

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

WRIT PETITION NO. 13364 OF 2016

Nizampur Vibhag Shikshan Prasarak Mandal
Through Chairman Shri. Dattatram D. Naokar ... Petitioner

Vs.

Mr. Rajendra A. Gurav & Ors. ... Respondents

....

Smt. Gauri Jadhav for the Petitioner.

Mr. C.G. Gavnekar for the Respondent No. 1.

Mr. A.R. Metkari AGP for the State.

CORAM : A.A. SAYED, J.

DATE : 6 DECEMBER 2016

P.C.:

1 The challenge in this Petition is to the judgment and order dated 14 July 2016 passed by the School Tribunal, Pune, by which the Appeal of the Respondent No. 1 has been allowed. The operative part of the impugned judgment reads as under:

“ORDER

1. The impugned order otherwise termination of services of Appellant dated 1 May 2015 is hereby declared illegal, null and void and same is hereby quashed and set aside.

2. the Respondent No. 1/Management is hereby directed to reinstate the Appellant in service with full back wages and consequential benefits.

3. The Respondent No. 1 and 2 are hereby directed to comply the above order within one month.

4. No order as to costs.”

2. In paragraphs 15 and 16 of the impugned order, the School Tribunal has observed thus:

“15. I have also perused written notes of argument of Respondents. They have not clarified any provision of law and rule of MEPS under which permission from Dy. Director require for resumption of duty after long leave was required. Had it been clarified then I would have seen management's case in its proper perspective. On the other hand when the Appellant produced the medical certificate countersigned by Civil Surgeon and complied conditions for grant of leave then the purpose seems to have been fulfilled. So also the Dy. Director of Vocational Education and Training, Mumbai had not replied the management's application dated 1 May 2015 then it should have been held by it that there is no requirement of prior permission of him for resumption of duty after long leave.

16. The learned Counsel for the Appellant further argued that the case put forth by the Respondent in their written statement and written notes of argument that, the Appellant was negligent in his duty and incompetent but by mere allegations it cannot be entertained. These are grounds or allegations on which inquiry under Rule 36 to 38 of MEPS Rules, 1981 is required and that too it is mandatory under MEPS Rules, 1981 also. In this case admittedly when there is no inquiry held by the management and had there been he found incompetent in teaching subjects then management

could have inquired against them. Hence unless and until there is inquiry the Appellant cannot be alleged that he was negligent and incompetent. It is to be noted here that the Respondents have admitted that the Appellant is a permanent employee and while terminating any permanent employee the inquiry is must and mere allegations whatsoever strong cannot take place of truth while alleging any incompetence or negligence and employee's work is required to be assessed by the Head Master. In this case he was issued show cause notice by the President and he replied the same to him. Again the management has alleged that he ought not to have replied directly. But in this circumstances the notice ought to have been issued by Chief Executive Officer and management seems to have done mistake itself then it cannot be attributed to the Appellant. It seems that he has put in 28 years of service and now he cannot be attributed as negligent and incompetent without conducting any inquiry against him. It is required to be stated here at the cost of repetition that the Appellant was on long leave for his left eye surgery and therefore same was not willful and by which any educational loss caused to the students it should be inquired by the management as per the MEPS Rules, 36 and 37 of 1981 by invoking provisions of Rule 28; if at all they intended any action against him. With these observations I hold that the management is not justified in causing Appellant otherwise termination since 1 May 2015 and it is required to be set aside as same is not sustainable in law. In the result I hold that Appellant is required to be reinstated in service with all consequential benefits.”

3 The Respondent No. 1 was a permanent employee and rendered 28 years of service. Even assuming there was some misconduct by Respondent No.1 including the fact that he had proceeded on a long leave without permission or that he was issued some Memos with regard to the manner of his working, it is an undisputed position before the Court that there was no enquiry conducted against him by the Petitioner Management. The impugned order records that the Respondent No. 1 had produced some medical certificates signed by the Civil Surgeon in respect of his medical treatment. In the facts and circumstances of the case, in absence of any enquiry having been conducted, there was violation of principles of natural justice and the Respondent No.1 ought not to have been prevented by the Petitioner Management from resuming his duty and the School Tribunal has rightly held that the Petitioner Management was not justified in causing otherwise termination of the Respondent No.1.

4 In these circumstances, no fault can be found with the impugned order. The Writ Petition shall accordingly stand dismissed in limine. There shall be no order as to costs. It is clarified that this order would not

prevent the Petitioner Management from instituting an inquiry in respect of any misconduct by the Respondent No. 1 in accordance with law.

(A.A. SAYED, J.)