

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

WRIT PETITION NO.8320 OF 2016

Balu Rabhaji Gangurde
an adult, Indian Inhabitant,
R/at. Ward No.6, House No.59,
Mahatma Phule Nagar,
At Post Kasara (West), Dist.Thane.

..Petitioner

vs.

1. The Secretary, Kasara Vibhag
Education Society, Kasara,
Taluka – Shahpur, Dist. Thane.

2. The Head Master,
K. B. Dhanke Secondary Vidyalaya,
Vashala, Taluka – Shahpur, Dist.Thane.

3. The Education Officer (Secondary),
Zilla Parishad, Thane (Summons /
proceedings to be served upon the Ld.
Government Pleader, Civil Appellate Side,
High Court, Bombay)

..Respondents

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Mr. Gauraj Shah a/w. Ms. Ankita Upadhyay i/b. Omar Khaiyam
Shaikh, Advocate for Petitioner.

Ms. Deepali Y. Deherkar, Advocate for Respondent Nos.1 & 2.

Mr. P P Pujari, AGP for Respondent No.3 / State.

CORAM : C.V. BHADANG, J.

DATE : 14th JANUARY, 2020

P.C.

. The challenge in this petition is to the judgment and order
dated 23/8/2013 passed by the Presiding Officer, Additional School

Tribunal at Navi Mumbai, in Appeal No.4/2013. By the impugned judgment, the School Tribunal has dismissed the appeal filed by the petitioner, challenging his dismissal.

2. The brief facts are that the petitioner was appointed as a Peon in the second respondent school somewhere in the year 1985 and was promoted as a Clerk on 14/3/1996. A Departmental Enquiry was initiated against the petitioner on the charge of insubordination, late attendance and inability to perform duties. The Inquiry Committee found the petitioner guilty and after a show cause notice issued to the petitioner, his services came to be terminated by an order dated 29/4/2010.

3. The petitioner sought to challenge the said termination before the School Tribunal in the year 2013 alongwith an application for condonation of delay. The School Tribunal refused to condone the delay which order was subject matter of challenge before this Court in Writ Petition No.1154/2013. This Court by an order dated 26/3/2013 condoned the delay and eventually the appeal was registered and was heard on merits. The Tribunal however has dismissed the appeal on merits by judgment and order dated 23/8/2013, which is subject matter of challenge in this petition. Here again there is a delay of about three years in challenging the said judgment.

4. I have heard learned counsel for the petitioner and learned counsel appearing for the respondent Nos.1 and 2. Perused record.

5. Learned counsel for the petitioner has raised three contentions. First that Mr. Shankar Waghode who was the representative of the Management in the Enquiry Committee was disqualified on account of he having personal interest in the matter. It is submitted that Mr. Shankar Waghode was interested in appointment of his son Mr. Vijay Waghode as a Clerk in the post held by the petitioner. It is contended that therefore Shankar Waghode had bias against the petitioner and as such the enquiry was vitiated. Secondly, it is contended that the documents on which the report of the enquiry is based, were not furnished to the petitioner, on account of which the petitioner was handicapped in properly cross examining the witnesses of the Management and thirdly, it is submitted that the notices issued to the petitioner were short of 10 days as is required by the relevant rules which has also resulted into breach of principles of natural justice and fair play. Except these, there are no other contentions raised.

6. Ms. Deepali Deherkar, learned counsel for respondent Nos.1 & 2 has supported the impugned judgment. It is submitted that there is serious delay and laches in challenging the judgment of the School Tribunal and the petition deserves to be dismissed on this count alone. It is submitted that the Enquiry Committee was required to be reconstituted on account of the fact, that the earlier Management representative Mr. Surendra Vajpayee and subsequent to that Mr. Eknath Shirkar had refused to act as such as part of Enquiry Committee. It is submitted that the petitioner was asked to nominate his representative. However, he has failed to do so. Learned counsel has pointed out that the reply / explanation submitted by the petitioner would show that he had received all the

documents on which reliance is placed. Learned counsel has also submitted that there was sufficient notice to the petitioner and in any event, the requirement of 10 days notice cannot be read as a mandatory requirement. Learned counsel has taken me through the judgment of the School Tribunal in order to submit that the School Tribunal after proper consideration of the material on record has rightly found petitioner to be not entitled to relief as claimed.

7. I have considered the rival contentions and the submissions made.

8. At the outset, it is necessary to note that the petitioner failed to nominate his representative on the Enquiry Committee for reasons best known to him although he was called upon to do so. The record discloses that Mr. Shankar Waghode was appointed as a Management representative by letter dated 4/3/2010 and the contention in para 4 of the appeal memo before the School Tribunal as raised by the petitioner is that no opportunity of hearing was granted and he was not given an opportunity to appoint his representative. The said contention in my considered view cannot be accepted and has rightly been negated by the School Tribunal. The School Tribunal on facts has found that the petitioner had received a letter dated 4/3/2010 vide postal acknowledgment dated 5/3/2010. The School Tribunal has also found that the petitioner was asked to communicate name of his representative, on the Enquiry Committee within 15 days. However, the petitioner failed to do so. The contention that on account of the alleged bias or personal interest of Mr. Shankar Waghode the inquiry is vitiated also cannot be accepted. At the cost of repetition, it needs to be stressed

that the petitioner could have appointed his representative so as to safeguard and ensure his interest which he failed to do.

9. Even so far as the non furnishing of the documents is concerned, the School Tribunal has dealt with this aspect in para 6 of the impugned judgment and School Tribunal has found, and to my mind rightly so that the explanation filed by the petitioner available on record finds that he has received the documents from the Management alongwith statement of allegations. The School Tribunal has referred to the contents of the explanation in which the petitioner claimed that the evidence is contrary to the documents which has been found by the School Tribunal to be an admission of the receipt of the documents by him.

10. Coming to the last contention about the inadequate notice, the Tribunal has found that the meeting of the Enquiry Committee dated 31/3/2010 was formal in nature and therefore the notice which falls short of 10 days cannot be said to be fatal. Tribunal has found that the examination of the witnesses was kept on 10/4/2010 for which notice was sent on 6/4/2010. In this regard, the School Tribunal in para 18 of the judgment held that Rule 37(2)(b) of the MEPS Rules framed under the said Act, speak about giving of 10 days notice to the employee by the Enquiry Committee. However, on fact it has been found that the notice was only of four days in as much as the notice of the meeting scheduled on 10/4/2010 was given on 6/4/2010. This Court in the case of **Daulatrao Thakare Vs. Sangam Shikshan Sanstha 2004(1) ALL MR 644** has held that in such a case the employee has to demonstrate prejudice on account of non-observance of the 10 days, notice, which the petitioner has

failed to show. In this case, it is significant to note that the Block Education Officer (B.E.O.) had visited the second respondent School and had found that the appellant was not competent to work on the post of Clerk. In this regard the Tribunal has referred to the letters dated 3/8/2009 and 15/12/2009 given by Mr. Harish Asthana B.E.O. to the Head Mistress. B.E.O. being an independent public officer had no grudge against the petitioner.

11. There is an additional reason why the petition cannot be favourably entertained which is delay and latches on the part of the petitioner in challenging the impugned judgment. It is necessary to note that there was delay by the petitioner in approaching the School Tribunal which delay was condoned. However, even after the impugned judgment was passed on 23/8/2013 the present petition is filed on 4/5/2016. This is the additional reason why I decline to entertain the petition.

12. I have carefully gone through the impugned judgment and it does not suffer from any infirmity so as to require interference in the exercise of supervisory jurisdiction of the Court under Section 227 of the Constitution of India.

13. The petition is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.