

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

WRIT PETITION NO.4903 OF 2016

1. Rayat Shikshan Sanstha, Satara)
Through its Secretary)
Office at Karmaveer Samadhi Parisar)
Satara.)

2. The Head Master)
Shri Shambhu Mahadev Vidyalaya)
Kukudwad, Tal. Man, Dist. Satara.) .. Petitioners

Versus

1. Appa Bhimrao Pol)
Age: 58 yrs., Occ: Supervisor,)
At Post- Devpur,)
Tal. Man, Dist. Satara.)

2. The Education Officer (Secondary))
Zilla Parishad, Satara) .. Respondents

Mr.N.V. Bandiwadekar i/by Mr.Milind Deshmukh for the petitioners.
Mr.V.S.Talkute for the respondent no.1.
Mr.A.R. Metkari, AGP for the respondent no.2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 9th August 2016
PRONOUNCED ON : 7th September 2016

Judgment :-

. Rule. Learned counsel appearing for the respondents waives service. By consent of parties, the petition is heard finally.

2. By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the judgment and

order dated 25th February 2016 passed by the learned Presiding Officer, School Tribunal, Kolhapur allowing the appeal (49 of 2015) filed by the respondent no.1 partly thereby setting aside the termination order dated 6th October 2015 and directing the petitioners to give pensionary benefit to the respondent no.1 by treating his last pay as on 31st December 2015 without any continuity for the purpose of monetary benefit. The School Tribunal rejected the claim for back wages and rejected the claim for reinstatement in view of the respondent no.1 having retired. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The respondent no.1 was appointed as a Supervisor in the school run by the petitioner no.1 on 20th September 1984. The petitioner no.1 received various complaints of molestation of three girl students against the respondent no.1 and other misconduct. On 1st February 2013, the respondent no.1 ordered students to run without sleepers due to which their legs got injured. The respondent no.1 celebrated his birthday in school by collecting money from students. The alleged incident regarding immoral act on the part of the respondent no.1 occurred on 25th February 2015.

4. On 15th May 2015, the petitioners issued a charge sheet to the respondent no.1 and proposed to make an enquiry. The petitioners appointed an enquiry committee consisting of three members including the member nominated by the respondent no.1. The respondent no.1 attended first three meetings conducted by the enquiry committee. It is however the case of the respondent no.1 that 15 hirelings were sitting outside the enquiry committee's hall and on 14th July 2015, the respondent

no.1 and his nominated member in the enquiry committee were beaten by those hirelings during the enquiry proceedings. The respondent no.1, thereafter, demanded alleged protection of security and insisted that unless security was provided to the respondent no.1 and his nominee member in the enquiry committee, they would not participate in the enquiry. It is the case of the respondent no.1 that since no security was provided to the respondent no.1 by the management, he could not attend the enquiry proceedings though he had received notices from time to time.

5. The management examined several witnesses including some of the students who were alleged to have been molested by the respondent no.1 and their parents. The respondent no.1, however, did not cross-examine those witnesses before the enquiry committee. The enquiry committee, thereafter, submitted a report recommending the termination of the respondent no.1 in view of the charges against the respondent no.1 having been proved. Based on the recommendation made by the enquiry committee, the petitioners terminated the services of the respondent no.1 on 6th October 2015.

6. Being aggrieved by the said order passed by the petitioners, the respondent no.1 impugned the said order of termination by filing an appeal (49 of 2015) before the school tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “the said MEPS Act”). The said appeal was resisted by the petitioners. By a judgment and order dated 25th February 2016 passed by the learned Presiding Officer, School Tribunal, Kolhapur, the school tribunal has set aside the termination order dated

6th October 2015 and directed the petitioners to pay pensionary benefit to the respondent no.1 by treating his last pay as on 31st December 2015 without any continuity for the purpose of monetary benefit. The school tribunal rejected the claim for back wages.

7. In so far as the claim for reinstatement made by the respondent no.1 is concerned, since he had already retired during the pendency of the appeal, the said prayer was rejected by the school tribunal. Being aggrieved by the judgment and order dated 25th February 2016 passed by the school tribunal, the petitioners have preferred the present writ petition under Articles 226 and 227 of the Constitution of India and have prayed for quashing and setting aside the said impugned judgment and order and for dismissing the appeal filed by the respondent no.1.

8. Mr.Bandiwadekar, learned counsel appearing for the petitioners invited my attention to the charge-sheet dated 16th May 2015, evidence led by the petitioners by examining several witnesses including some of the students who were alleged to have been molested by the respondent no.1 and their parents and in support of the other charges levelled against the respondent no.1 by the management. He submits that though the notices were served upon the respondent no.1 from time to time by the enquiry committee and also the notes of evidence etc., the respondent no.1 though initially attended three meetings, refused to attend the remaining meetings conducted by the enquiry committee on the false pretext that unless and until he was granted police protection or security by the management, he along with his nominee member in the enquiry committee would not attend the enquiry proceedings.

9. It is submitted by the learned counsel for the petitioners that though the respondent no.1 was all throughout present in the school and used to attend the school regularly where the enquiry proceedings were being conducted, he chose to remain absent before the enquiry committee on the false plea that he was likely to be beaten by the hirelings who were alleged to be present outside the enquiry committee hall in which the enquiry proceedings were going on. He submits that it is a matter of record that the respondent no.1 never made any police complaint alleging any threat or any alleged assault on him by any hirelings or any villagers.

10. It is submitted that though the head master of the school had also repeatedly informed the respondent no.1 for attending the enquiry proceedings when he was attending the school during the same period, the respondent no.1 deliberately chose to remain absent before the enquiry committee. It is submitted by the learned counsel that the witnesses examined by the petitioners were admittedly not cross-examined by the respondent no.1 and thus the entire evidence led by the management remained uncontroverted. The charges levelled against the respondent no.1 by the management were proved.

11. It is submitted by the learned counsel for the petitioners that the school tribunal has passed an erroneous order and has rendered a finding that if the enquiry committee would have obtained police security or would have changed the place of enquiry or would have granted fair opportunity to the respondent no.1 to represent his case before the enquiry committee, the respondent no.1 would have attended the enquiry proceedings and would have placed his case before the enquiry

committee. It is submitted by the learned counsel that the enquiry proceedings had to be conducted in the school premises under the provisions of the MEPS Act read with the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “the said MEPS Rules”). He submits that in any event, there was no application made by the respondent no.1 to change the place of enquiry. He submits that in view of the respondent no.1 attending the school during the course of on going enquiry proceedings in the same premises, the school tribunal could not have accepted such frivolous plea raised by the respondent no.1.

12. Learned counsel for the petitioners submits that the school tribunal has erroneously compared the oral evidence led by the girl students with the news published in the Newspapers and had disbelieved the evidence led by the girl students on the ground of alleged inconsistency. He submits that the petitioners have not given any such news to the media and thus the evidence led before the enquiry committee in no event could be compared with the news items published in the Newspapers.

13. It is submitted by the learned counsel for the petitioners that the school tribunal has erroneously held that since the Award Winning Member of the enquiry committee had retired before his appointment as a Member of the enquiry committee, his appointment was in breach of Rule 36 of the MEPS Rules. He submits that even a State Awardee Teacher who had retired could also be appointed as a Member of the enquiry committee under Rule 36 of the MEPS Rules. In support of this submission, the learned counsel for the petitioners placed reliance

on the judgment delivered by the Full Bench of this Court in the case of ***Shikshan Prasarak Mandal, Awasari (BK) and Anr. Vs. Ramesh Bhimrao Narayankar & Ors.***, reported in ***2016 (2) Mh.L.J. 677*** and in particular paragraph 51 thereof. He submits that the Full Bench of this Court has held that a teacher or headmaster on whom State/National award is conferred and who is chosen in the enquiry committee under MEPS Rules, 1981 can be a retired teacher or headmaster. He submits that the impugned judgment and order passed by the school tribunal holding that a retired State Awardee Teacher could not be a member of the enquiry committee or the same was in breach of Rule 36 of the MEPS Rules is contrary to the judgment of the Full Bench of this Court in the case of ***Shikshan Prasarak Mandal, Awasari (BK) and Anr. (supra)***.

14. Learned counsel for the petitioners invited my attention to paragraph 24 of the impugned judgment and order in which it is held by the school tribunal that the convenor of the enquiry committee is not a member of the enquiry committee but is associated with the enquiry committee with a limited role and it is his duty to initiate action pertaining to the conduct of the enquiry and to maintain all the relevant record of the enquiry and that he does not participate in the enquiry proceedings as a member of the enquiry committee but he has to assist the enquiry committee in the secretarial role.

15. Learned counsel invited my attention to Rules 36(2)(a)(i) and 36(5) of the MEPS Rules and submits that the said rule specifically provides that one member from amongst the members of the management to be nominated by the management or by the President of the management if so authorised 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. He submits that the convenor of the enquiry committee has to be a nominee of the President. He submits that the findings rendered by the school tribunal in paragraph 24 of the impugned judgment and order is ex facie perverse and contrary to Rule 36(2)(a)(i) and 36(5) of the MEPS Rules. It is submitted by the learned counsel that the convenor of the enquiry committee does not have a secretarial role as observed by the school tribunal but he is one of the full-fledged member of the enquiry committee and has to participate along with the other members in view of Rules 37(2)(a) and 37(2)(e) of the MEPS Rules.

16. In so far as the finding of the school tribunal that there was no opportunity given to the respondent no.1 to represent himself before the enquiry committee by the management or by the enquiry committee in the enquiry proceedings is concerned, it is submitted by the learned counsel that the respondent no.1 had also nominated a member of the enquiry committee. The respondent no.1 had attended three meetings before the enquiry committee. He submits that however in collusion with the said member of the enquiry committee nominated by the respondent no.1, the respondent no.1 stopped attending the subsequent meetings though he was served with all the notices and inspite of opportunities given to him from time to time. He submits that the respondent no.1 subsequently started refusing to accept the notices issued by the enquiry committee to remain present. The respondent no.1 having deliberately chosen to remain absent, the school tribunal could not have held that no opportunity was given to the respondent no.1 by

the enquiry committee and could not have held that the enquiry proceedings would vitiate on that ground.

17. Learned counsel for the petitioners invited my attention to the enquiry report submitted by the enquiry committee and would submit that though the nominee member of the respondent no.1 was issued notices by the convenor of the enquiry committee to remain present, he deliberately remained absent. The enquiry proceedings were therefore continued in absence of the nominee member of the respondent no.1 in the enquiry committee. It is submitted by the learned counsel for the petitioners that since the respondent no.1 had refused to participate in the enquiry proceedings, he cannot challenge the enquiry proceedings on merits. In support of this submission, learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of **Bank of India Vs. Apurba Kumar Saha**, reported in (1994) 2 SCC 615 and in particular paragraphs 3 and 4 thereof. He also placed reliance of the judgment of the Supreme Court in the case of **Chairman, Ganga Yamuna Gramin Bank and Ors. vs. Devi Sahai**, reported in (2009) 11 SCC 266 and in particular paragraphs 22 and 24 thereof and the judgment of the Supreme Court in the case of **Ranjan Kumar Mitra Vs. Andrew Yule & Co.Ltd. & Ors.**, reported in (1997) 10 SCC 386 and in particular paragraph 1 thereof.

18. In his alternate submission, the learned counsel for the petitioners submits that if according to the school tribunal, the respondent no.1 was not given proper opportunity to represent his case before the enquiry committee, the school tribunal could have remanded the matter for enquiry from the stage at which the respondent no.1 had stopped

attending the enquiry proceedings. He submits that such order could be passed even against the retired employee and more particularly who had recently retired during the pendency of the proceedings before the school tribunal. In support of this submission, learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of **Anant R. Kulkarni Vs. Y.P. Education Society & Ors.**, reported in **2013 (4) Bom.C.R. 93** and in particular paragraphs 12 to 18 and 20 to 29 thereof. He submits that the respondent no.1 had retired on 31st December 2015 whereas, the order was passed by the school tribunal on 25th February 2016.

19. Mr.Talkute, learned counsel for the respondent no.1, on the other hand, invited my attention to some parts of the evidence led by the management before the enquiry committee and submits that there was no proper opportunities given to the respondent no.1 to cross-examine the witnesses examined by the management. He submits that the respondent no.1 had applied for police protection and security to enable the respondent no.1 to remain present during the course of enquiry in view of threats and for protection from assault upon the respondent no.1 by the hirelings and villagers at the time of enquiry and inspite thereof, no such police protection or security was provided to the respondent no.1. He submits that the respondent no.1 thus could not attend the enquiry proceedings and his absence in enquiry was not intentional.

20. It is submitted that the respondent no.1 had worked for about 31 years in the school. There were some litigations pending between the management and the respondent no.1 and it was due to such litigations, the management had taken vindictive action against the respondent

no.1. He submits that even otherwise the charges levelled against the respondent no.1 by the management were not proved even after examining the number of witnesses before the enquiry committee.

21. It is submitted by the learned counsel for the respondent no.1 that there were contradictions and inconsistencies in the evidence of the witnesses examined by the management before the enquiry committee and thus the enquiry committee could not have recommended the termination of the services of the respondent no.1. He submits that the respondent no.1 had made a representation to the management not to take any action against the respondent no.1 as precipitated. The respondent no.1 had also made a request for providing security and police protection to the respondent no.1. He submits that within two months of termination of his services by the management, the respondent no.1 would have retired by superannuation.

22. In so far as the submission of the learned counsel for the petitioners that since the enquiry against the respondent no.1 had already commenced prior to the date of superannuation, such enquiry could have been continued against the respondent no.1 is concerned, it is submitted by the learned counsel for respondent no.1 that there is no provision in the MEPS Act for continuing an enquiry against a retired teacher and thus there was no question of continuing any enquiry against the respondent no.1 who retired during the pendency of the enquiry. In support of this submission, learned counsel for the respondent no.1 placed reliance on the judgment of this Court in the case of the Chairman/Secretary of Institute of ***Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal and the Principal, Mahavir Mahavidyalaya***

Vs.Shri Bhujgonda B.Patil decided on 27th February 2003 in Writ Petition Stamp No.41833 of 2002 and the judgment of this Court in the case of ***Manohar B.Patil Vs.State of Maharashtra & Ors.*** decided on 3rd October 2013 in Writ Petition No.3319 of 2012.

23. It is submitted that even under the provisions of the Maharashtra Civil Services (Pension) Rules, 1982, the departmental proceedings at the most could be continued after superannuation of an employee only for taking action contemplated under Rule 27(1) in relation to the pension. He submits that though the said provision did not apply to the respondent no.1, since the enquiry initiated by the management against the respondent no.1 was for termination of the services of the respondent no.1, the same could not be continued as suggested by the learned counsel for the petitioners.

24. It is submitted by the learned counsel for the respondent no.1 that he had not demanded back wages in view of the fact that within two months from the date of termination of his services, he was even otherwise due for retirement by superannuation.

25. It is submitted by the learned counsel for the respondent no.1 that the State Awardee Teacher who was one of the member in the enquiry committee was an employee with the same management and thus there was no fair opportunity granted to the respondent no.1. He submits that the said State Awardee Teacher could not be an independent nominee in the enquiry committee and could not be fair and reasonable with the respondent no.1.

26. The last submission of the learned counsel for the respondent no.1 is that if this Court comes to the conclusion that the respondent no.1 shall attend the enquiry proceedings even at this stage, the termination of the services of the respondent no.1 shall be set aside and if the police protection is provided to the respondent no.1, the respondent no.1 would be advised by him to attend the enquiry proceedings even at this stage.

27. Mr.Bandiwadekar, learned counsel for the petitioners in rejoinder submits that the respondent no.1 did not file any complaint to the police station alleging any threats by any alleged hirelings or by any villagers and thus cannot be allowed to urge that no police protection allegedly was given to him. He submits that the respondent no.1 was all throughout present in the school when the enquiry was proceeded with in the school premises. He submits that if the respondent no.1 had any threat of any hirelings or villagers, he could not have attended the school during those days. He submits that headmaster of the petitioner no.1 had personally gone to call the respondent no.1 for enquiry, however, the respondent no.1 deliberately did not attend the enquiry proceedings. He submits that the respondent no.1 thus cannot be allowed to challenge the enquiry proceedings on merits at this stage. The respondent no.1 did not take any steps against any alleged hirelings or in respect of any alleged threats given to him by any hirelings or villagers.

28. It is submitted by the learned counsel for the petitioners that the State Awardee Teacher who was one of the member of the enquiry committee was not in the employment of the school run by the same

management. He submits that no such ground is raised by the respondent no.1 in the appeal memo filed before the school tribunal. He submits that when the name of the State Awardee Teacher was nominated by the management, the respondent no.1 did not raise any objection on the ground that the State Awardee Teacher was alleged to be in the employment of the same management or on any other ground.

29. It is submitted by the learned counsel for the petitioners that various documents now sought to be relied upon by the respondent no.1 at this stage were not part of the record before the enquiry committee and thus cannot be allowed to rely upon at this stage. He submits that the respondent no.1 had deliberately abandoned the enquiry proceedings.

REASONS AND CONCLUSIONS :-

30. A perusal of the record indicates that the respondent no.1 was issued various notices by the management as well as by the enquiry committee from time to time to remain present at the time of enquiry. The respondent no.1 and his nominee in the enquiry committee had attended three meetings and thereafter stopped attending the meetings on one or the other grounds. It is not in dispute that the respondent no.1 used to attend the school at the time when the enquiry was proceeded with against him which was conducted in the school premises. If there was any threats alleged to have been given to him by any alleged hirelings or by any villagers, the respondent no.1 could not have attended the school at the same time. Be that as it may, neither any such complaint was admittedly made by the respondent no.1 to the local police station nor any police protection was applied. It is thus clear that the respondent

no.1 abandoned the enquiry proceedings and had deliberately chosen to remain absent during the enquiry proceedings inspite of notices having being received from time to time.

31. Supreme Court in the case of ***Bank of India Vs. Apurba Kumar Saha (supra)*** has held that an employee who had refused to avail of the opportunities provided to him in a disciplinary proceedings of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the Bank-employer had resulted in violation of principles of natural justice of fair hearing.

32. Supreme Court in the case of ***Ranjan Kumar Mitra Vs. Andrew Yule & Co.Ltd. & Ors. (supra)*** has held that if the services of an employee were terminated after an enquiry in which he chose not to participate, he cannot be allowed to assail his termination on merits. This Court after adverting to the judgment of the Supreme Court in the case of ***Ranjan Kumar Mitra Vs. Andrew Yule & Co.Ltd. & Ors. (supra)*** and several other judgments of the Supreme Court has held that an employee who chose to remain absent in the enquiry proceedings inspite of opportunities having been given to him, without any genuine reason, he cannot be allowed to challenge the enquiry proceedings on merits.

33. In my view, in this case, there is no dispute that the respondent no.1 was issued several notices from time to time by the

enquiry committee to remain present and the headmaster of the petitioner no.1 school also personally had called the respondent no.1 to attend the enquiry proceedings, the respondent no.1 however on one or the other pretext failed to remain present before the enquiry committee. When an employee chose to remain absent deliberately or intentionally before the enquiry committee in the enquiry proceedings inspite of opportunities having been given to him, he cannot be allowed to challenge the enquiry proceedings on merits. I am thus not inclined to accept the submission of the learned counsel for the respondent no.1 that the respondent no.1 did not remain present in the enquiry proceedings unintentionally. The judgments of the Supreme Court in the cases of **Ranjan Kumar Mitra Vs. Andrew Yule & Co.Ltd. & Ors. (supra)** and **Bank of India Vs. Apurba Kumar Saha (supra)** squarely apply to the facts of this case. I am respectfully bound by the said judgment.

34. In so far as the view of the school tribunal that a retired State Awardee Teacher could not be a member of the enquiry committee is concerned, Full Bench of this Court in the case of **Shikshan Prasarak Mandal, Awasari (BK) and Anr.(supra)** after construing the provision of the MEPS Rules, 1981 has held that a teacher or headmaster on whom State/National award is conferred and who is chosen as a third member of the enquiry committee under MEPS Rules, 1981 can be a retired teacher or headmaster. In my view, the view taken by the school tribunal that the State Awardee Winner could not be a part of the enquiry committee after his retirement is totally perverse and contrary to the law laid down by the Full Bench of this Court in the case of **Shikshan Prasarak Mandal, Awasari (BK) and Anr.(supra)**.

35. In so far as the submission of the learned counsel for the respondent no.1 that the said State Awardee Winner was working in the school run by the same management and thus could not be a part of the enquiry committee is concerned, the respondent no.1 admittedly did not raise any such objection before the enquiry committee though had attended three meetings. No such ground has been raised in the appeal memo filed by the school tribunal. The said allegations even otherwise was factually incorrect as the State Awardee Teacher was not working in any school run by the petitioner no.1.

36. In so far as the view taken by the school tribunal that the Convenor of the enquiry committee appointed by the management only has a secretarial role in conducting an enquiry and does not participate in the enquiry proceedings is concerned, this view of the school tribunal is totally contrary to Rule 36(2)(a)(i) and also Rules 37(1) and 37(2)(a) of the MEPS Rules. In my view, the Convenor of the enquiry committee has to participate along with the other members of the enquiry committee and his role is not limited to the Secretary or only of an administrative nature. The impugned order passed by the school tribunal shows clear perversity and deserves to be set aside.

37. In so far as the submission of the learned counsel for the respondent no.1 made after conclusion of his arguments that his client is ready and willing for fresh enquiry on the condition that the management withdraws the order of termination and provides security which is vehemently opposed by the learned counsel for the petitioners at this stage is concerned, I am not inclined to direct fresh enquiry or to

recommence the enquiry from the stage when the respondent no.1 had stopped participation therein. The petitioners had though at one stage made a suggestion for consideration of this Court, the respondent no.1 had opposed such suggestion of the learned counsel for the petitioners on the ground that no enquiry could be recommenced after retirement of the respondent no.1 from the employment of the petitioners. In my view, since the respondent no.1 had deliberately remained absent inspite of various opportunities given by the enquiry committee to participate in the enquiry committee, no fresh opportunity to the respondent no.1 can be given to the Respondent No.1. Those witnesses may be available or not is also uncertain.

38. I am not inclined to accept the submission of the learned counsel for the respondent no.1 that his client could not attend the enquiry proceedings because of alleged threats given by the alleged hirelings or villagers. The fact remains that the respondent no.1 though was attending the school at the same time, had chosen to remain absent in the enquiry proceedings.

39. In my view, the impugned order and judgment rendered by the school tribunal is totally contrary to the provisions of the MEPS Act and MEPS Rules and also contrary to various judgments referred to aforesaid and shows perversity and thus deserves to be set aside.

40. I therefore passed the following order :-

- (a) The impugned judgment and order dated 25th February 2016 passed by the learned Presiding Officer, School Tribunal, Kolhapur in Appeal No.49 of 2015 is set aside;

- (b) Appeal No.49 of 2015 filed by the respondent no.1 is dismissed;
- (c) Rule is made absolute in aforesaid terms;
- (d) There shall be no order as to costs.

R.D. DHANUKA, J.