

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 7182 OF 2015

Bhagwan s/o Jamla Jadhav,
Age 57 years, Occu. Service,
R/o Kader, Taluka Omerga,
District Osmanabad

.. Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
Department of School Education,
Mantralaya, Mumbai
2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad
3. Lokmanya Tilak Shikshan Sanstha,
Kader, Taluka Omerga,
District Osmanabad, through
its Secretary
4. Lokmanya Tilak Vidyalaya,
Kader, Taluka Omerga,
District Osmanabad, through
its Head Master

.. Respondents

Mr S.S. Jadhavar, Advocate for petitioner
Mr M.B. Bharaswadkar, A.G.P. for respondents no.1 and 2
Mr S.D. Tawshikar, Advocate for respondents no.3 and 4

**CORAM : R.M. BORDE AND
A.M. DHAVALA, JJ**

DATE : 18th July 2017

ORAL JUDGMENT (Per R.M. Borde, J.)

1. Rule. Rule returnable forthwith. With the consent of parties,
heard finally at the stage of admission.

2. The petitioner is assailing the order of termination issued
against him by the management on 15th January 2016.

3. This petition is liable to be allowed only on the short ground that the impugned action of termination has been issued in pursuance to initiation of inquiry after retirement of the petitioner on attaining age of superannuation. It is not the matter of dispute that the petitioner has retired on attaining age of superannuation on 31st July 2015. The petitioner was served with the charges in the departmental proceedings, admittedly after his retirement.

4. In view of the judgment delivered by the Division Bench of this Court to which one of us (R.M. Borde, J.) is a member in Writ Petition No.11441/2010 decided on 26.2.2014, the order of termination is liable to be set aside. This Court has observed in paragraphs 4 and 5 of the judgment, as quoted below :

4. The term employee has been defined in section 2(7) of the MEPS Act which reads thus :

(7) "employee" means any member of the teaching and non-teaching staff of a recognised school [and includes Assistant Teacher (Probationary)];

The term 'Teacher' is defined in section 2(26) of the Act which reads thus :

(26) "teacher" means a member of the teaching staff, and includes the Head of a school;

Categories of employees are provided for in Rule 10 of the Rules of 1981 which read thus :

10. Categories of Employees : (1) Employees shall be permanent or non-permanent employees may be either temporary or on probation.

(2) A temporary employee is one who is appointed to a temporary vacancy for a fixed period.

Section 4(6) of the Act provides that no employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank by the Management, except in accordance with the provisions of this Act and the rules made in that behalf. The procedure for inflicting major penalties is provided under Rule 33 of the MEPS Rules which provides thus :

33. Procedure for inflicting major penalties : (1) If an employee is alleged to be guilty of [any of the grounds specified in sub-rule (5) of rule 28] and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Education and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order.

(2) If the employee tenders resignation while under suspension and during the pendency of the inquiry such resignation shall not be accepted.

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not leave the headquarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.

(5) An employee against whom proceeding have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained by police for judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty after producing documentary proof of his release (otherwise than on bail) or acquittal, as the case may be. An adjustment of his pay and allowances for such periods shall be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified.

(6) After the result of the criminal prosecution, a copy of the judgment shall be obtained by the Management and if the judgment is one of conviction for the charges and if any inquiry is also initiated by the Management against the employee on the basis of the same charges, it shall not be necessary to proceed with the inquiry on the same charges and the Management shall take action to terminate the services of the employee. The Management shall not however pass any order till the period upto which the employee is entitled to prefer an appeal or revision application to the higher Court against the conviction by the lower Court is over. If the appeal or revision application is preferred the Management shall not take any action till the conviction is finally confirmed by the higher Court. When the judgment in the criminal case appeal or revision application is one of the acquittal, the Management shall consider in the light of the judgment whether it is necessary to institute or proceed with the inquiry. If the Management agrees that the acquittal is justified, it may drop the inquiry by certifying that it agrees with the findings of the Court. If the Management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment.

In the instant matter the petitioner who was allowed to retire on attaining age of superannuation can not be termed as 'employee' within definition of term as provided under

section 2(7) of the Act. He also on his retirement cannot be termed as 'teacher' within meaning of definition provided under section 2(26) of the Act. A retired employee is not included in categories of employees as provided under Rule 10 of Rules of 1981. As provided under Rule 35(1) of the Rules an employee functioning in school can only be proceeded departmentally and proceedings against an retired employee initiated after he is allowed to retire cannot be permitted. There is no sanction under the Act or the Rules permitting the management to commence and continue and inflict punishment in departmental proceedings against a retired employee, after the institution / management permits him to retire on attaining age of superannuation.

5. The employee functioning in private school can be put under suspension in accordance with Rule 35(1) of the Rules of 1981 only with prior approval of the appropriate authority mentioned in Rule 33. Appropriate authority mentioned in Rule 33 is the Education Officer, so far as present petitioner is concerned. In the instant matter, it has not been brought to our notice that alleged suspension of petitioner is with prior approval of the Education Officer. No record is also brought before us to substantiate contention of the management that the employee was put under suspension prior to the date of retirement and that order was served upon him while he was in employment. Admittedly, statement of charges was served on the employee after he was permitted to retire on attaining age of super annuation. As prescribed under Rule 33 of the Rules of 1981, if an employee is alleged to be guilty of any of the grounds specified under Rule 28(5) and if there is any reason to believe that in the event of guilt being proved against him he is likely to be reduced in rank or removed from service, the management shall have to first decide whether to hold inquiry and also to place the employee under suspension. Decision to suspend an employee can be taken as contemplated by Rule 33(1) of the Rules on being satisfied that an employee needs to answer charges which provide for

penalty of reduction in rank or removal from service. In the instant matter, it has not been brought to our notice that the management has taken decision to hold departmental enquiry against petitioner in respect of charges which provide for punishment of reduction in rank or removal from service prior to the date of his retirement. Since the management has proceeded against the employee i.e. petitioner only after he was allowed to retire on attaining age of super-annuation, the whole proceeding and the consequential action of punishment of removal from service is rendered illegal and is thus liable to be quashed and set aside. Writ petition thus deserves to be allowed and the same is accordingly allowed.

5. In view of the decision referred to above, the instant petition deserves to be allowed and the same is accordingly allowed.

6. The order of termination issued against the petitioner after his retirement on 15th January 2016 stands quashed and set aside.

7. The respondents shall process the pension proposal of the petitioner and forward the same to the concerned authorities within a period of four months from today. The petitioner undertakes to co-operate the management in preparing the pension proposal. The petitioner also undertakes to tender the duplicate of service book (if any) and all other relevant documents to the management forthwith.

8. Rule is made absolute to the extent, as specified above. No costs.

(A.M. DHAVAL, J.)

(R.M. BORDE, J.)