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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4383 OF 2017

The Secretary, Lucy Sequeira Trust And Anr. ...Petitioners

vs

Mr. Kailash Ramesh Tandel And Ors. ...Respondents

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Mr. Sureshkumar Panicker, i/b. Panicker & Associates, for the Petitioners.

Mr. Jitendra M. Pathade, for Respondent No.1.

Ms. K.R. Kulkarni, AGP, for Respondent Nos. 2 and 3.

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CORAM : PRASANNA B. VARALE, J.

DATED: 4 SEPTEMBER, 2017

P.C. :

. This is a petition challenging the order dated 17 February 2017 passed in an appeal challenging the termination order dated 26 September 2014. The Respondent employee was before the Tribunal. The Tribunal, on appreciation of the material, more particularly on the basis of the report submitted by the members of the Committee, found that the course undertaken by these members of the Committee could not have been accepted and there was no finding jointly by the members. On the contrary, each member submitted a different report and two members refused to sign the report. Learned Presiding Officer, on consideration of these aspects, allowed the appeal partly. The termination order dated 26 September 2014 was set aside and the Respondent was directed to reinstate the Appellant on the original post

notionally for the purpose of conducting the enquiry, whereas the Enquiry Committee was directed to conduct a fresh enquiry against the Appellant from the stage of submission of joint and combined decision of all the members. Learned Presiding Officer, however, passed an order that during the course of enquiry, the Appellant shall be deemed to be under suspension and the Appellant was granted liberty to challenge the decision of management after conclusion of the Enquiry Committee. The management was directed to comply the order within stipulated period, i.e. within three months from the date of the order.

2. Learned Counsel for the Petitioners invited my attention to the various documents placed on record. On perusal of the material placed on record, it revealed that on receiving the complaints from two minor girl students that the Respondent/Appellant misbehaved with the girl students, initially a warning was issued. Perusal of the material further reveals that the parents also submitted a compliance to the school authorities. The report at the police station was also lodged. The Respondent/Appellant was subjected to a charge-sheet issued and then was subjected to an enquiry conducted by the management. It may not be necessary to refer the detailed accounts of an enquiry conducted. Suffice to say that, in the process of the enquiry, statements were recorded. There was an examination of the witnesses, namely, the victims, i.e. the girl students. The material placed on record further revealed that the Respondent/Appellant chose to cross-examine one of the victim witness and on the ground that the witness did not sign the deposition, the Respondent/Appellant chose not to cross-examine the other witness. Be that as it may, as the settled procedure of the enquiry,

the Enquiry Committee was constituted of nominee of the management, the nominee of the Respondent/Appellant and one State awardee teacher. The perusal of material further shows that parents of both the victims were subjected to examination. The enquiry report dated 20 September 2014, which is placed on record at **Annexure 'AA'**, shows that the report is signed by one of the member, i.e. the convener - one Ms. Philomena D'Souza. Mrs. Juee Hadkar, i.e. the awardee teacher, refused to sign, as she preferred to give her own finding and the other member, i.e. the teacher's nominee, refused to sign on the ground that he will prefer to give his own finding. The awardee teacher submitted the finding on enquiry that by giving a decision in the enquiry, the members would be committing contempt of Court. The member then opined that it would be an erroneous act proving the Respondent/Appellant as guilty. The member then opined that an undertaking be taken from the Respondent/Appellant and he be permitted to reinstate in service and further action be initiated only after the decision of the Criminal Court at Borivali and the Sessions Court. The nominee of the Respondent/Appellant was also of the similar opinion. He also opined that as the criminal prosecution launched against the Respondent is pending in the Court at Borivali and Sessions Court, if the Enquiry Committee gives its finding in the enquiry, it would be contempt of the Court. The Respondent/ Appellant's nominee then gave his finding on the material, namely, the statement and the oral evidence of the witnesses. Learned Presiding Officer of the Tribunal, by referring to these reports of the State awardee teacher and the nominee of the Respondent/Appellant, arrived at a conclusion that these separate reports of the three members of the Committee cannot be called as joint

and combined report of the Committee. Learned Presiding Officer also submitted that no firm decision is given by the members. On the contrary, opinion expressed by these members was in contrast to the judgment of the Apex Court. Learned Presiding Officer, by referring to the judgment of the Apex Court, in the matter of **State of Punjab vs. Harbhajans Singh**¹ and the judgment of the Apex Court in the matter of **Avinash Sadashiv Bhosale vs. Union of India**² found that the members of the Committee failed to discharge their duty in giving their opinion and submit the report. Considering the material placed on record, I am of the opinion that the learned Presiding Officer of the School Tribunal committed no error. Learned Presiding Officer was also justified in observing that the nature of departmental enquiry is different than the criminal proceedings. In the departmental enquiry, principle of preponderance of probability is applicable, whereas in case of criminal trial, the principle beyond reasonable doubt would be applicable. The Presiding Officer of the Tribunal was also justified in observing that the members, namely, the State awardee teacher and the nominee of the Respondent could not have kept in abeyance till the outcome of the cases. Taking into consideration all these aspects, the learned Presiding Officer allowed the appeal partly and further directed the Respondent to reinstate the Appellant on his original post notionally and the matter was remitted to Enquiry Committee for submission of joint and combined finding and decision of all the members. On a specific query made to the learned Counsel for the Petitioners that what prejudice is caused to the Petitioner management by order of remitting the matter back from the stage of the joint report of the Enquiry Committee, learned Counsel

1 (1999) 9 SCC

2 2012 ALL SCR 3192

submitted that it would be a futile exercise. Learned counsel submitted that it is possible that these members would again refuse to sign the report. Apprehension of the so called prejudice expressed by the learned Counsel for the Petitioners is only on assumption and presumption. The Petitioners failed to submit before this Court how the order passed by the Presiding Officer allowing the appeal partly and remitting the matter back for fresh enquiry is either illegal or an erroneous order. The course adopted by the learned Presiding Officer of the School Tribunal, on appreciation of the material, cannot be faulted with. The petition, being meritless, deserves to be dismissed and the same is, accordingly, dismissed.

3. Considering the fact that the proceedings were pending in the Tribunal for quite some time, the exercise of conducting the enquiry and submitting joint report be undertaken as expeditiously as possible and preferably within three months.

(PRASANNA B. VARALE, J.)