

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8063 OF 2013

Pitambar S/o Sitaram Ingle,
Age-39 years, Occu-Service,
R/o At N-9, K-34/5,
Pawan Nagar, HUDCO,
Tq. and Dist. Aurangabad

PETITIONER

VERSUS

1. The President,
Dr.Babasaheb Ambedkar Smarak Samiti,
Fulle Nagar, Peer Bazar,
Tq. and Dist.Aurangabad,

2. The Head Mistress,
Nagsen Madhyamik Vidyalaya,
Fulle Nagar, Peer Bazar,
Tq. and Dist. Aurangabad,

3. The Education Officer,
(Secondary),
Zilla Parishad,
Tq. and Dist.Aurangabad

RESPONDENTS

Mr.S.R.Kolhare, Advocate for the petitioner.
Mr.V.D.Gunale, Advocate for respondent Nos. 1 and 2.
Mr.A.P.Basarkar, AGP for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/04/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. I have heard the learned Advocates for the respective sides at length.

3. The issue raised is with regard to the impugned judgment of the School Tribunal, Aurangabad. Appeal No.22/2012 has been dismissed by the impugned judgment dated 07/12/2012 primarily on the ground that the petitioner's appointment does not appear to be in consonance with the procedure laid down in Law and therefore his appeal deserves to be dismissed in the light of the judgment delivered by this Court in the matter of Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, 1997 (3) Mh.L.J. 697.

4. Learned Advocate for the petitioner points out the advertisement dated 30/05/1998 published in "Dainik Lokmat", typed copy of which is at page Nos.39 and 39-A. The Staffing Pattern issued by the Education Officer (Secondary) dated 23/07/1999 indicates that there were 4 posts of Peons available with the respondent School for the academic year 1998-1999 and 1999-2000. Pursuant to the advertisement, the petitioner was appointed as a Peon for one academic year. On 08/06/2001, the Management

passed a resolution to grant permanency to the petitioner. Proposal was forwarded for approval by the Management. By order dated 11/06/2009, as per Schedule D, under Rule 9(5) of the M.E.P.S. Rules, the petitioner was confirmed in service.

5. A proposal was forwarded by the Management on 23/08/2001 seeking continuation of the petitioner. Prior thereto, by an order dated 22/10/1999, the Education Officer had granted approval to the service of the petitioner from 12/06/1999 for a period of 2 years prior to he being confirmed in employment on 23/08/2001.

6. Mr.Kolhare, learned Advocate for the petitioner/employee submits that despite the above, the School Tribunal has concluded that the service of the petitioner is not in accordance with the procedure. He further submits that the Tribunal has come to a conclusion that as the petitioner was absent from 19/11/2006, there is no termination and hence the appeal lacks cause of action.

7. The petitioner submits that he was orally terminated on 11/06/2008 after having put in 9 years in employment. The Tribunal has lost sight of this fact and has merely placed reliance upon the judgment in the Anna Pethe case (supra) and mis-directed itself. He

submits that the petitioner is willing to face a departmental enquiry as per the MEPS Rules and he can establish that he was not absent but was terminated from employment.

8. Mr.Gunale, learned Advocate appearing on behalf of the Management contends that the petitioner had developed a habit of reporting for duties in a drunken state. Several complaints were lodged by teachers and students. He was unauthorizedly absent from 19/02/2006 till 20/01/2007, from 22/06/2007 to 18/11/2007 and then has been continuously absent from 23/05/2008 till he preferred his appeal on 14/09/2009.

9. Mr.Gunale further submits that the Management is willing to conduct a Departmental Enquiry against the petitioner for his unauthorized absenteeism as it has not terminated his services. However, there is no vacancy since the posts of Peon have been reduced and the respondent cannot reinstate him today.

10. I find from the record before the Court that the petitioner was appointed pursuant to an advertisement and has been granted permanency and regularization. His service has been approved. I do not find any reason for which the School Tribunal should have

opened the issue as to whether the petitioner was properly appointed or not, in the face of the fact that the Management had taken a stand that he was unauthorizedly absent and wanted to avoid disciplinary proceeding. The documents placed on record, though were not cited before the Tribunal, are indicative of the fact that a procedure was followed by the Management in appointing the petitioner pursuant to an advertisement and he was granted permanent approval by the Education Officer which has not been questioned by the Management. For this reason, the order of the Tribunal dismissing the appeal deserves to be quashed and set aside.

11.. It, therefore, emerges that on the one hand, the petitioner claims of oral termination and on the other hand, the Management claims that he was remaining absent and there were complaints about his drinking habits. Both the parties are agreeable for a departmental enquiry so as to consider their rival claims and let the Enquiry Committee decide the truthfulness in the claims put forth.

12. The Hon'ble Supreme Court in the matter of Vidya Vikas Mandal and another Vs. Education Officer, 2007(3) Mh.L.J. 801 has held in paragraph No.8 and 9 as under :-

“8. 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.

9. 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. In the light of the above, the impugned judgment of the School Tribunal is quashed and set aside. I do not find any purpose in remitting the appeal back to the School Tribunal. The issue with regard to whether the petitioner was absent or whether the Management prevented the petitioner from reporting for duties could be more advantageously considered by the Enquiry Committee.

14. In the light of the above and considering the ratio laid down by the Hon'ble Supreme Court in Vidya Vikas Mandal judgment (supra), the petitioner shall be treated as being placed under suspension by the respondent from the date of this order and shall pay the petitioner suspension allowance on monthly basis as per rules. An application seeking approval to his suspension can be submitted by the respondent / Management to the Education Officer for obtaining its sanction and for the release of his suspension allowance by way of reimbursement to the Management.

15. The respondent/Management shall issue a charge sheet to the petitioner and conduct a departmental enquiry strictly in accordance with Rule 33 to Rule 37 of the MEPS Rules. The issue of alleged absenteeism or purported refusal of the Management to allow the petitioner to work shall be subject to the result of the Departmental Enquiry and further claims of the petitioner shall, therefore, depend upon the result of the Departmental Enquiry.

16. Needless to state, till a final decision is arrived at by the Management by following the procedure as above, the Management shall be bound to pay suspension allowance as per rules to the petitioner. Appeal No.22/2012 filed by the petitioner, therefore,

stands partly allowed as above.

17. In the result, this petition is partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)