

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.8238/2017

Deepak Govindrao Yedatkar

..Vs..

Shikshan Prasarak Mandal, Pusad, Tah. Pusad, Distt. Yavatmal and others

AND WRIT PETITION NO.243/2018

Shikshan Prasarak Mandal, Pusad, Tah. Pusad, Distt. Yavatmal and another

..Vs..

Dipak Govindrao Edatkar and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.D. Wakode, Advocate for the petitioner.
Shri P.S. Chawhan, Advocate for respondent Nos.1 and 2.
Shri A.M. Kadukar, A.G.P. for respondent No.3. (in W.P. No.8238/2017)

Shri P.S. Chawhan, Advocate for the petitioners.
Shri P.S. Patil, Advocate for respondent No.1.
Shri A.M. Kadukar, A.G.P. for respondent No.2. (in W.P. No.243/2018)

CORAM : Z.A. HAQ, J.

DATE : 16.1.2018.

1. Heard.
2. Both these petitions are disposed by common order as the petitions arise out of the same order passed by the School Tribunal.
3. The petitioner in Writ Petition No.8238/2017 has been admittedly working in the school administered by the Society (respondent No.1 in Writ Petition No.8238/2017) since 1992 and at the relevant time had been the Headmaster of the school. On a complaint made by a female student of class 9 of the school, charge-sheet came to be issued to the employee and after

conducting the enquiry, the three members of enquiry committee submitted the report. Each member arrived at a different conclusion regarding the penalty to be imposed on the employee. The representative of the employee proposed that penalty should not be inflicted on the employee. The representative of the Management proposed that that the services of the employee should be terminated. The State awardee teacher proposed that the employee should be compulsorily retired.

The Management accepted the recommendation of the State awardee teacher and by the order dated 14th February, 2017 retired the employee compulsorily.

4. The employee challenged this order of compulsory retirement in appeal before School Tribunal. The appeal is pending. The employee had also filed an application praying for interim order which is disposed by the impugned order. The Tribunal has granted interim relief in favour of the employee. The effect and operation of the order dated 14th February, 2017 is stayed, however, it is directed that the employee shall not be permitted to join the duty and that the employee will be entitled for only 25% of the salary every month from March, 2017 till disposal of the appeal. The employee being aggrieved by the order passed by the Tribunal directing that he will not be permitted to join the duty and he will be entitled for only 25% of the salary, has filed Writ Petition No.8238/2017. The Management being aggrieved by the order passed by the

Tribunal granting stay to the effect, operation and implementation of the order dated 14th February, 2017, has filed Writ Petition No.243/2018.

5. The employee would be retiring on 31st January, 2018, attaining the age of superannuation.

6. The submission on behalf of the employee is that the penalty of compulsory retirement is not provided under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short "the Rules of 1981") and in any case, the decision to retire the employee compulsorily is not of majority of members of the enquiry committee, and it being so and the Tribunal having found that the order dated 14th February, 2017 is required to be stayed, the Tribunal should not have directed that the employee should not be permitted to join the duty and that the employee would be entitled only for 25% back-wages. The employee has prayed that the order passed by the Tribunal be modified so that the employee can report on duty before he retires so that after 25 years of service, he can retire honourably.

7. The learned Advocate for the Management has submitted that the Tribunal has committed an error by granting stay to the effect, operation and implementation of the order dated 14th February, 2017 overlooking the fact that serious charges are found to be proved against the employee. It is submitted that in any

case, the prayer of the petitioner for reinstatement cannot be granted looking to the charges against him and that there are about 1000 female students in the school.

8. As the appeal is pending before the Tribunal, it would not be appropriate for this Court to delve into the merits of the matter. The emotional appeal made by the employee that if he is reinstated he will retire with honour, after 25 years of service, also cannot be considered, at this stage.

9. However, on *prima facie* consideration, I find that the punishment of compulsory retirement is not provided under the Rules of 1981 and it is proposed by only one out of three members of enquiry committee. This aspect has weighed with the Tribunal for granting interim order in favour of the employee. The considerations of the Tribunal for grant of interim order in favour of the employee are based on proper appreciation of the Rules of 1981 and cannot be faulted with. I see no reason to modify the order passed by the Tribunal insofar as the effect, operation and implementation of the order dated 14th February, 2017 is stayed.

10. Considering the charges which were framed against the employee, and as the matter is pending for consideration on merits before the Tribunal, in my view, it would not be appropriate to grant prayer made on

behalf of the petitioner that he be permitted to report on duty, as it is always the choice of the Management to keep the employee under suspension, the obligation on the Management being that it will have to pay full salary to the employee.

11. In view of the above, the following order is passed:

(i) It would be the discretion of the Management to permit the employee to report on duty or to keep him away from work, however, the Management will have to pay full salary of the employee from 1st March, 2017 till he attains the age of superannuation. The entitlement of the employee to receive full salary is upheld as it is undisputed that the enquiry was not completed within 120 days as laid down by Rule 37(2)(f) of the Rules of 1981 and the permission sought by the Management to continue with the enquiry beyond 120 days keeping the employee under suspension was rejected by the Education Officer. The employee is entitled for full salary to be paid by the Management.

The impugned order is modified accordingly.

The writ petitions are **disposed** in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE