

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13054 OF 2016**

Shri Gaikar Chandrakant Shrirang	]	Petitioner
Vs.		
1. Abhuday Dnyanvardhani Sanstha	]	
and others.	]	Respondents

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Ms. Jai Kanade a/w Ms. Shruti Tulpule, for petitioner.

Mr. Shaikh Nasir Masih, for respondents No.1 and 2.

Ms. Jyoti Jadhav, A.G.P. for respondents No.3 and 4.

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CORAM : R.G. KETKAR, J.

DATE : 27TH JULY, 2017.

P.C.

Heard Ms. Kanade, learned Counsel for the petitioner, Mr. Shaikh, learned Counsel for respondents No.1, 2 and 5 and Ms. Jadhav, learned A.G.P, for respondents No.3 and 4 at length. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 2nd August, 2016 passed by the learned Presiding Officer, School Tribunal, Mumbai [for short "Tribunal"] in Appeal No. 39 of 2014. By that order, the Tribunal has dismissed the appeal preferred by

the petitioner. The matter was heard at length on 11th July, 2017 when *prima facie* it was indicated that enquiry conducted against the petitioner was vitiated. Mr. Shaikh sought time for taking instructions as to whether respondents No.1 and 2 are willing to conduct fresh enquiry through newly constituted Committee and petitioner can be reinstated on his post along with continuity of service and other consequential benefits. Accordingly, the matter was adjourned to 13th July, 2017.

3. The matter was heard on 13th July, 2017. Mr. Shaikh stated that Mr. R.G. Hule, President and Mr. Mahesh Karle, Secretary of the first respondent are present in the Court. He tendered photo copy of Aadhar Card of Mr. Mahesh Karle and photo copy of Identity Card issued by the Government of India of Mr. R.G. Hule which were taken on record and marked 'A' and 'B' respectively for identification. He also tendered resolution No.3 passed in emergency meeting dated 12th July, 2017 which was taken on record and marked 'C' for identification.

4. Mr. Shaikh, upon taking instructions, submitted that the impugned order may be set aside and respondents No.1 and 2 will reinstate the petitioner on his original post along with continuity of service and other consequential benefits. He stated that respondents No.1 and 2 will constitute fresh Enquiry Committee as per Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [for short 'Rules'] subject to the petitioner filing reply to the charge-sheet within 2

weeks from today and nominating his representative in that Committee within one week thereafter. Ms. Kanade assured that within 2 weeks from today, petitioner will file reply to the charge-sheet and thereafter within one week will nominate employee as per Rule 36(2) (a) (ii). Mr. Shaikh assured that within 8 days from the nomination of the petitioner, respondents No.1 and 2 will nominate the other members as per Rule 36 (2) (a) (i) and (iii) and thereafter will follow the procedure as per Rule 37 of the Rules. Matter was adjourned to 27th July, 2017.

5. The matter was heard today at length. Mr. Shaikh submitted that though in the place of petitioner, respondents No.1 and 2 have appointed respondent No.5, they have not claimed reimbursement from respondent Nos. 3 and 4 and respondents No.1 and 2 are paying salary to respondent No.5 from their funds. Mr. Shaikh further states that Mr. R.G. Hule, President and Mr. Mahesh Karle, Secretary of the first respondent are present in the Court. Mr. L. K. Deshmukh, Head Master of Abhuday Dnyanvardhani Sanstha is present in the Court. He has tendered photo copy of Driving Licence of Mr. L.K. Deshmukh, which is taken on record and marked 'D' for identification. Upon taking instructions, he states that respondents No.1 and 2 will terminate services of respondent No.5. He further states that respondents No.1 and 2 will reinstate petitioner on his original post along with continuity of service and other consequential benefits excepting back wages. The payment of back wages will depend upon outcome of the fresh enquiry which is proposed to be held by

respondents No.1 and 2. He relied upon decision of Apex Court in the case of **U.P. State Textiles Corpn. Ltd Vs. P.C. Chaturvedi and others, (2005) 8 Supreme Court Cases 211**. Mr. Shaikh states that respondents No.1 and 2 will permit the petitioner to join duties with effect from 1st August, 2017 and will submit the bills to the Education Department for sanction. Ms. Jadhav assures that respondents No.3 and 4 will consider the proposal of pay bills and will release salary of the petitioner. Ms. Kanade states that petitioner is present in the Court. She has tendered photo copy of his driving licence which is taken on record and marked 'X' for identification. Upon taking instructions from him, she states that as far as issue of back wages is concerned, let it depend upon conclusions of fresh enquiry which is proposed to be held.

6. Mr. Shaikh submits that Mr. R.G. Hule, President of respondent No.1 has filed Criminal Complaint No. 1796/55/2014 against petitioner herein u/s 499, 500, 501 Indian Penal Code, 1860. Upon taking instructions from Mr. Hule, Mr. Shaikh assures that he will not pursue the complaint and if permissible will withdraw the complaint filed in the Court of Metropolitan Magistrate, Vikroli. In case, complaint cannot be withdrawn, he will consent for quashing of the complaint or compounding of offence by adopting appropriate proceeding. Statements made by Mr. Shaikh, upon instructions are recorded.

7. Ms. Kanade states that petitioner has instituted O.M.A No. 324 of 2015 against respondents No.1 and 2 as also Head

Master and President Mr. R.G. Hule and Mrs. Alka Hule u/s 406, 420, 122 r/w Section 34 I.P.C for not depositing TDS though it was deducted from the salary of the petitioner. Mr. Shaikh upon taking instructions from Mr. Deshmukh states that TDS deducted was deposited with Income Tax Department. Mr. Shaikh submits that in that complaint, learned Magistrate had issued process. Aggrieved by that decision, respondents No.1 and 2 filed Criminal Revision Application No. 109 of 2016 in the Sessions Court at Kalyan. By order dated 7th February, 2017, Sessions Court set aside the order of issuing process. Ms. Kanade upon taking instructions states that petitioner accepts correctness of that decision and will not challenge the said order passed by the Sessions Court.

8. Ms. Kanade further states that petitioner has instituted O.M.A No. 72 of 2015 in the Court of Judicial Magistrate First Class, Ulhasnagar. The petitioner will not pursue that complaint and will withdraw the same, if permissible in law. In case, it is not permissible, the petitioner will consent for quashing the complaint or compounding of the offence by adopting appropriate proceeding. Ms. Kanade further states that the petitioner will extend full co-operation during the course of fresh enquiry which is to be held *de novo*. Statements made by Ms. Kanade upon instructions are accepted. In view thereof, Petition is disposed of in following terms.

[1] Impugned order dated 2nd August, 2016 passed by the Tribunal in Appeal No. 39 of 2014 is set aside and appeal is partly allowed as under;

- [2] Respondents No.1 and 2 shall reinstate the petitioner on his original post with continuity of service with other consequential benefits excepting back wages.
- [3] The petitioner will join duties with effect from 1st August, 2017.
- [4] Respondents No.1 and 2 shall forward his bills to the Education Department and Education Department will consider the proposal and release his salary.
- [5] As respondents No.1 and 2 have appointed respondent No.5 in the place of the petitioner, they will terminate her services.
- [6] Respondents No.1 and 2 will constitute fresh Enquiry Committee as per Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'Rules').
- [7] The Petitioner will file reply to the charge-sheet within two weeks from today and nominate his representative as per Rule-36 (2) (a) (ii) within one week. Thereafter, respondents No.1 and 2 shall nominate other members as per Rule-36 (2) (a) (i) (iii) within 8 days from petitioner nominating his representative.
- [8] The petitioner shall co-operate with the fresh enquiry which shall be concluded as far as

within six months from the first day of hearing.

- [9] Respondents No.1 and 2 shall hold the enquiry on the charges which are already framed.
- [10] The petitioner and respondents No.1 and 2 will withdraw the complaints referred hereinabove filed against each other or apply for quashing the complaints or compounding of offences by following appropriate procedure.
- [11] Question of back wages will depend upon the outcome of the fresh enquiry.
- [12] All contentions on merits are expressly kept open.
- [13] Rule is made absolute in aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]