

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4373 OF 2014

Smt. Seema Ganpat More .. Petitioner
vs.
The President/Secretary,
Shishu Vikas Mandir, Daund and ors. .. Respondents

Ms Kumud Bhatia for the Petitioner.
Mr. Neel Helekar for Respondent Nos.1 and 2.
Ms Aparna Vhatkar, AGP for Respondent No.4.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 12 March 2015.
Date of Pronouncing the Judgment : 19 March 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the judgment and order dated 21 February 2014 made by the School Tribunal, Pune dismissing the petitioner's appeal against the termination of her services vide order dated 12 June 2013.

3] The petitioner belongs to the Scheduled Caste category. By appointment order dated 21 September 1979, the petitioner was appointed as a full time Assistant Teacher in Shishu Vikas Mandir, Daund (school) established and managed by respondent Nos.1 and 2. It is the case of the petitioner that on 18 August 1995, she was promoted to the post of Head Mistress of the said school and she took charge of said posts on 19 August 1995. It is further the case of the petitioner that the Secretary of respondent No.1 instituted Writ

Petition No.4312 of 1993 to strike down Government Resolution (GR) dated 15 September 1989, which required maintenance of 50 Point Roster, in the matters of appointment to the post of Head Master. The petitioner was not impleaded as a party to the said petition, but the said writ petition was allowed on 17 September 2001. From the said date, it is the case of the petitioner that though she was never removed from the post of Head Mistress, one Mrs.Meenakshi Shelar, sister of one of the Managing Committee Members started discharging duties as Head Mistress. The said Mrs. Meenakshi Shelar retired with effect from 30 June 2012. The petitioner being senior most eligible teacher, as a matter of abundant caution applied for promotion to the post of Head Mistress by following the rule of seniority. In order to avoid formal promotion of the petitioner to post of Head Mistress, the school management, including in particular Shri. Ambadas Muley, Secretary of the school management issued a Show Cause Notice dated 17 September 2012 to the petitioner, making therein several false and belated allegations. It is the case of the petitioner that the Secretary, Mr. Ambadas Muley, who had filed the Writ Petition No.4312 of 1993 questioning the GR dated 15 September 1989 on basis of which the petitioner had been promoted to the post of Head Mistress. Further, it is the case of the petitioner that Mrs. Meenakshi Shelar, who, in 2001 took charge of post of Head Mistress was the sister of said Mr. Ambadas Muley.

4] It is also the case of the petitioner that soon after her appointment to the post of Head Mistress in the year 1995, the petitioner had made some complaints of harassment against the Secretary Mr. Ambadas Muley. As a counter blast, Mr. Ambadas Muley and the sister Smt. Meenakshi Shelar instigated one

Smt.Sushila Navale, peon in the school to file a criminal complaint against the petitioner alleging offences under Section 323 and 379 of Indian Penal Code. The allegation in such complaint was that the petitioner committed theft of Attendance Muster and caused hurt to the said peon. By the judgment and order dated 13 July 1998, the said complaint was dismissed and the petitioner was acquitted of the offences alleged. Thereafter, some time in the year 1996 itself, Mrs. Meenakshi Shelar filed a complaint of criminal intimidation against the petitioner. Again by, judgment and order dated 27 March 2000, the said complaint was dismissed.

5] In response to the Show Cause Notice dated 17 September 2012, the petitioner filed a detailed response dated 8 October 2012, denying charges leveled against her. A chargesheet dated 16 October 2012 was issued to the petitioner and an inquiry was held, in which the Secretary Ambadas Mules was appointed as a Management representative. The Inquiry Committee was constituted in terms of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) and Rules made thereunder. The members of the Inquiry Committee did not submit a combined Report, but rather made separate Reports. Two members recommended termination of the petitioner and the third member proposed a minor penalty. Based upon such separate Reports of the Inquiry Committee, the school management, by order dated 12 June 2013 terminated the petitioner's services. On the date of such termination, the petitioner had put in services of 34 years in the said school. Besides, the petitioner was to attain the age of superannuation on 30 June 2014.

6] The School Tribunal, by the impugned order, has held that there was no infirmity in the termination order dated 12 June 2013 and on the said ground dismissed the petitioner's appeal. Hence, the present petition.

7] Ms Kumud Bhatia, learned counsel for the petitioner, made the following submissions in support of the petition:

(a) That there was breach of the provisions of MEPS Act and Rules made thereunder in the matter of conduct of inquiry. The inquiry was not held consistent with the principles of natural justice and fair play. Further, there is breach of mandatory requirement of submission of a combined Report. All these vitiates the termination order;

(b) That the chargesheet issued to the petitioner on 16 October 2012, contained vague and in any case stale charges. The chargesheet was issued with the sole intention of depriving the petitioner, promotion to the post of Head Mistress, since the petitioner was admittedly the senior most teacher in the school. The chargesheet was issued at the behest of Mr. Ambadas Muley, the Secretary of the Managing Committee and his sister Mrs. Meenakshi Shelar, who bear a grudge against the petitioner;

(c) If the charges which were held by Inquiry Committee and the Tribunal as proved, are perused, it would be clear that the same are stale and in any case, trivial. In such circumstances, the imposition of major penalty of dismissal from services, after the petitioner had served the said school for a period of almost 34 years and was on the verge of retirement, is grossly disproportionate.

8] Mr. Neel Helekar, learned counsel for the respondent Nos.1 and 2 (school management) and Head Master, submitted that the inquiry in the present case, was held in accordance with the provisions of the MEPS Act and Rules made thereunder. There was no breach in the matter of compliance with the principles of natural justice and fair play. The Report of the Inquiry Committee was not really separate, considering that the Report of two members was contained in one document and the Report of third member was furnished simultaneously, though in a separate form. The Inquiry Committee and the School Tribunal have recorded that the most of the charges against the petitioner were proved and considering the nature of charges, penalty of dismissal from service was appropriate. Further, it was submitted that mere delay in service of chargesheet, is not recognized as a ground for either quashing the charges or exonerating delinquent employee. For all these reasons, Mr. Neel Helekar submitted that this Court ought not to interfere with the impugned order.

9] The rival contentions now fall for determination.

10] The charges levelled against the petitioner have to be examined in the background that the same that the same were levelled after the petitioner had put in service of almost 34 years and was due to retire within a year or two. As noted earlier, the petitioner was appointed as a teacher in the year 1979 and was due to retire on 30 June 2014. The chargesheet in the present case was issued only on 16 October 2012. Further, it is also necessary to note that the petitioner had been promoted to the post of Head Mistress some time in the year 1995. But this promotion, it appears was on the basis of GR dated 15 September 1989, which provided for a 50

Point Roster in matters of promotion. The Secretary, Mr. Ambadas Muley instituted Writ Petition No. 4312 of 1993 questioning the GR dated 15 September 1989, though to this petition, the petitioner had not been impleaded as a party. Consequent upon the GR having been struck down, Mrs. Meenakshi Shelar, sister of Mr. Ambadas Muley came to be appointed as Head Mistress in the place of the petitioner. The said Mrs. Meenakshi Shelar, retired on 30 June 2012. Thereafter, not on the basis that the petitioner was belonging to the Scheduled Caste category, but on the basis of seniority, the petitioner addressed the representation demanding promotion to the post of Head Mistress. On 17 September 2012, the petitioner was served with a Show Cause Notice containing some allegations. The petitioner replied on 8 October 2012 and soon thereafter, i.e., 16 October 2012, chargesheet came to be issued to the petitioner. Several of the charges included in the chargesheet dated 16 October 2012, are stale and therefore the circumstances do indicate that the main purpose of issuance of chargesheet was to deny to the petitioner, even consideration for promotion to the post of Head Mistress.

11] Before advertng to the actual charges, reference is required to be made to the records which indicate that criminal cases had been instituted by a peon of the school alleging that the petitioner had committed theft of the school Muster Roll. Further, Meenakshi Shelar had also instituted criminal case against the petitioner. Both these criminal cases were dismissed. The petitioner, had also instituted criminal cases against some of the school employees under the Protection of the Civil Rights (PCR) Act, 1955. Even the said case was dismissed.

12] The first charge, in the chargesheet issued on 16 October 2012, relates to the year 1996. The allegation is that the petitioner took away the school Muster Roll and kept it in her own custody. Though the two members of the Inquiry Committee have held such charge as proved against the petitioner, the School Tribunal, upon detailed consideration thereof has held that such charge cannot be said to have been proved against the petitioner. What is relevant, however, that the school management chose to level a charge in relation to an incident that is alleged to have taken place in the year 1996 only in the year 2012 and that too when the petitioner was senior most teacher demanding for promotion to the post of Head Mistress. The charge levelled, was undoubtedly a stale one. Further, perhaps in respect of the same charge, the petitioner was acquitted by the Judicial Magistrate, Daund in the criminal case instituted against her by the peon of the school. Clearly, therefore, the school management was not at all justified in raking up such a stale issue and this gives some credence to the contention of Ms Kumud Bhatia that the school management was bent upon dismissing the petitioner from services, so as to deny her consideration for promotion to the post of Head Mistress.

13] The second charge, in the chargesheet issued on 16 October 2012, again relates to the year 1995-1996. The charge is that the petitioner allegedly made remark in the Teacher's Muster Roll in her own handwriting and signed as a Head Mistress. The two members of the Inquiry Committee as also the School Tribunal have held this charge as proved. The School Tribunal has gone to the extent of observing that the petitioner by making remarks in the Teacher's Muster Roll and signing the same as Head Mistress in the year 1995-1996 constitutes '*serious misbehavior and arrogance*'.

14] The second charge was also stale and issued belatedly. It must be remembered that it is the case of the petitioner with effect from 19 August 1995 the petitioner had been promoted to the post of Head Mistress. It is only in the year 2001, consequent upon the decision of this Court in Writ Petition No.4312 of 1993 that Mrs. Meenakshi Shelar took charge of the post of Head Mistress. In this petition, we are really not concerned as to whether, the petitioner was validly appointed as Head Mistress or not. Suffice to observe that the petitioner was not some sort of an usurper to the post of Head Mistress. If therefore, the petitioner had made some remarks in Teacher's Muster Roll or even signed as Head Mistress in the year 1995-1996, surely the same cannot be held to be some charge worthy of being raked up after a period of almost 16 to 17 years. Further, such act can hardly be described as some serious misbehavior or arrogance. Accordingly, there is clear non-application of mind and perversity involved in the matter of reference to the second charge based upon alleged act of the petitioner in the year 1995-1996.

15] The third charge, again relates to the year 1995-1996 and the charge states that the petitioner proceeded on leave without permission. The charge, apart from being belated is very vague. The School Tribunal has come to the conclusion that such charge cannot be said to have been proved against the petitioner. It needs to be noted, however, that in the context of such charge, the school management sought to blame the petitioner for having remained absent on 16 April 2012, when her husband had expired. All this lend support to the petitioner's contention that the chargesheet was issued only in order to deny her consideration for promotion to the

post of Head Mistress and because some of the members of the Managing Committee had an Axe to grant against the petitioner.

16] The fourth charge, again relates to the incident allegedly taken place on 28 August 1995. The allegation is that in the petition, the petitioner has wrongfully confined Mrs. Meenakshi Shelar and also threatened her. It is to be noted that Mrs. Meenakshi Shelar had instituted a criminal case against the petitioner and the petitioner was acquitted on 27 March 2000. The school management, however, after a period of 17 years from the date of alleged incident and 12 years from the date on which the petitioner was acquitted for the offences alleged to have been committed for the self same incident, has chosen to level such charge upon the petitioner. This is clearly not justified. The Inquiry Committee and the School Tribunal were not right in holding this charge as proved. Normally, there can be no objection to an employee being departmentally proceeded against, even after acquittal in criminal case. This is because, it is well settled that the scope and import of the two proceedings is different and distinct. However, in the peculiar facts of the present case, the school management could not, at the stage when the petitioner was the senior most teacher seeking for promotion, raked up such a stale incident of the year 1995 in the year 2012, particularly when in the year 2000 the petitioner had been acquitted in the criminal case instituted against her. The findings of the School Tribunal are vitiated by non-application of mind and perversity.

17] The fifth charge, again relates to the year 1995 and states that the petitioner prepared a forged stamp and signed as Head Mistress, when in fact, she shall not the Head Mistress. Again, this charge is similar to the second charge wherein it was alleged that the

petitioner made some remarks in the Teacher's Muster Roll in her own handwriting and signed as Head Mistress. The charge as noted is stale. Besides on basis of the reasons concerning the second charge, the findings with regard to this charge are also unsustainable.

18] The sixth, seventh and eight charges though not stale, are vague and in the background of facts and circumstances in which they came to be issued, do not inspire any confidence. The sixth charge states that the petitioner refused letters/correspondence addressed to her and in some cases responded by using un-parliamentary language. On the aspect of un-parliamentary language, reference was made to the communication dated 22 May 2013, in which the petitioner referred to Mrs. Shelar as '*Monkey*'. The two members of the Inquiry Committee, have devoted considerable time of space to this communication and have found the petitioner to be guilty of using insulting and un-parliamentary language. The use of such term, is certainly, not justified. However, if paragraph 109 of the impugned order made by the School Tribunal is perused, it is clear that the petitioner, in her communication dated 22 May 2013 , had perhaps in the context of Mrs Shelar, stated that since the management has enthroned a Monkey and armed it with a weapon, the Monkey is attempting to burn the throne itself. In fact, the exact words used by the petitioner have been quoted in the said paragraph. From the same, it does appear that the petitioner did not really address Mrs. Shelar as a Monkey, but the petitioner made use of certain cliches well known in Marathi language. Again, although use of such language is best avoided, in the context of acrimony between the petitioner and Mrs. Shelar, it cannot be said that the

charge is of some serious nature, warranting penalty of dismissal, when the petitioner was virtually on the verge of her retirement.

19] The seventh charge, again makes reference to certain communications addressed by the petitioner to the State Government Authorities pointing out certain irregularities in the functioning of the school management. The School Tribunal has recorded a finding that seventh charge cannot be said to be proved against the petitioner and that the two members of the Inquiry Committee, who had held that such charge was proved, have not held so either justly or properly. The School Tribunal has recorded that the findings of petitioner Nominee in the course of inquiry are proper and just. The School Tribunal has also noted that the petitioner cannot be said to have made any false complaints, particularly because the Government Authorities, in pursuance of inquiries found that the same had substance. An Administrator was also appointed to manage the affairs of the said school.

20] The eighth charge, again makes vague reference to the petitioner arriving late for work or leaving the school premises before closing time. The charge is vague and simply alleges that there was negligence in discharge of duties by the petitioner. There is reference to not filling up of Confidential Reports and certain other matters. However, considered in the background as aforesaid, the charges are clearly trivial.

21] From the aforesaid, it is clear that there was absolutely no warrant for imposing penalty of dismissal upon the petitioner based upon stale, vague and mostly trivial charges. As noted earlier, most of the charges relate to the year 1995-1996. The chargesheet was

issued only on 16 October 2012. The chargesheet was issued at a stage when the petitioner was senior most teacher and was seeking for promotion to the post of Head Mistress. There is record of animosity between the petitioner and the Secretary of the Managing Committee. There is also record of animosity between the petitioner and the sister of said Secretary, who came to be appointed as Head Mistress in the place of petitioner. The chargesheet was issued not only after the petitioner had discharged 34 years of service, but further the impugned dismissal order was made, when there was hardly one year left for the petitioner to retire upon attaining the age of superannuation. The effect of the dismissal only is that the petitioner was deprived of retiral benefits even though she had discharged service of 34 years. The School Tribunal has concurred with Inquiry Committee wherein it has held that some of the charges against the petitioner were not proved. Further, the School Tribunal has also itself held that some of the charges against the petitioner were not proved, even though two members of the Inquiry Committee had returned the findings against the petitioner. In these circumstances, it is clear that there was absolutely no warrant for imposing the penalty of dismissal upon the petitioner. In any case, the penalty of dismissal in the facts and circumstances of the present case, was shockingly disproportionate.

22] In view of the aforesaid, there is no necessity of adverting to the other contentions raised by and on behalf of the petitioner. Though it is required to be noted that the Hon'ble Apex Court in case of *Vidya Vikas Mandal & Anr. vs. The Education Officer & Anr.*¹, has held that Rule 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 contemplated a

1 2007 (2) ALL MR 461

combined Report of three members whether consenting or otherwise. Further, though there may be no bar *per se* of limitation, in the matter of issuance of a chargesheet, nevertheless, issuance of a chargesheet at a highly belated stage, may at times constitute violation of principles of natural justice and fair play. This is because, at such length of time, i.e., about 17 years in the present case, it would be extremely difficult for delinquent employee to defend himself/herself. Though not as a general proposition, in the facts and circumstances of the present case, the inclusion of highly belated charges and vague charges in the chargesheet, have occasioned failure of justice.

23] The petitioner had instituted Appeal No.22 of 2013, in the matter of her supersession *qua* promotion to the post of Head Mistress. The said appeal was dismissed by the School Tribunal on 7 March 2014, primarily on the ground that the School Tribunal by its judgment and order dated 21 February 2014 (impugned order) has upheld the termination of the petitioner's services. Liberty appears to have been granted to the petitioner to revive Appeal No.22 of 2013, depending upon the outcome of the challenge to the impugned order.

24] The petitioner has also stated that she belongs to the Scheduled Caste category and that apart from the income from her employment, she has no other source of income. The petitioner has also averred that on account of tremendous mental stress occasioned to her and her family members, her husband expired and the entire responsibility of maintaining her family, which comprises three sons and one daughter is upon her.

25] For all the aforesaid reasons, the impugned order made by the School Tribunal is set aside. The termination order dated 12 June 2013 is also set aside. There is no question of any reinstatement of the petitioner, since she has already attained the age of superannuation on 30 June 2014. Accordingly, the respondents are directed to pay to the petitioner the backwages between the period from 12 June 2013 to 30 June 2014 and to further treat the said period as notionally spent on duty for the purposes of computing and payment of all retiral and consequential benefits, which the petitioner shall be entitled to under the law. This exercise shall be completed within a period of eight weeks from today.

26] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)