

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2205 OF 1996

Sanjay Awachit Patil,
C/o Satish Awachit Patil,
Deopur, Vit Bhatti,
Near Durga Mata Mandir,
Deopur, Dhule.

...PETITIONER

-VERSUS-

1 Rahul Education Society,
 Anand Nagar, Deopur,
 Dhule.
 Through it's President/ Chairman.

2 Head Master,
 Nalanda Vidyalaya, Deopur,
 Dhule.

...RESPONDENTS

...
Advocate for Petitioner : Shri D.J.Patil h/f Shri N.B.Suryawanshi.
Advocate for Respondents : Shri V.D.Hon, Senior Advocate a/w Shri
A.V.Hon.
...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 29th September, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the judgment and order dated 20.09.1994 delivered by the School Tribunal, Nashik by which his Appeal No.1/1994 has been partly allowed by passing the following order:-

"1. *Appeal of the appellant is partly allowed. Instead up holding the termination order issued by the management, I award lesser punishment u/s 11(2D)*

and direct management to appoint the appellant on the post of Peon. By issuing fresh appointment and direct the management to allow him to work on that post till he legally entitled to hold that post.

2. *The prayer of the appellant to reinstate him on the post of Lab Attendant and give back wages are hereby rejected.*

3. *There is no order as to costs.*

4. *Management is directed to observe these directions by appointing appellant on the post of Peon by issuing fresh appointment order within 40 days from the date of knowledge or from the date of receipt of copy of order, comply and report."*

2 There is no dispute as regards the following factors:-

- (a) The Petitioner was appointed as a Peon on 13.06.1984.
- (b) On 01.05.1991, he was promoted as a Lab Attendant.
- (c) His services have been approved by the competent authority.
- (d) He was served with the order of suspension dated 05.07.1993 suspending him with retrospective effect from 28.06.1993.
- (e) He was served with the charge sheet dated 29.09.1993.
- (f) The enquiry was concluded by report dated 04.01.1994.
- (g) On the same day 04.01.1994, the Petitioner was terminated by a single sentence order with retrospective effect from 28.06.1993.

3 The learned Advocate for the Petitioner draws my attention to the charge sheet and submits that the charge sheet is vague and

ambiguous. He then draws my attention to the impugned order delivered by the School Tribunal wherein the School Tribunal concluded that the enquiry is vitiated as Rules 36 and 37 of the MEPS Rules, 1981 have not been properly complied with while conducting the enquiry.

4 He submits that surprisingly, though the School Tribunal allowed the appeal partly, it awarded a lesser punishment and directed the Respondent/ Management to appoint the Petitioner on the post of Peon by issuing a fresh appointment order and allow him to work. He submits that the operative part of the order reproduced above, would indicate that the same is perverse and erroneous.

5 Shri Hon, learned Senior Advocate appearing on behalf of the Respondent/ Management, has strenuously defended the impugned order. He concedes that the Management has not challenged the impugned judgment in this Court. He further submits that pursuant to the impugned order of the School Tribunal, the Management intimated the Petitioner to report to the school so as to initiate steps as per the order of the Tribunal. He submits that the Petitioner was employed elsewhere in some ginning factory for nine months.

6 He, therefore, submits that neither the Petitioner can be

reinstated as a Lab Attendant nor is he entitled to any back wages. He has strenuously supported the enquiry conducted.

7 Having considered the submissions of the learned Advocates, I have gone through the petition paper book.

8 Shri Hon has defended the enquiry conducted against the Petitioner. The said enquiry has been set aside for the reason that the Convener sent the report of the Enquiry Committee on 04.01.1994 and on the same day, the Petitioner was terminated with retrospective effect. In paragraph 6 of the impugned judgment, the School Tribunal has considered various stages at which the enquiry was faulted and as a result of which, the enquiry was rendered unsustainable. The submissions of Shri Hon in support of the enquiry cannot be accepted or considered for the reason that after the enquiry was set aside by the School Tribunal, the Management has not chosen to challenge the judgment of the Tribunal before this Court and has thus, accepted the verdict of the Tribunal.

9 Insofar as the order of termination is concerned, it requires no debate that there cannot be termination with retrospective effect. Time and again, the Honourable Supreme Court as well as this Court has concluded that termination with retrospective effect is unforeseen in law.

(See *Assaram Raibhah Dhage vs. Executive Engineer, Sub Divisional, Mula, 1988 (4) Bom. C.R. 158 : 1987 (2) CLR 231*). Consequentially, the order of termination dated 04.01.1994 w.e.f. 28.06.1993 deserves to be quashed and set aside. Consequentially, the Petitioner is entitled to reinstatement.

10 Insofar as the contention of the Petitioner that the charge sheet is vague and ambiguous is concerned, I have no reason to disagree with the learned Advocate for the Petitioner. I have gone through the ten charges levelled upon the Petitioner in Marathi, which, upon being translated in English, would read as under:-

- (1) You took some money from the Clerk of the School Shri C.N.Gangurde in March, 1993 and did not explain what you have done with the money.
- (2) You do not behave properly in school and when you are directed to perform any work, which would take one hour, you take the whole day.
- (3) You do not keep the lab and material in the lab in proper condition.
- (4) You always speak lies and you reach the school late and leave the school early.
- (5) You defame the trustees of the Trust.
- (6) You apologized on 28.01.1993 in the presence of your relatives and friends of the trustees.
- (7) You are fickle minded and you are a mischief monger.
- (8) You are the cousin brother of the trustee and because you are

a disabled person, you were given employment and you have forgotten the favours done by the Management.

(9) You have taken undue advantage of your relations with the trustees.

(10) In the last two years, your conduct has not improved.

11 It is quite apparent that the charges levelled upon the Petitioner are as vague as they could have been. The enquiry conducted on the basis of the said charge sheet, is unsustainable since no details have been set out in the charge sheet, no employee is expected to defend himself on such vague and ambiguous charges. Considering the manner in which the enquiry was conducted and the contents of the charge sheet, I do not find that the School Tribunal has committed any error in setting aside the enquiry.

12 The impugned judgment, in my view, is unsustainable for the reason that when the enquiry was set aside and the charge sheet makes out no charge against the Petitioner, the School Tribunal has modified the punishment of dismissal and has granted a lesser punishment by directing the Respondent/ Management to issue a fresh appointment order to the Petitioner. His prayer for reinstatement and back wages was rejected. In the peculiar backdrop recorded as above, such an order is unsustainable in law.

13 The Honourable Apex Court in paragraphs 8 and 9 of its judgment in the case of *Vidya Vikas Mandal and another vs. Education Officer and another*, **2007(3) Mh.L.J. 801 (SC)**, has concluded that when the enquiry is set aside, the Management is to be directed to conduct the enquiry afresh from the stage at which it is vitiated and the employee is to be placed under suspension from the date of his termination and is entitled for subsistence allowance until fresh orders are passed.

14 However, in the instant case, I do not find it appropriate to direct the Management to conduct a de-novo enquiry after 23 years since the charge sheet itself is vague and ambiguous and indicates that the Management had no material before it to level any charge upon the Petitioner. Even as regards the charge of alleged misappropriation, no details are given. The amount is not mentioned. The Petitioner was a Lab Attendant and had no reason to accept any money from the Clerk of the School. In the absence of specific particulars and details, the said charge is also equally vague. I do not find any purpose in allowing the Management to conduct a de-novo enquiry after 23 years.

15 Insofar as the payment of back wages is concerned, the Honourable Apex Court in the matter of *Nicholas Piramal India Limited v/s*

Hari Singh, 2015 (2) CLR 468, has concluded that 50% back wages would be appropriate relief to reduce the rigours of litigation and unemployment. The Respondent/ Management contends that they had invited the Petitioner to the school. The direction of the School Tribunal was to issue a fresh appointment order and allow the Petitioner to work as a Peon. No such fresh appointment order has been placed on record. The plea taken by the Management that the Petitioner was called upon to report to the School, is only to create a make believe picture since the Management was directed to issue a fresh appointment order and it is not the case of the Management that they have issued a fresh appointment order and appointed the Petitioner.

16 In the peculiar facts as above, this Writ Petition is partly allowed. The impugned judgment of the School Tribunal is quashed and set aside. Appeal No.1/1994 is allowed with the following directions:-

- (a) The Petitioner, who is about 48 to 50 years old today, be reinstated as a Lab Attendant on the post which he was occupying earlier, within a period of TWO WEEKS from today.
- (b) The Respondent/ Management shall calculate his back wages including all allowances, on year to year basis, considering the gradual rise in wages and accordingly, pay 50% back wages to the Petitioner by calculating his gross wages at par

with comparable Lab Attendant, if any.

- (c) The back wages shall be paid by the Respondent/ Management to the Petitioner within a period of TWELVE WEEKS from today, failing which interest at the rate of 6% would be payable from the date of this judgment till the amount is actually paid.
- (d) There shall be continuity in service to the Petitioner from the date of his retrospective termination 28.06.1993 till his actual reinstatement.
- (e) Considering the fact that there were no charges against the Petitioner and he was persecuted by vague and ambiguous charge sheet dated 22.09.1993, I am imposing costs of Rs.25,000/- (Rupees Twenty Five Thousand) on the Respondent / Management to be paid to the Petitioner within a period of TWELVE WEEKS from today.

17 Rule is made partly absolute in the above terms.