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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4680 OF 2015

Al-Farooque,
Social and Educational Society,
Jalna. (Through its President)
...Petitioner...

Versus

- 1 Mohd. Jaleeloddin Mohammed
Mukhtaroddin, Age : 43 Yrs,
Occu: Assistant Teacher,
R/o : Near Raj Mahal Talkies,
Dargah Bes Road, Jalna.
Tq and Dist : Jalna.
- 2 Education Officer (Primary),
Zilla Parishad, Jalna.
- 3 State of Maharashtra,
School Education Department,
Mantralaya, Mumbai.
(Through its Secretary)
...Respondents...

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Shri R.J. Godbole, Advocate for petitioners.
Shri N.V. Gaware, Advocate for respondent no.1.
Shri S.S. Tope, Advocate for respondent no.2.
Shri D.R. Korde, AGP for respondent no.3.

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**WITH
WRIT PETITION NO.8221 OF 2015**

Mohd. Jaliluddin Mohd. Muktaruddin
Age : 43 Yrs Occu: Assistant Teacher,
R/o : Near Raj Mahal Talkies,
Dargah Bes Road, Jalna.
Tq. and Dist : Jalna.
...Petitioner...

Versus

- 1 Al-Farooque,
Social and Educational Society,
Jalna. (Though its President)
- 2 The Education Officer (Primary,
Zilla Parishad, Jalna.
Dist. Jalna.

.....

Shri N.V. Gaware, Advocate for petitioner.
Shri R.J. Godbole, Advocate for respondent no.1.
Shri S.S. Tope, Advocate for respondent no.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 10.03.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] In the first petition i.e. Writ Petition No.4680/2015, the management is the petitioner, which is

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aggrieved by the judgment and order dated 1.1.2015 delivered by the School Tribunal, Aurangabad, in Appeal No.68/2004. Respondent no.1 is the original appellant – employee in the said petition.

3] In the second petition i.e. Writ Petition No.8221/2015, the appellant – employee is the petitioner, who has challenged the same judgment and order delivered by the School Tribunal in his Appeal No.68/2004.

4] Considering the above, both these petitions have been taken up together for hearing. The litigating sides, for the sake of brevity, would be referred to as the 'management' and the 'employee'.

5] The learned Advocates for the respective sides as well as Shri S.S. Tope, learned Advocate appearing for respondent no.2 – Education Officer (Primary) with the learned AGP, have canvassed at length.

6] I have considered their submissions. In the light of the order that I intend to pass considering the ratio laid down by the Hon'ble Supreme Court in the case of *Vidya Vikas Mandal & another v. Education Officer & another* (2007 (11) SCC 352), I am not required to advert to their entire submissions since a *de-novo* enquiry is

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required to be conducted with regard to the charges leveled upon the employee.

7] Suffice it to say that the charge-sheet dated 1.10.2003 and the second charge-sheet dated 11.12.2003 are at issue. The earlier enquiry conducted by the management and which was questioned in Appeal No.68/2004 by the employee, has been vitiated and set aside by the School Tribunal *vide* the impugned judgment.

8] Having considered the record, the submissions of the learned Advocates, the conclusions of the School Tribunal and the ratio laid down in *Vidya Vikas Mandal's* case (*supra*), I am not inclined to cause any interference in the direction of the School Tribunal *vide* which the management is obliged to follow the due procedure laid down in law viz. Rules 36 and 37 of the Maharashtra Employees Private Schools (Conditions of Service) Rules, 1981. The issue of no hearing before initiation of the second charge-sheet dated 11.12.2003 is squarely covered by Rule 36(1) and as such the management would be under an obligation to follow the due procedure so as to ensure that the enquiry does not suffer from any deficiency.

9] The contention of the employee that the charges

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leveled upon him in both the charge-sheets are baseless, frivolous and vexatious, is not being entertained by this Court for the reason that if charges are leveled upon an employee by an employer, the law mandates that the employer should prove the charges by following the due procedure laid down in law. In effect, the disciplinary proceedings have to be initiated and have to be taken to a logical end. The employee cannot seek the quashing and setting aside of the charge-sheet akin to Section 482 of the Code of Criminal Procedure, 1973, which is invoked for quashing a First Information Report. The disciplinary proceedings in service jurisprudence are conceptually distinct and different from the criminal proceedings and hence the contention of the employee that no enquiry needs to be conducted and both the charge-sheets be quashed, is being rejected.

10] Paragraph nos.8, 9 and 10 of *Vidya Vikas Mandal* case (supra) reads as under:-

"8. Our attention was also drawn to Rule 36 sub-clause 2(a), which applies to the case of an employee and reads thus:

"36 (2)(a) In the case of an employee-

(i) one member from amongst the members of the Management to be nominated by the

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Management, or by the President of the Management if so authorized 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."

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

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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

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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."

11] Considering the above and in the light of the doctrine of 'relation back', no interference is called for in the order of punishment dated 5.8.200 by which the employee has been reverted to the post of Assistant Teacher. Since a *de-novo* enquiry is to be conducted, the conclusion of the disciplinary proceedings by the doctrine of relation back, would relate back to the date of order of punishment.

12] In the event, the employee is exonerated, the order of punishment dated 5.8.2004 shall stand set aside

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and he would then be at liberty to claim consequential benefits on account of the exoneration. In the event, the charges are held to be proved against him, the action of the management in punishing him by order dated 5.8.2004 would stand supported and the employee would then be at liberty to question the order of punishment afresh. Needless to state, if the management desires to enhance the punishment, proper opportunity of hearing will have to be given to the employee in tune with Rule 37 of the MEPS Rules, 1981.

13] The employee has raised an additional issue in his petition, which is with regard to two aspects. Firstly, that the wages from 5.8.2004 till 4.8.2008 when he joined duties as an Assistant Teacher, have not been paid to him. Secondly, by order of reversion dated 5.8.2004, which will now be subject to the result of the *de-novo* enquiry, the employee should have been reverted to the post of Assistant Teacher, which would be one step below his earlier position of Head Master.

14] The grievance seriously voiced by Shri Gaware is two-fold. Firstly, that the management did not pay him the wages from 5.8.2004 to 4.8.2008 and secondly he has

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been reverted to the position of the Assistant Teacher at the lowest salary scale as if he has newly joined as an Assistant Teacher. In doing so, he has been placed below the Assistant Teachers, who are much junior to him.

15] Shri Godbole has opposed the contention of Shri Gaware on the ground that the employee had filed Appeal No.18/2004 before the School Tribunal by which it was contended that he has been orally terminated. The management by its written statement brought it on record that the employee was not orally terminated, that there is no termination and that he was reverted from the position of Head Master to the position of an Assistant Teacher. Shri Godbole, therefore, submits that the employee withdrew Appeal No.18/2004 unconditionally. He is, therefore, precluded from raising any grievance as regards unpaid wages for exactly four years from 5.8.2004 till 4.8.2008.

16] He further submits that the management has reverted him to a particular scale as an Assistant Teacher. The said action is legal and proper and cannot be called in question, more so in the light of the fact that Appeal No.18/2004 has been unconditionally withdrawn

by the employee.

17] I find from the record that since the management informed the Tribunal as well as the employee that he has not been terminated in any form and has merely been reverted to the post of Assistant Teacher by the order of punishment dated 5.8.2004, the employee has withdrawn his appeal.

18] However, the issue as to whether the employee was absent for the said four years or whether he was restrained from reporting for duties by the management, remains unanswered. The moment, the management announced that there was no termination in the eyes of law, Appeal No.18/2004 was virtually without any cause of action. Nevertheless, the grievance of the employee that he has not been paid wages for four years and his reversion to the basic pay as if he is a new appointee, still survives.

19] I am, therefore, of the view that the employee deserves to be granted the liberty to question the non-payment of his wages for four years as well as the reversion bringing him down not to the stage of an Assistant Teacher based on his seniority, but bringing

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him down to the basic salary scale, before the Education Officer. In the event, any such representation / complaint is filed by the employee, the Education Officer will have to deal with the same and decide the said grievance after hearing all the parties.

20] In the light of the above, the petition filed by the employee is disposed of without causing any interference in the direction of the Tribunal in Clauses (1) to (4) below paragraph no.24 of the impugned judgment.

21] Nevertheless, the direction of the Tribunal to reinstate the employee on the post of Head Master by setting aside the order of reversion dated 5.8.2004 with all consequential benefits, arrears of salary and back wages, will stand modified in the light of the observations set out in the foregoing paragraph no.19 keeping in view the ratio laid down by the Hon'ble Supreme Court in *Vidya Vikas Mandal case* (supra).

22] The employee shall, therefore, work on the post of Assistant Teacher till the *de-novo* enquiry is concluded in accordance with Rules 36 and 37 of the Rules. He shall be at liberty to approach the Education

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Officer as has been observed above for expressing his limited grievance noted in the foregoing paragraph.

23] Rule is, therefore, made partly absolute in the first petition filed by the management.

24] Rule is discharged in the second petition filed by the employee.

25] There shall be no order as to costs in both the petitions.

(RAVINDRA V. GHUGE, J.)