

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7352 OF 2020

Shri. Dilip Punja Kasabe,
Age : 61 years, Occu. Nil.
R/o. Munjoba nagar, Popalghat Estate,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.

... Petitioner

Versus

- 1) The State of Maharashtra
(Through its Principal Secretary)
School Education Department
Mantralaya, Mumbai – 32.
- 2) The President,
Rahuri Education Society,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
- 3) Head Master (Incharge),
Late Lalasheth Bihani Vidya Mandir
Prashala, Rahuri, Tq. Rahuri,
Dist. Ahmednagar.
- 4) The Education Officer (Secondary)
Zilla Parishad Ahmednagar,
Tq. & Dist. Ahmednagar.

... Respondents

...
Advocate for Petitioner : Mr. P. R. Nangare
AGP for Respondent – State : Mr. P. G. Borade
Advocate for Respondent No.2 : Mr. V. S. Bedre

...
WITH
WRIT PETITION NO. 12702 OF 2021

- 1) The Rahuri Education Society,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
Through its President
Mrs. Prabhavati Satish Bihani
Age: 50 years, Occu: Household,
R/o. Rahuri, Tq. Rahuri, Dist. Ahmednagar.

- 2) Late. Lalasheth Bihani Vidya Mandir Prashala
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
Through its Headmaster,
Shri. Kailash s/o Rambhau Anap
Age : 51 years, Occu: Service,
R/o. Rahuri, Tq. Rahuri, Dist. Ahmednagar.

... Petitioners

Versus

- 1) Dilip Punja Kasabe,
Age : 60 years, Occu. Retired,
R/o. Munjoba Nagar, Popalghat Estate,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
- 2) The Education Officer, (Secondary)
Zilla Parishad Ahmednagar,
Tq. & Dist. Ahmednagar.

... Respondents

...

Advocate for Petitioners : Mr. V. S. Bedre
AGP for Respondent – State : Mr. P. G. Borade
Advocate for Respondent No.1 : Mr. P. R. Nangare

...

CORAM : NITIN B. SURYAWANSHI, J.
RESERVED ON : 22nd NOVEMBER, 2021
PRONOUNCED ON : 2nd DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. At the oral request made by the learned advocate for petitioner in Writ Petition No.7352 of 2020, leave to correct prayer clause is granted. Amendment be carried out forthwith.
3. Both these petitions challenge the impugned order dated 13-03-2020, passed by the Presiding Officer, School

Tribunal, Pune Region, Solapur in Appeal No.04 of 2016.

4. For the sake of convenience parties are referred to as 'appellant' and 'management'.

5. Brief facts leading to these petitions are as follows :

The appellant was initially appointed as Assistant Teacher on 13-06-1985 on permanent vacant post which was reserved for S.C. category. The appellant belongs to S.C. category. The appellant came to be promoted on the post of Supervisor with effect from 16-06-2008 and thereafter on the post of Assistant Headmaster with effect from 01-07-2009. The appellant was thereafter promoted on the post of Headmaster on 13-06-2013.

6. A show-cause notice dated 21-10-2014, containing 11 charges, was issued to the appellant. The charges were of the period prior to the appointment of the appellant on the post of Headmaster. The appellant replied the said show-cause notice. Thereafter charge-sheet came to be issued to the appellant on 02-02-2015, leveling 25 charges. The appellant replied the said charge-sheet. The appellant came to be suspended, pending the inquiry, vide order dated 25-04-2015. The inquiry committee came to be appointed by the

management. The inquiry committee failed to complete the inquiry within a period of 120 days. An extension was applied for by the management, which was rejected. In spite of direction issued by the Education Officer, the appellant was not reinstated in service. The inquiry was continued beyond a period of 120 days, though there was no extension granted by the Director of Education and Education Officer. The management failed to pay subsistence allowance to the appellant. After conducting the inquiry appellant was dismissed from service by order dated 18-01-2016.

7. The dismissal order was challenged by the appellant by filing Appeal No.04 of 2016 before the School Tribunal, Solapur. The appeal was partly allowed. The tribunal quashed and set aside the impugned termination order and directed the management to hold meeting of inquiry committee from the stage of receipt of explanation of the appellant to the summary of proceedings with prior intimation to the inquiry committee members and appellant in writing and the inquiry committee to complete the procedure of inquiry and communicate its combined findings in terms of the observations made in the judgment in terms of Rule 37(6) of the Maharashtra Employees of Private Schools' (Conditions of

Service) Rules, 1981 and further directed to complete the procedure of inquiry within a period of six months after the expiry of appeal period.

8. The appellant is being aggrieved by the directions contained in clause 3 of the impugned order, thereby directing the management to hold the meeting and has preferred Writ Petition No.7352 of 2020.

9. The management, on the other hand, being aggrieved, as the termination order of the appellant is set aside, has filed Writ Petition No. 12702 of 2021 challenging the impugned judgment to the extent of quashing and setting aside termination of the appellant.

10. Heard the learned advocate for appellant, the learned advocate for management and the learned AGP for State.

11. The learned advocate for appellant assailed directions contained in clause 3 of the impugned judgment of the tribunal contending that once the tribunal had come to the conclusion that there is infraction of Rule 37(6) of the Maharashtra Employees of Private Schools' (Conditions of

Service) Rules, 1981 there was no occasion for the tribunal to remand the matter back for conducting the inquiry from the stage of submission of the common report of the inquiry committee. By relying on the decision of this Court in **Shah Babu Education Society and Another Vs. Presiding Officer and Another**, reported in **2006 (6) Mh.L.J. 547**, he submitted that since the appellant has retired after attaining age of superannuation on 31-05-2017, the departmental inquiry against the appellant cannot be continued. He further submitted that there was no deliberation amongst the three committee members before submitting the inquiry report. One of the inquiry committee members has recorded dissenting opinion and, therefore, the inquiry report is unacceptable. He further submitted that since the inquiry was not completed within 120 days, in absence of extension granted for conducting departmental inquiry, the inquiry is vitiated. In support of his submissions he placed reliance on **Jaywant Govindrao Sanap Vs. Janki Shikshan Prasarak Sanstha, Kaulhkhed, Akola and Others**, reported in **2015 (5) Mh.L.J. 88**, and **Vidya Vikas Mandal Vs. Education Officer**, reported in **2007 (3) Mh.L.J. 801**.

12. The learned advocate for the management, on the

other hand, strenuously submitted that perverse findings are recorded by the tribunal in coming to the conclusion that there was no deliberation before the inquiry report was submitted by the inquiry committee and there is violation of Rule 37(6) while conducting the departmental inquiry against the appellant. According to him, the meeting dated 05-01-2016, which commenced at 03:00 p.m. and concluded at 08:00 p.m. itself, is sufficient to show that there was due deliberation on the inquiry report amongst the inquiry committee members. According to him, findings recorded by the tribunal are contrary to the record and are therefore, unsustainable in the facts of the present case. He further submitted that serious charges are levelled against the appellant which are proved during the inquiry and hence, the termination order issued against the appellant is justified. The tribunal has failed to appreciate contentions raised by the management in proper perspective and therefore, the impugned judgment of the tribunal, thereby setting aside the termination of appellant, is unsustainable and the same is liable to be quashed and set aside.

13. The learned AGP supported the impugned decision of the tribunal.

14. Perusal of record, more particularly, the proceedings of the meetings held by the inquiry committee reveals that there was no deliberation on the inquiry report amongst the inquiry committee members. On going through the minutes of the meeting dated 28-12-2015, it seems that the minutes recorded show that the meeting was held for accepting the explanation of the appellant. The explanation of the appellant was accepted on that date and the next meeting was scheduled on 05-01-2016 for reading the inquiry report and conclusion. On 05-01-2016, inquiry committee meeting No.39 was conducted at 03:00 p.m. The minutes reveal that the meeting was scheduled for presenting and reading inquiry report. Accordingly, the inquiry report was read and two inquiry committee members signed on the said report. The third member signed and mentioned on the inquiry report that he does not agree with the inquiry report and sought time to give separate inquiry report. It is further mentioned that the third member shall submit his report before 01-07-2016 to the President of the management.

It is, therefore, clear that there was no deliberation/ discussion on the inquiry report amongst the members of the inquiry committee. The argument of the management that, on

05-01-2016, since the meeting was conducted from 03:00 p.m. to 08:00 p.m., there was deliberation on the inquiry report, is unacceptable for the simple reason that in the meeting dated 05-01-2016 the inquiry report was presented and it was read over. Thus, there was no occasion for deliberation before preparation and presentation of the inquiry report. The deliberation ought to have been prior to the preparation of the inquiry report. In this view of the matter, the tribunal was justified in coming to the conclusion that before the preparation of the inquiry report there was no deliberation amongst the members of the inquiry committee.

15. It is a matter of record that the two members have, in their report, held the appellant guilty of the charges and recommended termination of his service. The third member, however, by submitting his inquiry report has come to the conclusion that the management has failed to prove the charges against the appellant and, therefore, has recommended exoneration of the appellant. Admittedly, the inquiry was not conducted within a stipulated time period of 120 days and extension sought by the management beyond 120 days was not granted. In that view of the matter, infraction of mandatory provision of Rule 37(6) of the

Maharashtra Employees of Private Schools' (Conditions of Service) Rules, 1981, is apparent on the face of record.

16. In **Vidya Vikas Mandal** (supra) the Hon'ble Apex Court held that:-

“8. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules. ”

17. In **Jaywant Govindrao Sanap** (supra), Learned Single Judge of this Court, in respect of Rule 37(6), observed

thus :-

“9. The object of the Rule is that the three members of the enquiry committee should have deliberations and consider the material which has come on record in the enquiry and then submit the report. In the present case, it being undisputed that the three members of the enquiry committee had discussions and then two members of the enquiry committee submitted one report and the third member of the enquiry committee submitted the report separately but on the same date, in my view, there is sufficient compliance of the provisions of Rule 37 (6) of the Rules, 1981. ”

18. The above ratio support the case of the appellant and the tribunal, therefore, was justified in coming to the conclusion that in absence of deliberation amongst the inquiry committee members the decision to terminate services of the appellant, relying on the report submitted by the two members, is unsustainable since the same is in violation of Rule 37(6). In my view, the tribunal was, therefore, justified in setting aside the termination of the appellant.

19. The impugned judgment of the tribunal is dated 13-03-2020. Admittedly, the appellant on reaching the age of superannuation stood retired on 31-05-2017. It is apt to reproduce relevant observations of the Co-ordinate bench in

Shah Babu Education Society and Another (supra), thus :-

*“11. The judgment on which learned Counsel for respondent No. 2 has placed reliance i.e. **Bhagirathi Jena Vs. Board of Directors, O.S.F.C.** (supra) clearly considers this situation. It has been held that after retirement of employee, the departmental enquiry lapses if*

there is no specific provision for its continuation after retirement of such employee. In the facts of that case the departmental proceedings were initiated against the appellant before the Hon'ble Apex Court under Regulation 44 of the Orissa Financial State Corporation Staff Regulations, 1975, and charge-sheet was served upon him on 22-7-1992. The enquiry could not be completed against him till his retirement which took place on 30-6-1995. He was relieved on 1-7-1995 by the employer Corporation by expressly noting that it was without prejudice to the claims of the Corporation. The Hon'ble Apex Court in paragraphs 6 and 7 of the judgment has noted that there was no specific provision in said Regulation of 1975 for deducting any amount from the provident fund consequent to any misconduct determined in departmental enquiry there was no provision for continuance of departmental enquiry after superannuation. The Hon'ble Apex Court has, therefore, held that respondent - Corporation had no legal authority to make any reduction in the appellant's retiral benefits. It has been held that after retirement of employee/appellant on superannuation, there was no authority vested in Corporation for continuing departmental enquiry even for the purposes of imposing any reduction in retiral benefits payable to the appellant.

12.

13. In the facts of present case, position is otherwise. The provisions of MEPS Act or MEPS Rules do not enable employer to continue with departmental enquiry after superannuation of employee. Therefore, it is obvious that prayer for remand of matter back to employer also cannot be entertained. In these circumstances, I find that no case is made out for interference in writ jurisdiction. Writ Petition is dismissed accordingly. Rule is discharged. No order as to costs. ”

It is, therefore, clear from the above ratio that after the retirement of the appellant the departmental inquiry cannot be proceeded against him. In the light of the above observations the direction given by the School Tribunal in clause 3 of it's judgment directing to proceed the

departmental inquiry against the appellant, cannot sustain. Since, the impugned direction is issued in ignorance of the settled legal position, the same is liable to be quashed and set aside.

20. In view of the aforestated reasons, following order:-

ORDER

- (I) Writ Petition No.7352 of 2020 is allowed.
- (II) The order dated 13-03-2020, passed by the Presiding Officer, School Tribunal, Pune Region, Solapur in Appeal No.04 of 2016, setting aside the termination order of the appellant, is upheld.
- (III) The impugned direction contained in clause 3 of the order dated 13-03-2020, passed by the Presiding Officer, School Tribunal, Pune Region, Solapur in Appeal No.04 of 2016, is hereby quashed and set aside.
- (IV) Writ Petition No.12702 of 2021 is dismissed.
- (V) Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)