

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8347 OF 2019

Sudev Nagnath Kamble,
Age: 45 Years, Occu: Teacher,
R/o Ujulamb Tq. Chakur,
Dist. Latur.

... Petitioner

Versus

1. The Secretary,
Ahilyabai Holkar Shikshan Prasark
Mandal, Karepur,
Tq. Renapur, Dist. Latur.
2. Head Master,
Late Janardhanrao Rajemane Madhyamik
Ashram Shala, Janwal,
Tq. Chakur, Dist. Latur.
3. Assistant Commissioner,
Social Welfare Office, Latur,
Dist. Latur.
4. Regional Deputy Commissioner,
Social Welfare Office, Latur,
Dist. Latur.
5. School Tribunal,
Latur.

... Respondents

...

Advocate for Petitioner : Mr. V. D. Salunke
AGP for Respondent Nos. 3 to 5 : Mr. K. B. Jadhavar
Advocate for Respondent Nos. 1 and 2 : Mr. V. D. Sapkal

...

CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th JANUARY, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with

the consent of the parties.

2. This is a classic case where the principles of natural justice have been thrown into air and the petitioner, who faced serious charges in the departmental inquiry instituted against him, succeed in this writ petition.

3. The petitioner was working as Assistant Teacher, appointed with the Management from 25-06-2004. This case is to the effect that the Management had a grudge against him since he was keen of being promoted to the post of Headmaster belonging to the reserved category but the Management was inclined to promote someone else. In any case, I am not much impressed by the said submission and would straight way turn to the facts highlighted in the present petition.

4. On 15-01-2013, the petitioner was issued with a show-cause notice asking him to show cause in respect of 18 charges leveled against him and his explanation was sought within a period of 07 days. The perusal of the charges would reveal that they relate to the period as early as 2007-2009 and some of the charges relate to insubordination, dereliction of duties, misdemeanor, misconduct, etc. On 24-01-2013 the petitioner submitted his reply denying the allegations leveled against him and on 07-02-2013 he was intimated about appointment of the inquiry committee. He was afforded opportunity to appoint Shikshak

Pratinidhi to represent him and with his consent being obtained it was communicated to convener of the Committee. Upon making the appointment, the petitioner sought more time but on 28-02-2013 itself he was informed that 15 days as prayed by him is a long period and he should submit the name of his representative within a period of 08 days. On 11-03-2013 the respondent Management appointed 02 Member Committee as an inquiry committee and this included Shri Padmakar Chaudhari, recipient of Maharashtra Government Award of Adarsh Shikshak and Shri S. S. Karkare, Member of the Society.

The petitioner was informed about their appointment on 12-03-2013 and on the very same day charge-sheet was served upon him which reiterated the charges leveled against him in the show-cause notice. The statement of imputation accompanying the said charges comprised only of the charges leveled against him, without any further details.

On 15-03-2013 the petitioner prayed for grant of stay to the proceedings since he had instituted a writ petition calling in question the composition of the inquiry committee, but since the petition came to be dismissed on 04-04-2013 with an observation that if the inquiry committee is not properly constituted and if the petitioner had any grievance about its constitution, he is at liberty to assail the same on its

finding being rendered and referring that the writ petition is premature, it came to be dismissed.

5. The petitioner responded to the charge-sheet by filing detailed reply and denied the charges faced by him.

Meeting of the inquiry Committee was scheduled on 03-04-2013 but on the said date of hearing the petitioner by requesting the Management to stay the inquiry proceedings, by preferring an application left the venue and the inquiry could not be conducted. It was rescheduled on 06-04-2013 when the petitioner made two fold request, one for accommodating Shri S. G. Patil as a Teachers Representative to represent him and since the Management was being represented by Advocate Manokar Karkare, he sought leave to be represented through a lawyer. The said application was not accepted by Manohar Karkare, Coordinator of the Committee, on the pretext that it was not possible for him to accept the application. The petitioner reported this conduct of the inquiry committee to the Assistant Commissioner, Social Welfare Department, Latur, on 06-04-2013.

6. Behind the back of the petitioner, the inquiry was completed in 3 days and on 09-04-2013 he received a communication from the coordinator of the inquiry committee, Advocate Manohar Karkare, intimating him that the inquiry committee had concluded the

proceedings/inquiry in his absence and if he was desirous of making any submission about the conduct of the inquiry committee, he was at liberty to forward his comments by Registered Post or by personally remaining present before the Committee within a stipulated period of 07 days of receipt of the letter. Along with the said letter copy of proceedings of the inquiry (Page Nos. 1 to 5) came to be forwarded. The said documents are to be found at page Nos. 60 to 63 of the petition.

7. On 27-04-2013, petitioner was served with an order of termination, terminating him from the post of Assistant Teacher with effect from 30-04-2013 and the said letter indicated that an inquiry conducted against him and the report of the inquiry being submitted on 26-04-2013, he was found guilty of all the charges leveled against him and therefore, it was decided to terminate his services forthwith.

Being aggrieved, the petitioner approached the School Tribunal which has dismissed his appeal by the impugned judgment and aggrieved by its dismissal he has filed the present writ petition.

The learned counsel for the petitioner has stressed upon the non observance of principles of natural justice, upon which his action of termination deserves to be tested and on perusal of the chronology and sequence of events, it is suffice to note that the Management desired to proceed departmental inquiry in respect of the allegations of

misdemeanor and misconduct of the petitioner and the charges leveled against him pertain to year 2007-2009 and inquiry was initiated by issuance of show-cause notice in January, 2013.

The settled principle of law being 'justice should not only be done but seem to be done' has been well accepted in the Indian scenario, particularly in the service jurisprudence. The petitioner may suffer serious consequences for indulging in alleged acts of misconduct, which he was accused of, by issuance of show-cause notice and subsequently, the charge-sheet issued on 12-03-2013.

If the charges leveled against the petitioner are to be viewed with seriousness, in that contingency, before adjudging him guilty of the said charges, it was expected for the Management to give due opportunity for him to represent himself in the inquiry process. The inquiry committee which was constituted, was objected by the petitioner by filing writ petition and since his petition was found to be without any merit it came to be rejected and therefore, the petitioner would not have insisted upon postponement of the inquiry proceedings in the wake of the decision of the Management to appoint 02 Members Committee. However, the manner in which the inquiry progressed further depict a hasty decision of the Management and the urge to somehow put an end to the proceedings and to the services of the petitioner and this can be

reflected from the fact that the petitioner did not remain present before the inquiry officer on 06-04-2013 and on 09-04-2013 the proceedings in the inquiry were completed, in his absence. Even the report of the inquiry is not forwarded to him and this position is not disputed by the learned counsel for Management, which is apparent and manifest from the affidavit-in-reply filed by the Management. In absence of the copy of inquiry report being supplied to the petitioner and the inquiry being concluded within a span of 03 days, and further the report of the inquiry being received by the Management itself on 26-04-2013 without affording any opportunity to the petitioner to submit his comments on the inquiry report or even giving him an opportunity to peruse the same, on 27-04-2013 itself the decision is taken by the disciplinary Committee to put an end to the services of the petitioner by the Management, speaks volumes and such an high-handed approach on the part of the Management cannot be sustained at all.

In regards the principles of natural justice and specially in case of departmental proceedings where a confirmed employee is to meet with serious civil consequences resulting into termination of his services, the Management ought to have been conscious of the seriousness of the proceedings, but instead it concluded the proceedings in an impulsive and abrupt manner, with a predetermined mind to make

a decision to put an end to the services of the petitioner and the procedural steps in arriving at finding of guilt was only looked upon as empty formality.

8. The School Tribunal, however, failed to advert itself to the said important aspect of the matter and perfunctorily dismissed the appeal filed by the petitioner.

The principle that justice should be impartial, fair, equal for all and ensuring protection of individual rights against arbitrary procedures, has been trampled by the Management and the Tribunal also missed the basic principle which is the soul of the body of justice and foundation on which delivery of justice is based. The rules of natural justice are considered as indispensable part of legal system and they are ingrained in the duty of judicial and quasi judicial authority to act fairly, in determining rights and obligations of the parties.

9. In the wake of the aforesaid, the impugned order dated 27-04-2013 is quashed and set aside, cannot be sustained and so also the judgment dated 12-04-2019 passed by the School Tribunal upholding the said order of termination. On setting aside the order of termination, the inquiry proceedings are remitted to the Management, with liberty to continue the proceedings in the inquiry initiated against the petitioner, from the stage of issuance of charge-sheet and submission

of reply by the petitioner to the said charge-sheet.

Needless to state that on the matter being remanded, the Management shall conduct the inquiry by adhering to the principles of natural justice and after affording adequate opportunity to the petitioner to defend himself in the said proceedings. The inquiry shall be completed by adhering to the procedure set out in the Rules 36 and 37 of the Maharashtra Employees of Private Schools' (Conditions of Service) Rules, 1981. In the interregnum period, on setting aside the order of termination, the petitioner shall continue to be under suspension with all the benefits accruing to him being under suspension. In the wake of the aforesaid, the writ petition is allowed.

Rule is made absolute in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)