

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8258 OF 2014

Raghunath Bapu Nangare	..	Petitioner
vs.		
Jai Shivrai Shikshan Prasarak Mandal & Ors.	..	Respondents

Mr. N. V. Bandiwadekar with Mr. Sagar Mane for Petitioner.
Mr. Anil Matale with Ms Archana Gaikwad for Respondent Nos. 1
and 2.
Mr. M. S. Topkar for Respondent No. 3.
Mr. A. R. Metkari – AGP for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 13 MARCH 2015

ORAL JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith. Besides, by order dated 18 December 2014, the parties were put to notice that this petition would be disposed of at the stage of admission itself.

2] This petition is directed against the judgment and order dated 27 August 2014 (impugned order) made by the School Tribunal, Kolhapur, dismissing the petitioner's appeal against the order dated 13 February 2014 made by the respondents – management, reducing the petitioner in rank from the post of Head Master to that of Assistant Teacher.

3] It is the case of the petitioner that the petitioner came to be appointed as an Assistant Teacher at the Bhadole High School (School) vide appointment order dated 31 May 1993 effective from, 1 June 1993 and that such appointment was approved by the Education Department on 8 January 1995. The learned counsel for the management has raised some dispute with regard to such approval and it is a fact that such approval order dated 8 November 1995 has not been produced on record. Further, by order dated 1 August 1997, the petitioner was promoted to the post of Head Master. Such promotion, was approved by the Education Department on 21 January 1998. The approval order is placed on record at Exhibit 'C' to the petition.

4] In the year 2012 or thereabouts on the basis of an anonymous complaint, the Education Officer deputed by the Education Department conducted an inquiry. By communication dated 2 July 2013, the Education Officer has stated that the petitioner, pursuant to a show cause notice has furnished his explanation, however, such explanation is not found to be satisfactory. Accordingly, the Education Officer issued the following directions to the school management:

- I. that the School should provide necessary infrastructural and educational facilities in terms of RTE Act 2009;
- II. necessary action should be taken against the petitioner in terms of the MEPS Rules 1981 and report compliance,

5] It is the case of the petitioner that on the basis of the aforesaid directive dated 2 July 2013 the school management, resolved on 26 July 2013 that minor penalty of strict warning or censure be imposed upon the petitioner. The decision in this regard was communicated by the school management to the Education Officer as well as the petitioner by communications dated 14 November 2013. The resolution dated 26 July 2013 as well as two communications dated 14 November 2013 have been placed on record. The learned counsel for the school management, in the beginning, disputed that any such resolution was ever passed or the same were communicated vide letters dated 14 November 2013. However, in paragraphs 6 and 7 of the petition, there are clear averments with regard to the passage of resolution and communication. The copies of resolution and communications have also been placed on record. In the affidavit in reply filed for and on behalf of the school management, there is a vague and evasive denial with regard to the contents of paragraphs 6 and 7 by styling the same as being '*totally false and misleading*'. However, this is

followed by the statement that the respondent – management in order to give a chance to make improvement in the work and behaviour of the petitioner, initially did not take any grave action. All this is sufficient to repeal the contention that the resolution dated 26 July 2013 was never passed or communicated.

6] Thereafter the petitioner was issued order dated 13 February 2014 imposing the major penalty of reduction in rank from the post of Head Master to that of Assistant Teacher. This order lists several acts of omission and commission, which have been described as '*major misconducts*' or at least '*serious misconducts*'. The order in its clause 14 also states that the petitioner, who possesses qualifications of M.Com and B.Ed., was, in the first place, not entitled to be appointed as the Assistant Teacher, because the petitioner's graduation was not in one of the subjects taken up in the school for education. The order, hands over the charge of the post of the Head Master to Mr. Mukund Shamrao Patil, who has been impleaded as the respondent no. 3 in the present petition.

7] The petitioner, instituted an appeal under Section 9 of the MEPS Act, 1977 before the School Tribunal, Kolhapur (Tribunal). By the impugned order dated 27 August 2014, the Tribunal has dismissed the petitioner's appeal, broadly upon the following

grounds :

- (a) that the appointment of the petitioner as Assistant Teacher was itself void *ab initio*, being in breach of GR dated 20 April 1978 as also the MEPS Rules 1981;
- (b) that the requirement of holding an inquiry as provided by Rule 33 of the MEPS Rules 1981 before imposition of a major penalty is not a mandatory requirement.

8] Mr. Bandiwadekar, the learned counsel for the petitioner submitted that the issue of whether or not the petitioner was qualified to be appointed as an Assistant Teacher could never have legitimately formed the subject matter of the appeal proceedings before the Tribunal. Such issue was not the issue enquired into by the Education Officer when he issued the directives dated 2 July 2013. Such was not the issue considered by the school management when the resolution dated 26 July 2013 was made. Accordingly, the Tribunal exceeded its jurisdiction in going into such an issue. Even otherwise, Mr. Bandiwadekar submitted that the Tribunal clearly erred in placing reliance upon the GR dated 20 April 1978, because, as held by this Court in the case of *Pragnya Vasant Acharya vs. The State of Maharashtra & Ors.*¹, said GR has lost its efficacy consequent upon coming into force of the MEPS Rules 1981. Mr. Bandiwadekar further submitted that the

¹ Writ Petition No. 767 of 2007 decided on 12.12.2012

interpretation put up on the provisions contained in Rule 33 by the Tribunal, in that there is no necessity to hold an inquiry before imposition of a major penalty, constitutes an error apparent on face of record. Relying upon the decision of the Hon'ble Apex Court in the case of *Satwati Deswal vs. State of Haryana & Ors.*² submitted that the impugned order is liable to be interfered with.

9] Mr. Matale, the learned counsel for the respondent nos. 1 and 2 i.e. the school management defended the impugned order by making the following submissions:

(A) The very appointment of the petitioner being in breach of the provisions of MEPS Act 1977, MEPS Rules 1981 and the GR dated 20 April 1978 was void *ab initio*. The same was the position with regard to the petitioner's promotion to the post of Head Master. The very entry of the petitioner in the said school being through the back-door, the petitioner cannot be heard to complain that his exit was not in accordance with law. The School Tribunal was thus justified in not interfering with the penalty of reduction in rank imposed upon the petitioner. In the matter of qualification for appointment to the post of Assistant Teacher, learned counsel relied upon the decision in the case of *Harlal Harchand Pardeshi vs. State of*

2 (2010) 1 SCC 126

*Maharashtra & Ors.*³;

(B) That if the scheme of the MEPS Act 1977 and the MEPS Rules 1981 is perused, it is clear that discretion is vested in the school management, in the matter of holding of inquiry. Accordingly, the Tribunal is right in its opinion that the requirement of holding an inquiry as provided under Rule 33 of the MEPS Rules 1981 is not a mandatory requirement, but, at the highest is a directory requirement.

(C) In any case, the facts of the present case would indicate that the Education Officer, as a delegate of the Director of Education had exercised powers under Section 4A of the MPES Act 1977, conducted an inquiry into the misconducts alleged against the petitioner and made a report that the same were established. By a communication dated 2 July 2013, the school management was merely directed to take action against the petitioner. In the absence of any challenge to either the report of the Education Officer or his communication dated 2 July 2013, the action of the school management in imposing major penalty of reduction in rank upon the petitioner, cannot be faulted with.

10] Mr. Topkar, the learned counsel for the respondent no.3 whilst adopting the submissions made by Mr. Matala, submitted

3 2001(1) Mh.L.J. 859

that there are no grounds to interfere with the impugned order made by the Tribunal.

11] Rival contentions now fall for determination.

12] The petitioner was appointed as Assistant Teacher w.e.f 1 June 1993. Thereafter, the petitioner was promoted as a Head Master on 1 August 1997 and this promotion was approved by the Education Department on 23 January 1998. Until the issuance of order dated 13 February 2014, by which penalty of reduction in rank came to be imposed upon the petitioner, no issues were raised with regard to the petitioner's qualifications for appointment as an Assistant Teacher. The order dated 13 February 2014, for the first time makes reference to some deficiencies in the qualifications possessed by the petitioner at the stage of his appointment as an Assistant Teacher. Apart from the circumstance that such deficiencies have surfaced after a lapse of almost 19 years, it is significant that even the school management has not deemed it fit to take any action with regard to the petitioner's appointment as an Assistant Teacher w.e.f. 1 June 1993. The order dated 13 February 2014 reverts the petitioner from the post of Head Master to that of Assistant Teacher. Admittedly, the petitioner continues in the school, as a Head Master, in pursuance of interim reliefs granted,

initially by the Tribunal and thereafter by this Court. Accordingly, there is substance in the contention of Mr. Bandiwadekar that in an appeal questioning reduction in rank, it was not really open for the School Tribunal to embark upon an inquiry as to whether the petitioner's initial appointment as an Assistant Teacher way back on 1 June 1993 was valid or not.

13] Further, the perusal of the impugned order would indicate that the Tribunal has, almost entirely proceeded on the basis of GR dated 20 April 1978 which had provided that the graduation qualification to be possessed must be with at least one subject, (other than compulsory English) which is taught as a school level subject in the prescribed course of Secondary Standards. The Tribunal, entirely missed the point that after coming into force of the MEPS Rules 1981, the circular dated 20 April 1978 could not have been pressed into service.

14] The qualifications for trained teachers in secondary schools and junior colleges of education are contained in Schedule 'B' appended to the MEPS Rules 1981. For graduate teachers, the qualification prescribed is a bachelor degrees in teaching or education of any statutory university or a qualification recognized by the Government as equivalent thereto. There is no requirement

that the graduation has to be in Arts or Science with at least one subject which is taught as a school level subject in the prescribed course for secondary standards. This is to be contrasted with the qualifications prescribed for teachers in junior colleges, where the requirement is of a Master Degree of a statutory university in second class in the respective subjects plus B.Ed. or a diploma or a certificate in teaching, approved by the department. The reference to the phrase '*in the respective subjects*' as it appears when prescribing the qualifications for teachers in whichever clause is conspicuous by its absence when it comes to prescription of qualifications for graduate trained teachers in secondary schools. Accordingly, the School Tribunal was not at all right in placing reliance upon the GR dated 20 April 1978 and finding fault with the petitioner's initial appointment as an Assistant Teacher, way back on 1 June 1993.

15] In the case of *Pragnya Acharya* (supra) in the precise context of the GR dated 20 April 1978 and the MEPS Rules 1981, this Court set aside the action of the Education Department in denying approval to a graduate teacher relying upon the GR dated 20 April 1978. In doing so, reliance was placed upon yet another decision of this Court in the case of *Anjuman Khairul Islam & Ors. vs. Mrs. Zulekha Mazhar Hussain & Ors.*⁴, in which, it has been held that

4 2001(2) Mh.L.J. 245 (SJ)

consequent upon the coming into force of MEPS Rules, 1981, there is no question of placing any reliance upon the circulars or government resolutions which may be in conflict with the statutory provisions. The relevant observations in paragraphs 21 and 22 of the said decision, read thus :

“21. In any event, I am of the clear view that the rules which have been framed in pursuance of the rule making power conferred by section 16 of the Act of 1977 much prevail over the terms of letters such as the one dated 22nd November, 1989. Letters and administrative instructions cannot override the provisions of the rules which have a statutory character. The First Respondent clearly fulfilled the qualifications required for an Instructor seeking to be appointed to a Junior College of Education. Her qualifications meet the requirements contained in clause (i) of Para 1 of Part II to Schedule “B” to the Rules. The first Respondent held a Bachelor's degree in Education of a statutory University. That being the position, the reliance placed on the letter dated 22nd November, 1989 in order to disregard the qualifications of the First Respondent is without basis or substance.

22. Similarly, the ground that the First Respondent had not completed her B.Ed. Degree in a subject other than compulsory English which was taught at the school level is once again erroneous . Part II of Schedule B to the Rules of 1981 specifies that the qualification required for graduate teachers in Junior Colleges of Education is, inter alia, a Bachelor's degree in teaching or education of any statutory University or a qualification recognized for Government as

equivalent thereto. In contrast with this, if a comparison is made with Part III of Schedule "B" which describes the qualifications for teachers in Junior Colleges, one of the requirements for a full time teacher is a Master degree of a statutory University in the respective subjects and in addition a B.Ed. or a Diploma or Certificate in Teaching. Thus, insofar as Junior Colleges are concerned, the qualifications required include a Master degree in the respective subjects as well as a degree in education or certificate in teaching. The requirement that a candidate should have done a degree in the respective subjects is thus not a part of the qualifications prescribed in the Rules for graduate teachers in colleges of education. In the case of a teacher seeking employment in a college of education, it is sufficient to hold a Bachelor's degree in teaching or education of a statutory University."

(emphasis supplied)

16] Even otherwise the settled position in law that where statutory rules govern the field, prior executive instructions would cease to apply. Further, in case of any conflict between executive instructions and statutory rules, the executive instructions shall have to be yield and the statutory rules shall prevail. For all these reasons, the impugned order, to the extent it holds that the petitioner's initial appointment as Assistant Teacher was void *ab initio*, shall have to be interfered with.

17] The decision in case of *Harlal Harchand Pardeshi (supra)* is distinguishable on facts. The issue of clash between statutory rules

and executive instructions was not considered therein. Rather, the decisions in case of *Pragnya Acharya (supra)* and *Anjuman Khairul Islam (supra)*, are directly on the point.

18] The second question which arises is whether the Tribunal was right in its reasoning that the requirement under Rule 33 to hold an inquiry, prior to inflicting the major penalty on an employee is not mandatory. Here again, the reasoning of the Tribunal cannot be sustained. The Tribunal, perhaps relying upon certain expressions employed in Rule 33 has reached its conclusion. However, such is not a manner to read or construe statutory provisions. Accordingly, Rule 33 of the MEPS Rules 1981 shall have to be read and construed in its entirety. Further, the scope and ambit of such Rule shall have to be appreciated in the context of several other provisions contained in the MEPS Act, 1977 and the MEPS Rules 1981. All this apart, even upon first principles, it could not have been the intention of the rule makers that a major penalty can be inflicted upon an employee without holding any inquiry, because imposition of such major penalty without holding any inquiry would be in breach of the principles of natural justice and fair play. Even in absence of specific provisions in the matter of compliance with principles of natural justice and fair play, there are several decisions which take the view that such principles should be

read into the unoccupied interstices of the statute. It is only for compelling reasons and where the legislature or the rule making authority in clear and unambiguous terms excludes the applicability of the principles of natural justice and fair play, can such exclusion be applied. There is nothing in Rule 33 which supports such exclusion.

19] Rule 33 of the MEPS Rules, 1981 reads thus :

“33. Procedure for inflicting major penalties : (1) If an employee is alleged to be guilty of [any of the grounds specified in sub-rule (5) of rule 28] and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Education and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order.

(2) If the employee tenders resignation while under suspension and during the pendency of the inquiry such

resignation shall not be accepted.

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not leave the head quarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.

(5) An employee against whom proceeding have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained by police for judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty after producing documentary proof of his release (otherwise than on bail) or acquittal, as the case may be. An adjustment of his pay and allowances for such periods shall be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified.

(6) After the result of the criminal prosecution, a copy of the judgment shall be obtained by the Management and if the judgment is one of conviction for the charges and if any inquiry is also initiated by the Management against

the employee on the basis of the same charges, it shall not be necessary to proceed with the inquiry on the same charges and the Management shall take action to terminate the services of the employee. The Management shall not however pass any order till the period upto which the employee is entitled to prefer an appeal or revision application to the higher Court against the conviction by the lower Court is over. If the appeal or revision application is preferred the Management shall not take any action till the conviction is finally confirmed by the higher Court. When the judgment in the criminal case appeal or revision application is one of acquittal, the Management shall consider in the light of the judgment whether it is necessary to institute or proceed with the inquiry. If the Management agrees that the acquittal is justified, it may drop the injury by certifying that it agrees with the findings of the Court. If the Management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment.”

20] The School Tribunal has relied upon the first part of sub rule (1) wherein it is stated that if an employee is alleged to be guilty of any of the grounds specified in sub rule 5 of Rule 28 and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the management shall first decide whether to hold an inquiry. From this, the Tribunal has concluded that it is within the discretion of the management whether or not to hold an inquiry and therefore the

provisions for holding the inquiry as contained in Rule 33 before infliction of a major penalty is not mandatory. If the provisions contained in Rule 33 are read in its entirety and in the context in which they appear, it is clear that in case the management is desirous of inflicting any major penalty, then it is mandatory for such management to hold an inquiry as prescribed under the said Rules. All that the first part of Rule 33 means and implies is that in a given situation if the management is satisfied that there is no real basis for having reason to believe that the employee concerned is guilty of any of the misconducts specified in sub rule 5 of Rule 28 then the school management may not be obliged to hold an inquiry and proceed to inflict any major penalty upon such an employee. However, if there is any proposal to inflict a major penalty upon an employee, then such major penalty cannot be inflicted without holding an inquiry as prescribed under Rule 33 of the MEPS Rules, 1981.

21] The learned counsel for the school management made reference to sub rule 6 of Rule 33 in support of his submission that it is always within the discretion of the school management, whether or not to hold an inquiry. Sub rule (6) inter alia provides that where an employee facing a criminal prosecution is acquitted by a competent court, the management shall consider in the light of the

judgment whether it is necessary to institute or proceed with the inquiry. If the management is of the opinion that the acquittal is justified, it may drop the inquiry by certifying that it agrees with findings of the court, if the management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment. This sub rule far from supporting the contention of the school management, supports the contention urged by and on behalf of the petitioner. This is because that this sub rule provides for a discretion in the school management whether or not to proceed with the inquiry, depending upon its agreement with the findings recorded in the criminal case, nevertheless this sub rule also provides that if there is proposal to inflict punishment upon employee concerned, then the same shall have to be imposed after proceeding with the inquiry

22] Section 4(2) of the MEPS Act 1977 provides that every employee of a private school shall be governed by the said Code or Conduct as may be prescribed that upon violation of any provision of said Code or Conduct an employee shall be liable to disciplinary action after conducting an inquiry in such manner as may be prescribed.

23] Rule 28 is concerned with removal or termination from services. Rule 28 (5) provides that employee shall be liable to be punished for misconduct, moral turpitude, wilful and persistent negligence of duty and incompetence. Rule 31 classifies penalties into minor and major. Reduction in rank is one of the major penalty prescribed. Rule 33 then provides for the procedure for inflicting major penalties.

24] As noted earlier, there is nothing in Rule 33 of the MEPS Rules, which would sustain the interpretation that there is no mandate to hold an inquiry before infliction of a major penalty upon an employee. In fact, if the scheme of the aforesaid provision is considered in its entirety, then it is clear that if the management proposes to inflict a major penalty upon an employee, then it is necessary that inquiry as per the procedure prescribed under Rule 33 shall have to be held by the management.

25] In the case of *Satwati Deswal (supra)*, the Hon'ble Apex Court has held that before any major penalty imposed upon an employee, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written

statement stating therein whether he/she desires to be heard in person. Precedent apart, even upon the first principles, since imposition of a major penalty visits an employee with serious civil consequences, such action cannot be taken without minimum compliance with the principles of natural justice and fair play, unless of course the legislation, in clear and unambiguous terms excludes, for good reason, application of principles of natural justice and fair play. As noted earlier, there is really nothing in the provisions contained in Rule 33 of the MEPS Rules 1981, which supports any such exclusion in the matter of compliance with the principles of natural justice and fair play.

26] The Tribunal, in making the impugned order has not adverted to the contention based upon Section 4A of the said Act. This is possibly because no such contention was ever raised before the School Tribunal. In any case, there is no merit in the contention of Mr. Matala for the school management, that the Education Officer, in holding some inquiry and issuing directives dated 2 July 2013 has exercised powers under Section 4A of the said Act. There is no material that powers of the Director under Section 4A have been delegated to Education Officer. Besides, sub section (1) of Section 4A provides that in case of alleged misconduct or misbehaviour of a serious nature or moral turpitude, if an inquiry is held by the enquiry

committee and the Director is of the opinion that the inquiry committee has on its own unreasonably exonerated the employee, then the Director may call for and examine the record and proceedings of such inquiry for the purposes of satisfying himself as to the correctness of the decision on the basis of its findings, and may either annul, revise or modify or confirm the said decision or may direct the inquiry committee to make further inquiry for taking additional evidence or he may himself take or authorise any other officer not below the rank of Education Officer to take additional evidence and if satisfied that charges of serious misconduct, misbehavior or moral turpitude have been substantially proved, shall direct the management to impose upon the employee penalties specified in sub section 4 of Section 4A. Further, under this sub section, the Director can direct the management to initiate action for holding inquiry into allegations against an employee, where it is found that the management has either neglected or refused to hold such inquiry. Sub section (2) of Section 4A further provides that where there is failure on the part of the management to initiate action as directed under clause (b) of sub section (1) of Section 4A or to hold an inquiry and to complete the same within the period prescribed under the Rules, the Director may himself hold or direct any officer not below the rank of Education Officer to hold such inquiry. Further sub section (3) of Section 4A provides

that while holding an inquiry, the Director or the officer authorized by him shall follow the same procedure as is followed by the inquiry committee under the rules made under this Act, as if the Director or the officer so authorised were an inquiry committee for the purposes of holding such an inquiry.

27] From the records of the case, it is clear that the Director has not exercised any powers under Section 4A. Further, even the Education Officer in the present case has not held inquiry by following the procedure as is prescribed under the Rules. Accordingly, there is no merit in the submission of Mr. Matala that the impugned action is justifiable under Section 4A of the said Act.

28] The reference is also required to be made to the reply filed by the Education Officer before the School Tribunal in the appeal instituted by the petitioner. In the said reply, the Education Officer has explained his own direction contained in communication dated 2 July 2013. The Education Officer has stated that the direction was only to take action as prescribed in Rules 33 to 37 of the MEPS Rules 1981. The Education Officer has gone to the extent of stating that the school management, in collusion with the petitioner has deliberately avoided following the proper procedure in the matter of

imposition of major penalty of reduction in rank and for this reason has introduced deficiencies in the making of the impugned order.

29] For all the aforesaid reasons, the impugned order made by the Tribunal is liable to be set aside and is hereby set aside. The order dated 13 February 2014, by which the major penalty of reduction in rank has been imposed upon the petitioner is also liable to be set aside and is hereby set aside. It is however made clear that this shall not preclude the school management from holding an inquiry into the charges against the petitioner in accordance with the provisions of MEPS Act, 1977. If such an inquiry is held, then it shall be open to the petitioner to raise all contentions available under the law.

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

(M. S. SONAK, J.)