

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 4486 of 2015

Bhartiya Bhatkya Vimukta Vikas Va
Sanshodhan Sanstha & anr.

.. Petitioners

Vs.

Shri Anand Yadu Deshmukh & ors.

.. Respondents

Mr.V.S.Talkute, for Petitioners.

Mr.K.S.Bapat a/w Mr.Vaibhav Gaikwad, for Respondent No.1.

***CORAM: N.M.Jamdar, J.
Thursday, 10 December 2015***

P.C. :

The Petitioner-management challenges the order passed by the School Tribunal Pune, allowing the appeal filed by the Respondent No.1 and setting aside the order of his dismissal dated 5 September 2012 and granting him reinstatement with full back wages.

2. Respondent No.1 joined the services of the Petitioners as a Superintendent, on 8 June 2005. Thereafter from 12 June 2006, he was working as an Assistant teacher. A charge-sheet was issued to him on 25 April 2011. It was stated that the Respondent No.1 remained absent from 9 March 2011 to 12 March 2011 without permission. It was then stated that he used his mobile phone and started filming the students. Radha Kumar Puribuwa, a peon

working with the Petitioner tried to tell the Respondent No.1 to stop using the mobile phone and his filming of the students. However, the Respondent No.1 abused the said employee and pushed her and therefore, upon the complaint of the said employee, the charge-sheet was issued and inquiry was initiated. The inquiry thereafter was concluded and the Respondent No.1 was terminated from services.

3. Thereafter the Respondent No.1 filed an Appeal in the School Tribunal. The School Tribunal has culled out the charges against Respondent No.1 in paragraph no.31 of the Judgment as under-

“1. Absent without permission for the period from 09/03/2011 to 12/03/2011.

2. Clipping video on his mobile phone in the School Premises on 14/03/2011. Using of Mobile Phone in School Premises. Refused to deposit mobile, though it was instructed.

3. Avoided and refused to receive order of Head Master and avoid to give acknowledgement.

4. He abused and pushed one Peon, Radha Paribuwa, humiliating her by using word that “she is class IV” in the 5th and 6th Std Classroom in front of Head Master when she went there to deliver written order.” under the caption 'for filing consent terms'.

4. As regards the first charge of remaining absent without permission a finding is recorded by the School Tribunal that the Respondent No.1 was prevented from joining his duties. The

learned counsel for the Petitioners has also not assailed the said finding.

5. As regards the second charge of taking a video on his mobile phone, the Petitioner management has solely relied upon the deposition of the Peon. In her deposition it is nowhere stated that he was filming the students in his class on the mobile phone. All that she has stated that he was talking to some one on the mobile phone and upon being accosted, refused to deposit his mobile. Charge No.3 and 4 relate to the same incident and depend solely on the deposition of the said Peon. The Tribunal has found that the inquiry was not fair and proper and has also considered the merits of the charges which as stated earlier rests solely on the deposition of the Peon.

6. The learned counsel for the Petitioner submitted that the finding of the Tribunal that the concerned Peon did not depose regarding use of the mobile phone is perverse as she has so deposed before the Enquiry Committee. But as regards the charge of filming the students on the mobile phone which could have been considered with some concern, the said Peon has not deposed to that effect. It is in this context that the Tribunal has made the observation. Mere use of mobile phone in breach of the circular entailed imposition of penalty and for that purpose termination from services was not warranted.

7. The learned counsel for Respondent No.1 pointed out that the Tribunal has recorded the finding that the colleagues of Respondent No.1 tried to depose before the Enquiry Committee in his favour but they were made to withdraw their depositions and matter between them and the Petitioner-management pending in School Tribunal were settled. As regards the deposition of the Peon, her cross-examination was closed and the request of the Respondent No.1 to proceed further with her cross-examination was not acceded to.

8. Apart from the deposition of the concerned Peon whose cross-examination was not completed, no other person has come forward to depose regarding the incident of abuse and physical assault. As observed above, two colleagues of the Respondent No.1 did come forward in support of the Respondent No.1 but they were made to withdraw.

9. The learned counsel for the Petitioner submitted that the cross-examination of the concerned employee did take place and therefore, the finding of the Tribunal is perverse. It is not the case of the Respondent No.1 that the cross-examination was not allowed at all but it was prematurely, closed therefore, there is bound to be some cross-examination. It has come on record the inspite of the request of the Respondent No.1, the Enquiry Committee did not allow him to proceed further with the cross-examination of the sole witness.

10. Even assuming that the Petitioner / Respondent No.1 was talking on the mobile phone, this could not have led to dismissal from service. The conclusion of the School Tribunal that the entire episode was preplanned only to somehow dismiss the Respondent No.1 from services, appears to be fully justified. The conduct of the Petitioner management in trying to terminate the services of the Respondent No.1 in this manner is deplorable. Not only there is no failure of justice in the order of the School Tribunal but it will be failure of justice if the Writ petition is not rejected with costs. Accordingly, the petition is rejected with costs of ₹ 10,000 (Rupees Ten thousand only) to be paid to Respondent No.1, within period of four weeks from today.

11. At this stage, the learned counsel for the Petitioners seeks stay of the order of the School Tribunal. Considering the facts and circumstances and the observations made above, this request cannot be granted and is accordingly refused.

(N.M.Jamdar, J.)