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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4796 OF 2012

Pramod s/o Shantaram Mahajan

PETITIONER

Age – 48 years, Occ – Nil

R/o C/o Pramod A Firke,

“Shree” Prabhat Colony,

Plot No. 14, Bhusawal,

Taluka – Bhusawal,

District - Jalgaon

VERSUS

1. Shrinath Education Society

RESPONDENTS

Through its President,

Shri Nilkanth Shalikram Zope,

Age – 58 years, Occ – Service

R/o Zopewadi, Varangaon,

Taluka – Bhusawal, District – Jalgaon

2. Ramesh s/o Raghunath Mahajan,

Principal,

Gangadhar Sandu Chaudhari Secondary

and Higher Secondary School

Varangaon, Taluka – Bhusawal

District – Jalgaon

3. The Education Officer (Secondary)

Zilla Parishad, Jalgaon

District – Jalgaon

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon with Mr. Vinod Jadhav, Advocate for petitioner

Mr. P. S. Paranjape, Advocate for respondents No.1 and 2

Mrs. V. S. Chaudhari, AGP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 11th JANUARY, 2022
PRONOUNCED ON : 1st FEBRUARY, 2022

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned advocates for the parties.
2. This petition challenges judgment and order dated 12th April, 2012 passed by the Presiding Officer, School Tribunal, Nashik Division, Nashik in Appeal No. 52 of 2010 and the termination order of the petitioner dated 27th September, 2010.
3. Hereinafter the litigating parties are shall be referred as, the petitioner – teacher; respondent No.1 – management; respondent No. 2 – school; respondent No.3 – education officer and the victim girl - student.

Facts in brief are as follows :

4. The teacher, being qualified for appointment on the post of assistant teacher, was appointed by the management in the school, vide order dated 13th June, 1994.
5. Second unit test of 9th standard was being conducted in the school on 3rd February, 2010. Science II paper was conducted between 2.30 and 3.30 p.m. at block No.14 and Mr. Borse was the supervisor. Thereafter, on the same day, second paper of

Environmental Science, was being conducted between 4.30 and 5.30 p.m. The student appeared in both the papers. On the next day i.e. on 4th February, 2010, the student addressed a communication to the Head Master making allegation against the teacher that during the examination on 3rd February, 2010, the teacher misbehaved with her.

6. It is the case of the teacher that the management approached the Education Officer on 18th February, 2010 seeking permission for suspending the teacher. The Education Officer enquired into the matter, through Deputy Education officer, who visited the school on 9th April, 2010 and after recording statements of the concerned, submitted a report that there is no substance in the complaint of the student. The Education Officer accordingly rejected permission to suspend the teacher.

7. The management on the basis of the complaint of the student, initiated an inquiry and constituted a committee of three members. The committee, after conducting inquiry, submitted a report, holding the teacher guilty of misconduct involving moral turpitude and code of conduct and recommended punishment of termination from service. The inquiry report was placed before the meeting of the Board of Directors of the management on 26th September, 2010. The report was accepted

by the Board of Directors of the management and by order dated 27th September, 2010, services of the teacher came to be terminated.

8. The teacher challenged the order of termination of his services before the School Tribunal, Nashik (for short "the Tribunal") by filing Appeal No. 52 of 2010. The appeal came to be dismissed by the Tribunal. Hence the present writ petition.

9. Mr. Hon, learned senior advocate appearing for the teacher, assailed the order of termination as well as the impugned judgment of the Tribunal submitting that the Education Officer had conducted an inquiry in which it was found that there was no substance in the complaint of the student. The inquiry committee has recorded perverse findings, without there being any evidence on record. The evidence led before the inquiry committee was not sufficient to come to the conclusion that the teacher is guilty of misbehaviour alleged against him. By pointing out statements recorded during the course of inquiry, he further submits that it was not possible for the girl Madhuri, who was sitting in the first row, to notice the alleged misbehaviour of the teacher with the student, who was sitting in the last row. By taking me through the statements and cross-examination of the witnesses recorded during the course of the inquiry, he submits

that the teacher only kept hand on the shoulder of the student as a fatherly gesture. He did not do anything else. The girls around the student have stated that no incident, as alleged by the student, has taken place. Evidence of the student's uncle is a hearsay evidence. The Tribunal has passed the judgment on assumptions and presumptions and for minor misconduct of the teacher of putting hand on the shoulder of the student, shockingly disproportionate punishment is imposed on the teacher, which cannot be sustained in the facts of the present case. He, therefore, submits that the termination order as well as the impugned judgment of the Tribunal are liable to be quashed and set aside, by allowing the writ petition. In support of his submissions, he relied on ***"Shankar Gopal Pagire V/s State Transport Co-operative Bank Ltd.," 2004 (6) Bom.C.R.217*** and ***"Mahalaxmi Shikshan Sanstha V/s State of Maharashtra" 1998 (1) Mh.L.J. 826.***

10. Countering the arguments advanced on behalf of the teacher, learned advocate for the management and the school, submits that the allegations of misbehaviour against the teacher are serious. The teacher has misbehaved with the student twice. The friend of the student, namely, Madhuri, has corroborated the allegations of the student. By pointing out the statement

addressed to the President of the School Committee of the school given by the teacher, dated 6th February, 2010, he submits that the teacher has admitted in writing that he had kept hand on the back of the student, unintentionally, however, the student took it otherwise. He admits that he has committed a mistake and he may be pardoned for the same. He, therefore, submits that the teacher has categorically admitted his misbehaviour with the student. Therefore, no leniency be shown to the teacher. By relying on the following judgments, he submits that taking into consideration the serious nature of misbehaviour committed by the teacher, no case is made out by the teacher to warrant interference in the termination order and the impugned judgment, in the extraordinary writ jurisdiction.

1. *“Thapar Education Society & another Versus Shyam Maroti Bhasarkars & others”, 1997 (Supp.) Bom. C.R. 661 : 1997(3) Mh.L.J. 709;*
2. *“Sulochana Daulatrao Thakare Versus Sangam Shikshan Sanstha & others”, 2004 (4) Bom.C.R. 488;*
3. *“Datta Shikshan Prasarak Mandal & anr. Versus Dinkar Krishna Gawde”, 2006(6) Bom.C.R. 695;*
4. *“Sarv U. P. Gramin Bank Versus Manoj Kumar Sinha, 2010 DGLS (Soft.)” 79 : 2010(3) SCC 556;*
5. *“Shashikant B. Kulkarni (Prof.) Versus Principal, BPCS College of Physical Education & ors.,” 2008(4) Bom.C.R. 1 and*

6. *“Manohar Pandit Marathe Versus President, Sharda Vidya Prasarak Mandal and Others”, Writ Petition No. 9310 of 2013 and Civil Application No. 2010 of 2014 decided on 01.04.2014*

11. Learned Assistant Government Pleader submits that the misconduct of the teacher is proved on record during the course of the inquiry and hence, there is no reason to interfere in the termination order.

12. Heard Mr. V. D. Hon, learned senior advocate for the teacher, Mr. P. S. Paranjape, learned advocate for the management and the school and Mrs. Chaudhari, learned Assistant Government Pleader for the education officer, at length. Perused the record.

13. The record indicates that on 3rd February, 2010, between 2.30 and 3.30 p.m. during the examination of Science II paper, Mr. Borse was the supervisor at block No. 14 and when he went out for some time, the teacher went there for supervision. As per the allegations of the student, when she was writing the answer sheet, the teacher moved his hand from her neck to back. She disclosed this to her friend Madhuari, immediately after the examination was over at 3.30 p.m. On the same day, at 4.30 p.m. at the time when paper of Environmental Science was going

on, the teacher was the supervisor. This time again, the teacher went to the student and by moving his hand on the back of the student, he put his hand inside her top. The student yelled " Oh Sir". After hearing the yelling, Madhuri and other girls looked at the student, at that time the teacher asked her whether she wants any help and then he left. On the next day these two incidents were informed by the student in the form of complaint to the Head Master of the school. On the basis of the complaint of the student, a charge that the teacher has misbehaved with the student, which amounts to misconduct involving moral turpitude was framed against the teacher and a three members inquiry committee was constituted.

14. Before the inquiry committee, statements of the student, other girls who were sitting around the student in the examination hall including her friend Madhuri etc. were recorded. They were cross-examined by the teacher. Initially, at the time of paper of science II, the teacher had moved his hand on the back of the student. This fact was immediately disclosed by the student, to her friend Madhuri after the paper was over. At the time of second paper of Environmental Science, the teacher moved his hand on the back of the student and then put his hand inside her top. When the student yelled "Oh Sir", the girls

sitting beside the student heard the same. Though it is a fact that the allegation of the student that the teacher put his hand inside her top is not supported by other girls, the fact remains that her yelling "Oh Sir" was heard by Madhuri and another girl Vaishali.

15. In her statement, before the inquiry committee, the student has categorically disclosed the two incidents i.e. first during science II paper between 2.30 and 3.30 p.m. of the teacher moving his hand on her back and second between 4.30 and 5.30 p.m. during the Environmental Science paper, the teacher putting his hand inside her top. It is pertinent to note that though the student was cross-examined at length, it is not even suggested to her that said allegations are false and they are made due to some prejudice or they are actuated with particular intention. Thus, there is sufficient material on record to hold that the teacher has misbehaved with the student, which amounts to misconduct involving moral turpitude.

16. The teacher was cross-examined before the committee. He has admitted that he moved his hand on the back of the student and he had kept his hand on her shoulder. He has further admitted that he had kept his left hand on the right shoulder of the student for 30 to 40 seconds.

17. The student was 15 years of age at the time of the incident. She was of such an age that she could make out difference between good touch and bad touch. She was capable of differentiating between fatherly touch and touch with ill intention. The teacher has admitted that he had moved his hand on the back and had kept his hand on the shoulder of the student, which the student has realized to be with ill-intention. The teacher was not teaching any subject to the student. Therefore, the student had no reason to falsely implicate the teacher. The misbehaviour on the part of the teacher, therefore, clearly amounts to misconduct involving moral turpitude.

18. Though the teacher has relied on statements given by his colleagues in writing, including lady teachers to the effect that conduct of the teacher with them is good and he has never misbehaved with them, however, taking into consideration the material brought on record during the course of inquiry, this cannot be said to be of any help to the teacher.

19. The teacher has also relied on the statements of six girl students given after five months of the incident that they have not seen any such incident on 3rd February, 2010, however, the same is also rightly not taken into consideration by the Tribunal

on the ground that it is belatedly taken after five months and the students had no reason to give such statements.

20. The Tribunal has considered all aspects of the matter and the arguments of the teacher. The Tribunal has recorded a finding that there is no substance in the arguments of the teacher that the Deputy Education Officer had conducted an inquiry and had submitted a report that no such incident, as alleged by the student, has taken place. The management has categorically contended that they have no knowledge that any Education Officer came to the school and conducted inquiry in respect of the incident alleged by the student. The Tribunal has observed that the Education Officer or the Deputy Education Officer have no right to conduct such inquiry under Maharashtra Employees of Private Schools Act and Rules. Therefore, there is no question of considering the report of the inquiry allegedly conducted by the Deputy Education Officer. The contention of the teacher that he was not given necessary documents during the inquiry and, therefore, the principles of natural justice are violated, is also negated by the Tribunal by observing that four charges were levelled against the teacher i.e. (i) *the teacher deliberately got the block No. 1 changed; (ii) at the time of science examination, the teacher moved his hand from the neck*

up to back of the student; (iii) the teacher deliberately got his block changed and (iv) the teacher put his hand inside the top of the student” . Charge sheet levelling these charges was served on the teacher on 17th May, 2010. It is observed by the Tribunal that the major charges are of misconduct involving moral turpitude about the teacher moving hand on the back of the student and putting his hand inside her top. There cannot be any documentary evidence about these two charges. So far as the the two charges about the teacher got the examination blocks changed are concerned, the teacher himself has admitted that the examination blocks were changed at his request. The Tribunal, therefore, held that there is no substance in the contention of the teacher that he did not receive documents in support of the charges.

21. The Tribunal has come to a conclusion that the findings recorded by the inquiry committee are based on reliable evidence of the student, direct evidence and other circumstantial evidence brought on record during the course of the inquiry. The Tribunal also held that the inquiry committee was legally constituted. The Tribunal, after assessing the evidence before it and after giving reasonable and fair opportunity of defence and after following principles of natural justice, has held that the

teacher is guilty of the charges levelled against him. The Tribunal has assigned proper reasons in support of its findings. The Tribunal, therefore, was justified in dismissing the appeal filed by the teacher. There is no illegality or perversity in the impugned judgment of the Tribunal.

22. In "**Shankar Gopal Pagire**" (*supra*) this Court, in the peculiar facts of that case, has held that the inquiry officer questioned the petitioner extensively to plug loopholes in the cross-examination conducted by the management's representative. The Inquiry Officer, therefore, exceeded his jurisdiction by violating principles of natural justice. This Court, therefore, set aside the inquiry.

In the case in hand, though questions were put to the teacher by the inquiry committee, those were seeking his explanation about the incident, therefore, this ratio would not help the teacher.

23. In "**Mahalaxmi Shikshan Sanstha**" (*supra*) this Court has held the delinquent employee is entitled to be supplied true copies of all documents tendered by the management, by way of evidence. Since the management did not supply true copies of the documents relied upon by it, in spite of request of the

employee, then the inquiry was held to be vitiated for violation of procedure prescribed under Rule 37. Such are not the facts in the present case.

24. In **"Apparel Export Promotion Council Vs. A. K. Chopra", 1999 (1) SCC 759 : A.I.R. 1999 S.C. 625**, the Hon'ble Supreme Court has held, thus :-

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty

imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.
....”

25. Applying above ratio to the facts of the present case, this Court is of the considered view that the charge of misconduct involving moral turpitude is proved against the teacher during the course of the inquiry and the punishment imposed on the teacher is commensurate with the misconduct of the teacher. No case, therefore, is made out by the teacher to interfere in the termination order as well as in impugned judgment and order of the Tribunal. Writ petition being meritless is dismissed. Rule discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE