

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2102 OF 2018
(Roshan Ara d/o Akhtar Ahemad Vs. The President and others)

Mr.R.R.Mantri, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/02/2018

PER COURT :

1. Learned Advocate for the petitioner has strenuously contended that the impugned judgment of the School Tribunal, Latur dated 16/01/2018 partly allowing Appeal No.40/2010 filed by the petitioner/appellant, is unsustainable to the extent of the direction to the Management to conduct a *denovo* enquiry.

2. It is strenuously canvassed that the petitioner had put forth two main contentions before the Tribunal. Firstly, that after the change in Management, the new Management developed a bias against the petitioner and levelled false allegations. Secondly, that the conducting of a departmental enquiry was purely farcical and the Management, in fact, never intended to comply with Rules 36 and 37 of the M.E.P.S.Rules, 1981 while conducting the enquiry so as to tire out the appellant.

3. Learned Advocate further submits that besides the record and proceedings before the Tribunal, some more documents were also called for by the Tribunal by way of additional evidence.

4. It is well settled law for the past about 50 years that once a departmental enquiry is held to be vitiated, the enquiry proceedings are relegated to the stage at which the enquiry is vitiated. If the constitution of the Enquiry Committee itself is bad or if the conditions prescribed under Rule 36 are violated, a *denovo* enquiry is to be directed.

5. Under the Labour Legislation, the Labour Court or the Tribunal, as the case may be, itself assumes the role of an Enquiry Officer and the *denovo* enquiry is conducted before the Court itself in the light of the judgment delivered by the Hon'ble Apex Court in Workmen of Motipur Sugar Factory Private Ltd.,Vs. The Motipur Sugar Factory Private Limited [AIR 1965 SC 1803], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh [1972 (1) SCC 595], The Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd., Vs. The Management and others [AIR 1973 SC 1227 = 1973(1) SCC 813] and Shambhu Nath Goyal Vs. Bank of Baroda [AIR 1984 SC 289].

6. However, in the matters of teaching and non teaching employees of private schools covered by the M.E.P.S. Act, the Hon'ble Apex Court has crystallized the Law in Vidya Vikas Mandal and another Vs. Education Officer, 2007(3) Mh.L.J. 801. Paragraph Nos. 7 to 9 of the said judgment read as under :-

"7. Our attention was also drawn to Rule 36 sub-clause 2(a), which applies to the case of an employee and reads thus:

"36 (2)(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 authorized 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."

8. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent

member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9. In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one

member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.”

7. The petitioner's strenuous contention is that the Management lacks the bonafides to conduct a fair enquiry and there is every likelihood that again the enquiry would be rendered defective so as to tire out the petitioner. This issue is no longer *res-integra* in the light of the judgment of this Court in WP No.4999/2016 with WP No.5826/2016 dated 29/08/2016 [The Head Master Vs. Alka Namdeo Khalekar and others] wherein it is concluded that once a *denovo* enquiry is directed after the first enquiry is vitiated, there cannot be a second *denovo* enquiry even if the *denovo* enquiry is rendered defective or vitiated. The entire disciplinary action taken by the Management in the face of a second defective *denovo* enquiry, would

fall to the ground and the employee would be as good as exonerated.

8. It is strenuously submitted that as there are fake charges levelled against the petitioner, the intention of the Management is only to harass the petitioner. I find that an employee is sufficiently protected by Rule 36 and 37 of the MEPS Rules .

9. Considering the above, this petition is disposed of with the observation that since the Management has not challenged the judgment of the School Tribunal dated 16/01/2018, it shall be duty bound to conduct a denovo enquiry against the petitioner in accordance with Rules 36 and 37 and other applicable Rules within the time frame of 4 months prescribed by the Rules. So also, the Law laid down in Vidya Vikas (supra) obliges the Management to ensure that the suspension allowance is paid to the employee from the date of the initial termination. So also, the petitioner would be at liberty to raise all the grounds in defence including the ground of stale charges, if any.

(RAVINDRA V. GHUGE, J.)