Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9772 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Shri Mahendra Gaikwad … Respondent

ALONGWITH
WRIT PETITION NO. 3585 OF 2019

Barnes School and Junior College … Petitioner
V/s.
Ashok Prabhakar Khajekar … Respondent

ALONGWITH
WRIT PETITION NO. 3589 OF 2019

Barnes School and Junior College … Petitioner
V/s.
Sanjay Ramkrushna Aher … Respondent

ALONGWITH
WRIT PETITION NO.9775 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Deelip Sitaram Gaikar … Respondent

ALONGWITH
WRIT PETITION NO.9776 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Laxman Jagan Tak … Respondent

ALONGWITH
WRIT PETITION NO.9777 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Nandu Baburao Ghorpade … Respondent

ALONGWITH
WRIT PETITION NO.9778 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Shekhar Ratan Shirsat … Respondent

ALONGWITH
WRIT PETITION NO.9779 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ravi Jagan Tak … Respondent

ALONGWITH
WRIT PETITION NO.9780 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ramdas Kundaji Zade … Respondent

ALONGWITH
WRIT PETITION NO.9781 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Rahul Pandurang Gaikwad … Respondent

ALONGWITH
WRIT PETITION NO.9782 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Neeta Suresh Wadangle … Respondent

ALONGWITH
WRIT PETITION NO.9783 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Somnath Baburao Mali … Respondent

ALONGWITH
WRIT PETITION NO.9784 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Leela Vasant Ghorpade … Respondent

ALONGWITH
WRIT PETITION NO.9785 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Vishal Ashok Salunke … Respondent

ALONGWITH
WRIT PETITION NO.9786 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sanjivani Keshav Nikam … Respondent

ALONGWITH
WRIT PETITION NO.9787 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sunil Murlidhar Hase … Respondent

ALONGWITH
WRIT PETITION NO.9788 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Deepak Shankar Gite … Respondent

ALONGWITH
WRIT PETITION NO.9789 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Mohan Shankar Tak … Respondent

ALONGWITH
WRIT PETITION NO.9790 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ashok Yashwant Waghchaure … Respondent

ALONGWITH
WRIT PETITION NO.9792 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Martha Ajit Netawate … Respondent

ALONGWITH
WRIT PETITION NO.9793 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sangeeta Ravindra Shejwal … Respondent

ALONGWITH
WRIT PETITION NO.9794 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sanjay Baburao Ghorpade … Respondent

ALONGWITH
WRIT PETITION NO.9795 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Prakash Baburao Ghorpade … Respondent

ALONGWITH
WRIT PETITION NO.9796 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ritesh Ashok Salunke … Respondent

ALONGWITH
WRIT PETITION NO.9797 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Shobha Sharad Dani … Respondent

ALONGWITH
WRIT PETITION NO.9798 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Archana Waghchaure … Respondent

ALONGWITH
WRIT PETITION NO.9799 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sulochana Dadaram Rokade … Respondent

ALONGWITH
WRIT PETITION NO.9800 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Radha Arjun Jadhav … Respondent

ALONGWITH
WRIT PETITION NO.9801 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Namdeo Bhikaji Bhalerao … Respondent

ALONGWITH
WRIT PETITION NO.9802 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Dnyaneshwar Kachru Ohol … Respondent

ALONGWITH
WRIT PETITION NO.9803 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Kailash Yashwant Waghchaure … Respondent

ALONGWITH
WRIT PETITION NO.9804 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Manoj Chotu Pawar … Respondent

ALONGWITH
WRIT PETITION NO.9805 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ramesh Nagurao Deshmukh … Respondent

ALONGWITH
WRIT PETITION NO.9806 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Mandakini Prakash Ghorpade … Respondent

ALONGWITH
WRIT PETITION NO.9807 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sanjay Budharam Lukat … Respondent

ALONGWITH
WRIT PETITION NO.9808 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Vinod Balu Chaudhari … Respondent

ALONGWITH
WRIT PETITION NO.9809 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sham Bhanudas Khadangle … Respondent

ALONGWITH
WRIT PETITION NO. 9810 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Devidas Kisanrao More … Respondent

ALONGWITH
WRIT PETITION NO.9811 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Renuka Rohidas Ubale … Respondent

ALONGWITH
WRIT PETITION NO.9812 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Sandeep Balu Shejwal … Respondent

ALONGWITH
WRIT PETITION NO.9813 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Krishnabai Sudam Bhalerao … Respondent

ALONGWITH
WRIT PETITION NO.9814 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ranjana Rajendra Jadhav … Respondent

ALONGWITH
WRIT PETITION NO.9815 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Dattu Ganpat Aher … Respondent

ALONGWITH
WRIT PETITION NO.9816 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Vinayak Kashinath Jadhav … Respondent

ALONGWITH
WRIT PETITION NO.9817 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ramratan Tejram Puniya … Respondent

ALONGWITH
WRIT PETITION NO.9818 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Jagan Chimaji Bhade … Respondent

ALONGWITH
WRIT PETITION NO.9819 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Rama Bhaskar Unawane … Respondent

ALONGWITH
WRIT PETITION NO.9820 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Kalu Kondaji Gaikar … Respondent

ALONGWITH
WRIT PETITION NO.9821 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Shri Bomi Sitaram Naidu … Respondent

ALONGWITH
WRIT PETITION NO.9822 OF 2018

Barnes School and Junior College … Petitioner
V/s.
Ajay Jagan Sasane … Respondent

Mr.Arshad Shaikh a/w Mr.Aditya S.Bhat i/b M/s.Sanjay Udeshi & Co., for the Petitioner.
Mr.Sagar A. Rane, Legal Aid Counsel, for Respondent in all Writ Petitions except WP/9787/18.
Mr.Amit A.Gharte, for Respondent in WP/9787/18.

CORAM : M.S.KARNIK, J.

DATE : 01st APRIL, 2019

P.C. :

. Rule. The respondent waives service. By consent, Rule made returnable forthwith and heard finally.

2. Though the Industrial Tribunal at Nashik had passed separate orders below every application preferred on behalf of the respondents- workmen, the issue involved is common. Since common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by this common order. For the purpose of appreciating the controversy raised between the parties, facts from Writ Petition No. 9772 of 2018 are taken into consideration.

3. The petitioner filed an application under section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'Act') before the Industrial Tribunal at Nashik (hereinafter referred to as 'Tribunal' for short). It was contended by the petitioner – School that it is managed by the Bombay Education Society and is a minority educational institution. The respondent came to be issued with a charge-sheet dated 26/04/2016 for serious acts of misconduct mentioned therein. An inquiry was conducted into the alleged acts of the misconduct. It is the contention of the petitioner that inquiry was conducted after following principles of natural justice. The inquiry officer submitted the findings. The services of the respondent were terminated by way of dismissal order dated 16/09/2016 for the reasons stated in the letter of dismissal. In terms of section 33 (2)(b) of the Act, one month's wages were paid to the respondent. The application therefore came to be filed for approval under section 33 (2)(b) of the Act. The written statement/reply was filed by the respondent – workman to the said application on 04/11/2016. An interim relief application was filed for

payment of full wages or reinstatement during the pendency of the proceeding on 04/11/2016. On 15/01/2018, an application was filed by the respondent not pressing the interim application in view of the delay and in view of the prayer made for disposal of the application itself, the application for interim relief came to be dismissed by the Tribunal by 15/01/2018.

4. In the meantime, application dated 15/01/2018 was filed by the petitioner seeking amendment to the original application filed under section 33(2)(b) of the Act. By the said application, the petitioner sought amendment to paragraph 4 and requested insertion of paragraph 4(a) as under :

> "The Applicant submits that the Honourable Court be pleased to frame a Preliminary Issue in respect of legality and validity of the Domestic Inquiry held in the matter, including the issue of perversity of findings of the Inquiry Officer and pass on Order on the said Preliminary Issue.
>
> Considering the law developed on the issue, the Applicant further submits that if the Honourable Court, were to decide against the Applicant on the above mentioned Preliminary Issue, the Applicant reserves the right to lead such evidence to justify the action of dismissal of the Second Party, and it further reserves the right to issue a fresh Charge Sheet /amend the Charge Sheet if and when the circumstances may warrant."

5. The respondent filed reply to the application on 30/01/2018 opposing the amendment application.

6. By the impugned order dated 14/03/2018, application for amendment came to be rejected by the Tribunal. The reason for rejection of the said application, as can be seen from the order, is that the said amendment in the application would change the nature of the application itself.

7. In the opinion of the Tribunal, the petitioners were requesting for amendment of charge-sheet and for incorporating fresh charges. This according to the Tribunal was not permissible and hence, the application came to be rejected.

8. At this stage, it would be material to note that on 03/08/2018, the Industrial Tribunal considered the application filed by the petitioner and in fact, framed preliminary issues in addition to the issues framed. Preliminary issues read thus :

1. Whether the inquiry held is legal, valid and proper ?
2. Whether the findings of the Enquiry Officer are perverse ?

9. Learned Counsel for the petitioner relied upon several decisions of the Hon'ble Apex Court and this Court in support of his submissions. He mainly relied upon the decision of the Apex Court in the case of **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh AIR 1972 SC 1031**. Inviting my attention to the principles which are stated by their Lordship in paragraph 61, he would submit that the principles applied to the proceedings before the Tribunal which have come before it either on a reference under section 10 or by way of an application under section 33 of the Act. He would therefore submit that since after making the application under section 33, at the very first opportunity, the petitioner made application for amendment, the same should have been allowed by the Tribunal. My attention is also invited to the dismissal order dated 16/09/2016 issued by the petitioner to respondent where it is stated by the petitioner thus :

> "…. We reserve our right to justify our action of dismissal in respect of illegal strike on and from 15th June 2016 by giving appropriate evidence before the forum if you challenge the same."

10. Learned Counsel for the petitioner - Shri Shaikh in all fairness submitted that he is not pressing for the relief for amending the charge-sheet in these proceedings and to that extent, he is giving up his claim. He moreover submits that even as a result of framing of the preliminary issues which is referred to hereinabove, the application made by him to some extent is satisfied.

11. Learned Counsel appearing for the respondents vehemently opposed the Petition. They would invite my attention to the compilation of the judgments relied upon by them. Learned Counsel - Shri Gharte and Shri Rane appearing on behalf of the respondents invited my attention to the provisions of section 33(2)(b) of the Act in support of their contention. They would rely upon the following cases :

i) Delhi Cloth and General Mills Vs. Ludh Budh Singh, AIR 1972 SC 1031;

ii) Shambhu Nath Goyal Vs. Bank of Baroda (1983) 4 SCC 491;

iii) Rajendra Jha Vs. Presiding Officer 1984 (Supp) SCC 520;

iv) Karnataka State Road Transport Corp. Vs. Lakshmidev Amma (2001) 5 SCC 433;

v) Sennampathy Milk Producer Co-operative Society Vs. Presiding Officer, Labour Court (2006) 2 LLJ 817;

vi) Krishna Thakur Vs. Zilla Parishad 2004(4) Mh.LJ. 196.

to contend that the application for amendment deserves to be rejected as the same is preferred by the petitioner belatedly. According to them, the right to adduce evidence before the Tribunal is not specifically reserved in the application by the petitioner. This being the position, according to them, it is not open for the petitioner to make an application for amendment and request for adducing evidence in support of the charges to establish the misconduct and that too at the belated stage.

12. I have gone through the Petition and the annextures thereto. I have also gone through the decisions relied upon learned Counsel for the parties. It would be necessary to mention that the letter of dismissal was issued by the petitioner to the respondent- workman on 16/09/2016 and on the same day, application was made by the petitioner before the Tribunal seeking approval under section 33(2)(b). The written statement/reply was filed by the respondent - workman on 04/11/2016. The application for amendment was preferred by the petitioner on 15/01/2018. Though the application is filed after lapse of 16 months, in my opinion, said delay need not come in the way of the petitioner. As indicated earlier, Shri Shaikh has already submitted that he is not pressing the application for amendment insofar as the relief for amending the charge-sheet is concerned. Moreover, the Tribunal has already framed the preliminary issues in addition to the issues framed at Exhibit '0-5' as regards legality and validity of the inquiry & as to whether the inquiry held is legal, valid and proper and as to whether the findings of the enquiry officer are perverse. The

said issues are framed on 03/08/2018.

13. In this view of the matter, I am of the opinion that the petitioner is justified in relying upon the decision of the Hon'ble Supreme Court in case of **Delhi Cloth and General Mills Co.** ***(supra)***. As the preliminary issues on the legality and for deciding the perversity of the findings of the enquiry officer are already framed and even the petitioner is not pressing relief of amending charge-sheet or filing fresh charge-sheet in the present applications, present Petitions can be allowed to the limited extent of permitting petitioner to lead evidence to prove misconduct alleged in the charge-sheet as it stands.

14. Learned Counsel for the petitioner, moreover, submitted that the delay in filing the application was not at all intentional. In my opinion, as rightly submitted by the learned Counsel for the petitioner, workman concerned can be compensated with costs. Learned Counsel for the petitioner submitted that they are willing to pay costs of Rs.2,000/- to

each of the respondent. This suggestion is fair and reasonable in the facts of the present case.

15. The Petitions therefore are partly allowed in the above terms subject to payment of costs of Rs.2,000/- to each respondent. The impugned order is set aside. The petitioners are permitted to lead evidence in support of the charges to prove the misconduct alleged.

16. Learned Counsel for the petitioner submits that he would pay costs by way of cheque issued in the name of individual workman and the same will be handed over to the Advocate- Shri Andhale who represents the workmen before the Industrial Court.

17. The Tribunal is requested to decide the application as expeditiously as possible and preferably within a period of 6 months from today.

18. I must place on record my appreciation for the able

assistance rendered by Shri Gharte and Shri Rane who were appointed by the High Court Legal Services Committee for defending the cases of the workmen concerned.

19. Rule is partly made absolute in the above terms.

(M.S.KARNIK, J.)