch on some occasions was proved, but not the charge of remaining at home for lunch for 2 to 3 hours. The Tribunal noted that though the headmistress had admitted that on a few occasions she went home for lunch, these were not routine occurrences. As for the students, it was the case

of the headmistress that they were not allowed to go out of the school during lunch time for their own safety.Â

12. The last charge against the headmistress was that during the academic year 1999Â2000, the school worked for only 194 days as against the actual

instructional requirement of 195 days per academic year.Â The Tribunal noted that during the enquiry, no evidence was adduced on this point.Â Â

The Tribunal also noted that though documents were said to have been placed before the enquiry committee, no documents were found on this topic in

the record of the enquiry.

13. In the premises, the Tribunal observed that out of eight charges levelled against the headmistress, the only charges which could be said to be

proved were (i) she went on leave from 3 March 2001 to 9 March 2001 without submitting a leave application; (ii) she used to go sometimes to her

house for lunch; (iii) she did not conduct school committee and academicÂ council meetings as per the norms on the number ofÂ meetings to be held

in an academic year; and (iv) she did not inform the committee about the absence of one peon (who incidentally had met with an accident).Â The

Tribunal noted that these allegations were not of serious nature and did not warrant the extreme punishment like dismissal from service, which was

butÂ Â an economic death for the teacher.Â The Tribunal was of the view that the punishmentÂ of termination was too harsh and disproportionate

to the charges proved. The Tribunal noticed that it was admitted by the management that there was not a single adverse remark against the

headmistress and all her confidential reports were good. The Tribunal observed that this fact went on to show that the entire service of the

headmistress was clean and without any blot and, under such circumstances, the punishment inflicted upon her was harsh and shockingly

disproportionate andÂ deserved to be set aside.Â On this basis, the Tribunal set aside the order of termination and directed reinstatement of the

headmistress to her original post with consequential benefits and continuity of service.Â

14. No infirmity can be found with the impugned order of the School Tribunal in this behalf.Â The view taken by the Tribunal is clearly a possible

view, supported by evidence.Â There is no irrelevant or nongermane material considered or any relevant or germane material disregarded by the

Tribunal whilst arriving at its conclusion.Â The impugned order of the Tribunal, in the premises, does not merit any interference.

15. In so far as back wages are concerned, the Tribunal observed that the headmistress had sought to file an affidavit before the School Tribunal that

she had not been employed anywhere after her termination butÂ that the management had strongly objected to taking the affidavit on record, since

the matter was partÂheard and copy of the affidavit was not furnished to the management.Â The Tribunal observed that the law on back wages had

been developed over recent years. (The appeal before the Tribunal was of the year 2002 and the impugned order of 20 April 2009.)Â Contrary to the

earlier settled law, under which reinstatement was said to be followed by back wages, the trend now was that the initial onus was on the applicant for

reinstatement to show want of gainful employment in the interregnum.Â The older decisions, though,Â held the field around the time, when the

present appeal was filed before the School Tribunal. The Tribunal noted that the punishment of termination from service was harsh considering the

proven misconduct of the appellant and that partial back wages could always be awarded to the teacher in the circumstances of the case.Â

16. The services of the headmistress were terminated on 7 April 2002.Â Within 30 days she had to file an appeal. It was obvious that within these 30

days, she could not have been employed at any other institution.Â Absence of any statement in this behalf in the appeal is really of no consequence.

By the time the appeal came to be heard, there was a shift in the law on the subject of back wages.Â She even tried toÂ tender an affidavit

testifyingÂ want of gainful employment on her part, but she could not do so.Â The whole blame of not placing any material in this behalf could not be

laid at her door.Â If, in the premises and particularly considering the altered judicial trend on award of back wages, the Tribunal, in the facts and

circumstances of the case, has proceeded to apply a thumb rule, awarding 50% of back wages, no infirmity can be found with either its approach or

the relief granted by it to the teacher.

17. Analysis of evidence by the School Tribunal and grant of relief, in the facts and circumstances of the case, thus, clearly exhibit a possible view and

no interference is called for within the jurisdiction of this Court under Articles 226 or 227 of the Constitution of India.

18. There is, thus, no merit in the petition. The petition is dismissed with no order as to costs. The Court is informed that Respondent No.1 has superannuated in the meanwhile.Â The Petitioners and Respondent Nos. 2 and 3 are, accordingly,Â directed to forthwith release back wages and other dues including terminal benefits payable to Respondent No.1 post her superannuation after adjusting withdrawals made by her, if any, in pursuance of interim orders of this Court.

19. As far as the companion writ petition, namely, Writ Petition No.851 of 2010, is concerned, in the light of the above observations, particularly in connection with the award of back wages, no interference is called for.Â The writ petition is dismissed.Â No order as to costs.