

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1895 OF 2012
WITH
CIVIL APPLICATION NO. 2789 OF 2014

The President,
Maharashtra Seva Sangh & Anr. .. Petitioners
VS.
Kacharulal s/o. Digambar Chaudhary
& Anr. .. Respondents

Mr. M. S. Topkar for Petitioners.
Mr. Anil Golegaonkar for Applicant and Original Respondent No. 1.
Mr. S. D. Rayrikar – AGP for Original Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE : 18 FEBRUARY, 2015

P.C. :-

1] This petition challenges order dated 27 September 2011 made by the School Tribunal allowing the appeal instituted by the respondent no. 1, setting aside his termination order dated 30 August 2007 and directing payment of full back-wages and consequential benefits, including benefits upon superannuation.

2] The respondent no. 1 was appointed as a teacher by the petitioner school on 24 July 1990 and promoted as a Head Master on 3 November 2004. On 28 June 2007, a charge sheet was issued to the respondent no.1 and based upon the report of enquiry, the respondent no. 1 was terminated by order dated 30 August 2007. There is no dispute that the respondent no. 1 was to attain the age of superannuation on 31 August 2007. This means that the

termination order was made just a day prior to the respondent no. 1 attaining the age of superannuation.

3] The respondent no. 1, instituted an appeal before the School Tribunal which came to be treated as appeal no. 72 of 2007. The School Tribunal, by the impugned order made on 27 September 2011 has allowed the appeal on the sole ground that there was a defect in the constitution of the enquiry committee.

4] Rule 36(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("said Rules") provides for the constitution of the enquiry committee. Since the respondent no.1 was a Head Master, the enquiry committee had to comprise of the President of the management, a member to be nominated by a Head Master from amongst the employees of any private school and a member chosen by the President from the panel of Head Masters, who have been State / National Awardees. In the present case, the respondent no. 1 has nominated Mr. V. S. Kulkarni as the member of the enquiry committee. However, upon the commencement of the enquiry, it was noticed that Mr. V. S. Kulkarni was a retired Head Master. Therefore, Mr. V. S. Kulkarni was not permitted to continue as a member of the enquiry committee. The School Tribunal has found that after discontinuance of Mr. V. S. Kulkarni, an opportunity ought to have been given to the respondent no. 1 to nominate some other member from amongst the employees of any private school. Since such opportunity was never afforded to the respondent no. 1, the School Tribunal has come to the conclusion that the constitution of the enquiry committee was not in accordance with the Rule 36(2)(b) of the said Rules and the termination order on basis of report of such enquiry officer was unsustainable.

5] There appears to be no difficulty to sustain the aforesaid conclusion of the School Tribunal. However, Mr. Topkar, the learned counsel for the petitioners is right in his submission that in such an eventuality, the matter ought to have been remanded for fresh consideration by enquiry committee which could have been constituted in accordance with Rule 36(2)(b) of the said Rules. Normally, whenever the report of the enquiry committee is set aside on technical grounds or on grounds of violation of principles of natural justice, the school management has to be afforded opportunity to establish the charge against the employee concerned, by rectifying the defect, which may have been the cause for vitiation of the enquiry proceedings.

6] In the peculiar facts and circumstances of the present case, however, the School Tribunal cannot be faulted with for not adopting the aforesaid course of action. This is because, the record would indicate that the respondent no. 1 has been employee of the petitioner school right from the year 1990. The record would further indicate that for the period between 24 July 1990 and 28 June 2007, the service of the respondent no. 1 was blemish-less. Hardly two months prior to the date of superannuation however, charge sheet dated 28 June 2007 came to be issued. The enquiry was completed and one day prior to the date on which the respondent no.1 was to attain the age of superannuation, termination orders were issued. The Tribunal, has made the impugned order on 27 September 2011. By this date, the respondent no. 1 had already attained the age of superannuation and therefore there was no question of any reinstatement involved. Although the School Tribunal has directed payment of back-wages, the same in effect means and implies the back-wages for hardly one day.

7] The respondent no. 1, by now is almost 62 years of age. At this stage, therefore, no useful purpose would be served if the petitioners are permitted to hold enquiry afresh against the respondent no. 1. Besides, the position is also not very clear as to whether the petitioners can hold such an enquiry, once the respondent no. 1 has already attained the age of superannuation. However, that issue does not arise in the present petition and therefore no opinion is expressed upon the same. If the charges are perused, then although some of them appear to be of some substance, there is really nothing as serious as to deprive the respondent no. 1 of retiral benefits, after having rendered services from the year 1990 to the petitioner school. If therefore, the School Tribunal, upon taking into consideration all such aspects has merely set aside the termination order and directed payment of retiral benefits, it cannot be said that the impugned order or the approach of the School Tribunal is in any manner perverse, unreasonable or arbitrary. Ultimately, this Court in the exercise of its extra ordinary jurisdiction, is not expected to interfere, merely because a legal point has been made out or merely because some error is demonstrated in the impugned order. In the final analysis, all that has happened is that the respondent no. 1 has been held as eligible to receive his retiral benefits. Such conclusion or result which appears to be equitable, cannot be disturbed by this Court in exercise of its extra ordinary jurisdiction. For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

8] At this stage, the learned counsel for the petitioners prays for stay of four weeks. As interim relief was granted during the pendency of this petition, the same is extended for a further period of four weeks from today.

9] In view of the dismissal of the writ petition, the civil application no. 2789 of 2014 taken out by the respondent no. 1 does not survive, accordingly, the same is disposed of.

(M. S. SONAK, J.)

Chandka