

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7391 OF 2022

1. Ashok Vidyalaya Shikshan Sanstha
Gaul Tanda, Tq. Kandhar, Dist. Nanded
Through its Secretary.

2. Shri Shivajirao Patil Primary School
Wajegao, Tq. and Dist. Nanded
Through its Head Master.

Petitioners

Versus

1. Bhalchandra Manikrao Pawar
age 54 years, occ. At present Nil
r/o Dhanwantary Colony
Near Ravindra Primary School
Nanded, Tq. & Dist. Nanded.

2. The Education Officer (Primary)
Zilla Parishad, Nanded.

3. The State of Maharashtra
Through the Secretary
School Education & Sports Department
Mantralaya, Mumbai

Respondents

Mr. R. J. Godbole, Advocate for the petitioners.
Mr. K. B. Jadhavar, AGP for respondent/State.
Mr. S. S. Manale, Advocate for respondent No. 1.

CORAM : M.G. Sewlikar, J.

DATE : 28th JULY, 2022.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. With the consent of the parties, the petition is taken up for final hearing at the admission stage.
3. This petition arises out of the judgment and order passed by the learned School Tribunal, Latur in Appeal No. 44/2014 whereby the appeal of respondent No. 1 is allowed and his termination is set aside, he is reinstated with full backwages and other consequential benefits.
4. The facts in nutshell are that petitioner No. 1 is the Education Society. Respondent No. 1 was appointed on 12th June, 1995 on clear vacancy and permanent post in petitioner No. 2 – school as Assistant Teacher. The educational qualification of respondent No. 1 is D.Ed. He was terminated. However, his termination was set aside by the school tribunal and he was reinstated.
5. Respondent No. 1 was subjected to harassment by petitioner No. 2. Petitioners No. 1 and 2 did not forward the proposal

of respondent No. 1 for higher pay scale as he had completed twelve years of service. He had made representation to the Education Officer to take appropriate steps in that respect. It was informed to the Education Officer on 20th November 2013 that there were charges of mis-conduct against respondent No. 1 and, therefore, he was not granted higher pay scale.

6. In the year 2008, the Head Master – petitioner No. 2 herein who is also the President of petitioner No. 1 – society, started demanding money from respondent No. 1 for construction of school building. Respondent No. 1 refused to pay the amount and, therefore, he filed police complaint against petitioner No. 2.

7. Respondent No. 1 was issued show cause notice about his absenteeism. Though respondent No. 1 was ill, petitioner No. 2 did not accept his application for leave and he (respondent No. 1) was issued notice for his absenteeism. Respondent No. 1 was placed under suspension. Inquiry was not conducted against respondent No. 1 in terms of Rules 36 and 37 of the Maharashtra Employees of Private Schools, Rules (for short “MEPS Rules”). Copies of documents were not supplied to respondent No. 1. No opportunity of

hearing was given to respondent No. 1 and therefore, the inquiry was not as per the Rules. After completion of the so called inquiry, respondent No. 1 was terminated from service. Therefore, respondent No. 1 preferred appeal before the learned School Tribunal.

8. Petitioners No. 1 and 2 by filing say below Exhibit 21 in the record of the School Tribunal, resisted the appeal. Petitioners No. 1 and 2 denied all the allegations of respondent No. 1 in toto. They contended that respondent No. 1 is guilty of severe mis-conduct and willful negligence. He was issued show cause notice from time to time but there was no change in his behaviour. Therefore, inquiry was conducted against respondent No. 1 and as per the report of the Inquiry Committee, his services were terminated. Respondent No. 1 was initially appointed on 12th June, 1985 as an untrained teacher. Later on, he completed postal D.Ed. Course on 12th August, 1995. Respondent No. 1 never rendered continuous service by virtue of which, he was not entitled to the higher pay scale. There was no harassment as alleged on the part of the petitioner No. 2. Respondent No. 1 always deviated from virtues. He used to oggle at the ladies while they were taking bath. Houses of those ladies are

near the school and they made complaints in that respect to the school. Respondent No. 1 never strived for achieving good results in the scholarship examination. Accordingly, statement of allegations was issued to him on 4th January, 2014. He was placed under suspension on 24th February, 2014. Charge-sheet was served on 18th June, 2014, but no reply was given by respondent No. 1. Respondent No. 1 remained absent for the inquiry. Therefore, ex-parte inquiry was conducted and respondent no. 1 was terminated from service on 5th July, 2014 with effect from 28th June, 2014.

9. I have heard learned counsel for petitioners No. 1 and 2 and learned counsel for respondent No. 1.

10. Learned counsel for the petitioners submitted that the petitioners committed irregularity in conducting inquiry. The inquiry was not in terms of Rules 36 and 37 of the MEPS Rules. He, therefore, submitted that the judgment and order of the learned School Tribunal be set aside and the petitioners be permitted to hold *de novo* inquiry against respondent No. 1. For this purpose, he placed reliance on judgment in the matter of State of Madhya Pradesh vs. Dr. Harbhajan and another reported in 1990 (Supp)

Supreme Court Cases 738.

11. Learned counsel for respondent No. 1 submitted that the inquiry was not held in accordance with Rules 36 and 37 of the MEPS Rules. He submitted that the charges levelled against respondent No. 1 are stale charges. Some of them are of the year 1992. The only serious charge against respondent No. 1 is that he used to oggle at the ladies who were bathing, from the window of the school. He submitted that the inquiry papers were never produced before the Inquiry Officer and the bunch which was filed along with the say by petitioners No. 1 and 2 in the School Tribunal. The said was never furnished to him during the course of inquiry. It was for the first time produced before the School Tribunal and the School Tribunal has also taken a note of it and observed that the possibility of preparing such record cannot be ruled out. He further submitted that the period for which he was punished on account of absence from duty has also been included in the charges. He submitted that the School Tribunal has rightly drawn an inference that the possibility of preparing these documents subsequently cannot be ruled out. He submitted that relations of respondent No. 1 with petitioner No. 2 are not good. They are the relatives. Both of them

have filed complaints against each other. This inquiry was nothing but an outcome of the vengeance of petitioners No. 1 and 2. He, therefore, strongly opposed the argument rendered by learned counsel for the petitioners that petitioners No. 1 and 2 be permitted to hold *de novo* inquiry. He submitted that when charges are stale, there is no propriety in instituting the inquiry. For this purpose, he placed reliance on the following cases :

- i) State of Madhya Pradesh vs. Bani Singh and another reported in 1990(Supp) SCC 738.
- ii) State of Punjab and others vs. Dr. Harbhajan Singh Greacy reported in 1990 (Supp) Supreme Court Cases 738.
- iii) Ratlial Durlabhai Desai vs. Municipal Corporation of Greater Bombay and others, LAWS (BOM) – 1993 – 2 – 163.

12. I have given thoughtful consideration to the submissions of the learned counsel.

13. The statement of allegations is annexed with the petition. The first charge is that he reported late to the school from 6th January, 1992 to 8th January, 1992, by 15 minutes and, despite notice, no explanation was given. In the year 1994, by following due

procedure of law, the school was shifted from Nath Nagar, Latur to Vajegaon. Despite that he had got a news published in Daily Lokmat and defamed the school. The second charge is that he did not remain present on 6th January, 1992, after he was relieved from training. He is guilty of insubordination, threatening the Head Master to kill him, neglecting cleanliness in the classroom, absence from duty from 29th February 2008 to 16th March, 2008, making false complaint against petitioner No. 2 with the police, making indecent gestures at women by looking out of the window when they were bathing.

14. As indicated by the learned counsel for the petitioners, inquiry is not held in accordance with Rules 36 and 37 of the MEPS Rules. Therefore, it is not necessary for me to deal into the lapses while conducting the inquiry.

15. It is true that most of the charges levelled against respondent No. 1 are stale charges. All the charges are of the year 1993, 1994 and 2008. These charges are not so serious so as to entail dismissal of respondent No. 1. Learned Single Judge of this Court in the case of Bhagwanrao s/o Vishwanath Vyawhare vs. Sau. Sunita w/o Gopinath Palve and another reported in 2008(1) Mh.L.J.

417 has observed thus :-

6. I have given my anxious consideration to the rival contentions. It is significant to note here that the enquiry has been found to be vitiated on three counts namely; that the person competent to issue the statement of allegations i.e. the President of the Management has not issued the said statement of allegation, secondly, the constitution of the Inquiry Committee was not proper as the President was not part of the Inquiry Committee and did not act as the Convener and thirdly that the termination order has been issued by a person incompetent to issue it. The question as indicated herein should the Management be permitted to hold a de novo enquiry against respondent No. 1. For consideration of the said question, the observations of the Full Bench in para 65, in my view, are relevant. The Full Bench has taken into consideration the judgment of the Apex Court in the matter of *State of Punjab and others vs. Dr. Harbhajan Singh Greasy and others* (supra) and the Judgments cited before it and thereafter it has concluded in the manner it has done in paragraph 65 of the said judgment. The question that begs an answer is, is the present case an exceptional case to warrant a de novo enquiry into the charges levelled against the respondent No. 1. Looking to the background of conspectus of facts prior to the issuance of the statement of allegations issued to the respondent No. 1, in my view, the course of action allowing the petitioners to hold de novo enquiry is not warranted in the instant case.

16. It is observed in the case of *M. V. Bijlani vs. Union of India and others* (2006) 5 SCC 88 thus :

16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant

in terms of the prescribed rules or otherwise. Further more, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Registered by way of sheets which were found attached to the estimate file were not appropriate to as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

17. In State of M.P. vs. Bani Singh, this Court has clearly held: (SCC p. 740, para 4)

“The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than twelve years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.”

17. Thus, from the aforementioned observations, it is clear that it would be unreasonable on the part of the management to initiate

inquiry after a gap of more than twelve years. In the case at hand, the charges those have been levelled against respondent No. 1 are of the year 1992 and 2008. It is not the case of the petitioners that they became aware of this mis-conduct only in the year 2014. They were very much aware of the same and despite that they did not initiate any action for a period of twelve years.

18. One of the charges is of absenteeism. The period of absenteeism is from 29th February, 2008 to 16th March, 2009. Charge No. 5 clearly indicates that in the statement of allegations, it is stated that respondent No. 1 was absent from 29th February, 2008 to 16th March, 2008 and he was punished by treating the said period as leave without pay. Charge No. 5 shows that respondent No. 1 has again been charged of absenteeism for the same period. It is settled principle of law that if an employee is punished once, he cannot be charged for the same mis-conduct again.

19. The only serious charge against respondent No. 1 is that he used to oggle at the women who were bathing from the window of the school. This charge is vague. It does not mention the period during which this incident happened. The learned School Tribunal

has observed that the bunch of papers was produced before it at the time of filing of the say by petitioners No. 1 and 2. Learned counsel for respondent No. 1 made a statement at bar that those papers were never produced before the Inquiry Officer at any time. Therefore, the learned School Tribunal was justified in drawing inference that the possibility of those papers being prepared subsequently cannot be ruled out.

20. In the matter of State of Punjab and others vs. Dr. Harbhajan Singh Greasy reported in (1996) 9 Supreme Court Cases 322, it has been held thus :-

“.... It is now well-settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. 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.

However, considering the deficiencies, no fruitful purpose would be served by remanding the matter. Thus, all these charges clearly show that the school authorities are bent upon terminating

the services of respondent No. 1 by one way or the other. He was terminated earlier and was reinstated. Having regard to this, I do not find any infirmity in the appreciation made by the learned School Tribunal. Writ petition is, therefore, devoid of any substance. Hence, stands dismissed. Rule is discharged. No costs.

(M. G. SEWLIKAR)
Judge

dyb