

(2015) 05 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 4487 of 2006

Urdu Education Association and Others

APPELLANT

Vs

Farrukh Ara Khhatun and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

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

Citation : (2015) 05 BOM CK 0086

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : U. Dastane and M.D. Lakhe, for the Appellant; N.R. Saboo and B.N. Mohta, Advocates for the Respondent

Judgement

A.S. Chandurkar, J.—This writ petition takes exception to the judgment dated 21/07/2006 whereby the appeal preferred by respondent No. 1 under provisions of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act) has been allowed and the order of termination has been set aside.

2. The litigation between the parties has a checkered history and hence reference is being made only to those facts that are necessary to decide challenge to the aforesaid judgment.

The respondent No. 1 was initially appointed as Assistant Teacher with the institution run by the petitioner No. 1. On 08/08/1977 she was appointed as in-charge Headmistress. She worked as officiating Headmistress from 01/09/1981. On 01/10/1989 a continuation order was issued to her to be effective from 01/09/1983 on the post of Headmistress. The services of respondent No. 1 came to be reverted on the post of Assistant Teacher by order dated 01/02/1997. The respondent No. 1 therefore preferred an appeal under Section 9 of the said Act challenging the order of reversion. The School Tribunal by order dated 19/03/1997 rejected the application for stay filed by respondent No. 1 on the

ground that the order of reversion had already been executed and hence it could not be stayed. This order was challenged by respondent No. 1 by preferring Writ Petition No. 972 of 1997. However no interim order was passed in the said writ petition and the same came to be dismissed on 10/09/1998. As a result thereof, no interim orders operated in favour of respondent No. 1 during pendency of the appeal challenging the order of reversion.

3. After the order of reversion dated 01/2/1997 was issued, the management on 06/04/1997 passed a resolution for holding an enquiry against the respondent No. 1 under the provisions of the said Act. On completion of the enquiry proceedings, the petitioners terminated the services of respondent No. 1 from the post of Assistant Teacher. According to the respondent No. 1, this order of termination was not immediately communicated to her as a result of which she could not file the appeal to challenge the order of termination within limitation. She therefore filed an application for condoning delay in filing the appeal. Said delay was condoned by the School Tribunal and Writ Petition No. 749 of 2000 preferred by the management challenging the said order came to be dismissed. On 13/08/2003 the appeal filed by respondent No. 1 came to be partly allowed and the order of termination passed pursuant to the enquiry proceedings was set aside. However, directions in relation to reinstatement and back-wages were deferred till completion of enquiry by the Director of Education. Subsequently on 29/09/2005, the School Tribunal passed another order directing reinstatement of the respondent No. 1 on the post of Headmistress. These orders came to be challenged by the present petitioners in Writ Petition No. 5524 of 2005 and by judgment dated 27/02/2006, both the orders were set aside and the proceedings were remanded to the Tribunal to decide whether the enquiry conducted against the respondent No. 1 was valid or not.

4. After aforesaid order of remand, the learned Presiding Officer of the School Tribunal heard the parties and by the impugned judgment held that the enquiry conducted by the petitioners was contrary to the provisions of Rule-36(2)(b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981). The Tribunal held that the President of the management was not associated with the enquiry proceedings and hence said proceedings were invalid. This judgment is the subject matter of challenge in the present writ petition.

5. On behalf of the petitioners, Shri U. Dastane learned counsel submitted that the School Tribunal erred in holding that the enquiry held against the respondent No. 1 was invalid. He submitted that the respondent No. 1 had been reverted to the post of Assistant Teacher and hence by treating her as Assistant Teacher, the management had conducted the inquiry. According to him, the learned Presiding Officer misdirected himself in restricting the consideration of the dispute only to provisions of Rule-36(2)(b) of the Rules of 1981. It was therefore urged that the School Tribunal by failing to consider the post held by respondent No. 1 after the order of reversion erroneously held the enquiry to be invalid. He then submitted

that even if the order of reversion was ultimately set aside in a separate appeal, the action of holding enquiry proceedings against the respondent No. 1 would have to be tested on the basis of the situation that was prevailing when the enquiry proceedings were held. According to him, the entire records were placed before the School Tribunal and hence the learned Presiding Officer ought to have considered the findings recorded in said inquiry proceedings. He therefore submitted that the order passed by the School Tribunal was liable to be set aside.

6. On the other hand, Shri N.R. Saboo learned counsel for the respondent No. 1 supported the impugned judgment. It was submitted that the respondent No. 1 had held the post of Headmistress and hence provisions of Rule-36(2)(b) of the Rules of 1981 were required to be followed. He submitted that order of reversion was found to be illegal by the School Tribunal in Appeal No. 14 of 1997 and hence it would have to be held that the order of reversion dated 01/02/1997 had no legal effect. According to him if the order of reversion was set aside, then it was clear that same had never taken effect and the respondent No. 1 continued on the post of Headmistress. According to him the School Tribunal rightly found that the President had not participated in the enquiry proceedings that were held against the Headmistress and therefore the School Tribunal was justified in holding the same to be vitiated.

7. Smt. M.N. Hiwase, the learned Assistant Government Pleader appearing for respondent No. 3 supported the impugned order.

Though learned counsel for the parties referred to various decisions in support of their respective submissions, reference is being made only to those decisions that are found relevant in the facts of the present case.

8. The facts on record indicate that the order of reversion dated 01/02/1997 had been challenged in Appeal No. 14 of 1997 by the respondent No. 1. She had moved an application for seeking interim relief therein but the School Tribunal rejected the said application on 19/03/1997. The challenge by respondent No. 1 to aforesaid order by filing Writ Petition No. 972 of 1997 was unsuccessful. As a result thereof, at least during pendency of the appeal, there was no interim order staying the reversion of the respondent No. 1 to the post of Assistant Teacher. The resolution passed by petitioner No. 1 to hold enquiry against respondent No. 1 is dated 06/04/1997. In it, it has been stated that it was proposed to hold an enquiry against the respondent No. 1 who was holding the post of Assistant Teacher after reversion. Thereafter, the enquiry proceedings are claimed to have been conducted by the management as per the provisions of Rules 36 and 37 of the Rules of 1981. The School Tribunal in the impugned judgment has considered the challenge to the order of termination dated 27/10/1997 pursuant to aforesaid inquiry. In the written statement filed by the management in aforesaid appeal, a specific stand was taken that the respondent No. 1 was working on the post of Headmistress till 02/02/1997 and had been reverted on the post of Assistant Teacher on 03/02/1997. It is then pleaded that enquiry was held against the respondent No. 1 as per the procedure prescribed by the Rules of 1981.

9. The School Tribunal after considering the material on record however restricted examination of the validity of the enquiry proceedings to compliance with provisions of Rule-36(2)(b) of the Rules of 1981. It failed to take into account the factual situation as arising on account of the order of reversion dated 01/02/1997. The fact that after issuance of said order of reversion the same had operated and there was no interim order passed in favour of respondent No. 1 has been totally ignored. The legal effect of failure to obtain any interim order by respondent No. 1 was that she stood reverted on the post of Assistant Teacher on 03/02/1997. It therefore cannot be said that the management while proceeding to hold enquiry proceedings by treating the respondent No. 1 as holding the post of Assistant Teacher was either illegal or contrary to law. In absence of the reversion order being stayed at least when the resolution to hold an enquiry was passed and during conduct of enquiry proceedings, the petitioners cannot be faulted for holding the enquiry proceedings by treating the respondent No. 1 as Assistant Teacher. The School Tribunal however, failed to consider as to whether the enquiry as held against the respondent No. 1 by treating her as Assistant Teacher was in accordance with law or not. In fact, the stand that the enquiry was duly conducted as per the procedure prescribed had been specifically pleaded. However, by posing a wrong question the learned Presiding Officer completely misdirected himself in holding that the Enquiry Committee was not validly constituted.

10. According to the learned counsel for respondent No. 1 as the order of reversion was subsequently set aside by the School Tribunal by judgment dated 13/08/2003 in Appeal No. 14 of 1997, same would relate back and it would have to be held that there was no reversion at all. Reliance in this regard has been placed on the decision of the Supreme Court in *Lata Baburao Mane Vs. Ramchandra Balasaheb Mane* and judgment of learned Single Judge in *Manohar Pandit Marathe Vs. President, Sharda Vidya Prasarak Mandal and Others*, (2014) 4 ABR 469 : (2014) 5 ALLMR 116 : (2014) 6 BomCR 62 : (2014) 4 MhLj 556 . On this basis it was urged that the School Tribunal was justified in holding the enquiry to be invalidly held. In the present case the doctrine of "relation back" cannot be made applicable for the reason that the action of the petitioners in holding enquiry proceedings against the respondent No. 1 during pendency of challenge to the order of reversion is under consideration. The issue is as regards the manner in which the management should have conducted the enquiry after having reverted the respondent No. 1 and during pendency of proceedings challenging the order of reversion. In absence of any interim order staying the order of reversion, the management was legally justified in treating the respondent No. 1 to have been reverted on the post of Assistant Teacher for the purposes of holding an enquiry against her. The decisions referred to by learned counsel for the respondent No. 1 would therefore have no application in the present facts. The situation in hand did not fall for consideration in aforesaid decisions.

11. Though it was urged by the learned counsel for the petitioners that the

material on record should be examined to record a finding that the enquiry proceedings were validly held and the charges were proved, said exercise which would involve adjudication of questions of fact which cannot be undertaken in the present proceedings. It is a fact that respondent No. 1 has superannuated from service. However considering the fact that the enquiry proceedings were duly held and records thereof are available, there is no other option but to direct the School Tribunal to consider the validity of the enquiry proceedings and whether the charges have been proved in the light of provisions of Rule-36(2)(a) of the Rules of 1981 by treating respondent No. 1 to be reverted on the post of Assistant Teacher when the enquiry was held. It is however clarified that such consideration is only for the purposes of considering the validity of the enquiry proceedings and the same shall not be treated as affirmance of the order of reversion which has been separately challenged.

12. In view of aforesaid discussion, the following order is passed :

(i) Judgment dated 21/07/2006 passed by the learned Presiding Officer, School Tribunal, Amravati, in Appeal No. 14 of 1999 is set aside.

(ii) The School Tribunal shall consider challenge to the order of termination dated 27/10/1997 in accordance with law and by considering whether the Enquiry Committee was constituted validly as per provisions of Rule-36(2) (a) of the Rules of 1981, whether the enquiry proceedings were held in accordance with law and whether the charges have been duly proved.

(iii) It is clarified that this Court has not examined the other findings recorded on merits and present consideration is restricted to applicability of provisions of Rule-36(2)(a) of the Rules of 1981. The rival contentions on merits are kept open.

(iv) As the respondent No. 1 has superannuated from service, the appeal shall be decided expeditiously and in any event by the end of October 2015.

(v) Rule is made absolute in aforesaid terms with no order as to costs.