

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

WRIT PETITION NO. 4263 OF 2014

1. Indra Shikshan Prasarak Mahila
Mandal, Jalgaon. Through its President.
23, Utkarsha Grah Nirman Sanstha,
Adarsh Nagar, Jalgaon, Tq. & Dist. Jalgaon.
2. Indra Shikshan Prasarak Mahila
Mandal, Jalgaon. Through its Secretary.
Akshata Grah Sankul, Block Nos.1 and 2,
Adarsh Nagar, Jalgaon, Tq. & Dist. Jalgaon.
3. Appasaheb Pundlik Kalu Patil
Madhyamik Vidhyalaya, Pimpalkhed,
Tq. Bhadgaon, Dist. Jalgaon.
Through its Head Mistress

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Education Officer,
Secondary Zillha Parishad, Jalgaon.
2. Sunil Abhiman Marathe
Age: 40 years, Occu.: Nil,
R/o Gut No.31, Laxmanbhau Nagar,
Balad Road, Bhadgaon, Dist. Jalgaon.

..RESPONDENTS

....

Ms. S.D. Mahajan, Advocate for petitioners.
Mr. V.G. Shelke, AGP for Respondent No.1.
Mr. S.R. Barlinge, Advocate for Respondent No.2.

....

CORAM : RAVINDRA V. GHUGE, J.
DATED : 2nd MARCH, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner-management is aggrieved by the judgment and order dated 26.02.2014 delivered by the School Tribunal, Nashik by which Appeal No. 49/2010 filed by Respondent No.2-employee has been allowed. His termination is set aside and has been granted reinstatement with continuity and full back wages.
3. Ms. Mahajan, learned Counsel for the petitioners has strenuously criticized the impugned judgment.
4. Mr. Barlinge, learned Counsel appearing on behalf of Respondent No.2-employee has vehemently supported the impugned judgment. His contention is that once the Tribunal has arrived at a finding of facts, this Court should be slow in causing

any interference in its writ and/or supervisory jurisdiction. He relies upon the judgment delivered by the Hon'ble Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan, AIR 1964 SC 477* and *Surya Dev Rai Vs. Ram Chander Rai, AIR 2003 SC 3044* to support his contention that unless the impugned judgment and order is perverse, erroneous and is likely to cause grave injustice, no interference is called for.

5. I have considered the submissions of the learned Counsels. In the light of the order that I intend to pass, I am not required to advert to their entire submission.

6. It is apparent that the petitioner-management had conducted a domestic enquiry against Respondent No.2-employee as provided under Rule 36 and 37 of M.E.P.S. Rules, 1981. The School Tribunal has framed six issues. Issue Nos. 4 and 5 pertain to the aspect of the domestic enquiry and findings of the enquiry officer. The Tribunal has arrived at a conclusion that the domestic enquiry is vitiated and deserves to be set aside. For similar reasons,

the punishment imposed by the petitioner on Respondent No.2-employee pursuant to the domestic enquiry has also been interfered with.

7. In the above back drop, the School Tribunal has set aside the punishment of the Respondent No.2 on 05.09.2010 and has granted him reinstatement with continuity and full back wages.

8. The Hon'ble Supreme Court in the case of ***Vidya Vikas Mandal and Another Vs. Education Officer and Another, 2007(3) Mh.LJ 801*** has dealt with an almost identical situation. Considering the fact that the enquiry was vitiated, the Hon'ble Supreme Court has concluded in paragraph nos.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.”*

9. It is therefore settled law that if an enquiry is held to be vitiated, the same can be set aside, but an opportunity is required to be afforded to the employer to conduct the enquiry from the stage

at which it has been vitiated. The learned Apex Court in such a situation has concluded that the employee should be placed under suspension/should be treated to be under suspension and shall be entitled for suspension allowance from the date of termination of his services.

10. The learned Apex Court has dealt with the relief of reinstatement in service with continuity and grant of full back wages as was done by the Tribunal in the Vidya Vikas Mandal (supra) case and which direction was sustained by the learned Single Judge and the learned Division Bench of this Court. The learned Apex Court has concluded that the learned Single Judge and the learned Division Bench have committed a serious error in ordering reinstatement with back wages.

11. In *Bhartiya Seva Acharya Education Society, Nagpur and Others Vs. School Tribunal, Nagpur and Others, 2014(2) Mh.L.J. 879*, the learned Single Judge of this Court has concluded in paragraph nos.6 to 10 as under:

“6] *The question involved in the present petition is as to whether the tribunal was right in passing the order of reinstatement, continuity in service with full backwages, without leaving option to the management to hold denovo enquiry when it has held that the enquiry conducted by the management vitiates on technical defects. The another question is whether the tribunal was right in going into the merits of the charges levelled against an employee to hold that the charges of misconduct levelled against her have not been established, when the tribunal finds that the enquiry was vitiated on technical grounds.*

7] *The Full Bench of this Court has considered the question in the decision of Saindranath Jagannath Jawanjal vrs. Pratibha Shikshan Sanstha and another, reported in 2007(3) Mh.L.J. 753. In para 45, the Full Bench has considered the decision of the Apex Court in case of State of Punjab and others vrs. Dr.Harbhajan Singh Greasy, reported in (2005) 8 SCC 264, as under:*

'45. At this stage, it would be relevant to make reference to the cases of Government employees, who are protected under Article 311 of the Constitution of India. If the punitive action leading to dismissal, removal or reduction in rank without holding enquiry is taken in case of Government employee, then no

alternative is left for the Courts but to direct reinstatement with full backwages. However, in the recent judgments, the Apex Court has adopted little different route and permitted the management to hold departmental enquiry from the stage the illegality has crept in. In this behalf, readily available judgments are in the cases of State of Punjab and others vs. Dr. Harbhajan Singh Greasy, U.P.State Spinning Co. Ltd. vs. R.S.Pandey and another, (2005) 8 SCC 264, U.P.State Textile Corpn. Ltd. vs. P.C. Charturvedi and others, 2005 (8) SCC 211; wherein the Supreme Court has observed that in case of no enquiry or defective enquiry, proper relief is to set aside the dismissal with direction to the management to hold enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as backwages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry.'

In para 47, the question has been considered with reference to the provision of MEPS Act and Rules framed thereunder and hence, para 47 is reproduced below;

'47. The up shot of above is that the M.E.P.S. Act and Rules do not subscribe to the action of the management leading to inflicting major penalties

without holding enquiry as contemplated under the provisions of the Act and Rules. In this backdrop, in case of “no enquiry”, the school management cannot be allowed to justify their action, for the first time, before the School Tribunal. It is open for the School Tribunal to adopt the same route which has been adopted by the Supreme Court in the case of Dr. Harbhajan Singh Greasy with some other cases noted supra, but the school management cannot be allowed to justify their action for the first time before the tribunal in case of no enquiry.'

8] It is thus apparent that in case where the enquiry is found to be defective, the appropriate relief as has been held in Dr. Harbhajan Singh Greasy's case by the Apex Court is to set aside the order of dismissal with direction to the management to hold an enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as the backwages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry. The case of “defective enquiry” is considered on par with the case of “no enquiry”, even in respect of the cases arising out of disciplinary proceedings conducted under the MEPS Act and the Rules framed thereunder.

9] In view of above law laid down by the Full Bench of this Court, it was not permissible for the School Tribunal to go into the merits of the charges levelled against an employee and the tribunal should have set aside the order of termination and permitted the management to hold an enquiry from the stage the illegality has crept in and that the reinstatement of the respondent no. 3 is required to be treated for the purposes of holding fresh enquiry and no more. The question of payment of backwages in such a situation also does not arise as it would depend upon the final outcome of the fresh enquiry.

10] Shri Mohgaonkar, the learned counsel appearing for the respondent no. 3 – employee has urged that there was no permission sought by the management before the School Tribunal to lead evidence to establish the charges of misconduct. The tribunal has, therefore, rightly gone into the merits of the charges on the basis of the material available before it and has recorded the finding of fact that the findings recorded by the Enquiry Committee holding that the charges proved, are perverse. It is not possible to accept this argument for the reason that the matter is covered by the decision of the Full Bench as has been held in paragraphs 45 and 47, which are reproduced above. There was no question

of the management seeking permission to prove the misconduct by making out a case for leading additional evidence under Order XLI, Rule 27 of CPC. Once it is found that the enquiry was vitiated on the technical grounds, the course open for the tribunal was to permit the management to conduct denovo enquiry from the stage from which it is found to be vitiated.”

12. It is therefore apparent that the School Tribunal could not have granted reinstatement with continuity and full back wages to the petitioner vide the impugned judgment. The said conclusion is therefore perverse and erroneous and calls for an interference.

13. The impugned judgment deserves to be set aside for yet another reason which is that if the enquiry is vitiated, an employer cannot be precluded from conducting an enquiry from the stage at which it has been vitiated. From the impugned order, this right as is available in law to the petitioner, has been taken away.

14. In the light of the above, this petition is partly allowed. The impugned judgment of the School Tribunal dated 26.02.2014 is

modified to the extent of the directions set out in Clauses 4 and 6.

15. It is informed by the learned Counsels that the enquiry as against Respondent No.2 has been vitiated from the very formation of the enquiry committee. As such, Respondent No.2 shall be treated as being under suspension from the date of his termination dated 05.09.2010 and shall be entitled for suspension (subsistence allowance) in accordance with Rule 34 of the 1981 Rules.

16. The petitioner shall initiate steps as is required to be done under Rules 36 and 37 of the 1981 Rules and ensure that the enquiry committee is properly constituted and the enquiry against Respondent No.2-employee in relation to charge-sheet leveled upon him is conducted strictly in accordance with Rules 36 and 37.

17. Considering the fact that Respondent No.2-employee is out of employment from 05.09.2010, it is expected that the petitioner-management shall initiate immediate steps to ensure that

Respondent No.2 is paid his suspension allowance with effect from 05.09.2010 @ 50% wages for the first four months and then @ 75%, till the passing of this order as expeditiously as possible and preferably within a period of four weeks from today. It shall continue to pay him the suspension allowance till the conclusion of the disciplinary proceedings.

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

19. In the event the grant of suspension allowance by following the due procedure takes time, the management shall pay the suspension allowance from its account and shall then seek reimbursement of the amount through the salary grants by following the due procedure as is laid down in law.

(RAVINDRA V. GHUGE, J.)