

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6221 OF 2015

The President,
Rashtriya Shikshan Samittee,
C/o Bharat Vidyalaya,
Shakti Nagar Nanded, Dist.Nanded,
Through its President,
Purushottam S/o Manohar Mahajan,
Age-84 years, Occu-Nil

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32,
2. The Deputy Director of Education,
Latur Division, Latur,
3. The Education Officer (Secondary)
Nanded, Dist. Nanded,
4. The Headmaster,
Bharat Vidyalaya, Shakti Nagar, Nanded,
Dist.Nanded,
5. Gajanan S/o Madhukarrao Yennawar,
Age-36 years, Occu-Teacher,
R/o Mahavir Chowk, CIDCO,
Nanded, Dist.Nanded,
6. Gajanan S/o Hariprasad Hasanpalli,
Age-37 years, Occu-Teacher,
R/o Hariom Niwas, Bhagyashree Society,
Vasarani Nanded, Dist.Nanded,
7. Laxman S/o Gyanoba Doke,
Age-49 years, Occu-Teacher,
R/o Siddharth Nagar, Taroda (Bk.)
Nanded, Dist.Nanded,

8. Santosh S/o Nandkumar Tuptewar,
Age-38 years, Occu-Teacher,
R/o Dr.Handiwala, 16, Shastri Nagar,
Nanded, Dist.Nanded.

9. Rajiv So Madhavrao Hingamire,
Age-52 years, Occu-Peon,
R/o Old Kautha, Nanded,
Dist.Nanded

RESPONDENTS

Mr.M.V.Ghatge, Advocate for the petitioner.

Mr.S.P.Katneshwarkar, Advocate for respondent No.4.

Mr.A.V.Patil-Indrale, Advocate for respondent Nos. 5 to 9.

Mrs.S.S.Raut, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/04/2016

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 impugned order dated 05/12/2014 delivered by respondent No.2 / Deputy Director of Education, by which the order of punishment dated 15/03/2014, thereby permanently stopping 2 annual increments of respondent Nos. 5 to 9, has been interfered with.

3. The petitioner submits that departmental enquiries under the

MEPS Act and the Rules were conducted against respondent Nos. 5 to 9 (hereinafter referred to as the employees). They did not participate in the enquiry and virtually boycotted it. Orders of punishment dated 15/03/2014 were issued. Said orders were challenged by the employees before respondent No.2 leading to the impugned order.

4. Grievance is that a single line order has been passed by respondent No.2 thereby quashing the orders of punishment. Mr.Ghatge, learned Advocate for the petitioner submits that the President of the petitioner/Institution was a party to the proceedings before respondent No.2. He represented the Institution along with respondent No.4 / Headmaster. He has filed this petition on 24/12/2014 when he was the Chairman/President.

5. As a response to the affidavit in reply filed by the employees contending that the petitioner President no longer occupies the said position, Mr.Ghatge submits that his change report of 2008 by virtue of which he became the President has been rejected by the Assistant Charity Commissioner on 12/05/2015. Proceedings in that regard are pending. Nevertheless, as on the date of filing of this petition, he had the authority to represent the Institution.

6. Mr.Katneshwarkar, learned Advocate appearing on behalf of respondent No.4 / Head Master submits that the submissions of the petitioner are correct. He was representing the Institution alongwith respondent No.4 before respondent No.2 / Authority. He further submits that respondent No.4 is supporting the petitioner in this petition since a single sentence order has been passed by respondent No.2.

7. Mr.Patil, learned Advocate appearing on behalf of the employees has strenuously supported the impugned order. His primary grievance is that as on date, Mr.P.M.Mahajan has filed this petition unauthorizedly. Mr.Mahajan has no authority to represent the Institution. There are two factions in the Trust. Elections had taken place in 2008. Mr.Mahajan claims to have been elected and so does the rival group. Change reports of 2008 filed by both the factions have been rejected on 12/05/2015.

8. He further submits that the employees are being harassed owing to the internal squabbles in the Trust. The two factions are committing injustice on the employees who are suffering owing to the dispute amongst the two groups.

9. He further submits that the authority of Mr.Mahajan has been questioned before respondent No.2. The departmental enquiries have not been conducted by adhering to Rule 36 and 37 of the MEPS Rules. Punishment imposed on the employees is not provided either under the MEPS Act or its rules.

10. He further submits that the State Awardee Teacher namely G.M.Sonkamble who was appointed on the Enquiry Committee, was removed from the Committee on the complaints filed by the employees, by order dated 20/01/2014 passed by respondent No.3/ Education Officer. Yet, Mr.Sonkamble continued to participate in the enquiry which in itself renders the enquiries vitiated.

11. Mr.Patil has placed reliance upon the judgment of the learned Division Bench of this Court in the matter of Kewalram Tulshiram Kiranapure Vs.Manoharbhair Shikshan Prasarak Mandal and others,2011(5) BCR 516=2011(4) Mh.L.J.760 and the judgment of the Hon'ble Apex Court in the matter of Roshan Deen Vs. Preeti Lal, 2002 AIR SC 33.

12. The learned AGP appearing on behalf of respondent Nos. 1, 2

and 3 supports the impugned order.

13. I have considered the submissions of the learned Advocates and have gone through the judgments cited by Mr.Patil.

14. Issue as regards the dispute between the two factions of the petitioner / society is still subjudice after the rejection of two change reports on 12/05/2015. Mr.P.M.Mahajan, representing the petitioner, has also represented the petitioner before respondent No.2. Respondent No.4 / Head Master supports the petitioner in this petition as well as in the proceedings before respondent No.2.

15. Though this dispute of Authority is raised before respondent No.2, same has not been dealt with by him while passing the impugned order. There is no verdict as to whether Mr.P.M.Mahajan, has the authority to represent the petitioner or respondent No.2.

16. I have considered the impugned order. To say the least, this single sentence order setting aside the orders of punishment is a clear indication of the casual attitude and non application of mind on the part of respondent NO.2 / Deputy Director, Education, Latur. It is quite astonishing as to how could his conscience allow him to pass

such type of an order. There is no discussion of the rival submissions and there is no adjudication on the issues raised. Such a cryptic order ought not to survive even for a minute.

17. In so far as the submissions of Mr.Patil that the imposition of punishment of permanent stoppage of two annual increments is not provided for in the MEPS Act and the Rules is concerned, the same ought to be decided by respondent No.2. So also, Mr.Patil's submission that the cause of action put forth by the employees under Rule 29 and accompanying Rules under the 1981 MEPS Rules empowers respondent No.2 to adjudicate upon the said issue is concerned, the same also will have to be considered by respondent No.2 in the light of the view taken by the learned Division Bench of this Court in the matter of Kewalram Tulshiram (supra).

18. The Hon'ble Apex Court in paragraph No.12 of its judgment delivered in Roshan Deen case (supra) has observed as under :-

"We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so

outrageously and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it. (vide State of Uttar Pradesh V. District Judge, Unnao and others, AIR 1984 SC 1401). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injuries has resulted on account of any erroneous interpretation of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.”

19. I am in respectful agreement with the observations as reproduced above. However, the distinguishing feature in the case in hand is that respondent No.2 has abdicated his authority and has practically declined to consider the rival submissions and the issues raised. It is beyond comprehension as to what prompted respondent No.2 to pass such a cryptic order which is totally perverse and unsustainable. There is no adjudication at all on the issues raised by the litigating sides. I, therefore, find that the view taken by the Hon'ble Apex Court in the Roshan Deen Case (supra) would be of no assistance to the employees.

20. In the light of the above, this petition is partly allowed. The impugned order dated 05/12/2014 is quashed and set aside and all the appeals filed by the respondents/employees are remitted back to respondent No.2 with the following directions :-

- [a] The litigating sides shall appear before respondent No.2 on 25/04/2016 at 11.00 a.m. Formal notices need not be issued.
- [b] Respondent No.2 shall decide the appeals filed by the respondents/employees after considering the rival submissions and on their own merits.
- [c] The following issues, besides any other issues raised by the litigating sides, shall be decided by respondent No.2 ;
 - (i) whether the State Awardee Teacher, upon being removed by the Enquiry Committee, could have still continued as a Member of the Enquiry Committee.
 - (ii) Whether the enquiry conducted by the Management is in compliance of Rule 36 and 37 of the MEPS Rules.
 - (iii) Whether the punishment imposed upon the employees is provided as a form of punishment under the MEPS Act and/or Rules.
 - (iv) Whether Mr.Purushottam Manohar Mahajan can

represent the petitioner/Management ?

(v) Whether the Head Master can represent the Management ?

[d] Respondent No.2 shall decide the appeals of the employees as expeditiously as possible and preferably within a period of 3 (three) months from the date of appearance of the parties in the matter.

[e] All contentions of the litigating sides are kept open.

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

(RAVINDRA V. GHUGE, J.)