

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.210 OF 2004

Mohammed Ismail Mohammed Ibrahim Mashalkar ... Petitioner
Vs.
The Secretary, The Progressive Education Society
and others ... Respondents

Mr. A. B. Tajane for Petitioner.
Ms Chaitrali Deshmukh i/b. Mr. I. M. Khairdi for Respondents No.1 and 2.
Mr. Ramkrishna Yedave i/b. Mr. Vijay Killedar for Respondent No.3.
Mr. Graham Francis i/b. Mr. Vishwanath Talkute for Respondent No.4.

CORAM : R. G. KETKAR, J.
DATE : JULY 13, 2017

P.C. :

Heard Mr. Tajane, learned Counsel for petitioner, Ms Deshmukh, learned Counsel for respondents No.1 and 2, Mr. Yedave, learned Counsel for respondent No.3 and Mr. Francis, learned Counsel for respondent No.4 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the judgment and order dated 20.08.2002 passed by the learned Presiding Officer, Additional School Tribunal for Pune Region at Solapur (for short 'Tribunal') in Appeal No.41 of 2000. By that order, the Tribunal dismissed the appeal preferred by the petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act') challenging the termination order dated 05.05.2000. The relevant and material facts giving rise to filing of the present Petition, briefly stated, are as under:

3. Petitioner being a qualified Graduate i.e. B.Com. was appointed

as a Clerk with the second respondent school. Respondent No.2 school is run by respondent No.1 Trust. By order dated 07.06.1995, petitioner was appointed as a junior Clerk. After completion of probation period on 31.07.1997, he became permanent employee. It is the case of the petitioner that solely with a view to creating record for the purpose of his dismissal, on 08.08.1998, respondents No.1 and 2, hereinafter referred to as 'management', prepared inspection report allegedly showing that petitioner was not competent to discharge the duties of Clerk. In pursuance of that report, notice was issued to the petitioner on 06.10.1998 calling upon him to submit the explanation. On 09.10.1998, petitioner gave reply to the show cause notice. Management initiated the enquiry against the petitioner and issued charge-sheet dated 13.10.1998. The enquiry was completed on 22.04.2000. By termination letter dated 05.05.2000, services of the petitioner were terminated. The petitioner preferred Appeal under Section 9 of the Act against the termination of 05.05.2000, which was dismissed by the impugned order. It is against this order, petitioner has instituted the present Petition under Articles 226 and 227 of the Constitution of India.

4. In support of this Petition, Mr. Tajane strenuously contended that the enquiry proceedings are vitiated as the Committee was not properly constituted. He further submitted that under Rule 37(2)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'Rules'), the composition of Committee is prescribed. However, persons other than members of the Enquiry Committee also interfered / participated in the enquiry proceedings. He has invited my attention to the proceedings of the Enquiry Committee and in particular-

(i) paragraph 2, which recorded that during the discussion, Head Mistress added that there was a ban on the

appointment of non-teaching staff upto 1996;

(ii) paragraph 3, which recorded that Head Mistress informed about rate of fees;

(iii) in paragraph 8, Head Mistress added that Ismail Mashad (petitioner herein) was asked to deposit the fees in the Bank, in writing and also orally so many times. Such letter is also given to him by the Treasurer on 30.07.1998, but he did not reply to it.

(iv) paragraph 12, which recorded that Mr. Riyaz Bedre stated that in the years 1997-98, total amount of fees of Rs.919/- collected by the teachers were handed over to the petitioner but he did not enter it in the fees register;

(v) Mr. Teher Phadnis stated that in the month of May, while writing account, he was seen with a boy sitting with him.

In short, Mr. Tajane submitted that Head Mistress Mr. Riyaz Bedre and Mr. Teher Phadnis were not members of the Enquiry Committee and still they participated through out the enquiry. Thus, the enquiry is vitiated on the ground that unauthorized persons participated in the enquiry proceedings.

5. Mr. Tajane invited my attention to the specific objection raised by the nominee of the petitioner as regards participation of Riyaz Bedre. However, the enquiry committee did not deal with this aspect. Alternatively, he submitted that even if such point is not raised either in the appeal memo or during the course of argument, this being a pure point of law, he has raised this contention in paragraph 3B) of the Petition. In paragraph 3B), petitioner specifically asserted that persons, who were not members of the Committee, participated in the inquiry. He submitted that this issue goes to the root of the matter. The enquiry, therefore, must be held to be vitiated on account of participation of unauthorized persons.

6. Mr. Tajane relied upon Rule 37(2)(f) of the Rules and submitted that the enquiry was not completed within 120 days from the first date of the meeting. The first date of meeting was 16.10.1999 and the enquiry was completed on 27.04.2000. Management has however not reinstated the petitioner.

7. Mr. Tajane further submitted that even otherwise the punishment inflicted on the petitioner is grossly disproportionate. Having regard to the nature of misconduct, the penalty of termination was not warranted in the facts and circumstances of the case. He further submitted that there is no sufficient evidence to impose penalty of dismissal. He invited my attention to grounds (P), (Q) and (R) of the Petition and submitted that the Enquiry Committee did not extend reasonable opportunity to the petitioner to defend his case. The Enquiry Committee also denied opportunity of hearing the petitioner in person, leading evidence, cross-examining the witness examined by the management as also did not afford sufficient opportunity to examine his witnesses. For all these reasons, he submitted that the impugned order deserves to be set aside.

8. On the other hand, Ms Deshmukh supported the impugned order. She submitted that the first date of the enquiry is not 16.10.1999 as contended by the petitioner. Though the meeting was convened on 16.10.1999, because of the objections raised by the petitioner, the said meeting was cancelled. As per Rule 36(2)(a)(iii), the award winning teacher attended the meeting for the first time on 25.12.1999, and therefore, that was considered as the first meeting. The enquiry proceedings were over on 22.04.2000 and were therefore, completed within a period of 120 days from the date of the first meeting of the

Enquiry Committee. Even otherwise, she submitted that Rule 37(2)(f) lays down that if the enquiry is not completed within 120 days, the employee shall be ceased to be under suspension and shall be deemed to have rejoined duties. She submitted that petitioner was not placed under suspension and in fact was paid salary. She, therefore, submitted that the contention based on Rule 37(2)(f) is misconceived.

9. She further submitted that the contention of the petitioner that Head Mistress, Mr. Riyaz Bedre and Mr. Teher Phadnis participated throughout in the enquiry proceedings though they were not authorized is also misconceived as they were the witnesses examined by the management. Apart from that, no objection on that score was raised before the Enquiry Committee. The said contention was also not raised in the appeal memo as also before the Tribunal and this contention cannot be raised for the first time in the present Petition.

10. She submitted that after considering the material on record, the Enquiry Committee found petitioner guilty of the charges levelled against him. On the basis of the report of the Enquiry Committee, the services of the petitioner were terminated. She submitted that having regard to the charge of misappropriation of amount, it cannot be said that the punishment of termination of service is shockingly disproportionate. She submitted that the Tribunal has considered the material on record and held that charges are proved against the petitioner and inflicted punishment of termination and accordingly dismissed the appeal. She, therefore, submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. As noted earlier, Committee under Rule 36(2)(a) was constituted. On 13.10.1998, charge-sheet was issued. Petitioner raised objection to the name of the State Award Winner Dr. Abdul Majid Sheikh on the ground that he has completed more than 65 years of age. In view thereof, other State Award Winner Mrs. Potabatti was appointed as State Award Member of the Enquiry committee in the place of Dr. Faiz Shaikh. This caused delay in conducting committee's business. A perusal of the enquiry report shows that the State Award Winning Teacher attended meeting on 25.12.1999 for the first time and that was treated as the first date of meeting. Rule 37(2)(f) reads thus,

“37. Procedure of Inquiry: (1) ...

(2)(f) The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employer, whichever is earlier, unless the Inquiry Committee, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.”

12. It is not in dispute that the enquiry was concluded on 27.02.2000, which commenced from 25.12.1999 and therefore, was completed within 120 days. That apart, it is not in dispute that petitioner was not placed under suspension and was paid salary. Even otherwise, petitioner was not in a position to show that any prejudice was caused to him assuming that the enquiry was not completed within 120 days from the first date of the meeting. I, therefore, do not find any merit in the submission advanced by Mr. Tajane based upon Rule 37(2)(f) of the Rules.

13. Mr. Tajane submitted that Head Mistress, Mr. Riyaz Bedre and Mr.

Teher Phadnis who were not members of the Enquiry Committee, throughout participated before the Enquiry Committee. As these persons were not members of the Enquiry Committee, the enquiry is vitiated. Against this, Ms Deshmukh submitted that management had examined these persons as witnesses. Mr. Tajane submitted that in fact specific objection was raised about their presence during the enquiry. However, Enquiry Committee overruled that objection. I do not find any merit in any of the submissions. A perusal of the enquiry proceedings shows that objection was raised by the nominee of the petitioner on the ground that though Riyaz Bedre is a Trustee of the first respondent, he is not member of the school committee and still he is participating in the enquiry committee. In other words, no specific objection was raised by the nominee of the petitioner that as Riyaz Bedre is not member of the Enquiry Committee, he cannot participate in the inquiry proceedings. Apart from that, no such contention was raised in the appeal memo as also before the Tribunal. As against this Ms Deshmukh submitted that these persons were examined as witnesses on behalf of the management. In view thereof, I do not find any merit in the submission of Mr. Tajane that persons, who were not members of the Committee, participated in the enquiry proceedings.

14. Mr. Tajane further submitted that the punishment of termination is shockingly disproportionate. This aspect was considered by the Tribunal in paragraphs 13 to 16. In paragraph 13, the Tribunal considered second charge of fraud as also misappropriation of Rs.918/- by the petitioner. In paragraph 16, the Tribunal observed that as a charge was proved against the petitioner, he deserves major punishment and therefore, did not find any illegality, irregularity or perversity in recommending penalty of termination simplicitor. After considering the material on record and for the reasons recorded in paragraphs 13 to 15, I

do not find that the Tribunal committed any error in recording that finding.

15. Mr. Tajane lastly submitted that there is no sufficient material on record for imposing drastic penalty. He further invited my attention to grounds (P), (Q) and (R) of the Petition and submitted that the Enquiry Committee did not extend reasonable opportunity to the petitioner to defend his case. The Enquiry Committee also denied opportunity of hearing the petitioner in person, leading evidence, cross-examining the witness examined by the management as also did not afford sufficient opportunity to examine his witnesses. After perusing the inquiry proceedings, I do not find any merit in this submission. Hence, Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there shall be no order as to costs.

(R. G. KETKAR, J.)

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