

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.716 OF 2000

Himayat Pasha s/o Chand Saheb Mujawar,  
aged 51 years, Occu. head master,  
(since dismissed), R/o Surangali,  
Tq. Bhokardan, Dist. Jalna.

... Petitioner

Vs.

1. Kashi Vishweshwar Shikshan Prasarak  
Mandal, Surangali, Tq. Bhokardan,  
Dist. Jalna through its Secretary.
2. Kashi Vishweshwar Vidyalaya, Surangali,  
Tq. Bhokardan, Dist. Jalna through  
its Senior Clerk.
3. the Education Officer (Secondary),  
Zilla Parishad, Jalna.
4. The Zilla Parishad, Jalna through  
its Chief Executive Officer,  
Jalna.
5. Pandurang s/o Krishnath Jadhavar,  
aged 51 years, Occu. Service,  
R/o Surangali, Tq. Bhokardan,  
District Jalna.

... Respondents

Advocate for Petitioner : Shri A. V. Patil Indrale  
Advocate for Respondent Nos. 1 & 5 : Shri R. K. Jadhavar  
AGP for Respondent No. 3 : Shri N. T. Bhagat

CORAM : RAVINDRA V. GHUGE, J.  
DATED : MAY 9, 2019

ORAL JUDGMENT :-

1. This matter was heard extensively on 7.5.2019. The synoptical notes / submissions tendered by the parties were also considered.

2. After considering the submissions of the learned advocates and on perusing the record and proceedings of the School Tribunal which are before this Court, it was quite obvious that the departmental enquiry conducted by the management was against the procedure set out under Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. In this backdrop, the enquiry would have been required to be declared as vitiated and considering the law laid down by the Hon'ble Apex Court in the matter of **Vidya Vikas Mandal & Anr. Vs. Educational Officer & Anr.** 2007 DGLS(SC) 123, the employee would have to be treated as being under suspension from the date of his dismissal, entitling him to suspension allowances, with liberty to the management to conduct a de novo enquiry.

3. Paragraphs 9 and 10 of the Vidya Vikas Mandal & Anr. Vs. Education Officer & Ors. judgment (supra) read as under :

*“9. 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.*

10. 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. ”*

4. Considering the above, the options available to the litigating sides were as follows :

(a) The employee, who has already attained the age of superannuation, would claim entire suspension allowance and subject himself to a de novo enquiry.

(b) The management would be liable to pay the entire suspension allowance, from the date of dismissal of the employee, by applying the “Relation Back Theory”.

5. In this situation, the learned advocates for the employee and the management sought time to take instructions and the matter was posted today to enable them to address this Court on the basis of the instructions received.

6. Today, the learned advocate for the management submits,

on instructions, that if the employee waives the entire suspension allowance from the date of his dismissal till the date of his superannuation, the management is agreeable to grant continuity of service to him and treat him as being reinstated in service which would entitle him to all retiral and pensionary benefits, including gratuity.

7. Learned advocate for the employee submits, on instructions, that the said proposal is acceptable to him. Since, he has superannuated in 2007, at the age of 58, he would prefer to avoid the rigours of a de novo enquiry after 12 years of retirement, when he is already 70 years of age.

8. It is pointed out that an employee, by name Pandurang Krishna Jadhavar, who was inducted in place of the employee petitioner at issue, namely, Himayat Pasha Chand Saheb Mujawar, had preferred Writ Petition No. 5519 of 2008 before the learned Division Bench claiming approval to his proposal and pensionary benefits. By order dated 22.9.2008, the learned Division Bench issued a direction that the State / Management would pay the provisional pension to the said petitioner Mr. Jadhavar and to revise the same in accordance with law.

9. Considering the above, this petition is disposed off by recording the statements of the learned advocates for the employee and the management, made on instructions. Rule is discharged.

10. The petitioner employee Mr. Himayat Pasha Chand Mujawar

would, therefore, be entitled to continuity of service from the date of his dismissal dated 25.9.1996 till his superannuation in 2001. He would be entitled for gratuity and pensionary benefits. This would not be an impediment in the path of Shri Pandurang Jadhavar, in so far as his eligibility for regular pension and gratuity is concerned. Consequentially, the impugned judgment of the School Tribunal dated 16.12.1999 in Appeal No. 320 of 1996, would lose its efficacy.

11. The management shall, therefore, submit the proposal of the petitioner Mr. Himayat Pasha Chand Mujawar for fixing his pensionary benefits and payment of gratuity, to the concerned Pensioner Officer, within a period of six weeks from today. In the event, if any faulty proposal is forwarded, the management shall be guilty of dis-obedience of the directions of this Court. After Education Officer receives the proposal, he would sanction the same in the light of this order within six weeks.

(RAVINDRA V. GHUGE, J.)

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