

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10910 OF 2018
(Adarsh Vidyalaya Shikshan Samiti and another Vs. Hanmant s/o
Digambarrao Hambarde and others)

Mr.V.J.Dhage, Advocate for the petitioners.
Mr.P.N.Kutti, AGP for respondent Nos.5 and 6.
Mr.R.J.Godbole, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 01/10/2018

PER COURT :

1. The petitioner/Management is aggrieved by the impugned order dated 26/07/2018 passed by the School Tribunal, Latur. The directions issued in the said order read as under :-

“1, The application is allowed.

2. The written termination order dated 09/01/2016 is hereby quashed and set aside.

3. The appellant is reinstated on the post of assistant teacher from 09/01/2016 and deemed to be under suspension from said date.

4. Respondent Management to pay the amount of subsistence allowance to the appellant by depositing the same from 09/01/2016 till July 2018 in the Tribunal within 30 days from the date of the order.

5. Respondent management to pay the subsistence allowance from August 2018 onwards to the appellant directly.

6. Respondent Management to complete the enquiry within 120 days starting from 15/08/2018.

7. Parties to bear their own costs.”

2. Learned Advocate for the Management has strenuously criticized the impugned order to a limited extent of Clauses 4 and 5, by placing reliance on the judgment delivered by this Court at Nagpur in the matter of Bhartiya Seva Acharya Education Society, Nagpur and another Vs. School Tribunal, Nagpur and others [2014(2) Mh.L.J. 879].

3. Contention is that as the Management noticed that there are certain lacuna in conducting of the enquiry and the said enquiry would therefore be affected in view of Rules 36 and 37 of the M.E.P.S.Rules 1981, that it had moved an application Exh.48 seeking leave to conduct a *de-novo* enquiry, which has been wrongly interpreted by the School Tribunal. The Management had voluntarily withdrawn the enquiry so as to conduct a fresh enquiry in accordance with Rules 36 and 37. The Tribunal could not have directed the Management to pay subsistence allowance to the appellant. The view taken by this Court in Bhartiya Seva case (supra) is applicable in such situations. The employee would be entitled to

reinstatement only for the period of conducting the fresh enquiry. He would not be entitled for back wages and the question of payment of back wages would not arise as it would depend upon the final outcome of the fresh enquiry. This view was based on the judgment of the learned Full Bench of this Court in Saindranath Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha and another [2007(3) Mh.L.J. (F.B.) 753].

4. Learned Advocate for the original appellant has supported the impugned order.

5. The record reveals that the Management stated in the application Exh.48 that the enquiry suffers from procedural defects in view of Rule 36 and 37. The Management, therefore, prayed in Exh. 48 as under :-

“That, the present application may kindly be allowed, and respondents Management may kindly be permitted to start fresh enquiry of appellant by keeping the appellant under suspension. Accordingly the present matter may kindly be remanded back to the respondent management to start fresh enquiry in the interest of justice.”

6. I find from the judgment of this Court in *Bhartiya Seva* (supra)

that the law laid down by the Hon'ble Apex Court in the Vidya Vikas Mandal and another Vs. Education Officer and another [2007(3) Mh.L.J. 801] was not pointed out. In cases in which the enquiry is vitiated in view of non observance of Rules 36 and 37, the Hon'ble Apex Court has observed in paragraph Nos. 8 and 9 of Vidya Vikas (supra) as under :-

“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.* (Emphasis supplied)

7. It is, therefore, specifically laid down by the Hon'ble Apex Court that such an employee will be treated to be under suspension and he will be entitled to the subsistence allowance as per rules w.e.f. the date of termination of his service.

8. Since the law laid down in Vidya Vikas (supra) was not cited before this court in Bhartiya Seva (supra), the Court did not have proper assistance in deciding a similar issue. The learned Advocates appearing before this Court in Bhartiya Seva (supra), when WP No.1736/2012 was decided on 28/01/2014, have not rendered assistance to the Court by failing to cite the judgment of the Hon'ble Apex Court in Vidya Vikas (supra).

9. Mr.Dhage has then submitted that petitioners' case would not be covered by the Law laid down in Vidya Vikas (supra) for the reason that the petitioners did not invite a verdict of the Tribunal with regard to the fairness of the enquiry. Had the Tribunal set aside the enquiry, the consequences in view of the Law laid down in Vidya Vikas (supra) would have followed. Since the petitioners did not stretch the matter to the extent of the Tribunal setting it aside and since the Management voluntarily withdrew the enquiry praying for leave to conduct a denovo enquiry, Vidya Vikas (supra), would not be

applicable.

10. I do not find that the submissions of the petitioners deserve consideration. It was only when the petitioners realized that the enquiry had suffered serious deficiencies and the *Fait-Accompli* would be that it would be set aside, that the petitioners decided to withdraw from the litigation by giving up the enquiry. Even if the submissions of the petitioners are considered from another angle, the same still would not deserve consideration. If the Management has voluntarily withdrawn the enquiry, then the foundation for the impugned order of termination stands withdrawn and consequentially, the termination would also stand set aside. The Management cannot choose to withdraw the enquiry considering its own interests and cannot continue with the order of termination issued by it on the basis of the enquiry in which the appellant was held guilty.

11. In my view, whether the enquiry is set aside by the Tribunal for being vitiated or that the employer withdraws the enquiry on finding that it was likely to be vitiated, with the liberty to conduct a *denovo* enquiry, the Law laid down by the Hon'ble Apex Court in Vidya Vikas (supra) would be squarely applicable.

12. Considering the above, I do not find that the School Tribunal has committed any error in passing the impugned order dated 26/07/2018 to the extent of treating the appellant as being under suspension from 09/01/2016 and he being entitled to suspension allowance since then till the completion of the enquiry and the decision of the Management.

13. Learned Advocate for the petitioner submits that as the concerned Educational Institution is grant-in-aid and salary grants are received, it would forthwith submit the bills towards payment of suspension allowance as per rules for the period 09/01/2016 till July 2018 and even thereafter, expeditiously. The Education Department would sanction the bills.

14. Considering the above, the Management shall submit a flawless proposal to the Education department / respondent Nos. 5 and 6 with regard to the payment of suspension allowance of the appellant for the above stated period and from August 2018 as well within a period of 15 days. The concerned Department shall clear the said proposal within 15 days thereafter and shall initiate payment of

subsistence allowance as per rules, which is 50% for the first 4 months from 09/01/2016 till 08/05/2016 and then @ 75% of the pay scale inclusive of allowances as are payable to a candidate on duty for the period thereafter. In the event the Management has engaged any other person in place of the appellant and his salary has been paid through the salary grants, then the suspension allowance of this appellant shall be paid from the coffers of the petitioners/Management within 4 (four) weeks from today and it shall continue to pay even thereafter.

15. In the event, the proposal of the Management for payment of suspension allowance is found to be defective by the concerned Education Department, either the Management shall pay the entire subsistence / suspension allowance as a precondition for initiating the enquiry afresh as is agreed upon or shall not commence the enquiry till the entire suspension/subsistence allowance is paid to the appellant.

(Ravindra V.Ghuge, J.)

Kranti
Hansraj
Shekatkar

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by Kranti Hansraj
Shekatkar
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