

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

4 WRIT PETITION NO. 1408 OF 2013

BABASAHEB TRIMBAK BHAGURE  
VERSUS  
THE SECRETARY, SANJIVANI GRAMIN SHIKSHAN SOCIETY AND OTHERS

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Advocate for Petitioner : Mr. Godbole R.J.  
AGP for Respondents 3 and 5 : Mr. S.N.Kendre  
Respondent no.2 served  
Advocate for Respondents 1 and 4 : Mr. V.D.Hon, Senior counsel i/b Mr.  
A.V.Hon

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**CORAM : V.K.JADHAV, J.**

**DATE : MAY 2, 2018**

**PER COURT**

Heard finally with the consent of the learned counsel for the respective parties, at the admission stage.

2. The petitioner was working as a Clerk with the respondents. By filing Appeal No. 79 of 2011 before the School Tribunal, Solapur, the petitioner had challenged the termination order dated 11.7.2011 terminating him with effect from 15.7.2011, with the prayer to quash and set aside the said termination

order and reinstate the petitioner with full back wages and consequential benefits on the original post of Clerk.

3. The learned Presiding Officer, School Tribunal, Solapur, by impugned order dated 15.10.2012 in Appeal No. 79 of 2011 dismissed the appeal with costs. Hence, this Writ Petition.

4. The learned counsel for the petitioner submits that though the learned Presiding Officer, School Tribunal, Solapur has recorded the findings on point nos. 5 and 6 in the affirmative, contrary to the said finding, dismissed the appeal with costs. The learned counsel submits that otherwise also the inquiry conducted by the respondents is not in accordance with Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter for short called as, "the Rules of 1981"). The learned counsel by relying upon

the judgment of the Supreme Court in the case of **Vidya Vikas Mandal and another vs Education Officer and another**, reported in 2007 (3) Mh.L.J. 801, submits that the inquiry committee consisting of 3 members has not submitted the combined enquiry report and even the inquiry committee has not submitted the report, though submitted separately by its members, within stipulated period.

5. The learned Senior counsel for the respondent-management submits that the members of the inquiry committed have submitted their reports to the convener and accordingly, the convener has submitted the combined report before the management.

6. The learned Senior counsel submits that the termination order, passed thereon on the basis of due enquiry, is legal and the learned Presiding Officer, School Tribunal has rightly dismissed the appeal. The learned Senior counsel submits that though the

School Tribunal has recorded the finding incorrectly, however, in the relevant para, has made the observations in consonance with the operative part of the order.

7. In the case of **Vidya Vikas Mandal** (supra), relied upon by the learned counsel for the petitioner, in para nos. 8 and 9 of the judgment, the Supreme Court has made the following observations : -

“ 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. "

8. In the instant case, 2 members of the inquiry committee has submitted the separate report on 12.6.2011 and one member has submitted the report on 8.6.2011. The report is not in accordance with the mandatory provisions of the rules of 1981 and in view of the ratio laid down by the Supreme Court in the afore said case, the same cannot be accepted and acted upon.

9. In view of provisions of Rule 37 (6) of the

Rules of 1981, it is incumbent upon the inquiry committee to complete the enquiry and communicate the findings on the charges against the employee and its decision on the basis of these findings to the management for specific action to be taken against the employee, within ten days after the date fixed for receipt of further explanation as provided under Rule 37 (4 and 5) of the Rules of 1981.

10. It is part of record that the petitioner has submitted his reply on 10.5.2011 and it was thus incumbent upon the inquiry committee to submit the report within ten days i.e. at the most on 20.5.2011, however, the inquiry committee has submitted the report on 12.6.2011 and 8.6.2011, respectively. It is also part of the record that two members, out of 3 members of the inquiry committee, submitted the report on 12.6.2011 and remaining member has submitted the report on 8.6.2011. The said two members of the inquiry committee found the present

petitioner guilty, however, the remaining member has given clean chit to the petitioner. In the case of **Vidya Vikas Mandal** (supra), in para 8 of the judgment the Supreme Court has observed that when the committee of three members is appointed to inquire into a particula matter, all the three members should submit their combined report, whether consenting or otherwise.

11. In view of above, it appears that the learned Presiding Officer, School Tribunal, Solapur has committed mistake in accepting the said report of the inquiry committee, upholding the termination order passed by the respondent-management.

12. In view of above discussion, the present Writ Petition deserves to be allowed. Hence, the following order.

**O R D E R**

(i) Writ Petition is hereby partly allowed.

(ii) No costs.

(iii) The impugned termination order, dated 11.7.2011, passed by respondent no.1 terminating services of the petitioner as a Clerk is hereby quashed and set aside. Consequently, the impugned judgment and order, dated 15.10.2012, passed by the learned Presiding Officer, School Tribunal, Solapur in Appeal No. 79 of 2011 is also quashed and set aside.

(iv) The respondent-management is hereby directed to form the inquiry committee, amongst them (a) one member would be of the Management or the President of the Management, if so authorised by the Management, (b) one member would be from amongst the employees of any private school, and (c) one member chosen by the Chief

Executive Officer from the panel of teachers on whom State/National Award has been conferred.

(v) The respondent-management is directed to constitute the inquiry committee in accordance with Sub-Rules (i), (ii) and (iii) of Rule 36 (2)(a) of the Rules of 1981.

(vi) The enquiry shall be commenced from the stage at which fault was pointed out, and as such, the evidence, if any recorded, during previous enquiry, shall be subject to all exceptions to the evidence recorded during enquiry as directed.

(vii) The members of enquiry committee shall submit a combined report and the respondent management may pass appropriate orders in terms of the report submitted by the enquiry committee afresh, as expeditiously as possible.

(viii) The petitioner will be treated now under suspension and will be entitled for subsistence allowance as per the rules with

effect from termination of his services i.e. 11.7.2011. The subsistence allowance shall be paid to the petitioner before the commencement of the enquiry as directed.

(ix) All the points are kept open.

(x) Writ Petition is accordingly disposed of.

**[ V.K.JADHAV, J. ]**

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