

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8351 OF 2007

Shri Dilip Mahadeo Thorat

...,Petitioner

v/s.

The Secretary,
 Shri Hanuman Shikshan Prasarak Sanstha,
 Malshiras and ors.

...Respondents

Mr.S.G.Kudle for the Petitioner.

Mr.M.A.Utagikar for the Respondent No.1.

Mr.S.B.Kalel, AGP for the State.

...
CORAM : A.A. SAYED &
M.S.KARNIK,JJ.
DATED : 28 JULY 2017

ORDER: (Per A.A.Sayed, J)

By this Petition, filed under Articles 226 and 227 of the Constitution, the Petitioner has impugned the judgment and order dated 20 September 2007 passed by the School Tribunal, Solapur. By the impugned order, the Appeal filed by the Petitioner under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 came to be dismissed thereby upholding the termination order dated 10 April 2006 of the Petitioner. During the pendency of the Petition, the Petitioner has crossed the age of superannuation.

2. The Petitioner/original Appellant was appointed as Assistant Teacher in the school run by the Respondent No.1-Management from 01 October

1984. On 31 October 2015 Articles of charges were framed against the Petitioner. There were 18 charges levelled against the Petitioner. The allegations against the Petitioner were, inter alia, of coming late to school for 26 days during the period between 25 October 2004 to 30 December 2004, threatening the Head Master and Assistant Head Master on many occasions to send them to prison by filing a false complaint under the Prevention of Atrocities Act, using irresponsible and disrespectful language, bringing influence on the students by taking writing from them of his having come in time in school, assault on peon Shri Sawant on 7 January 2005, not signing his Service Book from the year 1989, remaining absent in the meeting of teachers on 19 August 2005, using derogative language against other staff members, not remaining present on 10, 12, 13, 14 and 15 September 2005 for prayer and National Anthem.

3. On 2 December 2005, the Petitioner submitted his explanation and denied the allegations made against him. It was contended that charges and allegations levelled against him are false, baseless and are with malafide intention. The Respondent No.1-Management constituted an Inquiry Committee. As per the Rule 36 (2) (a) (ii) of MEPS Rules, one member of the Inquiry Committee is to be nominated by the employee. In the inquiry proceedings, both the Petitioner as well his nominee remained

absent. The Inquiry Committee held that all charges against the Petitioner were proved. The Inquiry Committee concluded as follows:

“In respect of all allegations the witnesses has deposed against Shri.Thorat and Management has furnished written evidence. The Committee has in addition to above documents has perused all other document filed by the Management and the evidence of all witnesses have been read carefully. Shri. Thorat has not taken cross-examination of anyone and moreover, he has not taken either oral or written objection about the evidence led by the Management and moreover, he has not adduced any evidence prejudicial to the evidence of the Management and hence, the Inquiry Committee has to accept oral and written evidence of the Management and overall evidence of the Management is against the delinquent employee and the same is substantiated properly. Shri. Thorat and his representative did not remain present despite having asked to remain present and hence by accepting the evidence of the Management, all the charges levelled against Shri. Thorat are established and accordingly, we both the Members of Inquiry Committee hereby declare and states under,

All the allegations/charges levelled against Shri. Thorat are of serious nature and he has assaulted the employee in the School and he has used the derogatory language against the Senior and he has abuse the Seniors and in the letter addressed to the School, he has declared himself as a approved Head Master and he has addressed the letter to Shri. Panchwagh Mohan (M.B.

Panchwagh) Asstt. Teacher and in this regard he has not submitted any explanation and the seriousness of allegations levelled against Shri. Thorat is to the effect that he used to complain, he used to use the insulting language against the senior, assaulting of the employee and these are the instances of arrogant and to continue the service of such Teacher, it is a loss to the School and this is our opinion.

And it is also our opinion that behaviour of Shri. Thorat before the Inquiry Committee is not proper and in the letter send to the Inquiry Committee he has proclaimed as a Government approved Head Master and in the School premises the employee of the School was assaulted and for one Teacher he asked the question that in the morning have you come under the influence of intoxication. To utter such language in the School is a serious matter and it is apparently clear and to behave with the seniors arrogantly and to talk with them in the indecent language despite having the knowledge they being seniors and these things are also of serious nature.

Prior to this, for this misconduct the Management has imposed minor punishment upon Shri. Thorat and this is revealed from the statement and evidence of Secretary, Shri. Kulkarni. Despite this, there is no improvement in the behaviour of Shri. Thorat. Shri. Thorat did not come before the Inquiry Committee for pleading his cass or for countering the evidence of Management and hence to continue his services, it will be harmful to the School and accordingly we have arrived at this conclusion.”

FINDINGS

Findings of we both of us from this Inquiry Committee in respect of charges levelled against Shri. Thorat D.M. are as under.

All the charges from Sr. No. 1 to 18 levelled against Shri. Thorat have been proved.

ORDER

Shri. D.M. Thorat should be removed from the service of Gopalrao Deo Prashala run by Shri. Hanuman Shikshan Prasarak Sanstha, Malshiras.

Place : Malshiras.

Sd/-

Date : 6-4-2006 .

6-4-2006.

1) Shri. Madhav Krushna Miraskar
(Convenor)

Sd/-

6-4-2006.

2) (Shri Vasant Shivaji Kulkarni)
Member & State Awardee Teacher)

4. Based on the Inquiry Report, the Petitioner came to be terminated on 10 April 2006 by the Respondent No.1-Management, which termination was the subject matter of challenge before the School Tribunal. The School Tribunal framed and answered the points of determination in the following terms:

POINTS	FINDINGS
1. Whether the Inquiry Committee is legally constituted as per the Rule 36 (2) (b) of M.E.P.S. Rules, 1981 ?	In the affirmative.
2. Whether the Inquiry Committee has followed proper procedure laid down under the Rules 36 & 37 of the M.E.P.S. Rules?	In the affirmative.
3. Whether the Inquiry Committee has followed principles of natural justice?	In the affirmative.
4. Whether the charges levelled against the Appellant are proved?	In the affirmative.
5. Whether the impugned termination order dated 10-4-2006 is legal and valid?	In the affirmative.
6. Whether the Appellant is entitled for : i) Reinstatement ? ii) Backwages	In the negative No No
7. What order?	As per final order.

5. Learned Counsel for the Petitioner submitted that the Petitioner was malafidely terminated by making false allegations and charges. He submitted that the mandatory provisions of Rules 36 and 37 have not been followed. He submitted that the constitution of the Inquiry Committee was not in accordance with Rule 36(2)(a) of MEPS Rules and the principles of natural justice were not followed. He further submitted that the findings of the inquiry report were perverse. He submitted that the School Tribunal

wrongly proceeded on the basis that the Petitioner was Head of the Institution and the provisions of Rule 36(2)(b) was considered by the School Tribunal instead of Rule 36(2)(a) of MEPS Rules.

6. Having heard the learned Counsel for the parties, we find that the contentions raised on behalf of the Petitioner cannot be accepted. We find that though the impugned order of the Tribunal mentions Rule 36(2)(b), the same is merely a typing error. What is discussed in the impugned order so far as the constitution of the Inquiry Committee is concerned is Rule 36 (2) (a). Rule 36(2), which are in relation to the constitution of Inquiry Committee reads as follows:

36. Inquiry Committee :

(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the management within fifteen days from the date of receipt of the explanation. The management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say -

(a) in the case of an employee - (i) 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;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub- rule (1) - i) one member who shall be the President of the management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.

(emphasis supplied)

7. The School Tribunal in the impugned order has discussed the issue regarding the constitution of the Inquiry Committee at length in paragraphs 19 to 26, which read as follows:

19. On receipt of the explanation given by the Appellant on 3-12-2005 which was not found satisfactory to the Management and the Management after passing Resolution on 5-12-2005 has constituted Inquiry Committee after taking into consideration the decision of all the members of the institution as per the M.E.P.S. Rules, 1981 and the Inquiry Committee which was constituted in which one Mr. M.K. Mirajdar was appointed as Nominee of the Management and one member who is State Awardee Teacher viz. Shri. Vasant Kulkarni retired Head Master from the panel of Teacher from State was appointed. As per the M.E.B.S. Rules one member is to be nominated from the employees and therefore it was also informed to the Appellant that he should convey the name within stipulated time of 15 days, but he failed convey it within stipulated time as per the Rules 36(3) of the M.E.P.S. Rules, 1981. Later on he conveyed the name of his representative and again changed the said representative. The Chief Executive Officer viz. M.V. Kulkarni who is

Secretary of the school and Executive Officer to conduct inquiry also got appointed as per the rules laid down in the M.E.P.S. Rules, 1981 and the Inquiry Committee came into existence as per the Rules 36(4) of the M.E.P.S. Rules, 1981.

20. It is seen from the record and documents that the R/M when started Departmental Inquiry against the Appellant in order to give proper opportunity to him send a letter dated 13-12-2005 to the Appellant to communicate the name of his nominee which required as per the Rule 36(3) of the M.E.P.S. Rules, 1981 and the Appellant when received the said R.P.A.D. letter he sought time of one month to nominate his nominee vide issuing letter dated 29-12-2005. The said letter filed on record at Exh-4/8. The R/M communicated to the Appellant by their letter dated 3-1-2006 that the stipulated period for communicate the name of the nominee has expired and more time cannot be granted to the Appellant and the Appellant was given all the documents i.e. letter of allegations his reply charge levelled copy vide letter dt. 3-1-2006 which is placed on record at Exh-4/5, which required as per the Rules 37(2) of the M.E.P.S. Rules, 1981.

21. It is also seen while assessing whether the Inquiry Committee is properly constituted or legally formed by the Management that after compliance of the Rules 37(2) of the M.E.P.S. Rules, 1981 the Appellant was communicated the names of the witnesses from the Management side which Management has to be examined before the Inquiry Committee. The copies of the documents were also supplied to him as per the letter of the Chief Executive Officer. The record also shows that the Appellant after some time lapsed not within stipulated time lately communicated his nominee's name on 15-1-2006. He has communicated the name of Mr. Zalte as a nominee and the said name

was accepted by the Management and the Inquiry Committee on its meeting held on 16-1-2006.

22. On that date i.e. 16-1-2006 inspite of receiving notice to the Appellant and his representative/nominee Mr. Zalte, they remained absent before the Inquiry Committee's meeting. It appears that the Inquiry Committee was consist member as per the Sub-Rule 2(a) of Rule 36 which is a statutory requirement. On perusal of the first meeting proceeding at Exh. 22/2, it appears that it started on 4:30 hrs and in the said proceeding Mr. Mirajdar who is representative of the Management and nominated by the Management alongwith Mr. V.S. Kulkarni who is State Awardee Teacher present, but from the proceeding it appears that the Appellant/delinquent Mr. D.M. Thorat was absent and the nominee on his behalf of suggested by him Mr. Zalte was also remained absent and therefore the meeting was posted on next date i.e. 1-2-2006. On 1-2-2006 it is seen from the proceeding that Mr. Mirajda who is nominated on behalf of the R/M and the member Mr. V.S. Kulkarni State Awardee Teacher was present, but Mr. D.M. Thorat Appellant was absent and his representative was also absent and hence the date was fixed on 8-2-2006 for further inquiry. On the said date Mr. Mirajdar was present and Mr. V.S. Kulkarni was also present but Mr. D.M. Thorat/Appellant was absent and his representative was also absent and evidence of Mr. Milind Kulkarni a witness and one another witness Mr. Adat from the Management evidence got recorded and the date was fixed for further inquiry on 11-2-2006.

23. On 11-2-2006 when the meeting was started, it was decided that there was a letter from Appellant/delinquent Mr. Thorat to change his nominee and to give opportunity to him for cross-examination. It is require to postpone the inquiry proceedings on next date and

accordingly the inquiry was posted and fixed on 15-2-2006. On 15-2-2006 it was decided in the meeting of inquiry committee that the telegrams received from Mr. D.M. Thorat. Hence to give one last opportunity the proceeding of the inquiry committee will have to be fixed on next date and the date was posted on 18-2-2006 and telegram to that respect was issued to Mr. Thorat.

24. On 18-2-2006 Mr. Mirajdar who is nominee of the R/M and Mr. V.S. Kulkarni another member of inquiry committee was present and the witnesses whose evidence was earlier recorded on 15-2-2006 was also present for cross-examination but Mr. Thorat and his representative Mr. Sathe which was suggested by Mr. Thorat by issuing letter dated 14-2-2006 was also absent. Therefore it was decided by the Inquiry Committee that, considering the principle of natural justice point again one chance should be given to the Appellant/delinquent Mr. Thorat for cross-examination and inquiry was posted on 28-2-2006 and on the said date again both members of the Inquiry Committee was present and the witnesses to whom cross-examination has to be done by Mr. Thorat also present, but Mr. Thorat and his representative were absent and the Inquiry Committee posted inquiry on 1-3-2006 after recording evidence of another witnesses viz. Mr. Jawanjai & Mr. Gadekar and on 8-3-2006 when the inquiry was posted, both the members were present and Mr. Thorat and his representative was also absent. The Inquiry Committee recorded evidence of another witness viz. Mr. Ajinand Sawant and again the proceeding was posted on 17-3-2006 and on the fixed date Mr. Mirajdar and Mr. V.S. Kulkarni was present. Mr. Milind Kulkarni was also present but the Appellant/delinquent Mr. Thorat and his representative was absent and it was decided to send copies of proceeding to Mr. Thorat by R.P.A.D. and thereafter inquiry committee fixed the date for further proceeding on 3-4-2006. Accordingly for calling explanation the

letter and documents were sent as per the decision of inquiry committee dated 17-3-2006 on 20-3-2006 to Mr. Thorat. Mr. Thorat received the said document and letter on 21-3-2006 and he has given explanation which is at Exh. 4/10 as per the M.E.P.S. Rule 37(5) to the Convenor of the Inquiry Committee. In the explanation he stated that it is require to wind up the proceeding of the Inquiry Committee started against him. The inquiry constituted against him is illegal, the inquiry committee is also illegal and devoid of merit.

25. It is also stated by him that it was having interference by Hr. Milind Kulkarni who is uncalled and unwarranted and ab-in-itio. The procedure totally wrongly taken. One side inquiry has taken place. The decision is not obligatory, imperative and mandatory on his part. All the proceeding has been done in absence of him and his representative and no opportunity was given to him. Modus operandi of the Committee is illegal and he denied the inquiry committee's proceeding. It appears that Mr. Thorat denied the proceeding taken place on the ground that fair opportunity not given to him and the proceeding ex-parte taken place. Thereafter Inquiry Committee after taking into consideration the evidence and the documents come to the conclusion that the allegations and charges which was stated in the documents at Exh. 4/3 got proved and issued copy of the conclusion and decision stating the punishment that the Appellant's services should be terminated vide letter at Exh. 4/2, dated 7-4-2006. The punishment proposed by the Inquiry Committee in compliance of the Inquiry Committee's decision and findings and as per the recommended punishment on punishment on the basis of appreciation of the facts.

26. From the above proceeding it is quite evident that there is nothing to show on the record by the Appellant/delinquent that the inquiry

committee is not legally constituted. So also there is nothing on the record to show that the Committee has not followed the proper procedure laid down in Rule 36 and 37 of the M.E.P.S. Rules, 1981.

8. Thus, the School Tribunal has rightly appreciated Rule 36(2)(a) which applies to the case of the Petitioner who is an Assistant Teacher [through it is inadvertently typed as Rule 36(2)(b)] and found that the Petitioner has chosen to remain absent before the Inquiry Committee though several opportunities were given to him to remain present. In these circumstances, we find that the Petitioner has not been able to substantiate his claim that the action taken against the Petitioner was malafide. The Tribunal observed that the charges against the Petitioner were very serious in nature. We find that the impugned order has discussed the issue threadbare and has rightly held that the termination order dated 10 April 2006 was legal and valid.

9. We are unable to accept the contention of the learned Counsel for the Petitioner that the Head Master is required to be one of the member of the Inquiry Committee. We find no such requirement in the aforesaid Rule 36(2)(a). The School Tribunal arrived at a finding of fact and we do not find any perversity in the said finding. It is seen that despite opportunities, the Petitioner as well as the nominee of the Petitioner as the member of the

Inquiry Committee, had failed to remain present in the Inquiry. It is further seen that though the Petitioner suggested name of another person as member of the Committee, the said member had also remained absent. In these circumstances, Inquiry Committee had no option but to proceed with the inquiry. It cannot be said that rules of natural justice were violated. We are also unable to accept the contention of the Petitioner that procedure under Rules 36 and 37 were not followed.

10. For the aforesaid reasons, we find no merit in the Petition. The Petition is dismissed. Rule is discharged. No order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)