

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12507 OF 2017

Keshavmani Bagairam Yadav .. Petitioner.

Vs.

Durga Education Society & Ors. .. Respondents.

Mr.N.R. Bubna with Mr.F.A. Waqif for the Petitioner.

Mr.Chetan Mali for the Respondent Nos.1 and 2.

Mr.Sandeep Marne with Ms.Sirisha Kuruda for the Respondent No.3.

Mrs.M.S.Bane AGP for the Respondent No.4.

CORAM : A.K. MENON, J.

DATED : 12TH FEBRUARY, 2019

P.C. :

1. By this petition, the petitioner assails the judgment dated 11th September, 2017 passed by the School Tribunal, Navi Mumbai in Appeal No.37 of 2016 filed by the petitioner. The appeal challenges termination of services of the petitioner after a departmental enquiry was conducted.

2. The facts in brief are as under : The petitioner was qualified for the post of Assistant Teacher in the respondent no.2 – school. The petitioner was appointed as the Assistant Teacher on 14th June, 2001 and was a permanent employee of the school. It transpires that in the course of his duties certain allegations were levelled against him but according to the petitioner the memo of allegations was not given to him by the management resulting in

farcical enquiry being conducted and the impugned order dated 19th October, 2016 being passed. The petitioner challenged that order in Appeal No.46 of 2015 before the Tribunal and that appeal came to be allowed on 16th March, 2016. The petitioner was directed to be reinstated and a fresh enquiry was ordered. It is contended that the inquiry was not conducted properly and subsistence allowance was not paid. The impugned order records that amount of Rs.57,380/- was paid to the petitioner towards subsistence allowance.

3. It is contended that in a fresh enquiry which started on 13th August, 2016, no notice was given to the petitioner. He received notice of the adjourned meeting of 19th August, 2016 only on 20th August, 2016 i.e. after the date. The first meeting was then fixed on 2nd September, 2018 at 12.30 pm. The petitioner had desired that his representative to also attend and hence requested the meeting to be scheduled at 3.00 pm but the next date was fixed on 3rd September, 2016 at 12.30 hours but request was declined and the petitioner could not attend as he was ill. He requested the management to fix the enquiry on subsequent date which request was accepted and the meeting was fixed on 14th September, 2016. This meeting was thereafter cancelled due to absence of the State awardee teacher. The next meeting was scheduled on 20th September, 2016 on which date due to heavy rains the petitioner telephonically communicated his inability to attend. Be that as it may, it is not in dispute that subsequently a meeting was

held on 29th September, 2016 at about 12.30 pm. Although the petitioner admits that he received notice of meeting according to him the letter incorrectly mentioned that he had been given notice of the meeting scheduled on 21st September, 2016. Since the notice suggested that the enquiry would be held *ex parte*, a reply dated 23rd September, 2016 was submitted requesting that the nominee be allowed to attend. This request was allegedly declined.

4. The scope of enquiry in my view was by that time well defined. It was limited to enabling the petitioner to cross examine the witnesses produced by the management. It is not in dispute that there were statements of six witnesses recorded which is evident from the compilation which is produced in the Court today. However, it is case of Mr. Bubna that these are no evidentiary value and in absence of evidence recorded in chief there is no question of cross examination. This assumes significances in view of the fact that only two issues that were framed for determination is whether proper opportunity was given to the petitioner to cross examine the management's witnesses and produced his evidence as required by the order of remand dated 16th March, 2016 and whether the impugned termination order was liable to be set aside. Needless to mention, the absence of the petitioner on various dates and his subsequent reluctance to cross examine the witnesses' statements as recorded in the impugned order resulted in termination of his service.

5. In the course of submissions, Mr.Bubna has canvassed the case of the petitioner on the basis that there was no evidence in chief at all in respect of which cross examination could have been conducted. He further submitted that the petitioner has presented himself at venue for the hearing on 29th September, 2016 along with his representative Shriniwas Pandey, however, at the outset the said representative was prevented from entering the school premises and therefore, he did not have assistance of the said representative. It is his case that on 29th September, 2016 although he was present in the afternoon, there was no occasion to cross examine the witnesses. When faced with the Minutes of Meeting dated 29th September, 2016, a copy of which is filed in the compilation, Mr.Bubna submitted on instructions that the minutes did not record correct position of the events that transpired on that day. He submitted that for that reason the minutes have not been signed by the petitioner. In this regard, he invited my attention to last page of the said minutes dated 29th September, 2016 wherein signature of the petitioner is conspicuous by its absence whereas his presence at the meeting has been recorded at very first page.

6. Thus, it is case of the petitioner that although the petitioner was present there was no occasion to cross examine the witnesses since there was no evidence in chief recorded. As far as the statements of six witnesses are concerned, namely, Mr.Rammurti R. Yadav, Mr.Dhan Bahadur Yadav, Mr.Satyendra B. Yadav, Mr.Satish R. Yadav, Smt.Kiran R. Mourya and

Mr.Munna Yadav all of whom were present on that day I find that those were the very persons who have deposed on 1st October, 2015 during the course of initial enquiry. The scope of present enquiry being limited to permitting the petitioner to cross examine these witnesses there could have been no doubt on the basis of which cross examination was to proceed obviously the statements of six persons was already recorded. It is the case of Mr.Bubna that the papers received by the petitioner did not contain deposition of witnesses but the petitioner had received an envelope with blank pages. Mr.Bubna relied upon the complaint said to have been made to the police station to the effect that he has received envelope with 22 blank pages. It is material to note that the petitioner at no stage has raised the issue during the course of enquiry but is sheer afterthought. In view of the fact that conduct of the petitioner at the material time required to be gone into, this Court has called for the papers pertaining to enquiry and compilation of documents were perused pursuant to the order dated 16th March, 2016.

7. The impugned order in my view has gone into all aspects and recorded its finding on 29th September, 2016 that the management has produced their witnesses. What appears is obvious reference to witnesses whose evidence is on record. The fact that the petitioner refused to cross examine these witnesses was taken note by the impugned order. Although it may be inaccurately worded, the fact remains that the petitioner was well

aware of what he was up against and allegations contained in the statements made by the witnesses and in particular by Smt.Kiran Mourya, whose allegations were of serious nature since abusive conduct is attributed to the petitioner by that witness unbecoming of a teacher. These allegations would obviously require the petitioner to cross examine the witness in question. It is in this light, the conduct of the petitioner has to be considered. At no stage he has shown any inclination to proceed with cross examination although sufficient opportunity has been granted to him.

8. Mr.Bubna also contended that entire process of recording evidence was completed in a single day. This in my view cannot be faulted since the statement was recorded in a single day, the fact is that the petitioner did not avail of opportunity to cross examine the witness although the matter was remanded at his instance. The impugned order, in my view does not suffer from any perversity. The petitioner fails to make out a case. No illegality has been shown in the impugned order. In these circumstances, I do not find any reason to interfere in writ jurisdiction of this Court, hence I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON.J.)