

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2284/2018

PRATIBHA SHIKSHAN SANSTHA, THROUGH PRESIDENT-MAHADEO LAXMAN GAJAPURE
VS.

SAIDRANATH JAGANNATH JAWANJAL AND ANOTHER.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mrs. Radhika D.Raskar, Advocate for petitioner.
Shri H.A.Deshpande, Advocate for respondent no. 1.

CORAM : A.S.CHANDURKAR, J.

DATED : July 05, 2019

In view of notice for final disposal of the writ petition,
learned counsel for the parties have been heard at length.

The petitioner-Management is aggrieved by the order dated 29.11.2017 passed by the learned Presiding Officer below Exhibit 9 refusing to summarily dismiss the appeal preferred by the respondent no.1 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

The respondent no.1 has filed an appeal challenging the order of termination that has been issued by the Management on 11.01.1999. According to the respondent no.1, his services were terminated without following prescribed procedure despite the fact that he was a permanent employee. Written statement has been filed by the Management justifying the order of termination as issued. During the pendency of the appeal, the Management moved an application seeking permission to prove the misconduct of the respondent no.1 before the School Tribunal. The said application was rejected by the School Tribunal. Writ Petition No.5546/2004

filed by the Management was allowed on 04.02.2016 by granting such permission. It is thereafter that the Management has moved the present application below Exhibit 9 seeking dismissal of the appeal on the ground that it was not necessary for the Management to have conducted any enquiry before terminating the services of the respondent no.1. That application was rejected by the School Tribunal.

Learned counsel for the petitioner by relying upon the decision in *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others, (1997) 2 Supreme Court 534* submits that considering the nature of accusations against the respondent no.1, it was not necessary to conduct any departmental enquiry and the Management was justified in summarily terminating the services of the respondent no.1. In the light of the nature of allegations, it was submitted that the Management could not be compelled to examine the victim to prove the misconduct. It was thus submitted that the impugned order is liable to be set aside.

On behalf of the respondent no.1 it is submitted that it was the Management that sought liberty to lead evidence for proving the misconduct and by accepting that submission made on behalf of the Management, the order passed by the School Tribunal earlier was set aside. He therefore submits that without any further change in situation the application below Exhibit 9 was moved. It was submitted that the impugned order therefore does not call for any interference.

On hearing learned counsel for the parties it becomes clear that it was the Management which sought liberty to prove the

misconduct by leading evidence before the School Tribunal. Unless that opportunity is availed by the Management, it cannot seek dismissal of the appeal only on the ground that it was justified in not holding an departmental enquiry. It is for the Management to justify the order of termination dated 11.01.1999 and after considering such material that would be brought before the School Tribunal, the appeal can be adjudicated. In these facts therefore the application moved by the Management is found to be misconceived. There is no case made out to interfere with the impugned order. The writ petition is therefore dismissed with no orders as to costs.

The proceedings in the appeal are expedited. The appeal shall be decided within a period of **six months** from the next date of the proceedings.

JUDGE

Andurkar.