

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

WRIT PETITION NO.8900 OF 2015

Ramesh s/o Hari Sapate,
Age 45 years, Occu. Service as
Assistant Teacher, Keshav Vidya
Mandir, Khanapur,
Tal.& District Osmanabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Secondary),
Zilla parishad, Osmanabad.
5. Shri Datta Seva Mandal, Ruibhar,
Tal.& District Osmanabad,
Through its Secretary / President.
6. Keshav Vidya Mandir, Khanapur,
Tal. & District Osmanabad,
Through its Headmaster.

...RESPONDENTS

...

Mr. P.S.Chavan, Advocate for the petitioner.

Mr. A.G.Magre, AGP for respondent State.

Mr. S.S.Jadhavar, Advocate for respondent nos. 5 and 6.

...

**CORAM: S.S.SHINDE
AND
RAVINDRA V.GHUGE, JJ.**

DATE : February 2nd, 2016.

ORAL JUDGMENT: (*Per Ravindra V.Ghuge, J.*)

1. Heard. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Counsel for the parties.

2. The petitioner has invoked our writ jurisdiction under Article 226 of the Constitution of India by setting up the following prayers in the memo of the petition, which are quoted here-in-below:

"B. By appropriate Writ, order or direction, the Departmental Enquiry initiated by Respondent no.5 against the petitioner vide charge sheet dated 17.07.2015 under the provisions of Maharashtra Employees of Private School Rule, 1981, may kindly be quashed and set aside, being premature and contrary to the law laid down by the Hon'ble Apex Court.

B. By appropriate Writ, order or direction, this Hon'ble Court may please to quash and set aside the permission granted by Respondent No.3 and 4 vide its letter dated 26/05/2015 and 30/05/2015 to initiate and hold Inquiry against the petitioner under the provisions of Maharashtra Employees of Private School Rule, 1981."

3. The contention of the petitioner, in brief, is that the respondent management has alleged commission of certain acts which would amount to misconducts. The said acts are said to have occurred in the year 2006. A private complaint was filed under Section 156 (3) of the Criminal Procedure Code. The competent Court of criminal jurisdiction passed an order on 24.3.2006, directing investigation.

4. The petitioner further submits that though the charges date back to the year 2006, the respondent management, for the first time, moved an application on 8th May, 2015, requesting the Deputy Director of Education, Latur Division, seeking permission to suspend the petitioner and initiate a domestic enquiry. A reminder was forwarded thereafter on 12.5.2015. By order dated 26.5.2015, the Deputy Director of Education declined to grant permission for suspending the petitioner.

5. Shri Chavan, learned Advocate for the petitioner, submits that the permission of the Education Department is to be sought only for suspending an employee, and not for conducting, or initiating, a disciplinary proceedings.

6. Shri Chavan further submits that statement of charges has been issued by the chairperson of the respondent educational society on 17.7.2015. It is apparent from the charges that the incidents are said to have occurred in the year 2006. Reference of the pending criminal proceedings is made in the said statement of charges. An enquiry is, therefore, sought to be conducted under Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "MEPS Rules).

7. Shri Chavan has placed reliance upon the judgments of the Apex Court, which are as follows:

1) **M/s Stanzen Toyotetsu India P.Ltd. vs. Girish V and others** (AIR 2014 SUPREME COURT 989).

(2) **Capt. M.Paul Anthony v. Bharat Gold Mines Ltd. and another** (AIR 1999 SUPREME COURT 1416)

(3) **Tata Oil Mills Co.Ltd. vs. The Workmen** (AIR 1965 SUPREME COURT 155)

(4) An unreported judgment of the Division Bench of this Court in the matter of **Surendrasingh Govindsingh Rajput Vs. Maharashtra State Electricity Distribution Co.Ltd. (MSEDCL) and another** (WP No.4758/2014 and group of petitions, dated 23.9.2015).

8. The gamut of the submissions of Shri Chavan is that, in the peculiar facts of this case, the charges levelled upon

the petitioner are virtually similar / identical to the charges which are being gone into by the Court of criminal jurisdiction in RCC No.540/2014. He contends that his defence could be exposed if the criminal proceeding, as well as the domestic enquiry, are conducted simultaneously. He submits that, the ratio laid down in the judgments cited above by the petitioner, is squarely applicable to the petitioner's case.

9. He, therefore, submits that the disciplinary proceedings deserve to be stayed till the criminal proceedings are completed. He further submits that this Court may direct the expeditious disposal of RCC No.940/2014 so as to ensure that neither of the litigating sides would delay the matter.

10. Shri Chavan has raised another issue which we are not required to deal with in the light of the statement made by the respondent management. Contention of the petitioner is that the chairman of the educational society is the complainant in the criminal proceedings. He has been nominated as the member of the Enquiry Committee under Rule 36 and 37 of the M.E.P.S. Rules. He, therefore, would not be impartial, and would have a bias against the petitioner, since he is the

complainant before the Criminal Court, and would, therefore, be a witness in the criminal proceedings.

11. Shri Jadhavar, learned Advocate, on instructions from his client, who is present in the Court, submits that the Enquiry Committee can be re-constituted. The chairman of the educational society would be withdrawn from the Enquiry Committee, and another member, as the nominee of the management, would be appointed on the Enquiry Committee.

12. We have heard the learned Advocates for the respective sides, and we have gone through the judgments relied upon by the petitioner.

13. It is trite law that disciplinary proceedings and criminal proceedings are conceptually distinct and different. The probative value of evidence required in criminal proceedings is of a very high degree in comparison to the evidence which is to be appreciated in disciplinary proceedings. The disciplinary proceedings are solely based upon the preponderance on the principles of probabilities. Hearsay evidence is also admissible. Unlike this position, in criminal proceedings, the offence has to be proved beyond any doubt.

14. In the above backdrop, though at first blush we find that the charges levelled upon the petitioner are not highly complicated so to say that it would require a judicial authority to deal with the said charges, however, we find that the respondent management has dug out stale charges against the petitioner. We have formed this prima facie opinion based on the dates on which the misconduct alleged to have been committed by the petitioner. It is undisputed that the charge sheet issued to the petitioner is with reference to the charges which date back to the year 2006. It is, therefore, after a period of about 9 years that the employer has decided to commence disciplinary proceedings.

15. Shri Jadhavar, learned Advocate for the management, has strenuously supported the issuance of the charge sheet in the year 2015 on the ground that after necessary orders were passed by the competent Court under Section 156 (3) of the Criminal Procedure Code, it took the Police authorities to frame charges against the petitioner over a period of eight years. The charge sheet filed against the petitioner is dated 26.11.2014. Hence, the delay, which cannot be said to be on the part of the respondent management.

16. We are unable to be persuaded by the strenuous submissions of Shri Jadhavar for reasons more than one. Firstly, the misconduct alleged to have been committed is with reference to the service of the petitioner with the management, which has to be dealt with by the management. Secondly, the respondent management, has invoked its powers as an employer and has initiated disciplinary proceedings against the petitioner, irrespective of the outcome of the proceedings under Section 156(3), or the framing of the charges by the Police authorities.

17. The Learned Division Bench of this Court, in the matter of **Food Corporation of India Employees Association V/s. Food Corporation of India and others, 2007 LLR 793**, has dealt with the issue of stale charges and has quashed the punishment imposed as the misconduct was committed four and half years ago.

18. In the light of the above, it would be appropriate to refer to the view taken by the Apex Court in the matter of **M/s Stanzen Toyotetsu India P.Ltd.** (*supra*), which is as under:

" In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defence lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order. "

19. The Apex Court, in the case of **Capt.M.Paul Anthony** (*Supra*), has arrived at certain conclusions based on various decisions of the Apex Court are set out in paragraph No.22, which reads as under:

"22. The conclusions which are deducible from various of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. "

20. In the light of the above, considering the fact that the management has contemplated disciplinary proceedings against the petitioner after a passage of nine years, we are inclined to partly allow this petition.

21. As such, this petition is partly allowed. The disciplinary proceedings initiated by the respondents shall stand stayed for a period of one year in the light of the view taken by the Apex Court in the case of **M/s Stanzen Toyotetsu India P.Ltd. (*supra*)**.

22. We expect that the Court of competent jurisdiction dealing with RCC No.540/2014 to proceed with the trial expeditiously and shall endeavour to conclude the trial within a period of one year.

If the RCC No.540/2014 is not decided within one year, the enquiry may be commenced.

23. Interests of justice, therefore, in our view, would be sufficiently served by directing the Court dealing with RCC No.540/2014 to ensure that the litigating sides are not permitted to seek adjournment on unreasonable and trivial grounds. We hope and trust that the trial Court would take effective steps to ensure that the witnesses are served with, they appear, and they are examined. We also expect the litigating parties to extend cooperation to the trial Court for the expeditious disposal of RCC No.540/2014 within a period of one year as stated above.

24. After the trial is concluded as directed above, the judgment of the Court in RCC No.540/2014 may be placed before the Enquiry Committee in the light of Rule 33 of the Maharashtra Employees of Service (Conditions of Service) Rules, 1981, which shall consider the same. The contention of the petitioner, as regards the effect of levelling stale charges upon the petitioner, is left open to be considered by the Enquiry Committee and / or the Court / Tribunal, as the case may be.

25. Rule is made absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE)
JUDGE

(S. S. SHINDE)
JUDGE

...