

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

WRIT PETITION NO.2646/2017

Gram Vikas Samiti, Shahapur, through its Secretary - Darshanlal N.Malhotra.

Vs.

Laxmikant N. Hedau and others.

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

Court's or Judge's Orders.

Shri N.D.Khamborkar, Advocate for petitioner
Shri P.V.Kaore, Advocate for respondent no.1.

CORAM : A.S.CHANDURKAR, J.

DATED : October 17, 2019

The challenge raised in the present writ petition is to the judgment of the School Tribunal dated 20.03.2017 whereby the appeal preferred by the first respondent herein challenging the order of termination has been allowed by directing his reinstatement without back-wages.

2. It is the case of the first respondent that being duly qualified to be appointed on the post of Assistant Teacher, he was initially appointed on probation as an Assistant Teacher from 20.07.1998. After completing the period of probation, his services came to be confirmed. He was issued a charge-sheet on 26.05.2011 in which it was stated that on six charges it was proposed by the Management to hold an enquiry against him. An enquiry was accordingly held and in terms of the report submitted by the Enquiry Committee, the Management proposed to terminate his services. Accordingly by the order dated 16.08.2011 the services of the first respondent came to be terminated.

3. The first respondent being aggrieved by the aforesaid order of termination filed, an appeal under Section 9 of the Maharashtra Employees of

Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the said Act') before the School Tribunal. By filing a reply, the Management justified the order of termination. It was the case of the Management that after giving full opportunity to the first respondent, the enquiry was conducted. As all the charges had been duly proved, the services of the first respondent came to be terminated. The learned Presiding Officer of the School Tribunal initially by its judgment dated 25.09.2013 allowed the appeal filed by the first respondent. That order was challenged by the Management by filing Writ Petition no. 5487/2013. As the relief of back-wages stood refused, the first respondent filed Writ Petition no.663/2014. By common judgment dated 16.09.2014, this Court set aside the order passed by the School Tribunal on the ground that the entire record with regard to the proceedings of the enquiry had not been considered. After the proceedings were remanded the learned Presiding Officer by judgment dated 18.02.2015 was pleased to allow the said appeal but refused to grant the relief of back-wages. This judgment was then challenged by the Management in Writ Petition no.1178/2015. On 25.10.2016 this Court allowed that writ petition and as it was noticed that the directions issued in the earlier judgment had not been complied with, the proceedings were again remanded to the School Tribunal for fresh consideration. It is thereafter that by the impugned judgment the appeal filed by the first respondent has been allowed and after setting aside the order of termination he has been directed to be reinstated in service without back-wages. A finding has been recorded that the constitution of the Enquiry Committee was not in accordance with the provisions of Maharashtra Employees of Private Schools Rules, 1981 (for short, 'the said Rules'). Further proper opportunity was not given to the first respondent to defend the charges. Hence the present writ petition by the Management.

4. Shri N.D.Khamborkar, learned counsel for the petitioner-Management after referring to various documents on record submitted that the Enquiry Committee had been properly constituted after serving the statement of allegations on the first respondent. A reply to the statement of

allegations was duly given by the first respondent on 13.06.2011 and this aspect ought to have been taken into consideration by the learned Presiding Officer. It was further submitted that during the entire proceedings due opportunity of hearing was given to the first respondent to defend the charges levelled against him. There was however no proper consideration of that aspect. Considering the nature of charges levelled against the first respondent, the punishment of termination of services was rightly imposed on the first respondent. It had been found that he was discharging duties under influence of liquor and such conduct did not suit the first respondent who was holding the post of Assistant Teacher. Merely on the basis of some technical breaches the learned Presiding Officer was pleased to hold the enquiry proceedings to be vitiated. He placed reliance on the decision in *Shri Anant R. Kulkarni Vs. Y.P.Education Society and Ors, 2013 (3) All M R 952* and submitted that the judgment of the School Tribunal was liable to be set aside. Without prejudice to the aforesaid submissions, it was urged that in case it was found that there was some lacuna in the enquiry proceedings, a fresh enquiry could be directed to be held de novo.

5. Shri P.V. Kaore, learned counsel for the first respondent supported the impugned judgment. According to him, the provisions of Rules 36 and 37 of the said Rules were mandatory in nature and it was clear that the Enquiry Committee did not conduct the enquiry proceedings in accordance with the said Rules. The finding that the statement of allegations was not served on the first respondent was justified and the document dated 26.05.2011 was in fact a charge-sheet and not the statement of allegations as alleged. It was also submitted that the Enquiry Committee was stated to be constituted on 13.06.2011 and the first meeting was immediately held on 14.06.2011. He further submitted that there was no evidence whatsoever to conclude that the first respondent was guilty of having come to the school in a drunken state. The learned Presiding Officer after considering the entire material on record including the proceedings of the Enquiry Committee rightly held that there were various breaches in the said proceedings thus vitiating the order of

termination. It was therefore submitted that there was no reason to interfere with the impugned judgment.

6. I have heard the learned counsel for the parties at length and I have given due consideration to their respective submissions. The findings recorded by the learned Presiding Officer with regard to the fact that the first respondent was holding a clear and sanctioned post as well as the fact that he was duly qualified to hold the post of Assistant Teacher are not under challenge. The dispute between the parties relates to the manner in which the enquiry proceedings were held and this has been found not to be in accordance with law. The reasons that have weighed with the learned Presiding Officer were that the statement of allegations was not duly served on the first respondent instead charge sheet dated 26.05.2011 was issued. In this regard, reference is made to the said document dated 26.05.2011 by the learned counsel for the petitioner. The same indicates that it is a combined statement indicating the nature of charges and the evidence proposed to be led by the Management in that regard. A reply to this document was given by the first respondent on 13.06.2011. In that reply a specific stand has been taken that without complying with the provisions of Rule 36(1) of the said Rules and without giving any show cause notice, the first respondent was issued the charge-sheet dated 26.05.2011. It is in this context that the learned Presiding Officer has noted that there was no statement of allegations produced on record to indicate that it was duly served on the first respondent. Rule 36(1) of the said Rules requires the statement of allegations to be served on the delinquent to enable him to respond to the same within seven days. It is thereafter that the Management has to decide whether an enquiry deserves to be initiated. This stage of the enquiry does not appear to have been completed. In absence of any specific material to indicate the service of statement of allegations on the first respondent, the finding recorded by the learned Presiding Officer that there was breach of Rule 36(1) of the said Rules does not deserve to be interfered with.

Another reason considered by the learned Presiding Officer is the constitution of the Enquiry Committee prior to the appointment of nominee of the first respondent. It was observed that in the document dated 26.05.2011 it was indicated as to who would be the two members of the Enquiry Committee. Thereafter on 13.06.2011 the first respondent indicated the name of his nominee and it was thus held that even before 13.06.2011 the Enquiry Committee stood constituted. This was breach of the provisions of Rule 36(2) and (4) of the said Rules. In effect, the Enquiry Committee was constituted on 13.06.2011 while the charge-sheet was issued much earlier on 26.05.2011. This finding is also based on the documentary material on record and especially the document dated 26.05.2011.

It has been further noted that on 26.07.2011 the first respondent along with his representative had requested for fixing the further proceedings after 06.08.2011 due to non-availability of the said representative. That request letter is at Exhibit 75. Despite that the final meeting of the Enquiry Committee was held on 05.08.2011 and the proceedings were thereafter closed. The justification was that the enquiry proceedings were required to be completed within 120 days and hence the aforesaid course was followed. It was observed that such time could be extended if requested and the Management has hastily concluded the proceedings. Rule 37(2)(f) ordinarily requires the enquiry to be completed within 120 days which period can be extended in appropriate cases.

7. As regards the charges framed against the first respondent, it was noted that the Management at no point of time had communicated any adverse remarks to the first respondent with regard to his behavior. There was no medical certificate on record to indicate that the first respondent was found under influence of liquor. The evidence led by the Management in that regard was found to be wanting to bring home that charge. It was thus held that in absence of any sufficient material it could not be said that the charges levelled against the first respondent were duly proved. It is found that these observations are again based on the material placed on record by the

Management and there is no perversity in the aforesaid finding. Thus considering the facts of the entire case, it was rightly observed by the learned Presiding Officer that without issuing the statement of allegations, the charge-sheet was issued. No proper opportunity was given to the first respondent to rebut the evidence led by the Management even by cross-examining the witnesses. The enquiry proceedings were completed in hasty manner without any deliberation amongst the members of the Enquiry Committee. The summary of the enquiry proceedings were served on the delinquent on 29.07.2011 and time of seven days was required to be given under Rule 37(4) to enable an explanation being furnished. However, before that period, on 05.08.2011 it was observed by the Enquiry Committee that the first respondent had nothing to say in the matter. On the next day, the Enquiry Committee concluded its proceedings. It is therefore found that the learned Presiding Officer was justified in observing that the mandatory provisions of Rules 36 and 37 had been violated. This finding therefore does not deserve to be interfered with.

8. There was no request made on behalf of the Management to lead further evidence before the School Tribunal to prove the misconduct. I therefore do not find any justifiable reason to permit the Management to conduct de novo enquiry.

9. While directing reinstatement of the first respondent the relief of back-wages has been denied. That direction has not been challenged by the first respondent. In that view of the matter, it is found that the learned Presiding Officer has after considering the entire material on record rightly allowed the appeal filed under Section 9 of the said Act. The impugned judgment does not call for any interference in writ jurisdiction. The writ petition is accordingly dismissed with no orders as to costs.

At this stage, the learned counsel for the petitioner prays that the interim relief that was operating in the present writ petition be continued for a period of eight weeks from today. The said request is opposed by the

learned counsel for the first respondent. As the interim relief has been operating since 27.04.2017, the same shall continue to operate for a further period of eight weeks and it shall cease to operate automatically thereafter.

JUDGE

Andurkar.