

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2411 OF 2014

1. Kai. Venkatrao Deshmukh Shilwanikar,
Shaikshanik va Samaji Sanstha, Shilwani,
Tq. Degloor, District Nanded, through
its Secretary.

2. Kai. Venkatrao Deshmukh Adivasi
Ashram School, Bendri, Tq. Degloor,
District Nanded, through its Head Master.

..Petitioners

Versus

1. Sharad Shridharrao Deshmukh,
Age 38 years, Occ. Service,
at present Nil, R/o Shilwani,
Tq. Degloor, District Nanded.

2. The Project Officer,
Ekatmik Adivasi Prkalpa,
Kinwat, Dist. Nanded.

3. The Assistant Commissioner,
Tribal Development, Amaravati
Division, Amaravati.

..Respondents

WITH
WRIT PETITION NO.3152 OF 2014

Sharad Shridharrao Deshmukh,
Age 40 years, Occ. Service,
at present Nil, R/o Shilwani,
Tq. Degloor, District Nanded.

..Petitioner

Versus

1. Kai. Venkatrao Deshmukh Shilwanikar,
Shaikshanik va Samaji Sanstha, Shilwani,
Tq. Degloor, District Nanded, through
its Secretary.

2. Kai. Venkatrao Deshmukh Adivasi
Ashram School, Bendri, Tq. Degloor,
District Nanded, through its Head Master.

3. The Project Officer,
Ekatmik Adivasi Prkalpa,
Kinwat, Dist. Nanded.

4. The Assistant Commissioner,
Tribal Development, Amaravati
Division, Amaravati.

..Respondents

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Advocate for Petitioners : Shri Salunke V.D.
AGP for Respondents - State authorities : Shri Shelke V.G.
Advocate for Respondent 1 : S/Shri Gunale V.D. & Patil A.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 19, 2016

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The first petition is filed by the employer / management challenging the judgment and order dated 23.1.2014, delivered by the School Tribunal, Latur, by which Appeal No.13 of 2009 has been partly allowed. The same judgment is challenged by the employee in the second petition on the ground that the employer should not be permitted to conduct a de-novo enquiry and the employee should be reinstated in service with continuity and full backwages. In the alternative, the employee prays that he should

be treated as being under suspension from the date of termination since he was under suspension at the penultimate stage in the enquiry, which is prior to his termination. Said termination has been set aside by the School Tribunal.

5. Considering the fact that the employer as well as the employee have challenged the same judgment of the School Tribunal, both these matters have been taken up together by consent of the parties.

6. I have heard learned Advocates for the respective parties, at length on 18.1.2016 and 19.1.2016.

7. The employee is said to have been appointed as an untrained teacher from 1.7.1999 in the Primary Ashram School. Subsequently, he was appointed as an in-charge Headmaster. He preferred Writ Petition No. 3045 of 2005 before the learned Division Bench of this Court seeking a direction to the management to permit him to undergo a postal D.Ed. course, which was available at the relevant time so as to be qualified. By order dated 17.10.2005, this Court permitted the employee to apply for postal D.Ed.

8. The employee then preferred Writ Petition No.7337 of 2006, seeking grant of approval. Same was not granted since he had not completed his B.Ed. course and had not acquired the said qualification. This Court directed the Education Officer to consider his proposal on its merits.

9. The management has alleged that the employee created a fictitious record and facilitated the appointment of his wife as an Assistant Teacher. She, lateron, preferred Writ Petition No. 4863 of 2009 seeking a direction to the management to permit her for the postal D.Ed. course. This Court issued Rule and did not grant any relief.

10. The employee as well as his wife also filed Writ Petition No.750 of 2009 before this Court seeking liberty to acquire the D.Ed. qualification through postal D.Ed. The management was not arrayed as a respondent. This Court, by order dated 4.2.2009, directed the employee to add the management as a respondent. However, the employee withdrew the said petition which was dismissed as withdrawn on 11.2.2009. Shri Salunke, therefore, submits that the conduct of the employee be taken into account while deciding these petitions.

11. In so far as the disciplinary proceedings conducted against the employee are concerned, Shri Salunke submits that serious charges were levelled upon him. Statement of allegations dated 20.9.2008 were served upon him in accordance with Rule 36(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short). After obtaining the reply of the employee, the management decided to conduct a departmental enquiry. So as to form a committee of Enquiry Officers, the management appointed the Secretary of the institution as the Convener of the enquiry and as a representative of the management. A retired Teacher, who was honoured with the Best Teacher's Award was

appointed as a Member of the enquiry committee. Despite opportunities, the employee did not nominate his representative as a Member of the committee.

12. In the light of the above, Shri Salunke vehemently submits that the enquiry committee was properly constituted and the enquiry was properly conducted. After complying with Rules 36 and 37, the employee was rightly dismissed from service by way of punishment on 9.4.2009.

13. He preferred an Appeal No.13 of 2009, which has been allowed by the impugned judgment of the School Tribunal.

14. Shri Salunke has strenuously criticized the conclusions of the School Tribunal, appearing in paragraph No.10 onwards. He has also criticized the judgment for the reason that though the State Awardee Teacher was a retired Headmaster and he continues to be a teacher and can be appointed as an impartial Member of the enquiry committee, the conclusion of the Tribunal that a retired Headmaster cannot be said to be a Teacher, is unsustainable in law.

15. He further submits that 16 serious charges were levelled upon the employee and hence the Tribunal should not have lightly interfered with the enquiry and should not have granted reliefs to the employee. He, therefore, submits that the enquiry was neither defective nor in defiance of the principles of natural justice. He, therefore, prays for the setting aside

the impugned judgment and dismissal of the appeal.

16. Shri Patil, learned Advocate for the employee has challenged the impugned judgment to a limited extent. Contention is that the termination order of the employee has been rightly set aside by the Tribunal. However, a direction to conduct a de novo enquiry is unsustainable. Similarly, once the termination of the employee is set aside, even if it is accepted for the sake of assumption that a de novo enquiry deserves to be conducted, the employee cannot be deprived of the entire wages if he was in employment at the penultimate stage in the enquiry. If the employee, as is in the given case, suspended pending enquiry and continued to be under suspension till the penultimate stage prior to dismissal, he would be entitled to be relegated to the penultimate stage and hence would be entitled for suspension allowance.

17. In rebuttal, Shri Salunke submits that the employee can, at best, be entitled for suspension allowance from the issuance of the charge sheet or the commencement of the de novo enquiry and cannot be said to be entitled for the same from the date of termination. The issue as regards entitlement of the employee for payment of back wages, during the period of the enquiry, has been kept open by the School Tribunal and hence, the employee will not be entitled for suspension allowance beyond the period of four months, which are statutorily available to the management for conducting a de novo enquiry.

18. I have considered the submissions of the learned Advocates as have been recorded herein above.

19. It is trite law that if an enquiry is found to be defective and is, therefore, set aside, the disciplinary proceedings have to be relegated back to the stage at which the enquiry has been held to be vitiated. In the instant case, the enquiry has been set aside on the ground that a retired Headmaster, who is a State Awardee Teacher, would not continue to be a Teacher after his retirement.

20. Shri Salunke has placed reliance upon the judgment of the Apex Court in the case of Syed Rahimuddin Vs. Director General, CSIR [AIR 2001 SC 2418], which is on the aspect of non-production of documents and bias of an Enquiry Officer. The said judgment would not be applicable to the instant case since the issue is with regard to the constitution of the Enquiry Committee.

21. Shri Salunke has relied upon the judgment of the learned Division Bench of this Court in the matter of Thapar Education Society and another Vs. Sham Maroti Bhasarkars and others [1997 (3) Mah.L.J.709]. I do not find that the said judgment would be of any assistance since the issue dealt with by the learned Division Bench was with regard to whether the Headmaster is a Teacher or not. It has been concluded that the Headmaster is a Teacher. The School Tribunal in the instant case has concluded that a retired Headmaster will not continue to be a Teacher.

22. Section 2(9) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) defines a Head of a School as under:-

(9) "Head of a school" or "Head" means the person, by whatever name called, in charge of the academic and administrative duties and functions of a school conducted by any Management and recognised or deemed to be recognised under this Act, and includes a principal, vice-principal, head master, head mistress, assistant head master, assistant head mistress, or superintendent thereof;

23. Since the Headmaster is held to be a "Teacher" by the learned Division Bench of this Court, in the Thapar Education Society's case (supra), the issue is as to whether a retired Headmaster can be said to be a "Teacher" even post retirement. I am, however, not required to deal with the said issue, since the management has submitted that as the Enquiry Committee is to be reconstituted, it would ensure that a Teacher, which includes a Headmaster, who is honoured with the State Award would be nominated as a Member of the Enquiry Committee.

24. It would be apposite to reproduce Rule 36 and Rule 37 of the MEPS Rules hereunder:-

"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 17 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 or 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.”

25. The Chief Executive Officer of the School is required to maintain a panel of Teachers on whom State / National Award has been conferred. The petitioner, therefore, will have to choose one member from such panel, while reconstituting the committee.

26. The Tribunal has also set aside the enquiry on the ground that the Convener of the Enquiry Committee has himself issued the charge sheet dated 1.12.2008 and therefore, his continuance as a Member of the Committee would amount to an “interested party” dealing with a charge sheet issued by himself. Rule 37(1) indicates that after the compliance of Rule 36 has been done, the management is to prepare a charge sheet, containing specific charges and handover the same together with the statement of allegations and the explanation of the employee, to the Convener of the Enquiry Committee.

27. Section 2(12) of the 1977 Act, defines a "Management" as under:-

“(12) "Management" in relation to a school, means, -

(a) in the case of a school administered by the State Government, the Department;

(b) in the case of a school administered by local authority that local authority; and

(c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school;”

28. In the light of the above, I do not find that the School Tribunal has erred in concluding that the Secretary of the institution, who is the Convener of the Enquiry Committee, could not have prepared a charge sheet, which is mandatorily required to be prepared by the management considering the word “SHALL” found in Rule 37(1). In my view, therefore, the charge sheet is also defective and the employer / management will have to prepare a fresh charge sheet, strictly as per Rule 37(1) to be served upon the employee afresh.

29. In the light of the above, I do not find any error committed by the School Tribunal in directing the reconstitution of the Enquiry Committee and for conducting a de novo enquiry. The management, therefore, will have to follow Rules 36 and 37 scrupulously to ensure that the Enquiry Committee is properly constituted and a fresh charge sheet prepared by the management is served upon the employee.

30. The issue raised by the employee is as to whether the employee can be said to be entitled for suspension allowance (subsistence allowance), as per Rules and from which date. The management has canvassed that the suspension allowance was paid to the employee as per Rules for the duration for which he was under suspension. The employee has contradicted the said contention.

31. It is trite law that suspension allowance is a right of a suspended employee and the employer who chooses to place an employee under suspension, pending disciplinary proceedings can do so strictly in accordance with the Rules applicable and is obliged to pay the suspension allowance as is provided under Rule 34.

32. The Apex Court has dealt with a similar situation in the matter of Vidya Vikas Mandal and another Vs. Education Officer and another [2007 (11) SCC 352]. The relevant observations, which are squarely applicable to this case are found in paragraphs 9 and 10 of the said judgment, which read 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."

33. The Apex Court has set aside the judgment of the Tribunal, the learned Single Judge and the learned Division Bench of this Court, which had ordered reinstatement with backwages, while ordering a de novo enquiry. The Apex Court, then, considered the effect of the setting aside of the order of termination and concluded that the employee will have to be treated as being under suspension and he would be entitled to the subsistence allowance as per Rules, with effect from the date of termination of his services.

34. In the instant case, the termination of the employee dated 9.4.2009 has been set aside by the School Tribunal. It is not in dispute that the employee was under suspension, throughout the disciplinary proceedings and till the date of his termination. As such, the ratio laid down by the Apex Court in paragraph 10 of the Vidya Vikas Case (supra) would squarely apply to the instant case.

35. In the light of the above, the petition filed by the management is partly allowed. Clause 4 of the impugned order granting wages to the employee during the period of the enquiry is quashed and set aside. The employee shall be treated as being under suspension from 9.4.2009 and the

management will be under an obligation to pay him suspension allowance as per Rule 34 till the final decision that would be arrived at by the management in the light of Rule 37. Said suspension allowance will, therefore, have to be paid to the employee every month.

36. The arrears of suspension allowance are directed to be paid to the employee within a period of six weeks from today. Consequentially, the petition filed by the employee is partly allowed.

37. Rule is, therefore, made partly absolute in the above terms in both these petitions.

(RAVINDRA V. GHUGE, J.)

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