

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3043 OF 2016

Shaikh Shafiullah Abdul Jabbar .. Petitioner
Vs.
Halavpoor Muslim Welfare Association
Through the Secretary & Ors. .. Respondents

Mr. Mihir Desai, Senior Advocate i/by Sarnath Pramod, Advocates for the petitioner.

Mr. Arvind Kothari, Advocate for the respondent nos.1 and 2.

Mr. A.R.Metkari, AGP for respondent nos.3 to 5.

CORAM : R.D. DHANUKA, J.
DATE : 25th July 2016

P.C.

. By this Writ Petition under Articles 226 and 227 of the Constitution of India, the Petitioner has impugned the order dated 23.9.2015 passed by the learned Presiding Officer, School Tribunal, Mumbai dismissing the appeal filed by the Petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules, 1981.

2 The principal ground raised in the Writ Petition filed by the Petitioner is that since the Enquiry Committee had forced the Petitioner to sign certain blank papers in one of the meetings, on that apprehension, the Petitioner did not attend further meetings conducted by the Enquiry Committee.

3 The other contention raised by the Petitioner is that since the appeal filed by the Petitioner was pending before the School Tribunal challenging the alleged oral termination of his service which was decided on 29.1.2009, the Petitioner did not attend the enquiry proceedings on that ground also.

4 Perusal of the record indicates that though the Petitioner has raised an issue in the Writ Petition that he was forced to sign on the blank papers by the enquiry committee, no complaint of any nature whatsoever has been made by the Petitioner against the enquiry committee. Mr. Kothari, the learned counsel appearing for the Management, states that no such ground is taken by the Petitioner in the appeal filed before the School Tribunal. Statement is accepted.

5 In my view, there is no dispute that the Petitioner did sign any blank documents as alleged to have been demanded by the Enquiry Committee. Be that as it may, since no such ground is taken before the School Tribunal, the Petitioner cannot be allowed to raise this issue for the first time in this Writ Petition. In so far as the second submission of the learned counsel for the Petitioner is that since the Appeal No.66 of 2007 filed by the Petitioner challenging oral termination of his services was pending before the School Tribunal during the pendency of the enquiry, the Petitioner did not appear before the Enquiry Committee is concerned, perusal of the order passed by the School Tribunal in the said appeal clearly indicates that the Respondent/Management had filed an application on 28th June, 2007 in the said appeal placing on record their contentions that the relationship between the Petitioner and the Management of the employee and employer subsisted and his services

were not terminated. In spite of such stand taken by the Management in the then pending appeal as far back as on 28th June, 2007, the Petitioner pursued the said appeal and did not appear before the Enquiry Committee. In my view, there is thus no substance in this submission of the learned counsel for the Petitioner.

6 Perusal of the record indicates that there is no dispute that by the Petitioner though was served with notices from time to time by the Enquiry Committee and was also served with the statement of allegations and charge-sheet, there was no response given by the Petitioner. Enquiry Committee had issued notices from time to time and had held six meetings, the Petitioner, however, did not appear before the Enquiry Committee. Perusal of the order passed by the School Tribunal indicates that the School Tribunal has considered all these facts in great details in the impugned order and has held that since the Petitioner did not appear before the Enquiry Committee in spite of several opportunities given by the Enquiry Committee, the Enquiry Committee was justified in proceeding with the enquiry ex-parte. The Petitioner also did not nominate any member in the Enquiry Committee though an opportunity was given to the Petitioner to appoint his nominee in the Enquiry Committee.

7 Mr. Desai fairly states that there is no dispute that the charges levelled against the Petitioner were serious in nature. In my view, since the Petitioner had chosen not to reply to the statement of allegations and charges and had chosen to remain absent and did not cross-examine witnesses examined by the Management, the Petitioner cannot be allowed

to urge that principles of natural justice were violated by the Enquiry Committee.

8 I do not find any infirmity with the order passed by the School Tribunal. The Petition is devoid of merits and is, accordingly, dismissed. No order as to costs.

R.D. DHANUKA, J.