

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.10044 OF 2012

1. The President,  
Hindi Education Society Ltd.,  
Dhule,
2. The President,  
School Committee, Dudhediya  
High School, Parola Road,  
Dhule

PETITIONERS

VERSUS

1. Chandrajeet Jaysing Suryawanshi,  
Age-26 years, Occu-Service,  
R/o 69, Jay-Vijay Satsang  
Colony, Gontur Road, Deopur,  
Dist.Dhule,
2. The Head Master,  
Dudhediya High School,  
Parola Road, Dhule.
3. The Education Officer (Secondary),  
Zilla Parishad, Dhule.

RESPONDENTS

Mr.A.G.Talhar, Advocate for the petitioners.  
Mr.V.D.Sapkal, Advocate for respondent No.1.  
Mr.S.N.Rodge h/f Mr.N.L.Choudhari, Advocate for respondent No.2.  
Mrs.S.S.Raut, AGP for respondent No.3.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/04/2016

ORAL JDUGMENT :

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

2. The petitioner/Society is aggrieved by the judgment and order dated 02/11/2012 delivered by the School Tribunal by which Appeal No.24/2011 (Dhule) filed by respondent No.1 employee has been allowed and he has been granted reinstatement with continuity and full back wages by setting aside his order of termination dated 17/03/2011.

3. I have heard Mr.Talhar, learned Advocate for the petitioner/Society and Mr.Sapkal, learned Advocate for respondent No.1 employee at length.

4. Considering the conspectus of this matter, I am not required to advert to their entire submissions.

5. The termination of the employee undisputedly is a stigmatic termination and which is founded on two grounds. Firstly, that the employee who has secured his employment by order dated 18/06/2007 claimed to be belonging to the Scheduled Tribe (in short,

S.T.) Category and the post of Shikshan Sevak on which he has been appointed is reserved for the S.T. category. Secondly, it has been brought on record by the petitioner / Management that his termination is also because he has committed a fraud by interpolating a particular clause in his approval granted by the Education Officer.

6. There is no dispute as regards the process followed by the petitioner while appointing the employee as a Shikshan Sevak pursuant to the advertisement published in the newspaper. The Education Officer has granted approval to the appointment of the employee for 3 years from 18/06/2007. The purported fraud said to have been committed by the employee is with regard to the said order of approval dated 12/12/2008 wherein a remark that the Tribe Validity Certificate should be produced only while seeking promotion.

7. The employee has worked from 18/06/2007 till 17/03/2011 and has therefore completed his 3 years of service as a Shikshan Sevak. His Tribe claim, however, has been invalidated though the said fact has not been brought on record in the appeal preferred by the employee. The petitioners have seriously contended that the employee suppressed the invalidation of his Tribe claim from the

School Tribunal. Had that aspect been brought to the notice of the Tribunal, his appeal could have been dismissed.

8. Per contra, Mr.Sapkal contends that notwithstanding the invalidation of his Tribe claim, his service would be protected in the light of the judgment of the Hon'ble Supreme Court in the matter of Shalini Vs.New English High School Association and others (2013) 16 SCC 526. He further submits that the ground for termination of the employee's service cannot be solely based on either non submission of the Tribe Validity Certificate or on the ground of the invalidation of his claim. There is no dispute that the Tribe Claim of the employee has been invalidated on 03/01/2012 and the Tribunal has delivered the impugned judgment on 02/11/2012.

9. It is submitted by Mr.Talhar on instructions that the petitioner/Management would not hesitate from conducting a departmental enquiry with regard to the fraudulent act of the employee in relation to the approval order dated 12/12/2008. He submits that this enquiry could have been conducted earlier, but as the criminal case for the same reason is pending, the Management decided not to proceed to initiate the disciplinary proceeding.

10. It is trite law that departmental enquiry as well as the criminal proceedings can be simultaneously conducted. Even acquittal from the criminal case would not cause an impact on the outcome of the departmental enquiry since both of them are conceptually distinct and different. The School Tribunal has granted reinstatement with continuity and full back wages to the employee since the Management has not conducted an enquiry while terminating his services.

11. Mr.Sapkal has strenuously contended that once the termination of an employee is held to be illegal under the M.E.P.S.Act, 1977, notwithstanding whether the Management desires to conduct an enquiry or not, the employee deserves to be reinstated in service with continuity and full back wages. The Management thereafter may initiate disciplinary proceedings by following the M.E.P.S.Act and the M.E.P.S.Rules.

12. With regard to the view taken by the Hon'ble Supreme Court in the case of Vidya Vikas Mandal and another Vs. Education Officer and another, 2007(3) Mh.L.J. 801 and especially its directions in paragraph Nos. 8 and 9, he submits that if an employee is suspended during an enquiry which is subsequently vitiated for non compliance

of the Rules, such an employee can be relegated back to his position as a suspended employee if a *denovo* enquiry is ordered.

13. I do not find that the submissions of Mr.Sapkal on this count can be sustained. In the Vidya Vikas Mandal case (supra), the employee was not suspended during the pendency of the enquiry and he continued to attend to his duties. Subsequently, he was dismissed from service by way of punishment having been found guilty of all the charges levelled upon him. The enquiry was held to be vitiated by the Tribunal which ordered a fresh enquiry to be conducted by reconstituting the Enquiry Committee. In doing so, he was granted reinstatement in service. The learned Single Judge as well as the learned Division Bench of this Court concluded that the relief of reinstatement with continuity and back wages deserves to be granted. The Hon'ble Supreme Court concluded that the Tribunal as well as this Court had committed a serious error in ordering reinstatement with back wages.

14. The conclusions of the Hon'ble Supreme Court in paragraph Nos. 8 and 9 in 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.”*

15. Considering the two grounds put forth by the petitioners for terminating the employee in the order of termination and the second ground has been seriously pressed by the petitioners, I do not find that this Court should express any opinion as to what should be the contents of the charge sheet that the petitioner/Management may issue for initiating disciplinary proceedings against the employee.

16. The fact however remains that the petitioner/Management



shall have to conduct an enquiry at least with regard to the allegation that the employee has played a fraud in relation to the approval order dated 12/12/2008. The learned AGP points out that an affidavit dated 23/02/2012 is placed on record by the Divisional Secretary who was the Education Officer, Z.P. Dhule at the relevant time contending that the said approval order has not been issued from his office. This aspect can be gone into by the Enquiry Committee.

17. In the light of the above and considering the ratio laid down by the Hon'ble Supreme Court in the Vidya Vikas Mandal Case (supra), the impugned judgment of the School Tribunal is modified as under :-

- [a] Respondent No.1 employee shall be treated as having been notionally reinstated in service and placed under suspension from the date of termination which is 17/03/2011.
- [b] He shall be entitled for suspension allowance as per rules and the petitioner/Management shall pay him the arrears of suspension within a period of 8 (eight) weeks from today.
- [c] The petitioner/Management shall pay the monthly suspension allowance regularly during the pendency of the disciplinary proceedings.
- [d] The petitioner/Management shall issue a charge sheet to the employee within 4 (four) weeks from today and conduct the disciplinary proceeding strictly in accordance with the MEPS Rules, 1981.

[e] The petitioner/Management is at liberty to request the Education Department for reimbursement of the suspension allowance paid to respondent No.1/employee provided the same can be granted strictly in accordance with Law.

18. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

( RAVINDRA V. GHUGE, J.)