

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.190 OF 2017

Gram Vikas Shikshan
Parishad and Anr. .. Petitioners.
Vs.
Shivaji Hindurao Kamble & Anr. .. Respondents.

**WITH
WRIT PETITION NO.1737 OF 2017**

Shivaji Hindurao Kamble .. Petitioner.
Vs.
Gram Vikas Shikshan
Parishad and Ors. .. Respondents.

Mr. N.V. Bandiwadekar for the petitioner in WP No.190/2017 and Mr. N.V. Bandiwadekar i/b Mr. Sagar A. Mane for respondent nos.1 and 2 in WP No.1737/2017.

Mr. Drupad Patil for the petitioner in WP No.1737/2017 and for respondent no.1 in WP No.190/2017.

Ms. Vaishali Nimbalkar AGP for the State.

CORAM : A.K. MENON, J.

DATED : 14TH FEBRUARY, 2018

JUDGMENT :

1. Rule. Rule returnable forthwith. By consent of parties, both petitions can be disposed of at the stage of admission. This common order

disposes of above two petitions. In Writ Petition No.190 of 2017 the petitioner challenges the judgment and order dated 21st November, 2016 passed by the School Tribunal, Kolhapur by which the impugned order of termination of respondent no.1-teacher was quashed and set aside and the matter was sent back to the management for imposition of appropriate penalty except termination from service and as specified under clauses of Rule 29 of the Maharashtra Employees of Private School Act, 1977 and Rules 1981 made there under (MEPS Act and Rules). In the interregnum the Management was directed to reinstate the respondent no.1-appellant within a period stated in the order. In Writ Petition No.1737 of 2017 the petitioner-employee challenges the very same judgment to extent that respondent no.1 herein was not granted back wages.

2. Mr. Bandiwadkar, learned counsel appearing for the petitioner submitted that the impugned order was bad in law and that the petitioner-management is required to follow the report and recommendation of the enquiry committee. In the present case the respondent no.1 was appointed on 2nd August, 1996 as an Assistant Teacher to the petitioner no.2-school. When respondent no.1 was appointed, he was holding the D.Ed qualification and was appointed in B.Ed category post, subsequently he acquired B.Ed. qualification. It

is contended that there were numerous complaints against respondent no.1 and despite sufficient opportunity given to him, his conduct did not improve as a result on 4th September, 2012 a show cause notice came to be issued to respondent no.1 setting out his unsatisfactory work, conduct and behaviour. 26 instances were set out and calling upon respondent no.1 as to why action should not be taken for his conduct.

3. A reply came to be filed on 18th September, 2012, the same was not satisfactory and it was decided to conduct departmental enquiry as contemplated under Section 36(2) of the said Rules. The charge-sheet came to be issued to respondent no.1 on or about 17th December, 2012. It contained 27 allegations of misconduct including those of moral turpitude, willful negligence in his duties and incompetence as contemplated in Rule 28(5)(a)(b)(c) and (d) of the said Rules. The management nominated their representative and also appointed a Awardee Teacher. Respondent No.1 was called upon to nominate his representative which he did.
4. The three member enquiry committee then conducted the proceedings. These proceedings were attended by respondent no.1. 15 witnesses were examined by the management and respondent no.1 cross examined witnesses of the management. Respondent No.1 filed a list of 21 witnesses whom he propose to examine but eventually

examined only 7 witnesses. No reasons are given for not examining other witnesses. 9 sittings were held by the enquiry committee at which respondent no.1 was present. The quorum was complete inasmuch as three member enquiry committee including respondent no.1's nominee was present. The combined enquiry report came to be issued on 3rd July, 2013 which held that all the charges of misconduct are proved by majority of 2 : 1. Since the committee held that the charges of misconduct are proved, the committee recommended dismissal of respondent no.1 from the services. The minority view was taken by the nominee of respondent no.1 who found that the charges had not been proved. Accordingly, the enquiry report came to be placed before the managing committee of the petitioner and its meeting dated 4th July, 2013, it was decided to accept recommendations of the enquiry committee and by the order dated 5th July, 2012 respondent no.1 was dismissed from the service with effect from 8th July, 2013 and he was also relieved on the same date.

5. Respondent No.1 being aggrieved, filed an appeal before the School Tribunal, Kolhapur under Section 9 of the said Act and also filed an application for interim stay. No interim stay was granted. By the impugned judgment, the appeal was partly allowed as aforesaid. Mr. Bandiwadekar, learned counsel for the petitioner submitted that the

impugned order was erroneous inasmuch as the management was merely required to accept recommendations of the enquiry committee and having accepted recommendations, there is no question of imposing any alternative punishment. He pointed out that the enquiry committee was constituted in accordance with law and there was no grievance whatsoever from respondent no.1 as to constitution of the committee or an opportunity not given to him to conduct the proceedings. In fact respondent no.1 was given and availed of an opportunity to cross examine all witnesses of the management. Respondent No.1 himself proposed to examine 21 witnesses but eventually examined only 7 witnesses for the reasons best known to him.

6. According to Mr. Bandiwadekar under Rule 37(6) of the Rules the management is only required to follow recommendations of the enquiry committee and had no discretion. In the instant case, the enquiry committee had recommended dismissal of respondent no.1 and this recommendation has been accepted. It is therefore submitted that the impugned order is bad in law and having found respondent no.1 guilty of the charges, there is no question of imposing alternate punishment. He submitted that the memo of appeal filed before the School Tribunal did not contain any substantial challenge referring to the impugned order. The constitution of an enquiry committee was

legal and proper as can be seen from the findings in the impugned judgment which held that the respondent no.1 had not proved that the enquiry was in violation of the principles of natural justice. It, however, proceeded to hold that the decision of the enquiry committee was erroneous and that termination order is required to be set aside and in doing so the School Tribunal has proceeded to examine each and every charge and discussed the merits of the same.

7. Mr. Bandiwadekar submitted that there is no occasion for the School Tribunal to reopen the issues that had been concluded by the enquiry committee. Respondent No.1 was found guilty of misconduct during the enquiry which had resulted in dismissal that the School Tribunal exceeded its jurisdiction and re-appreciating evidence of each of the charges and having recorded its own findings. Reliance was placed upon a decision of the Supreme Court in the case of *Administrator of Dadra and Nagar Haveli vs. H.P. Vora* 1993 Supp. (1) SCC 551 in which the Supreme Court had quoted from the judgment of *B.C. Chaudhari vs. Union of India & Ors.* (1995) 6 SCC 749. He relied upon decision of the Single Judge of this Court in *Sudarshani Damdjuji Thool Vs. Presiding Officer, Additional School Tribunal, Nagpur & Ors.* 2009(4) Mh.L.J. 210 which dealt with imposition of major penalties and procedure laid down under Rules 33 and 37 of the MEPS Rules which held that the management has to implement a decision of the

enquiry committee. Reliance is also placed on the decision of this Court in *Kashiram Rajaram Kathane vs. Bhartiya R.B. Damle Gram Sudhar Tatha Shikshan Prasari Society and Ors.* 1997 (3) Mh.L.J. 235 emphasizing that the enquiry committee was authorised to take final decision and it was duty of the management to implement it with recommendation of the enquiry committee and was not recommendatory in nature and therefore the management had no option but to implement decision of the enquiry committee. Mr. Bandiwadekar also invited my attention to the decision of this Court in case of B.C. Chaturvedi (supra) and decision of this Court in case of *High Court of Judicature at Bombay vs. Udaysing Ganpatrao Naik Nimbalkar* 1997 (2) Mh.L.J.578 which involves the case of disciplinary enquiry in which law on the nature of the imposition or penalties has been summed up and the decision of this Court in *Shivaji Education Society Vs. Presiding Officer, School Tribunal & Anr.* 2001 (Supp.) Bom.C.R. 400 in which the scope of jurisdiction of the School Tribunal has been considered. He therefore submitted that in the present case the School Tribunal has accepted the authority and the impugned order was bad in law.

8. On behalf of respondent no.1 Mr. Patil, learned Advocate submitted that the order of Tribunal did not require any interference. According to him the petitioner had malafide intention of terminating the services

of respondent no.1, who had attempted to bring changes in administration of the affairs of the school. Petty issues were blown out of proportion and consideration of the enquiry committee was intended to ensure his termination. Mr. Patil submitted that the enquiry was initiated with specific intention of terminating services of respondent no.1 and the allegations were baseless. The respondent no.1 has completed its syllabus and was taking extra lectures. According to Mr. Patil the learned counsel for the respondent no interference was called for in the petition no. 190.

9. Mr. Patil submitted that the respondent no.1 has filed a companion Petition being Writ Petition No.1737 of 2017 wherein respondent no.1 herein challenges the impugned order to the extent that back wages has been denied. He submitted that there was no occasion for the School Tribunal to deny him back wages and specifically when it found that punishment was disproportionate and had directed reinstatement of respondent no.1 with continuity of service. Mr. Patil submitted that apart from the fact that all allegations in the show cause notice were baseless, the constitution of the committee was illegal and no proper opportunity was given to lead evidence to respondent no.1. The enquiry committee relied upon documents which were not proved. Allegations of poor character has been made against the President of the petitioner. According to Mr. Patil,

respondent no.1 was a meritorious person and had made sincere efforts at teaching and he therefore submitted that the impugned order requires no interference to extent of reinstatement and continuity of service. Mr. Patil therefore submitted that Writ Petition No.190 of 2017 is liable to be dismissed and Writ Petition No.1737 of 2017 is liable to be allowed. Essentially five submissions were advanced by Mr. Patil on behalf of the respondent no.1 viz (i) the enquiry committee was not properly constituted, (ii) the constitution of the committee was such that it would ensure termination of the petitioner's services, (iii) the respondent was not given proper opportunity to lead evidence, (iv) the allegations were baseless and . (v) there were serious allegations against the President of the petitioner in Writ Petition 190.

10. Having heard learned counsel for the parties at length, On the aspect of constitution of the committee, I note that the respondent has appointed his own nominee, who was part of the enquiry committee. Initially, it appears objection was taken to appointment of the State Awardee teacher who was part of the committee. This nominee came to be replaced. The constitution of the enquiry committee was not subject matter of challenge thereafter. One of the points for determination framed by the School Tribunal was whether the constitution of the enquiry committee was legal and proper. This

point has been answered in the affirmative to the effect that the constitution of the committee was found to be legal and proper.

11. The issue whether the enquiry was in violation of the principles of natural justice has been answered in the negative. Thus, these two points having been answered in favour of the management, the least one would have expected for the respondent no.1 was to challenge these findings in Writ Petition No.1737 of 2017, however, none of the grounds taken in the petition of respondent no.1 seeks to assail the constitution of the committee. The entire focus in the petition is challenge to denial of back wages and the fact that the respondent was not working in any other institution after termination of services but was pursuing remedies available to him in challenging action of the management.

12. As far as the other challenge mounted by Mr. Patil viz the intention to terminate services of respondent no.1. This submission deserves to be rejected since apart from a bare allegation there is nothing on record whatsoever to suggest that the enquiry committee was constituted with intention to terminate services of respondent no.1. Thus, in my view there is no substance in challenge to the impugned order that the enquiry committee was formed with a sole intention of terminating the services of respondent no.1. It is also held that the School Tribunal found that the enquiry committee was constituted

legally and properly and that there was no violation of the principles of natural justice.

13. The third submission of Mr. Patil is that inadequate opportunity was given to respondent no.1 to lead evidence. There is nothing on record to show that the respondent no.1 was in any manner prevented from leading evidence. On the other hand, the impugned order records in paragraph 16 that the management had filed a list of witnesses and had examined 15 witnesses to substantiate their case. The respondent no.1 participated in the enquiry and had given a list of 21 witnesses but he examined only 7 witnesses and thereafter submitted purshis for closing his evidence.

14. The respondent no.1 had cross examined witnesses of the management whose identities were known before hand when the management filed a list of witnesses. Thus, in my view there is no denial of an opportunity to lead appropriate evidence in support of respondent no.1's case. It is surprising that the respondent no.1 has made this averment in the petition, even when the impugned order was in his favour, save and except for the issue of back wages

15. In his affidavit in reply filed in Writ Petition No.190 of 2017, the respondent no.1 has relied upon a decision of the Supreme Court in *S.R. Tewari vs. Union on India and Anr. (2013) 6 SCC 602* on the aspect that punishment is proportionate to the misconduct. In the

rejoinder, the contents of the reply have been denied which reiterates that misconduct had been proved which include the charge of moral turpitude. It is not necessary to elaborate various charges at this stage since the enquiry committee had given its findings which are binding on the management. The contents of the reply have been denied. The provisions of Rule 37 provides for procedure of enquiry which requires the management to prepare the charge-sheet containing specific charges and that the employee is given hearing. The enquiry committee is required to ensure that reasonable opportunity is provided to the employee for its defence including the matter of examination of the witness.

16. As far as Rule 37(6) is concerned, it clearly provides that the enquiry committee shall complete the inquiry and communicate its finding on the charges against the employee and its decision on the basis of these findings to the management and further procedure to be adopted. Rule 6 reads as follows :

“37. Procedure of inquiry :

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its 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 or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgment due. **Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgment due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.**" (emphasis supplied)*

17. Rule 6 is meant to set out the procedure to be followed by the management in respect of specific action to be taken against the employee or the Head of the Institution. It inter alia provides that the decision of the enquiry committee shall be implemented by its management which shall issue necessary orders within seven days of

decision. In this respect in the case of ***Sudarshani (supra)*** this Court has already held that the decision about the penalty to be imposed, has to be taken by the enquiry committee and has to be communicated to the management. The management is required to implement such decision. The Act and Rules does not empower the management to take decision as to what punishment or penalty should be imposed. In ***Kashiram Rajaram Kathane*** (supra) the Division Bench of this Court has held that the role of the committee is not really recommendatory but it was an authority to take final decision on imposition of the penalty and the management was required to carry out the decision of the enquiry committee. It was only when the enquiry committee could not come to the conclusion or decide as to what penalty should be imposed, the Director of the Education would be required to exercise the powers under Section 4A of the Act after hearing the employee and the management and take a decision and the appropriate penalty may be awarded.

18. In *B. C. Chaturvedi* (supra) the Supreme Court reiterated that judicial review is not an appeal from a decision but a review of the manner in which the decision was made. Power of judicial review does not entail that the Court shall act as Appellate Authority. In the instant case the Tribunal has undoubtedly acted as an Appellate Authority having re-appreciated the evidence. Furthermore, in case

of Udaysing Ganpatrao Naik Nimbalkar (supra) the Supreme Court observed quoting from paragraph 18 of B.C. Chaturvedi (supra) that summing up the law on the nature of imposition of the penalties and holding that the disciplinary authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline and they are invested with discretion to impose appropriate punishment keeping that view the magnitude or gravity of the misconduct.

19. Thus, in my view the order of the Tribunal is clearly uncalled for to the extent it seeks to re-appreciate evidence and come to its own conclusion while reducing the penalty. Even otherwise the reduction of penalty in the present case has resulted in a unprecedented situation where the management is called upon to decide the penalty other than dismissal from service. In the face of recommendation of the enquiry committee, in the facts of the present case it was not open for the Tribunal to direct the management to take an appropriate decision. In the case of ***Shivaji Education Society*** (supra) the learned Single Judge of this Court (as he then was) has observed that the jurisdiction of the Tribunal was to decide the appeal and conclude whether the order of dismissal, removal or termination of service or reduction in rank was in contravention of law or contract or conditions of service and the expression “otherwise illegal or

improper” does not permit the Tribunal to enlarge the scope of enquiry by re-appreciating the evidence of witnesses. In view of the aforesaid judicial pronouncements it leaves no manner of doubt that the Tribunal has exceeded its powers in having passed the impugned order. The impugned order cannot be sustained and deserves to be set aside.

20. I, therefore, pass the following order:

- (i) In Writ Petition No.190 of 2017 Rule is made absolute in terms of prayer clause (b). Writ petition is disposed of.
- (ii) In view of disposal of Writ Petition No.190 of 2017, Writ Petition No.1737 of 2017 does not survive and the same is also disposed of.
- (iii) No costs.

(A.K. MENON,J.)