

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

WRIT PETITION NO.11237 OF 2014

The President,

Shri. Warnamai Shikshan Prasarak Mandal

Kakhe and another

.. Petitioners

Versus

The State of Maharashtra and others

.. Respondents

Shri. Tejas Hilage, for the Petitioners.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.1 & 3.

Shri. N. V. Bandiwadkar, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 27th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court under Article 226 and 227 of the Constitution of India is invoked against the judgement and order dated 20.01.2014 passed by the Learned Presiding Officer of the School Tribunal, Kolhapur, by which order the Appeal filed by the Respondent No.2 herein being Appeal No.39 of 2013 came to be allowed and resultantly, the order dated 31.07.2013 by which the services of the Respondent No.2 were terminated was quashed and set aside. The Respondent No.2 was directed to be reinstated in service with continuity of service and other incidental benefits and the Appellant was entitled for

compensation at 25% of his salary from 31.07.2013 till the reinstatement as directed in clause-2 and thereafter if not reinstated, the Respondent No.2 was held entitled for the compensation full back wages till the actual reinstatement.

2. It is not necessary to burden this order with unnecessary details. Suffice it to state that the Respondent No.2 who was the Appellant before the School Tribunal was a permanent employee of the school run by the Petitioner management and was appointed in the year 1994. The service of the Respondent No.2 came to be terminated by letter dated 31.07.2013. In the said letter the fact that the Respondent No.2 is a permanent employee was accepted. However, it was alleged against Respondent No.2 that his conduct was not conducive and in interest of the school and that his conduct brings disrepute to the institution. The Respondent No.2 was thereafter informed that it was not possible to continue him in service and accordingly a resolution came to be passed in the meeting dated 30.03.2013 in which meeting resolution no.3 to terminate the services of the Respondent No.2 came to be passed. The termination of his services was taken exception to by the Respondent No.2 by filing an Appeal being Appeal No.39 of 2013. The said Appeal was filed on 08.08.2013 and the said Appeal came to be served on the management i.e. Petitioner herein in or about September, 2013. The Petitioner appeared

in the said Appeal through advocate, however did not file the written statement. The Tribunal on account of the same passed a “No Say” order against the Petitioner on 17.12.2013 and directed the matter to proceed accordingly. The Appeal was thereafter posted for hearing on 21.02.2014 on which day the Appeal came to be allowed. The gist of the reasoning of the Tribunal as can be seen from the impugned order is that the Respondent No.2 i.e. Appellant came to be appointed in the year 1994-1995 and that his appointment was duly approved by the department. The Tribunal came to a conclusion that since the termination of the services of the Respondent No.2 are for the reasons mentioned in the said letter dated 31.07.2013 the question that is posed is whether the management has followed the procedure prior to termination of the services of the Respondent No.2. The Tribunal adverted to the fact that though show-cause notice was issued to the Respondent No.2 vide letter dated 03.05.2013, no inquiry has been conducted by the management and the management has also not explained as to what procedure has been followed prior to the issuance of letter of termination dated 31.07.2013. The Tribunal therefore, found the action taken by the management i.e. Petitioner herein as violative of Rules 33, 36 and 37 and therefore recorded a finding that the termination of the Respondent No.2 is in violation of the Rules and is per se illegal, void ab initio. The Tribunal

therefore, deemed it appropriate to allow the Appeal and has issued the directions as contained in the operative part of the impugned order dated 20.01.2014 to which directions a reference has been made in the earlier part of this order.

3. It is the said judgment and order dated 20.01.2014 which is taken exception to by way of the above Petition.

4. Heard the Learned Counsel for the parties. The Learned Counsel appearing for the Petitioner Shri. Tejas Hilage would contend that since the Petitioner did not file its written statement, the Appeal can be said to have proceeded ex-parte and therefore, the adjudication that has taken place is an ex-parte adjudication. The Learned Counsel would contend that there are serious allegations against the Respondent No.2 and if the Respondent No.2 is reinstated the functioning of the institution would be in jeopardy. The Learned Counsel would contend that though the order passed by the Tribunal is dated 20.01.2014 the instant Writ Petition has been filed immediately thereafter and therefore, it cannot be said that there is any delay for the Petitioner approaching this Court by way of invoking its Writ Jurisdiction.

5. Per contra, Shri. N. V. Bandiwadekar the Learned Counsel for

the Respondent No.2 would contend that the termination dated 31.07.2013 has been done by the management without following a modicum of procedure as contemplated by the rules. The Learned Counsel would contend that since the termination is on the ground that the conduct of the Respondent No.2 is remiss, it was incumbent on the management i.e. Petitioner herein to conduct an inquiry that having not been done, the Tribunal is right in setting aside the order of termination. The Learned Counsel would further contend that the conduct of the management inter-alia discloses that the management is bent upon terminating the services of the Respondent No.2. The Learned Counsel would contend that on an earlier occasion the device of terming the Respondent No.2 as surplus was innovated. On the basis of which his services were terminated, which termination was set aside by this Court in Writ Petition No.8624 of 2010. It is after failing in the said attempt that the modality of termination by the order dated 31.07.2013 has been adopted. The Learned Counsel would contend that though the above Petition has been filed in February, 2014 has not been moved till this date and in the Trial Court i.e. in the Tribunal adjournments are sought on the ground that the above Petition is pending.

6. I have heard the Learned Counsel for the parties and considered the rival contentions. As indicated above, the Appeal in

question being Appeal No.39 of 2013 was proceeded ex-parte as the Petitioner herein i.e. management did not file its written statement as a consequence of which a “No Say” order passed against the management on 17.12.2013. The question that therefore arises is whether the Petitioner the management is required to be given an opportunity to file its reply by setting aside the order passed by the Tribunal. In the said context, a few facts are required to be revisited. In so far as the termination is concerned, the same as indicated above is by the order dated 31.07.2013. In the said order the reasons for terminating the Respondent No.2 have been mentioned, which reasons involve serious allegations made against the Respondent No.2. It is sought to be alleged that on account of the manner in which the Respondent No.2 conducts himself disrepute is brought to the institution. The statutory regime which is applicable under the Maharashtra Employees of Private School's Act and Rules contemplate a procedure that is required to be followed, more so in the case of the permanent teacher. The rules in question are Rules 33 to 37 rules. Indubitably, in the instant case no procedure was followed prior to the termination of the services of the Respondent No.2 and that the services of the Respondent No.2 were terminated without giving him an opportunity to meet the allegations. It is also required to be noted that on an earlier occasion the services of the Respondent No.2 were sought to be

terminated on the ground that he has turned surplus which termination was also set aside by Division Bench of this Court in Writ Petition No.8624 of 2010. Hence, the aforesaid chain of events indicate that the management seems to be finding a way for dispensing with the services of the Respondent No.2. In the light of the fact that the services of the Respondent No.2 were terminated without following a modicum of procedure, in my view no purpose would be served, if the impugned order is set aside and the matter is remanded back to the Tribunal for de-novo consideration. The question that begs an answer is what defence possibly the management can have against such a termination, the answer is obviously to be a resounding no. In my view, therefore, the reasons on the basis of which the Tribunal has allowed the Appeal cannot be found fault with. It cannot be said that the Tribunal has in allowing the Appeal committed any error of jurisdiction or any illegality or infirmity for this Court to exercise its jurisdiction under Article 226 and 227 of the Constitution of India. The Writ Petition is accordingly dismissed. The Learned Counsel for the Respondent No.2 tenders photocopy of the termination letter dated 31.07.2013 and the Appeal memo which is taken on record and marked as "X" and "Y" for identification.

[R.M. SAVANT, J]