

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4813 OF 2016

1. Vasantrao Naik Shikshan Prasarak Mandal,
Vijaydurga Niwas, Ambedkar Nagar,
Gangakhed, Tq. Gangakhed, Dist.Parbhani
Through its President,
Mr.Rajkumar S/o Trimbakrao Sawant,
Age-39 years, Occu-Agriculture,
R/o Gangakhed, Tq. Gangakhed,
Dist.Parbhani,
2. Vasantrao Naik Shikshan Prasarak Mandal,
Vijaydurga Niwas, Ambedkar Nagar,
Gangakhed, Tq. Gangakhed, Dist.Parbhani
Through its Secretary,
3. Sanjay Gandhi Madhyamik Aashram School,
Suralwadi, Tq.Gangakhed, Dist.Parbhani,
Through its Head Master

PETITIONERS

VERSUS

1. Rajkumar Baburao Rajbhoj,
Age-28 years, Occu-Service,
R/o Venkatesh Nagar, Gangakhed,
Dist.Parbhani
2. The Assistant Commissioner,
Social Welfare Office,
Dr.Ambedkar Bhavan, Jayakwadi Vasahat,
Parbhani, Dist.Parbhani,
3. The Regional Deputy Commissioner,
Social Welfare Department,
Dr.Ambedkar Samajik Nyay Bhavan,
Near Old Mondha, Aurangabad

RESPONDENTS

Mr.D.S.Bagul h/f Mr.P.D.Bachate, Advocate for the petitioners.
Mr.M.V.Ghatge, Advocate for respondent No.1.
Mrs.S.S.Raut, AGP for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/05/2016

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the judgment and order dated 06/02/2016 delivered by the School Tribunal, Latur by which Appeal No.32/2015 filed by respondent No.1 /appellant has been allowed and he is granted reinstatement with continuity and full back wages from his oral termination dated 29/09/2015.

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

4. During the course of their submissions, Mr.Bagul, learned Advocate for the petitioners submitted on instructions and especially in the light of the order of the Hon'ble Supreme Court (paragraph Nos. 8 and 9) in the case of Vidya Vikas Mandal & Anr vs The Education Officer & Anr., that if the petitioners are guilty of not conducting a departmental enquiry while alleging that the

respondent / employee is unauthorizedly absent, the Tribunal should have directed the Management to conduct an enquiry by placing the appellant under suspension. When the petitioners have specifically averred on the basis of voluminous record that the appellant has adopting a shifting stand and has fluctuated between the dates 07/07/2015 and 29/09/2015, the Tribunal should have refrained from prejudging the case and should have ensured that an equitable order is passed. He, therefore, submits that the Tribunal should have allowed the petitioners to conduct an enquiry under Rule 36 and 37 with the option of placing him under suspension as per Rule 35 of the M.E.P.S. Rules.

5. Mr.Ghatge, learned Advocate appearing on behalf of respondent No.1 employee submits that he has no hesitation in facing a departmental enquiry, if conducted as per Rules since it is his case that the Management has been orally refusing to allow the employee to perform his duties and has marked him absent from 07/07/2015. He, therefore, submits that for permitting the Management to conduct an enquiry, the respondent/employee has to be first reinstated with the obligation on the Management to conduct the departmental enquiry strictly as per Rules.

6. Paragraph Nos. 8 and 9 of the Vidya Vikas Mandal case (supra) read 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.”

7. In the light of the submissions of the learned Advocates as above and in view of the observations of the Hon'ble Supreme Court in paragraph Nos. 8 and 9 of the Vidya Vikas Mandal judgment (supra), this petition is partly allowed. The impugned judgment of

the School Tribunal dated 06/02/2016 is modified with a direction to the petitioners to reinstate the employee notionally on 09/05/2016. In the event, the petitioners desire to place the employee under suspension, it shall comply with the requirements as provided under Rules 33, 34 and 35 of the M.E.P.S. Rules.

8. The address of the appellant / employee shall be furnished with minute details of the house number as well while joining duties on 09/05/2016, in writing to the Head Master. Respondent No.2 / Assistant Commissioner, Social Welfare Office, Parbhani shall remain present in the Sanjay Gandhi Madhyamik Ashram School, Suralwadi, Tal.Gangakhed at 10 a.m. on 09/05/2016 and supervise the joining of the appellant/employee who will submit a written joining report.

9. Needless to state, the Enquiry Committee shall consider the allegations as may be leveled upon the appellant/employee by the petitioners, strictly on its merits. The wages for the period 07/07/2015 till 09/05/2016 shall be subject to the outcome of the departmental enquiry.

10. Needless to state, if the employee is placed under suspension, the Management shall ensure payment of subsistence allowance

regularly in accordance with rules and there shall be no delay on that count.

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

(RAVINDRA V. GHUGE, J.)