

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8387 OF 2019
WITH WP/8561/2019

BHARAT SARVA SEVA SANGH TRUST PACHEGAON THROUGH ITS
SECRETARY AND ANOTHER
VERSUS
RAMKRUSHNA NAMDEO ALIAS DNYANDEO GHAWATE AND
ANOTHER

Mr.P.S.Pawar, Advocate for the petitioners.
Mr.V.D.Sapkal with Mr.A.B.Jagtap, Advocate for respondent No.1.
Mr.N.T.bhagat, AGP for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/10/2019

PER COURT :

1. On 04/09/2019, this Court had passed the following order :-

“1. The first petition is filed by the Management/Educational Institution and the second petition is filed by the employee, who was the original appellant before the School Tribunal.

2. The issue involved in this matter is that the Management alleged against the appellant that he had eloped with a minor girl student from the School. The whole village swooped down upon the school and locked the Management officials demanding action. A law and order situation arose and the Management was left with no option but to terminate the services of the appellant forthwith to salvage the situation. The appellant was in police custody for 12

months and has been subsequently acquitted by the Court in a criminal case.

3. The learned Advocate for the appellant relies upon the judgment of the Hon'ble Apex Court in the matter of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, [(2013)10 SCC 324 = AIR 2014 SC (Supp) 121] and the judgment delivered by the Single Judge of this Court in the matter of Jairam Mahadeo Shende Vs. Zilla Parishad, Bhandara Through Chief Executive Officer, in WP No.22/2015 dated 26/11/2018. Contention is that if there is no offence made out, there is no reason for conducting an enquiry and full back wages have to be granted.

4. It is a settled position of Law that if an employer is unable to conduct a domestic/departmental enquiry, a speaking order has to be passed listing out the reasons for being unable to conduct the enquiry and the circumstances warranting immediate termination of the employee. The right to conduct an enquiry is therefore to be reserved if the employee approaches the Court. In view of the Law laid down by the Hon'ble Apex Court in the matter of Shambhu Nath Goyal Vs. Bank of Baroda [AIR 1984 SC 289] and Bharat Forge Company Ltd., Vs. A.B.Zodge and another [AIR 1996 SC 1556], a case of no enquiry would be at par with the case in which the enquiry is set aside for being vitiated.

5. The Hon'ble Apex Court has concluded in matters of an enquiry being vitiated and set aside in the case of Vidya Vikas Mandal and another Vs. Education Officer [2007(3) Mh.L.J. 801] and has concluded in paragraph Nos. 8 and 9, which read 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.”

6. The learned Advocate for the Management seeks time to take instructions, in view of the settled Law, as to whether the Management would conduct an enquiry subject to the observations of the Hon'ble Apex Court in Vidya Vikas (supra).

7. Stand over to 21/09/2019, to be taken up after the fresh admission board is over.

8. The parties shall note that these matters are likely to be heard finally at admission stage.”

2. The learned Advocate for the Management submits today that the Management has gone through the above order and has also gone through the Law laid down by the Hon’ble Apex court in the matter of Vidya Vikas Mandal (supra). It has sought permission from the Education Department to place the employee under suspension.

3. In view of the above, both these petitions are disposed off. The impugned order dated 26/04/2019 shall lose its efficacy in view of the above and the order of termination dated 19/07/2014 shall be rendered non existent. Hence, I am issuing the following directions :-

[a] The appellant/employee shall be deemed to be reinstated in service from 19/07/2014 and shall be deemed to be placed under suspension from the said date.

[b] The Management shall comply with Rules 36 and 37 of the MEPS Rules, 1981 scrupulously and shall follow the procedure laid down in the said Rules.

[c] Though the Management would initiate the proceedings strictly as per Rules 36 and 37, the actual recording of evidence in the enquiry shall not commence until the Management has paid the

subsistence allowance to the employee w.e.f. 19/07/2014 in accordance with the Rules and shall not delay the payment on the pretext that the bills for making such payments are pending with the Education Department. Such outstanding suspension allowance shall be paid within 4 weeks from today from the account of the Management and they are at liberty to set off the said payment through the amounts received on approvals granted by the Education Officer for payment of such subsistence allowance.

[d] Subject to the above conditions, the employee would not unnecessarily delay the proceedings and shall co-operate in the expeditious conducting of the enquiry in accordance with the rules.

(Ravindra V.Ghuge, J.)