

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13142 OF 2016

Shivner Mitra Mandal & Anr.	]	Petitioners
Vs.		
Smt. Kavita Kishor Dhamnaskar & Anr.	]	Respondents

.....
Mr. Prashant Bhavake, for petitioner.
Mr. Ravindra J. Dhond, for respondent No.1.
.....

CORAM : R.G. KETKAR, J.

DATE : 14TH JUNE, 2017.

P.C.

Heard Mr. Bhavake, learned Counsel for petitioners
and Mr. Dhond, learned Counsel for respondent No.1.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioners have challenged the judgment and order dated 8th July, 2016 passed by learned Presiding Officer, School Tribunal, Mumbai [for short 'Tribunal'] in Appeal No. 29 of 2015. By that order, Tribunal allowed the appeal preferred by respondent No.1 herein and set aside termination order dated 26th

August, 2015. Tribunal directed the petitioners, hereinafter referred to 'management' to reinstate respondent No.1 notionally on the post of Head Mistress as she retired on superannuation with effect from 31st August, 2015. Management was also directed to prepare pension papers of respondent No.1 within one month and forward the same to the respondent No.2, Education Inspector, Mumbai, for necessary action. Respondent No.2 is directed to take necessary steps in the matter so that respondent No.1 gets her retirement benefits at the earliest. Management is also directed to pay interest on pension amount if they fail to forward pension papers of first respondent to respondent No.2 within one month.

3. The Tribunal has principally allowed the appeal on the ground that inquiry conducted by Management is not accordance with provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [for short 'Rules'] and the findings recorded by the Enquiry Committee are perverse.

4. Matter was heard on 5th June, 2017 and 13th June, 2017. At the request of Mr. Bhavake, matter is kept today. Mr. Bhavake states that Mr. Gajanan Dongre, President of petitioner No.1,

Shivner Mitra Mandal is present in the Court. He has tendered written instructions of the petitioners along with photo copy of Identity Card issued by Election Commission of India. The same is taken on record and marked as 'X' colly for identification. Upon taking instructions from Mr. Dongre, Mr. Bhavake states that petitioners are not pressing this Petition. He submits that petitioners will forward fresh proposal of provident fund and pension through the first respondent to the Office of second respondent within four weeks from today. He further states that respondent No.1 may be directed to co-operate in sending the proposal. He states that before forwarding proposal to the second respondent, copy thereof shall be furnished to the first respondent.

5. Mr. Bhavake further submits that as the Tribunal has allowed appeal principally on the ground that enquiry conducted against first respondent was not fair and proper and findings recorded by Enquiry Committee are perverse, liberty may be reserved to the Management to initiate fresh enquiry on the basis of the charge-sheet already served on the first respondent. Mr. Dhond assures that within 15 days from today, respondent No.1 will file additional reply to the charge-sheet already served on her. Mr. Bhavake further submits that if pension is released to the first

respondent, it may be clarified that it shall be subject to the outcome of enquiry.

6. In view thereof, Petition is disposed of as 'not pressed' with following directions.

- [1] Impugned order passed by Tribunal is upheld.
- [2] Petitioners shall submit fresh proposal of provident fund and pension through first respondent to the Office of respondent No.2 within 4 weeks from today.
- [3] Respondent No.1 will extend full co-operation for sending fresh proposal of provident fund and pension.
- [4] Before forwarding fresh proposal, the petitioners shall furnish copy of proposal to first respondent.
- [5] Respondent No.2 will release provident fund as also pension as early as possible.
- [6] Petitioners are at liberty to continue with enquiry on the basis of the charge-sheet already served on the first respondent.
- [7] Respondent No.1 shall file her additional reply, if any, within 15 days and also will extend co-

operation for conducting inquiry in accordance with the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

- [8] Release of pension shall be subject to outcome of enquiry. Needless to say in case enquiry report and any adverse order is passed against first respondent, she is at liberty to challenge the same in accordance with law.

Order accordingly.

[R.G. KETKAR, J.]