

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3930/2019

Swawalambi Shikshan Prasarak Mandal, Wardha

..Vs..

The Education Officer (Secondary), Zilla Parishad, Wardha and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri F.T. Mirza, Advocate for the petitioner.
Shri N.R. Patil, A.G.P. for respondent No.1.
Shri N.S. Warulkar, Advocate for respondent No.2.

CORAM : Z.A. HAQ, J.

DATED : 12.6.2019.

Heard.

The petitioner / Management has challenged the order passed by the School Tribunal by which the appeal filed by the respondent No.2 / employee is allowed, order issued by the Management terminating the services of the employee is quashed and as the respondent No.2 / employee attained the age of superannuation during the pendency of the appeal, the Management is directed to pay back-wages from the date of termination till the date of attaining the age of superannuation.

The Tribunal found that the enquiry conducted against the respondent No.2 / employee was not in accordance with the provisions of Rule 37(2)(d) (ii), Rule 37(4) and Rule 37(6) of the Maharashtra Employees of Private Schools (Conditions of Service)

Rules, 1981. The violation of above referred mandatory rules has the effect of vitiating the enquiry. The findings regarding violation of above referred rules is recorded by the Tribunal after considering all the factual aspects. The petitioner has not been able to point out that the findings recorded by the Tribunal regarding violation of above referred rules is not proper or justified.

Faced with the above situation, the learned Advocate for the petitioner submitted that the Tribunal should have remitted the matter to the Enquiry Committee for proceeding with the enquiry from the stage at which it is found to be vitiated. Though the submission is based on legal position, in the facts of the case, it cannot be accepted. The respondent No.2 / employee attained the age of superannuation on 14th November, 2014 i.e. much before the decision of the appeal. There is no provision either under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 nor under Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 which enables the Management to conduct or continue the enquiry after the employee retires or attains the age of superannuation. Learned Advocate for the respondent No.2 / employee has rightly relied on the judgment given in the case of *Ramdas S/o Tejram Bhoyar V/s. Education Officer (Secondary), Zilla Parishad, Nagpur and others* reported in **2015(5) Mh.L.J.197** to counter the above submission made on behalf of the petitioner.

Alternate submission is made on behalf of the petitioner that the Tribunal has committed an error by directing the Management to pay the arrears of salary of respondent No.2 / employee, overlooking the fact that the post in which the respondent No.2 was working, was approved for the purposes of grants from the state exchequer. If the petitioner Management is entitled for reimbursement of the amount paid to the respondent No.2 employee from the state exchequer, the petitioner can resort to appropriate proceedings against the State and the concerned Authorities. It would not be in the fitness of things that on this ground, the respondent No.2 should suffer and be deprived of the back-wages from the Management.

For the above reasons, I am not inclined to interfere with the impugned order. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

The petitioner / Management will be at liberty to raise claim against the State and the Education Officer for reimbursement of the amount which will be paid by the petitioner to respondent No.2, according to law.

JUDGE

Tambaskar.