IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 505 OF 1997
WITH
CIVIL APPLICATION NO. 8584 OF 2005

1.Secretary,
Taluka Cooperative Educational
Society Limited, Shahada,
District Dhule.

2. Head Master,
Seth P.K.Vidya Mandir, Shahada,
Tq. Shahada, District Dhule.

3. Chairman,
Shahada Taluka Cooperative
Educational Society Limited,
Shahada, District Dhule. ..Petitioners

Versus

Suklal Manga Kunwar,
Age 37 years, Occ. Nil,
r/o Kahatur, Tq. Shahada,
District Dhule. ..Respondent

...
Advocate for Petitioner : Shri P.M.Shah
Advocate for Respondent : Shri B.R.Warma
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: October 15, 2016
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ORAL JUDGMENT :-

1. The petitioner / management is aggrieved by the judgment of the School Tribunal, dated 17.10.1996, by which, Appeal No.40 of 1993, filed by the respondent / employee has been partly allowed.

2. The Operative Part of the impugned order reads as under:-

> " Appeal is partly allowed with the direction to management to hold an inquiry as per provision laid down under Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and give proper opportunity to appellant and assured to give all documents to appellant on the strength on which management is going to conduct inquiry, issue copy of charge sheet and ask appellant to part in the inquiry committee, as per Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and submit its report within 2 months from the date of knowledge of the order but definitely not late than 25th Dece.1996."

3. By order dated 6.5.1997, the learned Division Bench of this Court admitted the petition and granted interim relief in terms of prayer clause (C). As a consequence of which, the impugned judgment was stayed and as the respondent was terminated on 10.4.1992, he remained out of employment. It is informed that the age of superannuation of a Peon is 58 years and the respondent has attained the age of superannuation in 2014.

4. I have heard the strenuous submissions of Shri Shah on 13.10.2016 and again today. He has strenuously criticized the impugned judgment and has prayed that the same deserves to be

quashed and set aside and the termination of the respondent dated 10.4.1992, by way of punishment, deserves to be sustained.

5. I have also considered the submissions of Shri Warma on behalf of the respondent / employee. He submits on instructions that the respondent is living in abject poverty. He submits that the respondent was appointed as a Peon on 1.9.1979 and he has been terminated on 10.4.1992 after putting in 12 years and 9 months in service. Since he has now superannuated, no enquiry can be conducted. He would pray for continuity of service atleast to the extent of 20 years of employment so that he would be putting in the requisite qualified service for pensionary benefits. He may not insist for entire backwages.

6. While considering the strenuous submissions of Shri Shah and Shri Warma, I have considered the entire Scheme of Conducting an Enquiry under Rule 36 and Rule 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short), which read as under:-

> *"Rule 36 :- Inquiry Committee:*
>
> *(1) If an employee is allegedly found to be guilty on (any of the grounds specified in sub-rule (5) of rule 28) and the*

Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer

within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National award has been conferred;

(b) in the case of the Head referred to in sub-rule (1) -

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.

(3) The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgment due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to

nominate a person on his behalf on the proposed Inquiry Committee and to forward the name along-with the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule (2).

(5) The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the inquiry Committee and shall maintain all the relevant record of the inquiry.

(6) The Meetings of the Inquiry Committee shall be held in the school premises during normal schools hours or immediately thereafter, if the employee agrees and even during vacation.

37. Procedure of inquiry:

1 *The Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convener of the Inquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgment due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.*

2 *(a) Within 10 days of the receipt of the copies of charge-sheet and the statement of allegations by the employee or the Head, as the case may be, -*

> *(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convener of the Inquiry Committee in person or send it to him by the registered post acknowledgment due.*

> *(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convener of the Inquiry committee the names of witnesses whom they propose to so examine, and*

(iii) If the Management desires to tender any documents by way of evidence before the Inquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the document relied upon by the Management is a register or record of the school it shall permit the employee or the Head as the case may be, to take out relevant extracts from such register or record. The employee or the Head as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence.

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the Inquiry Committee shall meet to proceed with the inquiry and give 10 days notice by registered post acknowledgement due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

(c) The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defense of his case.

(d) (i) The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee.

(ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the

right to cross-examine the witnesses examined on behalf of the Management.

(iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e) *All the proceedings of the Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.*

(f) *The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.*

3. *The Management and the employee or the Head, as the case may be shall be responsible to see that their nominees and the witnesses, if any, are present during the inquiry. However, if the Inquiry Committee is convinced about the absence of either of the parties*

to the dispute or any of the members of the Inquiry Committee on any valid ground, the Inquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.

4. *The Convener of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgement due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any,*

5. *The employee or the Head as the case may be shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgement due.*

6. *On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for*

receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgement due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgement due. Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgement due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be."

7. In the backdrop of the Rules applicable, I find from the record available that the respondent / employee was given a show cause notice. The management terms it to be statement of allegations. Even if the submissions of the management are accepted, the reply of the employee along with the statement of allegations have to be placed before the management and it is only after considering the said material that the management may decide to initiate an enquiry.

8. Rule 36(1),(2) and (3) clearly indicate that, after the statement of allegations, the employee has to nominate his

representative. Rule 36(2)(a) provides for one nominee of the management, one nominee of the charge-sheeted employee and one member chosen by the Chief Executive Officer from the panel of Teachers on whom State / National Award has been conferred.

9. When the employee did not nominate his representative, the Enquiry Committee would be deemed to be constituted comprising of only two members under Rule 36(5). As such, by inducting one more person in the Enquiry Committee and that too when the employee had not nominated his nominee, a stranger had participated in the enquiry, which is apparent from the documents placed on record from pages 11 to 29 of the petition paper book. One Shri B.D.Chaudhary was shown as an invitee and who participated in the enquiry, illegally.

10. Notwithstanding the above, a charge sheet as is mandated under Rule 37(1) was also not served upon the respondent. It is, therefore, apparent that the enquiry was defective and the Tribunal rightly vitiated the enquiry and directed the petitioner to conduct the enquiry afresh.

11. The events that have occurred during the pendency of this petition cannot be ignored. This Court stayed the judgment of the

Tribunal on 6.5.1997. No enquiry was, therefore, conducted. The respondent superannuated in 2014. As such, it would not only be impracticable, but unfair to direct the management to conduct an enquiry after the respondent has superannuated and is a senior citizen. I, therefore, find that in these peculiar facts, the equities will have to be balanced so as to ensure that the respondent / employee is not rendered to starvation.

12. In order to achieve the object of balancing the equity, I deem it proper to place reliance upon the observations of the Honourable Supreme Court in paragraph Nos.9 and 10 of the Vidya Vikas Mandal and another Vs. Education Officer and others [2007 (3) Mah.L.J. 801], which reads as under:-

> *"9. As rightly pointed out by the learned Counsel for the appellants, Rule 37(6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37(6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37(6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said*

findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37(6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

10. In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee *in accordance with Sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent No. 2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/ constitution."*

13. The law is, therefore, crystallized by the judgment of the Honourable Supreme Court in the Vidya Vikas Case (supra). Once the enquiry is vitiated, a *de novo* enquiry has to be conducted from the stage it is vitiated. The termination is to be kept in abeyance and the employee is, therefore, to be treated as being under suspension till the decision in the enquiry. The *Doctrine of Relation Back* would then be applicable.

14. Learned Advocate for the respondent makes a categoric statement that the four schools of the petitioner, which is a highly reputed institution, are receiving grant-in-aid. So also, he would prefer to be compensated through suspension allowance through the grants, only till he completes 20 years of qualifying service so as to be entitled for pensionary benefits and he would not claim the subsistence allowance after the 20 years of service are completed.

15. In the light of the above, this petition is partly allowed. Considering the peculiar facts recorded above, the impugned order of the School Tribunal dated 17.10.1996 is modified as under:-

(A) The termination order dated 10.4.1992 shall, therefore, be inoperative in the light of the Vidya Vikas judgment (supra) till December,1999 so as to calculate the continuous service of the respondent of 20 years and 4 months.

(B) He shall be deemed to be in continuous service from 1.9.1979 till 31.12.1999.

(C) His statement that he would give up all benefits of employment after 31.12.1999 is recorded and he shall, therefore, stand voluntarily retired from 1.1.2000.

(D) The petitioner / management shall accordingly forward the proposal of the respondent, for pensionary benefits upon deemed voluntary retirement from 1.1.2000, to the appropriate authorities for the grant of pensionary benefits.

(E) It is in the light of the above that the management need not conduct an enquiry.

(F) In so far as suspension / subsistence allowance is concerned, in the light of paragraph No.9 of the Vidya Vikas judgment (supra), the petitioner / management shall forward the proposal of the respondent from 10.4.1992 till

31.12.1999 to the appropriate authorities for grant of suspension allowance calculated on the last drawn wages of the respondent earned on an average in the months of January, February and March 1992.

(G) After the competent authorities receive the proposal for grant of pension in six weeks, the same shall be sanctioned within a period of eight weeks from the date of receipt of the proposal.

(H) By the above said directions, the respondent shall not be entitled to claim any other benefits arising out of his employment and his voluntary retirement w.e.f. 1.1.2000 before any authority or Court.

13. Rule is made partly absolute in the above terms.

14. Pending Civil Applications, if any, stand disposed off.

(RAVINDRA V. GHUGE, J.)

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