

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9670 OF 2016
(Raj Education Trust and another Vs. Aashish Murlidhar Upadhyaya
and another)

Mr.B.R.Kaware, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 20/09/2016

PER COURT :

1. The petitioner is aggrieved by the order dated 16/04/2015 passed by the School Tribunal, Aurangabad in Appeal No.11/2012 by which the application Exh.16 filed by the petitioner, seeking framing of two preliminary issues, has been rejected.

2. The grievance of the petitioners is that since it has conducted an enquiry against the respondent under Rule 36 and 37 of the MEPS Rules 1981, if the enquiry is held to be vitiated for any reason, the employer deserves to be granted the liberty to conduct a denovo enquiry before the Tribunal.

3. It is further contended that an enquiry can be vitiated for non adherence to the principles of natural justice or on account of the findings being perverse. By relying upon the judgments of the

Supreme Court in the matter of Bharat Forge Company Ltd., Vs. A.B.Zodge and another, [AIR 1996 SC 1556] and Karnataka Road Transport Corporation Vs. Lakshmiddevamma, [AIR 2001 SC 2090] a right to conduct a *denovo* enquiry would entitle the petitioners to justify the charges and the punishment imposed upon the respondent/employee.

4. The petitioner relies upon the judgment of this Court in the matter of Sheshrao Wankhede's 56th Birthday Foundation and another Vs. Pratibha Uttamrao Gadwer (Ku.) and others, [2005(3) Mh.L.J. 304] to support his contention.

5. It is further submitted that the School Tribunal has passed a cryptic order dated 16/04/2015 and as such, the same deserves to be quashed and set aside.

6. I have considered the submissions of the learned Advocate for the petitioner.

7. The view taken by this Court in the Sheshrao Wankhede's case (supra) is under the Maharashtra Universities Act, 1994. The learned Division Bench of this Court in the matter of Gurumaharaj Shikshan

Prasarak Mandal, Chousala and another Vs. Jalindar S/o Mahadeo Kedar and others, [2006(2) Mh.L.J.748] has considered a similar contention under the MEPS Act and the Rules and has concluded that the School Tribunal, being an Appellate Forum, cannot record evidence as if it is a Trial Court.

8. The Hon'ble Supreme Court in Vidya Vikas Mandal & Anr vs The Education Officer & Anr 2007(3) Mh.L.J. 801 = 2007(11) SCC 352 has held in paragraph Nos. 8 and 9 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 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 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. It is, therefore, trite law that if a departmental enquiry conducted under the MEPS Rules is held to be vitiated, the enquiry is relegated back to the Management for conducting the enquiry afresh from the stage at which it has been vitiated either under Rule 36 or Rule 37 of the MEPS Rules. Till this exercise is undertaken, the dismissed employee is treated as being under suspension from the date of dismissal and the employer is mandated to pay subsistence allowance strictly as per the MEPS rules.

10. In the light of the above, I do not find any reason to entertain this petition. Same being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)