
(2014) 07 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 3710 of 2003

Vidya Vikas Mandal

APPELLANT

Vs

The Education Officer (Secondary)

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Citation : (2014) 6 ALLMR 315

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : Chetan Sharma, Advocate for the Appellant; Nitin Rao, A.G.P. and Nikhil Tekade, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Z.A. Haq, J.—Heard Mr. Sharma, learned advocate for the petitioner, Mr. Tekade, learned advocate for respondent nos. 2(a) to 2(c) and Mr. Rao, learned Assistant Government Pleader for respondent no. 1-Education Officer.

2. The original respondent no. 2 had been working as an Assistant Teacher in the school administered by the petitioner-management, since 01.07.1989. There is no dispute that the appointment of original respondent no. 2 was made as per the rules and his appointment was granted approval by the respondent no. 1-Education Officer. The school administered by the petitioner-management receives grant-in-aid from the State Exchequer and therefore, the salary of original respondent no. 2 was being disbursed by the respondent no. 1-Education Officer. In the year 2000, on complaints against original respondent no. 2, an enquiry was conducted against him as per the provisions of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 (hereinafter referred to as "the Rules of 1981"). After the enquiry was completed, the services of original respondent no. 2 were terminated by the order dated 06.05.2002. The original respondent no. 2 had challenged his termination order before the School Tribunal, which allowed the appeal filed by original respondent no. 2 by its order dated 30.07.2002. By this order, the termination order dated

06.05.2002 is set aside and the petitioners are directed to reinstate the original respondent no. 2 with the consequential benefits. The main reason for setting aside the termination order, given by the School Tribunal in the order passed by it, is that the constitution of the Enquiry Committee which conducted the enquiry against the original respondent no. 2, was not according to the provisions of Rule 36(2)(a) of the Rules of 1981. The petitioners being aggrieved by the order passed by the School Tribunal, have filed this writ petition.

3. This Court, by the order dated 14.10.2003, issued Rule, Rule on stay and granted ad-interim stay until further orders. By order dated 12.11.2003, this Court confirmed the interim order. During the pendency of this petition, original respondent no. 2 has died on 01.06.2011 and respondent nos. 2(a) to 2(c), being the legal representatives of original respondent no. 2, are brought on record.

4. Mr. Sharma, learned advocate for the petitioners submitted that the finding of School Tribunal that constitution of the Enquiry Committee was not proper, is not correct. Learned advocate for the petitioners has pointed out that the petitioner-management had constituted the Enquiry Committee according to the rules and by the communication dated 01.09.2000, Shri Prabhakar Sadashiv Donadkar was nominated as the Member of the management and Shri Tukaram Sondruji Sondarkar was nominated as the National Award Recipient Teacher. It is submitted that the finding of the Tribunal that Shri Donadkar also participated in the enquiry and this shows that three nominees of the management participated in the enquiry as member of the Enquiry Committee, which is not permissible, is factually incorrect. Learned advocate further submitted that Shri S.S. Donadkar, being the Chief Executive Officer, was the Presenting Officer on behalf of the management and has not participated in the enquiry as the Member of the Enquiry Committee.

5. Mr. Sharma, learned advocate for the petitioners, in the alternative, has submitted that the Tribunal ought to have remitted the matter to the Enquiry Committee for proceeding with the enquiry from the stage at which the enquiry was found to be vitiated. It is submitted that now original respondent no. 2 having died, it is not possible to conduct fresh enquiry and as charges against original respondent no. 2 are serious, the order passed by the Tribunal, directing reinstatement of original respondent no. 2, has to be set aside and it has to be held that the original respondent no. 2 is not entitled for the reliefs as sought by him in the appeal filed before the School Tribunal.

6. Mr. Tekade, learned advocate for respondent nos. 2(a) to 2(c) has submitted that the conclusions of the Tribunal regarding constitution of the Enquiry Committee are proper. In addition, the learned advocate for respondent nos. 2(a) to 2(c) submitted that the enquiry report, which was submitted by the Members of the Enquiry Committee, was not a joint report and two members had submitted separate report and one member had submitted separate report, which is not permissible according to Rule 37(6) of the Rules of 1981. In support

of his submission, learned advocate has relied on the judgment of the Hon''ble Supreme Court in the case of Vidya Vikas Mandal and Another Vs. The Education Officer and Another, Mr. Tekade, learned advocate has submitted that the enquiry having been found to be vitiated, as a consequence, the termination has to go and it has to be treated that original respondent no. 2 was in service till his death i.e. till 01.06.2011. It is submitted that, accordingly, respondent nos. 2(a) to 2(c) are entitled for the arrears of salary, which the original respondent no. 2 would have received till his death. It is further submitted that if original respondent no. 2 is treated to be in service till 01.06.2011, he, having put in the qualifying service, is entitled for receiving the pension and other terminal benefits. Mr. Tekade, learned advocate for respondent no. 2(a) to 2(c) prays that the relief may accordingly be granted by this Court in the facts of the case.

7. Mr. Rao, learned Assistant Government Pleader, who appears for respondent no. 1-Education Officer, has submitted that as the lis is between the private parties i.e. the petitioners and respondent nos. 2(a) and 2(c), he has nothing to say in the matter. However, it is submitted that respondent no. 1-Education Officer or the State Exchequer cannot be burdened with the liability of disbursing any emoluments to the petitioner-management towards grant-in-aid for any amount payable to respondent nos. 2(a) to 2(c).

8. After considering the submissions made on behalf of the respective parties, without going into the other issues, it being an admitted fact that two separate reports are submitted by the Members of the Enquiry Committee, the conclusions of the Enquiry Committee cannot be acted upon as laid down by the Hon''ble Supreme Court in Vidya Vikas Mandal's case. Incidentally, the petitioner before the Hon''ble Supreme Court is the same management as in the present writ petition. The report of the Enquiry Committee, being illegal, the consequential action taken on the basis of the report also cannot stand, as the termination of original respondent no. 2 was on the recommendation of the Enquiry Committee, as contemplated by Rule 37(6) of the Rules of 1981. The management has only to implement the decision taken by the Enquiry Committee as per the above mentioned Rules. Therefore, the termination of original respondent no. 2 is required to be quashed.

9. The issue, which is required to be adverted, is what relief the respondent nos. 2(a) to 2(c) are entitled for, considering the fact that charges levelled against original respondent no. 2 were serious and this Court granted stay to the reinstatement of original respondent no. 2 by the order dated 12.11.2003. Considering the seriousness of the charges levelled against original respondent no. 2, in my view, the respondent nos. 2(a) to 2(c) cannot be held entitled for the entire arrears of the salary which could have been receivable by the original respondent no. 2. Mr. Sharma, learned advocate for the petitioners has rightly pointed out that the original respondent no. 2 had not pleaded anywhere that he was not gainfully employed during the period when he was not in the service of the petitioners. The respondent nos. 2(a) to 2(c) have also not placed any

material on record to substantiate that original respondent no. 2 was not gainfully employed during the period when he was not in service of the petitioners. Mr. Tekade, learned advocate for respondent nos. 2(a) to 2(c) has submitted that original respondent no. 2 was prosecuted for the charges levelled against him before the criminal Court also and he is acquitted in those proceedings.

10. If the original respondent no. 2 would have been alive and would not have attained the age of superannuation, in the facts of the present case, the fresh enquiry was necessary as two different enquiry reports are not acceptable as per the judgment given by the Hon''ble Supreme Court. Therefore, during the enquiry, if it would have been conducted, the original respondent no. 2 would have at the most been under suspension and in that case he would have been entitled for the subsistence allowance.

11. Considering all these facts and the fact that now there cannot be any enquiry against original respondent no. 2 for the charges levelled against him and considering the age of respondent nos. 2(a) to 2(c), I am of the view that the interests of justice would be sub-served by directing the petitioner-management to pay 40% of the arrears of salary, which the original respondent no. 2 would have received from the date of his termination i.e. 06.05.2002 till 01.06.2011.

12. In the circumstances, the Writ Petition is partly allowed.

The petitioners are directed to pay 40% of the arrears of salary, which the original respondent no. 2 would have received from the date of his termination i.e. 06.05.2002 till 01.06.2011.

It is further directed that the petitioner-management should take further steps to finalize the pension case of original respondent no. 2, treating original respondent no. 2 to be in continuous service from the date of his original appointment till the date of his death i.e. 01.06.2011. The papers of original respondent no. 2 for finalizing the terminal benefits should be sent to respondent no. 1-Education Officer within a period three months from today.

On receipt of the papers, respondent no. 1-Education Officer shall take appropriate decision in the matter till 31st of January, 2015 and if it is found that original respondent no. 2 was entitled to receive the terminal benefits, the same shall be paid to respondent no. 2(a) to 2(c).

13. Rule is made absolute accordingly in the above terms. In the circumstances, the parties to bear their own costs.