

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13137 OF 2018

The President Rajarshi Chatrapati Shahu Shikshan Prasarak Mandal and anr.	.. Petitioners
Vs.	
Nitin Kundlik Salokhe and ors.	.. Respondents

Mr.Kedar P. Lad, for the Petitioners.
Mr.Prajakt M. Arjunwadkar, for Respondent No.1.
Ms.M.S.Bane, AGP for Respondent No.2- State.

CORAM : M.S.KARNIK, J.

DATE : 04th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith by consent of the parties.

2. Heard learned Counsel for the parties. By this Petition filed under Article 227 of the Constitution of India, the petitioner – Rajarshi Chatrapati Shahu Shikshan Prasarak

Mandal challenges the judgment and order dated 11/10/2018 passed by Presiding Officer, School Tribunal, Kolhapur.

3. The petitioner is an educational institution registered under the provisions of the Bombay Public Trust Act. Respondent No.1 was working as a peon with the petitioner No.2 – School . Respondent No.1 in Appeal before the School Tribunal contended that when on 29/06/2015, he went to join the duties, respondent No.2 did not allow him to sign the muster and even did not allow him to work in School. He further contends that despite repeated requests made by him to allow him to join duties, he was not allowed to do so. It is averred that on 17/07/2015, he sent a letter to the petitioner No.2 with a request to allow him to resume duties. By letter dated 22/07/2015, petitioner No.2 responded that since respondent No.1 was absent from duties for 15 days and despite intimation to the respondent No.1 to join duties, there was no response from him. It is the case of respondent No.1 that he was orally terminated with effect from 29/06/2015.

4. Before the School Tribunal, the petitioners contended that with effect from 29/06/2015, the respondent No.1 remained absent from duties. It is the case of petitioners that they never terminated services of respondent No.1. The petitioners intimated respondent No.1 to join duties on several occasions, but he chose to remain absent. According to the petitioners, the respondent No.1 was involved in conduct amounting to moral turpitude and in view of the serious allegations levelled by the villagers and senior citizens as regards the conduct of respondent No.1, he remained absent from duties. The case of the petitioners – Management is that respondent No.1 abandoned services.

5. Learned Counsel for the petitioners would contend that there are serious allegations levelled against the respondent No.1 by villagers and citizens from the area. He would contend that the complaints were made against the respondent No.1 and the nature of the complaints is so serious that the respondent No.1 remained absent and therefore, it is clear case of

abandonment of service. The allegations made pertain to respondent No.1 having an affair with a lady peon working in the same School. The complaints were made that the respondent No.1 and the lady concerned were living together in village Savarde without getting married. It is alleged that even during the school hours, there were behavioural issues as a result of the said affair. This conduct of the respondent No.1 came to the knowledge of the petitioners, students and their parents. On several occasions, respondent No.1 was summoned by the petitioners, senior citizens in village, parents of students in School. When confronted with these allegations, respondent No.1 avoided to join duties.

6. Learned Counsel for the petitioners would submit that in view of the serious allegations made against the respondent No.1, respondent No.1 avoided joining duties. This is a case of voluntary abandonment of service. Learned Counsel would submit that despite repeated requests, respondent No.1 did not join duties. Learned Counsel would further submit that

considering the serious nature of the allegations and conduct of the respondent No.1, the School Tribunal was not justified in allowing the Appeal directing reinstatement and back-wages only because the procedure as contemplated by Rules 36 & 37 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the said Rules') was not followed. Learned Counsel would further submit that in any case, assuming the School Tribunal came to the conclusion that the termination is invalidated as no proper procedure was followed, then in that case, the Tribunal should have granted liberty to the petitioners to hold an enquiry in accordance with the procedure laid down in the said Rules.

7. Learned Counsel for the respondent No.1 on the other hand, would support the order passed by the Tribunal. He submitted that the Tribunal was justified in holding that as the procedure required by the said Rules was not followed before effecting the termination, respondent No.1 deserves to be reinstated. Learned Counsel for respondent No.1 further would

contend that he had immediately by his communication dated 17/07/2015 requested the petitioner No.2 to allow him to resume duties. In the light of the allegation that the respondent No.1 has remained absent from 29/06/2015 coupled with the fact that by communication dated 17/07/2015, respondent No.1 made a request for allowing him to join duties, it cannot be said that this is a case of voluntary abandonment of service. In any case, he would submit that without being charged for unauthorised absence or otherwise, the petitioners were not justified in terminating the services of the respondent No.1.

8. Heard learned Counsel for the petitioners, learned Counsel for respondent No.1 and learned AGP on behalf of respondent No.3. I have also gone through the order passed by the Tribunal. The petitioners have made serious allegations that the respondent No.1 was having an affair with a lady peon working in the School. It is the case of the petitioners that respondent No.1 did not report for work after 29/06/2015. However, there is no dispute that on 17/07/2015, respondent

No.1 had sent a letter to the petitioners to allow him to resume duties. It is further not in dispute that the petitioner No.2 by letter dated 22/07/2015 informed the respondent No.1 that since 15 days he was absent from duties and therefore petitioner No.2 intimated him to join duties, but there was no response from him. Thus, it is obvious that this cannot be a case of abandonment of service.

9. The Tribunal in this view of the matter, looking at the allegations and the circumstances observed that the petitioners ought to have held an enquiry as per the procedure laid down in Rules 36 & 37 of the said Rules. It is not possible to find fault with this view of the Tribunal. The Tribunal has recorded a finding of fact that this is a case of otherwise termination effected without following due procedure of law. In this view of the matter, I do not find any reason to interfere with the well reasoned order of the Tribunal.

10. However, having regard to the serious allegations

levelled against respondent No.1, the petitioners are well within their rights to initiate enquiry in accordance with the provisions of the said Rules against respondent No.1. Learned Counsel for respondent No.1 submitted that it would be unfair if the petitioners are to hold enquiry of respondent No.1 at this juncture. In his submission, he has been sufficiently harassed. Even, the Tribunal refused back-wages. He would therefore submit that the Management has predecided the issue & therefore holding such an enquiry would be an empty formality.

11. Be that as it may, in my opinion, having regard to the serious allegations on record, if the Management is of the opinion, that an enquiry has to be initiated against respondent No.1 in accordance with the said Rules, they are well within their rights to do so. Obviously, it is for the Management to take appropriate decision. If upon reinstatement, respondent No.1 is to be placed under suspension, it is for the Management to take appropriate decision in accordance with the said Rules.

12. Subject to the observations made hereinabove, I do not find any error in the order of the Tribunal. The Petition therefore stands dismissed. Rule is discharged. No order as to costs.

(M.S.KARNIK, J.)