

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6565 OF 2013

The President
Samta Shikshan Prasarak Mandal
& Anr. .. Petitioners
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. N. V. Bandiwadkar with Mr. P. M. Arjunwadkar for Petitioners.
Ms Vaishali Nimbalkar – AGP for Respondent No. 1.
Mr. Pradeep Gole for Respondent No. 4.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 16 February 2015

Date of Pronouncing the Judgment : 05 March 2015

JUDGMENT :-

1] This petition is directed against the order dated 9 March 2011 made by the Divisional Social Welfare Officer, Pune (Appellate Authority) allowing the appeal instituted by the respondent no. 4 against the termination of her services by the petitioners vide order dated 22 October 2009.

2] The Appellate Authority, in the impugned judgment and order has held that the enquiry into the charge-sheet issued to the respondent no. 4 was vitiated by non compliance with the principles of natural justice and fair play, apart from breach of the provisions contained in Rules 83 and 84 of the Conditions of Services of the

Employees of the Handicapped Schools 1997. The Appellate Authority has also further ventured into the merits of the charges levelled against the respondent no. 4 and ruled that there was no basis for the charges and in any case the same cannot be held to have been duly proved.

3] Mr. Bandiwadekar, the learned counsel for the petitioners i.e. school management basically made the following two submissions in support of the petition :

(A) That in the facts and circumstances of the present case, there was neither any breach in compliance with the provisions of natural justice nor any breach of Rules 83 and 84 of the Conditions of services in the matter of conduct of domestic enquiry against the respondent no. 4;

(B) In any case, the Appellate Authority upon coming to the conclusion that the domestic enquiry was vitiated on technical grounds or on the ground of violation of principles of natural justice, could not have itself gone into the merits of the charges, but the Appellate Authority was bound to follow the course commended by the Full Bench of this Court in the case of Saindranath s/o. Jagannath Jawanjal vs. Pratibha Shikshan Sanstha & Anr.¹ and remanded the matter for

1 2007 (3) Mh.L.J. 753

holding of enquiry from the stage any illegality had crept into the same. Further, at the highest reinstatement could have been granted only for the purposes of holding of such fresh enquiry and no more. Even the question of payment of back-wages has to be left for determination upon the final outcome of the enquiry upon remand.

4] Mr. Pradeep Gole, the learned counsel for the respondent no. 4 defended the impugned order and submitted that the Appellate Authority was entitled to go into the merits of the matter and the conclusion that the charges levelled against the respondent no. 4 were baseless, was a legal and valid conclusion supported by material on record. Mr. Gole relying upon the decision of this Court in the case of *Bhagwanrao s/o. Vishwanath Vyawhare & Anr. vs. Sau. Sunita w/o. Gopinath Palve & Anr.*², submitted that in case of victimisation or in a case like the present, where the school management was bent upon removing the respondent no. 4 by hook or by crook, the Appellate Authority was entitled to go into the merits of the charges and thereafter direct reinstatement with all consequential benefits.

5] Rival contentions now fall for determination.

² 2008 (1) Mh.L.J. 417

6] There is no merit in the submission of Mr. Bandiwadekar that in the present case there was compliance with the principles of natural justice and fair play in the matter of the domestic enquiry held against the respondent no. 4. The record indeed reveals that relevant documents were not made available to the respondent no. 4 and witnesses who had filed affidavits in the enquiry proceedings were not made available for cross-examination to the respondent no. 4. In these circumstances, the finding recorded by the Appellate Authority with regard to violation of principles of natural justice and fair play cannot be said to be vitiated by any illegality or perversity.

7] However, the Appellate Authority has proceeded further and held that there was no basis for issuance of the charge sheet or that the charges levelled against the respondent no. 4 are baseless. In this regard the appellate authority has made reference to the report submitted by the Social Welfare Officer, Zilla Parishad to the Divisional Commissioner, Social Welfare Division of 9 November 2006, in which it is stated that the allegation of non co-operation, abusing the students of weaker sections of society, instigating the parents, are held to be baseless. The Appellate Authority has also observed that in pursuance of some complaints made by the respondent no. 4, Social Welfare officer, Zilla Parishad issued

notices to the school management for alleged defaults in depositing provident fund and insurance dues and that it is for this reason that the school management was bent upon removing the respondent no. 4 from services and thereby causing her mental harassment.

8] This Court, in case of *Bhartiya Seva Acharya Education Society, Nagpur & Anr. vs. School Tribunal, Nagpur & Ors.*³, has held that where the Tribunal comes to the conclusion that a domestic enquiry against a teacher was vitiated on technical grounds, it was not permissible for the Tribunal to go into the merits of the charges levelled and the Tribunal should have set aside the order of termination and permitted the management to hold enquiry from the stage the illegality had crept in. The reinstatement of the employee was required to be treated for the purpose of holding of fresh enquiry and no more. Even the question of payment of back-wages would depend upon the final outcome of the fresh enquiry. In doing so, the learned Single Judge of this Court, placed reliance upon the decision in the case of *Saindranath* (supra) rendered by the Full Bench of this Court.

9] In the case of *Bhagwanrao* (supra), which was also case where the enquiry against the employee was found to be vitiated for non compliance with the principles of natural justice, this Court,

3 2014 (2) Mh.L.J. 879

looking to the allegations in the charge sheet and other material on record came to the conclusion that the very issuance of the charge sheet and holding of enquiry in pursuance thereof was mala fide. The manner in which, the school management had proceeded against the employee concerned, did not inspire any confidence and the contention of the employee that the school management was bent upon removing the employee by hook or by crook, was well founded. In the said decision, the ruling of the Full Bench in the case of *Saindranath* (supra) was also considered, but it was held that the normal rule laid down in the case of *Saindranath* (supra) does not preclude the courts from at least *prima facie* examining whether the allegations against the employee concerned are of such nature as would warrant a fresh enquiry or whether the entire exercise was mala fide.

10] The Supreme Court in the case of *Chairman, Life Insurance Corporation of India & Ors. vs. A. Masilamani*⁴, upon which the reliance was placed by Mr. Bandiwadkar has held that the circumstance whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point at it stood vitiated, depends upon the gravity of delinquency involved. The Court must examine the magnitude of misconduct alleged against the delinquent employee and without doing the same,

4 2014 (3) Mh.L.J. 524

should not quash charge sheet and related disciplinary proceedings dehorse the limits of judicial review. In this case, the Apex Court has further held that it is settled position that once court sets aside order of punishment on the ground that the enquiry was not properly conducted, it must remand the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated and conclude the same.

11] Applying the principles set out in the aforesaid decisions, therefore, the petitioners i.e. the school management have to be given an opportunity to conduct enquiry from the stage at which illegality had crept in. However, again, in the facts and circumstances of the present case, such opportunity cannot be unconditional, but rather, some fetters shall have to be imposed upon the school management for reasons and circumstances, briefly discussed hereafter.

12] In this case, the charge sheet dated 28 January 2008 issued to the respondent no. 4 makes reference to no less than 39 charges. Several charges however relate between the period 1996 to 2002. The charges are vague and concern trivial matters. The charges are stale as well. Most of such charges allege some minor negligence on the part of the respondent no. 4 and further allege

that the response of the respondent no. 4 in certain situation was somewhat rude. In this regard, reference is required to be made to charges 1 to 5, which basically relate to the period between 1996 and 2002. Further, although charges 7 to 13, 15 and 16 relate to the years 2004 and 2005, they basically allege that the response of the respondent no. 4, in certain situation was somewhat rude. Similarly, charges 17 to 21, are again vague and relate mostly to insubstantial and trivial matters. Accordingly, at this point of time, it shall not be appropriate that the petitioner proceeds with the enquiry in relation to the charges referred to in this paragraph. There would be clear violation of principles of natural justice as also inherent prejudice, if at this point of time, the respondent no. 4 is required to face an enquiry into vague, stale and trivial charges.

13] It is the case of the respondent no. 4 that she made some complaints to the authorities in the matter of defaults on the part of the petitioner relating to deposit of provident fund, insurance amounts. It is also the case of the petitioners, which, to a certain extent, is borne from the records that the Authorities initiated some action against the school management with regard to deposits of provident fund and insurance amount. It is the case of the respondent no. 4 that the entire exercise of issuance of charge sheet and holding of enquiry proceedings is by way of counter blast

to such complaints made by the respondent no. 4. At this stage, it is too premature to make any observations in this regard. However, it is open to the respondent no. 4 to make good such defense in the course of domestic enquiry.

14] This is also a case where the petitioners should be required to pay some back-wages to the respondent no. 4, even though the respondent no. 4 is being reinstated to face the domestic enquiry in respect of the balance charges in the charge sheet dated 28 January 2008. This is because, as noted earlier, several of the charges levelled against the respondent no. 4 were stale, vague or trivial. Further, in the present case, the appellate authority has already recorded a finding that the enquiry held against the respondent no. 4 was vitiated by non compliance with principles of natural justice and fair play. Relevant documents were not furnished to the respondent no. 4. The respondent no. 4 was denied opportunity to cross-examine the affiants, who had filed affidavits or made statements in the course of domestic enquiry. Thus, on basis of charge sheet dated 28 January 2008, which contain several stale, vague and trivial charges and by conduct of enquiry proceedings, which were in violation of principles of natural justice and fair play, the respondent no. 4 has had to face termination w.e.f. 29 October 2009. It is not even the case of the petitioners that the

respondent no. 4 was in any manner responsible for the derailment of the enquiry proceedings. On the contrary, it is the case of the respondent no. 4 that the very issuance of charge sheet and the consequent enquiry proceedings were nothing but retaliation for the complaints made by the respondent no. 4 against the school management and the action taken by the Authorities in pursuance thereof.

15] Therefore, upon cumulative consideration of all such circumstances, the termination order dated 22 October 2009 is set aside and the respondent no. 4 is directed to be reinstated with 40% back-wages for the period between 29 October 2009 and the actual date of reinstatement, which shall be within four weeks from the date of this judgment and order.

16] Upon reinstatement however, the petitioners shall be entitled to proceed with the domestic enquiry in the context of charge sheet dated 28 January 2008, save and except the charges referred to in paragraph 12 of this judgment and order. The enquiry proceedings shall be concluded with expedition and in any case within a period of one year from the date of this judgment and order. In case, the petitioners desire to place the respondent no. 4 under suspension, they shall do so, only after complying with the Rules in this regard,

including any Rule, if any, with regard to obtaining prior approval of the respondent nos. 1 and 3 as also payment of subsistence allowance at appropriate rate. The enquiry committee to ensure that the back-wages awarded by this judgment and order, as also the subsistence allowance, if applicable, is paid to the respondent no. 4, before proceeding with the enquiry.

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

(M. S. SONAK, J.)

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18] At this stage, Mr. Bandiwadekar, the learned counsel for the petitioners seeks stay of twelve weeks on implementation of this judgment and order. Taking into consideration the circumstance that the respondent no. 4 has been out of service from 22 October 2009, stay is granted for a period of eight weeks from today.

(M. S. SONAK, J.)

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