

(2017) 07 BOM CK 0017
In the Bombay High Court
Case No : 8978 of 2016

The Superintendent, The Nanded Sikh Gurudwra Sachkhand
Shri Hazur Apchal Nagar Nagar Sahib, & Anr. APPELLANT

Vs

Jyotinder Kaur Hira Singh, & Anr. RESPONDENT

Date of Decision : 18-07-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Rules, 1981](#), [Rule 37](#), [Rule 36](#)

Citation : (2017) 07 BOM CK 0017

Hon'ble Judges : Ravindra V. Ghuge

Bench : SINGLE BENCH

Advocate : P.P. Mandlik, A.V. Patil Indrale, N.T. Bhagat

Final Decision : Allowed

Judgement

1. Rule. Rue made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner management is aggrieved by the judgment of the School Tribunal dated 28th August, 2015 by which Appeal No. 23 of 2013 filed by her for challenging the punishment of reversion dated 04th March, 2013 has been quashed and set aside and she has been granted reinstatement on the original post of Head Mistress. The operative part of the impugned judgment reads as under:

"1) Appeal is partly allowed with proportionate cost as follows.

2) The written reversion order dated 04.03.2013 passed by respondent management is quashed and set aside.

3) The respondent management is directed to make afresh enquiry as per Rules and take appropriate decision accordingly against the charges leveled against the appellant. Mean time they are directed to reinstate the appellant on original post

of Head Mistress in respondent No.3 school. The other reliefs claimed by the appellant i.e. continuity of service, full backwages and all the other consequential benefits are made dependent on the outcome of decision that has to be taken by respondent management on the basis of enquiry made as per Rules."

3. I have heard learned Counsel for the respective sides at length.

4. The petitioners make a statement that they are giving up the objection as regards the Gurudwara Act, 1956 being applicable and concede that the Petitioner No.2 - school is a private school and is covered by the Maharashtra Employees of Private Schools Act, 1977 and the Maharashtra Employees of Private Schools Rules, 1981.

5. Respondent No.1 - Head Mistress (hereinafter referred to as "the appellant") was promoted to the said post on 23rd August, 2008 and her appointment as Head Mistress was approved by the Education Department.

6. In 2012, prior to the conducting of the S.S.C. examinations, S.S.C. examination forms of the students were prepared by a particular clerk viz. Mr. Pund, wherein wrong subject codes were mentioned in some forms. The appellant approved all the forms that were prepared by the department and after concluding that information mentioned in those forms were correct, she signed those forms and submitted to the S.S.C. Board. On the date of the examination, it was revealed that 40 students received wrong question papers, in the sense that the question papers placed before them in the examination hall were with regard to different subjects. As the consequence, the said students could not appear for the examination and had to leave the examination hall. Later on, the appellant telephonically called back a few students. Four of them returned and few of them returned after a loss of one hour and fifteen minutes. As a last minute scramble, these students were given the question papers of the subject in which they were supposed to appear for the examination, but the time lost earlier, was not extended and the examination concluded as per the schedule of the S.S.C. board. Consequentially, 41 students failed in the S.S.C. examination and lost a valuable educational year.

7. After conducting an enquiry by appointing a retired Additional District Collector as the enquiry officer, the appellant was held guilty. She was imposed with the punishment of warning on 20th December, 2012 by the management. However, the Maharashtra State Higher and Secondary Education Board, Division Latur, by communication dated 09th January, 2013, brought it to the notice of the petitioner - management that when a grave misconduct was committed by the appellant, she could not be let off with an extremely minor punishment of warning. Such leniency could not be shown towards her and the management ought to reconsider the quantum of punishment. Consequentially, by order dated 04th March, 2013, the management awarded the punishment of reversion from the post of Head Mistress to the corresponding pay scale of an Assistant Teacher.

8. The appellant filed an appeal before the School Tribunal challenging the said

punishment as well as the enquiry. The Tribunal concluded that the enquiry was not conducted in accordance with Rules 36 and 37 of the M.E.P.S. Rules and as such, the entire enquiry was vitiated. For the sake of clarity, Rules 36 and 37 are reproduced as under:

" 36. Inquiry Committee:

(1) If an employee is allegedly found to be guilty on any of the grounds specified in subrule (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 authorised 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 acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in subrule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say,

(a) in the case of an employee

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in subrule (1)

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.

(3) The Chief Executive Officer or, as the case may be, the President shall

communicate the names of members nominated under subrule (2) by registered post acknowledgement due to the employee or the Head referred to in subrule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in subrule (2).

(5) The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.

(6) The meetings of the Inquiry Committee shall be held in the school premises during normal school hours or immediately thereafter, if the employee agrees and even during vacation.

37. Procedure of inquiry

(1) The management shall prepare a chargesheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convener of the Inquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgement due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.

(2) (a) Within 10 days of the receipt of the copies of chargesheet and the statement of allegations by the employee or the Head, as the case may be,

(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the chargesheet, he shall submit the same to the Convenor of the Inquiry Committee in person or send it to him by the registered post acknowledgment due.

(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convenor of the Inquiry Committee the names of witnesses whom they propose to so examine, and

(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.

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the Inquiry Committee shall meet to proceed with the inquiry and give 10 days notice by registered post acknowledgement due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

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

(d) (i) The Management shall have the right to lead evidence and the right to crossexamine the witnesses examined on behalf of the employee.

(ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the right to crossexamine the witnesses examined on behalf of the Management.

(iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e) All the proceedings of the Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.

(f) The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.

3. The Management and the employee or the Head, as the case may be shall be responsible to see that their nominees and the witnesses, if any, are present during the inquiry. However, if the Inquiry Committee is convinced about the absence of either of the parties to the dispute or any of the members of the Inquiry Committee on any valid ground, the Inquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.

4. The Convener of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgement due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any,

5. The employee or the Head as the case may be shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgement due.

6. On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings 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 or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgement due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgement due. Thereafter, the 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 registered post acknowledgement due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be."

9. Apparently, a retired Additional District Collector could not be appointed as the enquiry officer. The procedure laid down in Rules 36 and 37 mandates an enquiry committee to be formed and one member of the enquiry committee has to be nominated by the appellant. It is trite law that an enquiry stands vitiated at the stage at which it is held to be faulty and violative of the provisions of law. In the instant case, as the constitution of the enquiry committee itself was unsustainable, the entire enquiry was vitiated.

10. This aspect of directing a denovo enquiry is no longer resintegra in the light of the judgment delivered by the Hon'ble Supreme Court in the matter of Vidya Vikas Mandal and Another Vs. Education Officer and Another 2007 (3) Mh.L.J. 801. It would be apposite to reproduce paragraph nos. 7, 8 and 9 of the said judgment hereinunder:

"7. Our attention was also drawn to Rule 36 subclause 2(a), which applies to the case of an employee and reads thus:

"36 (2)(a) In the case of an employee

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so

authorized by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management.

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred."

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 or by the President of the Management if so authorised 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 subRules (i) (ii) & (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."

11. The issue is therefore settled. When a *denovo* enquiry is to be ordered, though the order of punishment is quashed and set aside, the employee is to be placed under suspension from the date of the termination/dismissal which is set aside and he would be entitled for suspension allowance in accordance with the rules until the disciplinary proceedings stand concluded after the order of punishment or exoneration is passed by the management.

12. The view taken by the Hon''ble Apex Court in *Vidya Vikas Mandal* (supra) was cited before the School Tribunal. Reference to the said judgment has been made in paragraph no.74 of the impugned judgment in Appeal No. 23 of 2013 which reads as under:

"74. Advocate Shri. M.B. Whatte of respondent management submitted that, though the punishment awarded is proper, the respondent management has not followed proper procedure and in view of ratio laid down in case of *Vidya Vikas Mandal and Another Vs. Education Officer and Another* reported in 2007 (3) Mh.L.J. 801, *President/Secretary Pioneer Education Trust and Others Vs. Janardan Mitharam Jangale* reported in MEC 142 the respondent management is entitled to do afresh enquiry against the appellant according to rules prescribed."

13. I find it disturbing that when the judgment in *Vidya Vikas Mandal* (supra) was specifically cited by the management, the School Tribunal has not even referred to the ratio, much less, discussed the same in the impugned judgment. The School Tribunal could not have brushed aside the law laid down by the Hon''ble Apex Court and could not have ignored the conclusions arrived at in paragraph no.9 of the said judgment. Had the school tribunal gone through paragraph no.9 of the said judgment. It would not have directed the reinstatement of the appellant on the original post of Head Mistress. For the said reason, the impugned judgment deserves to be interfered with to the extent of the direction in Clause 3 reproduced above.

14. Learned Counsel for the petitioner submits on instructions that the management has voluntarily reinstated the appellant as Assistant Teacher and intends to continue the appellant as an Assistant Teacher till the conclusion of the disciplinary proceedings. In the light of the decision of the management which is voluntary and of its own volition, it needs to be left to the management if they wish to continue the appellant on the post of the Assistant Teacher pending the disciplinary proceeding.

15. Mr. IndralePatil, learned Counsel for Respondent No.1 strenuously contends that as the appellant was working as Head Mistress during the enquiry proceedings, she has been rightly reinstated on the same post by the School Tribunal and no interference is warranted. I do not find that the said submission could be sustained in the light of the observations of the Hon''ble Apex Court in paragraph no.9 of the *Vidya Vikas Mandal* (supra) which are with reference to a case of dismissal and which would also apply to a case of reversion. The law is

that there cannot be reinstatement on the same post from which the appellant is said to have either been dismissed from service or reverted as punishment.

16. In the light of the above, this petition is partly allowed to the extent of quashing and setting aside Clause 3 of the impugned order reproduced above. The same stands substituted by the decision of the management to continue the appellant in service from the date she has been reinstated as an Assistant Teacher. The management shall be under an obligation to follow Rules 36 and 37 in letters and spirits and initiate steps for conducting the disciplinary proceedings within the time frame prescribed under the Rules.

17. The aspect of the loss of wages of the appellant from the date of reversion i.e. 04th March, 2013 shall depend upon the result of the disciplinary proceedings by applying the doctrine of "Relation Back". It be noted that this Court has not expressed any opinion about the seriousness and the gravity of the alleged misconduct and the same is left entirely to the management based on the result of the disciplinary proceeding.

18. Rule is made partly absolute in the above terms.