

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3764 OF 2022

SATYAPRAMOD GOVINDRAO KULKARNI
VERSUS
SHRI SHARDCHANDRAJI PAWAR PRATHAMIK VIDYALAYA THR
ITS IN-CHARGE HEADMASTER AND OTHERS

...
Advocate for Petitioner : Mr. V.D. Gunale
Advocate for Respondent Nos. 1 and 2 : Mr. V.D. Salunke
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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 12th April, 2022

ORDER :

. By this petition, filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges the judgment and order passed by the School Tribunal, Solapur, to the extent it permits the management to conduct fresh inquiry against the petitioner and if such inquiry is conducted, treat the petitioner under suspension.

2. While working on the post of Headmaster in respondent No.1 - School, a charge-sheet levelling 23 charges was served on the petitioner and an inquiry was initiated. After the inquiry, on the basis of report of inquiry

committee, service of the petitioner was terminated. The petitioner challenged the termination, by filing Appeal No. 48 of 2019 before the School Tribunal, Solapur.

3. After considering the material placed on record and after hearing the parties, the tribunal held that, the inquiry was hurriedly completed, the entire procedure and recording of evidence of witnesses was without extending reasonable opportunity to the petitioner to defend his case, no opportunity of cross-examination was extended to the petitioner. Therefore there is breach of Rules 37(2c)(d), 37(4), 37(6) of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981 (*for short 'said rules'*). The tribunal, therefore, held that, the inquiry is vitiated for non following the mandatory procedure under Rules 36 and 37 of the said rules. The tribunal, therefore, set aside the termination order. But granted liberty to the management to conduct fresh inquiry, if the management so desires, by issuing specific charges against the petitioner. The tribunal directed to complete the inquiry within a period of six months by following procedure as per rules. The

tribunal further ordered that, if the management decides to hold fresh inquiry, the petitioner shall be treated under suspension and the management shall pay subsistence allowance to the petitioner. The petitioner is aggrieved by the said directions.

4. Heard learned advocate for the petitioner and learned advocate for respondents Nos. 1 & 2 – management.

5. The learned advocate for the petitioner assailed the impugned directions given by the tribunal, mainly on the ground that, when the tribunal has reached to a conclusion that the inquiry is vitiated, it ought to have reinstated the petitioner with full backwages. He submits that, the petitioner was suspended from April-2019. No permission of Education Department was obtained before suspending the petitioner. The petitioner was not paid any subsistence allowance, as per rules. He further submits that, though the report of the inquiry was served on the petitioner on 28.08.2019, the management has passed the resolution to terminate the services of the petitioner in the meeting dated 25.08.2019. Thus, the management was pre-

determined to terminate the services of the petitioner and this aspect is not considered by the tribunal. Further, by relying on the inquiry report of the same date i.e. 28.08.2019, placed along-with petition at page 91, he submits that as per this report the petitioner was exonerated of all the charges. However, another inquiry report of the same date is prepared by the inquiry committee, wherein the petitioner is held guilty of the 20 charges levelled against him. In this view of the matter, tribunal ought to have reinstated the petitioner with full backwages. By placing reliance on **Anant R. Kulkarni Vs. Y.P. Education Society and Ors., AIR 2013 SC 2098 in Civil Appeal No. 3935 of 2013 dated 26.04.2013**, he submits that the impugned directions of the tribunal are unsustainable and the same are liable to be quashed and set aside.

6. Per contra learned advocate for the respondent Nos.1 and 2 – management supported the impugned directions. He submits that, in all 23 charges were levelled against the petitioner including serious charge of misappropriation of

amount. Out of them 20 charges are held to be proved against the petitioner. Since the tribunal held that mandatory procedure prescribed in the said rules is not followed and there is violation of the principles of natural justice, the tribunal has set aside the termination order of the petitioner. In the facts of the present case, the tribunal is justified in granting liberty to the management to hold the fresh inquiry and the suspension of the petitioner is rightly continued. In support of his submissions, he relied on ***Vidya Vikas Mandal and another Vs. Education Officer and another, (2007) 11 SCC 352 in Civil Appeal No. 640 of 2007 decided on 07.02.2007*** and ***Adarsh Vidya Mandir Trust Vs. Awadesh Narayan Komal Singh & Ors., 2004 (4) ALL.M.R. 594 (4) Mh.L.J. 173 in Writ Petition No. 6025 of 2004 decided on 29.07.2004.***

7. Perusal of the impugned judgment of the tribunal reveals that, the tribunal has held that, while conducting the inquiry, the inquiry committee has failed to follow the mandatory procedure laid down in Rules 36 and 37 of the said rules. The inquiry committee has failed to follow

principles of natural justice. No reasonable opportunity was given to the petitioner to defend his case. In this view of the matter, the tribunal was justified in holding that, since the inquiry against the petitioner is held in violation of mandatory rules and the principles of natural justice are not followed, the same is vitiated and the termination order dated 28.07.2019 on the basis of said inquiry cannot be sustained.

8. It is clear from the above findings recorded by the tribunal that for non following of the mandatory procedure and for violation of principles of natural justice, the tribunal concluded that, the inquiry is vitiated. Therefore, in the facts of the present case the tribunal was justified in granting liberty to the respondent - management to hold fresh inquiry within six months and continued the suspension of the petitioner.

9. Merely because the tribunal has set aside the termination order of the petitioner on the ground that, inquiry held against the petitioner was not legal and proper, the petitioner as of right cannot claim that, he should be

reinstated in service with full backwages. Taking into consideration the charges levelled against the petitioner, this Court is of the considered view that, the tribunal is justified in granting liberty to the respondent – management to hold fresh inquiry against the petitioner, after following the mandatory procedure laid down in the said rules. The interest of the petitioner is protected by the tribunal, by directing the management to pay subsistence allowance to the petitioner and the inquiry is also directed to be completed within a period of six months.

10. The learned advocate for the petitioner has relied on Anant R. Kulkarni (*supra*). In the said decision in the facts of that case the Apex Court has held that, the punishment was quashed, not only because the inquiry was vitiated but also considering the merits of the charges. In that view of the matter it was held that permission granted to hold inquiry was unjustified. It is also held that, once the inquiry was found vitiated, the Court cannot go into merits of the charges.

11. In the case at hand, the tribunal has not gone into the merits of the charges. The inquiry is held vitiated for violation of the principles of natural justice and for not following of the mandatory procedure. Therefore, the ratio in the above ruling would not help the case of the petitioner.

12. The learned advocate for the respondent - management was justified in relying on the ratio in Vidya Vikas Mandal (*supra*). The Apex Court, in the said judgment found that, the inquiry is vitiated as the inquiry report was submitted by the only one member of the committee. The Apex Court directed the management to constitute the committee in accordance with the rules and directed the employee to be treated under suspension and further directed to complete the inquiry within six months.

13. In ***State of Punjab Vs. Dr. Harbhajan Singh Greasy, 1996(9) SCC 322*** it is held :

“Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The

consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction.”

14. This decision supports the case of the respondent - management and the tribunal is justified in issuing the said directions.

15. For the aforesaid reasons, there is no merit in the challenge raised by the petitioner in the present petition. The petition being devoid of merits is dismissed.

16. Needless to mention that, the petitioner is at liberty to claim subsistence allowance, which according to him is unpaid.

**[NITIN B. SURYAWANSHI]
JUDGE**