

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

WRIT PETITION NO. 3483 OF 2020

1. Gautam S/o Narayan Orke,
Age-58 years, Occ. Service,
R/o At Post Girad, Tah. Samudrapur,
Dist. Wardha-442305. ... Petitioner

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1. The State of Maharashtra, Through its
Secretary, Education and Sports
Department, Mantralaya, Mumbai-32.
2. Deputy Director of Education, Nagpur
Division, Nagpur.
3. The Education Officer (Secondary), Zilla
Parishad, Nagpur.
4. Lokseva Shikshan Sanstha, Through its
President, Kanchand Kirti Apartment, B-
3, Dharampeth, Nagpur-10.
5. Vasantrao Naik Krushi Vidyalay and
Junior College, Through its Head
Master, Shirsi, Ta. Umred, Dist. Nagpur.
6. Shri Krushna Janardhan Kaleshwar,
Aged about 78 years, R/o Behind Hotel
D-Mercy, Kalamna Road, Near Water ... Respondents
Tank, Umred, Tah. Umred, Dist.
Nagpur-441203.

Shri A.D. Mohgaonkar, Advocate for Petitioner.

Shri N.R. Patil, AGP for Respondent Nos.1 to 3.

Shri M.B. Turankar, Advocate for Respondent Nos.4 and 6.

Ms Rama V. Kukday, Advocate for Respondent No.5.

CORAM : SUNIL B. SHUKRE AND ANIL S. KILOR, JJ.

RESERVED ON : 07th OCTOBER, 2021.

PRONOUNCED ON : 17th NOVEMBER, 2021.

JUDGMENT: [PER: ANIL S. KILOR, J.]

The petitioner has approached to this Court by way of present petition, questioning the validity of suspension order dated 27.10.2020 and further for direction to the respondent Nos.4 and 5 to forward the pension case of the petitioner to the respondent no.3-Education Officer.

2. The brief facts of the present case which are relevant for appreciation and decision on the controversy involved in the present petition, are as follows:

The petitioner was appointed as 'Assistant Teacher' in the respondent no.5-School and he was thereafter promoted as 'Supervisor' and lastly as 'Head Master'. It is the case of the petitioner that there is a dispute in the management and one faction of the management issued a show-cause notice dated 28.09.2020 to the petitioner on frivolous allegations and called upon him to submit his reply within seven days.

3. It is the further case of the petitioner that because of his ill-health he could not submit his reply. However, on 27.10.2020 i.e. four days before retirement of the petitioner and when the petitioner was on

leave due to his illness, the petitioner was put under suspension vide order dated 27.10.2020. The petitioner thereafter on 31.10.2020 got superannuated and he was relieved as Head Master on 31.10.2020 after accepting the charge from the petitioner.

4. It is the further case of the petitioner that on relieving him on a superannuation the pension case was forwarded. However, because of faction in the management, the other group of the management had taken back the pension case of the petitioner from the Education Officer and thereafter did not submit the same though the petitioner has been superannuated on attaining the age of superannuation on 31.10.2020. Hence, this petition.

5. Heard learned counsel for the respective parties.

6. Shri Mohgaonkar, learned counsel appearing for the petitioner submits that in absence of any provision to continue with the departmental inquiry after superannuation, the suspension order does not survive after 31.10.2020 i.e. the date of superannuation of the petitioner.

7. It is submitted that as per Rule 34(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (for short the “MEPS Rules of 1981”) if any employee under suspension attains the age of superannuation while under suspension, he shall be

deemed to have retired on attaining the age of superannuation, therefore, in this case the impugned suspension order needs to be set aside.

8. It is further submitted that on the date of superannuation, no departmental inquiry was pending and therefore, in absence of any express provisions under *the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977* (for short the “MEPS Act”) and the MEPS Rules of 1981, the departmental inquiry cannot be continued. Hence, the petitioner is entitled for the pensionary benefits. He has placed reliance upon the following judgments:

- (i) Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and others¹
- (ii) Shah Babu Education Society, Patur Vs. Presiding Officer, School Tribunal Amravati and Aurangabad Divisions, Aurangabad and another²

9. On the other hand, Shri Turankar, learned counsel for respondent Nos.4 and 6 submits that there is no dispute and no faction either in the management and because the petitioner has committed misconduct, he was served with the show cause notice. It is submitted that even though sufficient opportunity was given to him to submit his reply to show-cause notice, no reply was submitted by him and therefore,

¹ (1999) 3 SCC 666

² 2006(6) Mh.L.J. 547
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the management has rightly put the petitioner under suspension vide order dated 27.10.2020.

10. It is submitted that since the process of departmental inquiry against the petitioner was initiated with the issuance of show-cause notice which was admittedly served upon the petitioner much before his date of superannuation, it can therefore, be said that the departmental inquiry was pending against the petitioner on the date of superannuation. As such, the same is permitted to continue as per the provision of Rule 34(3) of the MEPS Rules of 1981. Thus, it is submitted that the petition is *devoid* of any merit and it needs to be rejected.

11. It is further submitted that as the departmental inquiry is pending against the petitioner, a prayer to forward the pension case of the petitioner cannot be considered at this stage.

12. Shri N.R. Patil, learned Assistant Government Pleader for respondent Nos.1 to 3, supports the case of the petitioner and submits that there are no provisions under the MEPS Act and the MEPS Rules of 1981 to continue the departmental inquiry after the retirement if it was not pending on the date of the superannuation.

13. It is pointed out that the Education Officer has repeatedly requested the respondent-management and the school to submit the pension case of the petitioner. However, the pension case has not been submitted by the respondent-management and the school.

14. To consider the rival contention of the parties, we have gone through the record and also perused the relevant documents and the judgments.

15. In this matter, admittedly, the date of superannuation of the petitioner was 31.10.2020 and just before his date of superannuation, he was served with order of suspension dated 27.10.2020 on his failure to submit his explanation to show-cause notice. It is also an admitted fact that he was on leave on 27.10.2020 and joined his duties on 31.10.2020. It has come on record that he was relieved on the superannuation and the charge was taken from the petitioner as Head Master. The communication issued by the management dated 02.11.2020 speaks about the fact of relieving the petitioner as Head Master on attaining the age of superannuation on 31.10.2020 and seeking approval to the appointment of one Shri Gangadhar Baliramji Hedao in place of the

petitioner. The said letter dated 02.11.2020 has been placed by the respondent Nos.4 and 6 on record at Page 144 of the paper book.

16. In the light of above referred admitted facts, it would be appropriate to refer to the relevant provisions of the MEPS Rules of 1981, which are as below:

“34. Payment of subsistence allowance.

(1)....

(2)...

(3) In case an employee under suspension attains the age of superannuation while under suspension he shall be deemed to have been retired on attaining the age of superannuation and any departmental or judicial proceedings pending against him shall be continued even after his retirement....”

“36. Inquiry Committee.

(1) If an employee is allegedly found to be guilty on [any of the grounds specified in sub-rule (5) of rule 28] and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head Concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

[(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say -....”

17. Rule 34(3) of the MEPS Rules of 1981 makes it clear that in case an employee under the suspension attained the age of superannuation while under suspension, he shall be deemed to have been retired on attaining the age of superannuation and any departmental or judicial proceedings pending against him shall be continued even after his retirement.

18. Rule 36 of the MEPS Rules of 1981 further makes it clear that if an employee is allegedly found to be guilty on any of the grounds specified in sub-Rule (5) of Rule 28 and the management decides to hold an inquiry against the Head, President of the management shall communicate to the Head by registered post acknowledgement due, the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations. If the President finds that the explanation submitted by the Head is not satisfactory, he shall place it before the Management and the Management shall in turn decide whether an inquiry be conducted.

19. In the present matter, undisputedly the show cause notice was issued to the petitioner on 28.09.2020, calling upon explanation within

seven days. However, the petitioner failed to submit his explanation within the stipulated period. But, no decision of the management as required under Rule 36(2) of the MEPS Rules of 1981, has been put forth before this Court to show that management had taken any decision to conduct an inquiry against the petitioner before the date of the superannuation of the petitioner i.e. prior to 31.10.2020. In absence of any such resolution produced by the respondent Nos.4 and 6 on record, it cannot be said that on the date of superannuation of the petitioner i.e. 31.10.2020 any departmental inquiry was pending.

20. In the case of ***Shah Babu Education Society (supra)***, the learned Single Judge of this Court has held that the provisions of the MEPS Act and the MEPS Rules of 1981 do not enable the employer to continue departmental inquiry after superannuation of the employee.

21. The Hon'ble Supreme Court of India in the case of **Bhagirathi Jena (supra)** has held that unless there is an express provision for conducting the departmental inquiry after retirement, there is no authority vested in the employer for continuing the departmental inquiry.

22. In the present matter, though the show-cause notice dated 28.09.2020 was served upon the petitioner much prior to his superannuation, however, no resolution has been passed by the management before 31.10.2021 i.e. the date of superannuation of the petitioner to conduct the departmental inquiry against the petitioner as required under the Rule 36(2) of the MEPS Rules of 1981. In absence of any such resolution of the management prior to the date of the

superannuation of the petitioner, it cannot be said that the inquiry was initiated by issuing show-cause notice to the petitioner.

23. The provision of Rule 36(2) of the MEPS Rules of 1981 clearly states that after explanation to the statement of allegations received, if such explanation is found to be not satisfactory, the same shall be placed before the management who in turn decides whether an inquiry be conducted against the employee. So, the point of initiation of disciplinary inquiry in the case of any employee under the MEPS Act would be from the date of decision of the management under Rule 36(2) of the MEPS Rules of 1981 to conduct an inquiry, and not in any case from the date of issuance of show-cause notice issued prior to such decision of management.

24. In that view of the matter, we have no hesitation to hold that the contention of the respondent Nos.4 and 6 that an inquiry was initiated with issuance of show-cause notice to the petitioner, is misconceived and contrary to the provisions of law and hence, the same is rejected.

25. Having held that there is no express provision, under the MEPS Act and the MEPS Rules of 1981, to initiate an inquiry after superannuation of any employee or the head of the school and having further held that in this case no inquiry was initiated before the superannuation of the petitioner, we are of the considered view that the respondent-management cannot continue with disciplinary inquiry against the petitioner and further the petitioner is entitled for pension. Accordingly, we pass the following order:

- (i) The petition is **allowed**.
- (ii) The order of suspension dated 27.10.2020 is hereby quashed and set aside.
- (iii) The respondent Nos. 4 and 5 are directed to submit the pension case of the petitioner within a period of four weeks from the date of the order.
- (iv) The petition is disposed of. No order as to costs.

JUDGE

JUDGE