

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

WRIT PETITION NO.394/2020

- PETITIONERS :**
1. Shri Gajanan Dnyan Prakash Sanstha,
Andura, Through the Secretary, Guru Krupa
Main Road, Andura (Old), Tq. Balapur,
District Akola.
 2. The Head Mistress
Late Jagdeorao Warale Vidyalaya, Andura
(Old), Tq. Balapur, District Akola.
R/o Chincholi Kale, Tq.
Chandurbazar, District Amravati.

...VERSUS...

- RESPONDENTS :**
1. Ramdas Shaligram Kale
Aged 58 Years, Occupation – Service;
R/o House No.56, Nursing Colony,
Tq. Akot, District Akola.
 2. Education Officer (Secondary)
Zilla Parishad, Akola.
 3. Hon'ble School Tribunal
Amravati Division, Amravati, Through
its Presiding Officer.

Mrs. Radhika G. Bajaj, Advocate for Petitioners.
Mr. S. M. Vaishnav, Advocate for Respondent No.1.
Mr. K. L. Dharmadhikari, AGP for Respondent Nos.2 & 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/09/2021

ORAL JUDGMENT

1. Heard Mrs. Bajaj, learned Counsel for the Petitioners, Mr. Vaishnav, learned Counsel for the Respondent No.1 and Mr. Dharmadhikari, learned AGP for Respondent Nos.2 & 3.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

3. The Petition challenges the Judgment dated 19/12/2019 delivered by the Presiding Officer, School Tribunal, Amravati, whereby the termination order of the Respondent No.1 dated 24/4/2017 was quashed and set aside, and by exercise of the powers under Section 11(2)(d) read with Section 30 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [hereinafter be referred to as 'the said Act' for the sake of brevity], the Respondent No.1 was held guilty for the

charges and the punishment imposed was reduced by directing the withholding of his first due one year increment.

4. Mrs. Bajaj, learned Counsel for the Petitioners submits that the Respondent No.1 was appointed as a Peon on probation on 15/6/2001 and had acquired the status of deemed permanent employee in 2004. On 31/12/2011, the Respondent no.1 proceeded on unauthorised leave without any intimation or permission of the Petitioner No.2. It is contended that the Petitioner No.2 had issued him seven notices, out of which, only one notice dated 23/8/2014 is claimed to have been received. On 28/8/2014, a termination notice was published in local daily 'Matrubhumi', which had been challenged by way of appeal under Section 9 of the said Act, which was numbered as Appeal No.55/2014 and the same came to be partly allowed by the Judgment dated 5/5/2015, whereby the termination order, as published in the local daily 'Matrubhumi' dated 28/8/2014 came to be quashed and set aside, and further direction was issued to reinstate the appellant on the post of Peon. The reason for quashing the same, was that though the Respondent No.1 was a

permanent employee, no enquiry was initiated, as was mandatorily required under Rule 36 of the Maharashtra Employees of Private Schools Rules [hereinafter be referred to as 'the said Rules' for the sake of convenience].

5. This Judgment was not challenged and the Respondent No.1 came to be reinstated on 8/11/2016. Thereafter a fresh enquiry was conducted against the Respondent No.1, on the same allegations, that for the period from 31/12/2011 till 28/8/2014, the Respondent No.1 was absent without any leave, whatsoever. The enquiry committee, by its report dated 22/4/2017 recommended the termination of the Respondent No.1. After calling his explanation and considering it, the Petitioners, by order dated 24/4/2017 terminated the Respondent No.1.

6. This was again challenged before the learned School Tribunal, who by its Judgment dated 19/12/2019 found that the enquiry was vitiated on account of active participation of Shri Varale, the Secretary, who acted as a Convener and thus quashed and set aside the termination order dated 24/4/2017. Insofar as the

punishment imposed is concerned, the learned School Tribunal took a lenient view by observing in paragraph No. 28 that there were no allegations against the Respondent No.1 of any misappropriation or moral turpitude, and considering his earlier services for near about a decade from 2001 to 2011 without any complaint, and so also his age, exercised the powers under Section 11(2)(d) read with Section 30 of the said Act, and though held guilty the Respondent No.1 of being in unauthorised absence for the above duration, reduced the punishment by directing the management to withhold his first due one year increment. Against this Judgment, the present Petition has been filed.

7. Mrs. Bajaj, learned Counsel for the Petitioners, by placing reliance upon *North Eastern Karnataka R. T. Corporation V/s Ashappa and Anr., 2006 (5) SCC 137 (Para 6)* submits, that the misconduct of being absent from the services for a period of more than three years without any authorization, was a grave misconduct, which should not be taken lightly and once the misconduct was proved, the court could not go into the quantum of punishment.

She submits that the Tribunal could not have exercised the powers under Section 11(2)(d) of the said Act.

8. Further reliance is placed on *Delhi Transport Corporation V/s Sardar Singh, 2004 (7) SCC 574 (Para10)* to contend that once an employee chooses to remain absent unauthorisely from duties, without any prior intimation to the employer, it is negligence and lack of interest in work, amounting to misconduct and mere treating such absence as a leave or leave without pay after upholding the misconduct and avoiding punishment, is of no consequence on the effect of misconduct.

9. Further reliance is placed on *Chairman and MD V.S.P. & Ors. V/s Goparaju Sri Prabhakara Hari Babu, 2008(5) SCC 569 (Paras 15 & 17)* to contend that once the charge has been admitted/proved, the court should not interfere with the quantum of punishment upon a delinquent employee.

10. Further reliance is placed on *Om Prakash V/s State of Punjab & Ors., 2011(14) SCC 682*, to contend that the period of

absence is not the only criteria, but the conduct of the employee in remaining absent without authorization, is also material. She further submits that the charge of absenteeism, if condoned by the court, would have an adverse effect upon the discipline, and it would be difficult for the management to administer the school, in case such action is condoned, as that would give an inputs to the other employees, to indulge in such absence.

11. The learned Counsel, therefore, by relying upon *Kashiram Rajaram Kathane V/s Bhartiya R. B. Damle Gram Sudhar Tatha Shikshan Prasara Society and others, 1997(3) Mh.L.J. 235 (Para 14)* contends, that though there has been a deficiency in the enquiry, as found by the learned Tribunal, a fresh opportunity could always be afforded, considering the nature of the misconduct, which already stands proved.

12. Mr. Vaishnav, learned Counsel for the Respondent No.1 submits, that the absence of the Respondent No.1 from the employment, even if it remained unexplained, however, the Respondent No.1 cannot be subjected to repeated enquiries, as it is

for the management to comply with the necessary requirements of law. He submits that at the first instance the termination was without an enquiry, on the second instance, the termination is vitiated due to the participation of the Secretary, who also acted as a Convener, which was in violation of Rule 36 of the said Rules.

13. Placing reliance upon *Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap V/s Alka Namdeo Khalekar and others, 2017(1) Mh.L.J. 105 (Paras 33 and 34)*, learned Counsel submits, that repeated enquiries cannot be permitted by the management, as that would indicate, that the management was bent upon to terminate the Respondent No.1 anyhow. He further relies upon *Rajashri Shahu Chhatrapati Shikshan Sanstha, Nagpur and another V/s Mangala Rajesh Mankar and others, 2019(5) Mh.L.J. 418 (Para 20)*, to contend that in every case the management cannot be permitted to hold a *de novo* enquiry and the same if permitted would be the third enquiry on the very same charges. He also contends that the very request would indicate, that the

management was bent upon to remove the Respondent No.1 by any means.

14. Mrs. Bajaj, learned Counsel for the Petitioners is correct in her submission that the action of absenteeism of the Respondent No.1, for the above duration, is an action, which ought not to be countenanced by the management, as any such action, would have adverse effect upon the functioning of the Institution. The reliance placed upon *North Eastern Karnataka R. T. Corporation; Delhi Transport Corporation; Chairman and MD V.S.P; Om Prakash; and Kashiram Rajaram Kathane (cited supra)* is equally justified. However, what remains to be seen, is whether an appropriate opportunity, was granted to the management, to take action as per law against the Respondent No.1 for the absenteeism, which was the action, by which the Petitioners were aggrieved.

15. In the first instance, the termination dated 28/8/2014 as published in the local daily Matrubhumi was set aside on account of an enquiry having not been conducted at all, which was clearly in violation of the requirement of Rule 36 of the said Rules.

Consequent to the reinstatement, an enquiry was conducted, and it was necessary for the management, since it found the Respondent No.1 not to be desirable to be continued in the Institution, considering that the continuation of the Respondent, was being felt, to have an adverse effect on the discipline, to have ensured with the compliance of the requirement of law. It cannot be said that the management is not aware of the requirements of conducting an enquiry, so as to make it legally sustainable, as that is something, which is in public domain and the Petitioners being governed by the Maharashtra Employees of Private Schools Act, cannot claim ignorance of the statutory requirements in that regard. Thus, in spite of the opportunity being available, the Petitioners embarked upon a course, which led to the vitiation of the enquiry, on account of the Secretary of the Society, have acted as a Convener, which was impermissible in view of the provisions of Rule 36 of the said Rules.

16. The very fact, that a request is again made for the purpose of conducting a *de novo* enquiry against the Respondent No.1, would indicate, that the intention of the Petitioners is to get rid off the Respondent No.1, by any means. The purpose of

conducting a *de novo* enquiry, cannot be for the reason of a pre-decided intention to terminate an employee. Though the Petitioners had the opportunity, they have failed to make proper utilization of the same, in view of which, in the facts and circumstances of the present case, though the absenteeism on behalf of the Respondent No.1 is serious and grave, the default on the part of the Petitioners in complying with the requirements of the provisions of Rule 36 of the said Rules, cannot be given a go-bye in order to permit the Petitioners to conduct an enquiry afresh, that too, with an intention to ensure his dismissal. This view is supported by what has been held by this Court in ***Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap*** and ***Rajashri Shahu Chhatrapati Shikshan Sanstha*** (supra). That being the position, I do not see any infirmity in the Judgment passed by the learned School Tribunal. The Writ Petition is without any merits and therefore the same is dismissed. Rule stands discharged. There shall be no order as to costs.

17. At this juncture, Mrs. Bajaj, learned Counsel for the Petitioners submits, that the Judgment be kept in abeyance, for a

period of six weeks, so as to enable the Petitioners to take appropriate steps in the matter, which request is opposed by the learned Counsel for the Respondent No.1. Considering that the Respondent No.1, as of now is not in employment, the Judgment is kept in abeyance for a period of six weeks, so as to enable the Petitioners to take appropriate steps.

(AVINASH G. GHAROTE, J.)

Yadav VG