

sarnobat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2979 OF 2017

Bhavsar Ragen Mahendrakumar.

... Petitioner

vs.

Janseva Samiti & Ors.

... Respondents

.....

Mr. Ramanathan C. Sadasivan for the Petitioner.

Mr. Shaikh Nasir Masin a/w Mr. Vishal K. Jagwani for Respondent no.1. and 2.

Mr. Kedar Dighe, AGP for Respondent No. 3 State.

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CORAM : A.K. MENON, J.**DATE : 17th JANUARY, 2018****P. C.**

1. In this writ petition the petitioner has sought to challenge the order dated 23rd June, 2017 passed by School Tribunal, Mumbai rejecting the appeal of the petitioner challenging the findings of Inquiry Committee pursuant to show cause notice dated 15th September, 2015.

The brief facts are as follows :

2. The petitioner who was an employee of the 2nd respondent of registered trust. He joined the Jr. College on 1st July, 1999 as a full time Assistant Teacher. He was thereafter confirmed in service and continued to being in service for about 15 years. On 15th September, 2015 a show cause notice came to be issued to the petitioner in

view of allegations that the petitioner had committed various acts of misconduct. Subsequently, a charge-sheet came to be filed on 20th November, 2015 stating out the various charges against him.

3. On or about 2nd December, 2015 the respondent nominated two persons to be members of the committee. The petitioner was called upon to nominate his representative on the committee which he did. Accordingly, a committee came to be constituted. It is the grievance of the petitioner that initially the respondent no. 3 intended to lead evidence, but after filing a compilation of 85 documents, the management decided against leading oral evidence. According to him in anticipation of evidence led by the respondent he was desirous of examining two witnesses but he was not permitted to do so. His nominee on the committee also could not attend on account of personal problem faced by him and the inquiry proceedings concluded and made its findings and recommendations in the absence of his nominee.

4. Mr. Sadasivan submits that the School Tribunal has proceeded on the basis that Tribunal has no power in the instant case to permit the petitioner to lead evidence, whereas the fact is to contrary. Mr. Sadasivan submitted that the petitioner could not have been prevented from leading the evidence . He relied upon the following judgments :-

- 1) 1987 (3) Bom. C.R. 307, *Krishna Chandra Sharma Versus Sind Hyderabad National Collegiate Board and others*;
- 2) The judgment of this Court in *Appeal No. 512/1988 dated 18th October, 1989* on the aspects of power of the Tribunal.

5. The case is of the challenge to finding of an Inquiry. He submitted that the committee ought not to have proceeded in the manner by depriving him of an opportunity to lead evidence. He contended that the impugned order is bad and deserves to be set aside and the matter should be remanded back to enable his client to lead evidence.

6. In the course of inquiry on or about 23rd December 2015 the management intimated the petitioner that on account of charge of the committee members the inquiry would be started de novo and in response on 30th December, 2015 (Exhibit D/1) the petitioner had objected to the procedure earlier followed by inquiry committee but continued with his nomination of Mr. Singh on the committee. In view of the new inquiry proposed to be initiated he requested that the earlier record be treated as disposed and the present process be treated as the starting point. Thus second charge-sheet came to be served to him.

7. In response to the second charge-sheet which was also served upon the petitioner on or about 25th January, 2016 the petitioner responded on 27th January, 2016 (Exh.E/1) adopting explanations already filed with reply to the statement of allegations by his earlier letter dated 30th December, 2015. The nominee of the petitioner repeatedly failed to attend and the impugned order came to be passed.

8. I have heard the counsel at length and in the course of his hearing and with his assistance he has taken me through the charge-sheet and related documents and the findings of the Inquiry Committee. The record reveals that the allegations were

sought to be established with the documentary evidence indicating that the petitioner was working full time, simultaneously, in two junior colleges without permission and secondly, that he was found guilty of behaving rudely with students in academic sessions. Yet another charge is that he has damaged the property of management by driving a four wheeled vehicle in the college campus without having license under the Motor Vehicles Act.

9. In this respect necessary complaints were made to the local police station and for which the Petitioner was fired. The Respondent relied on 85 documents which are listed in the petition. It is not the case of the petitioner that these documents were not furnished to him, since these documents inter se correspondence between management and the petitioner. The findings revealed that the summary of the proceedings were served on 1st April, 2016. On 16th February, 2016 two letters had been submitted by the Petitioner. These were also taken into consideration by the committee. On the aspect of being deprived of the opportunity to lead evidence, I called upon Mr. Sadasivan to point out at what stage he had made such request. To this Mr. Sadasivan stated that by letter dated 6th April, 2016 addressed to the convener of the inquiry committee in which he had expressed his desire that in case the management does not want to examine witnesses, he should be at least permitted to cross examine them who included (I) the principal of the college and other two witnesses named in paragraph 2(e). He also offered to examine two witnesses in his defence. Both of them are assistant teachers in the college but this was restricted to the complaint, pertaining to the allegation that he was in the habit of leaving the college premises after recording

his attendance and returning after a period of 20-25 minutes. Evidence was not intended to be led to disprove the other allegations.

10. Having considered the submissions and the record it is evident that till the draft of the summary received by the petitioner on 1st April, 2016 he was not desirous of leading evidence. Therefore, request seeking liberty to lead evidence is dated 6th April, 2016. The impugned order in my view has considered all aspects that have been raised by the parties. The impugned order of dismissal of the appeal has considered all aspects of the petitioner's defence. The finding of the enquiry or the impugned order cannot be termed as perverse or otherwise illegal. There is no case for interference. In the circumstances, I pass the following order :-

(i) Writ Petition is dismissed.

(ii) No orders as to costs.

(A.K. MENON, J.)