

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10466 OF 2021

GORAKSHANATH GANPAT DHERANGE
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS

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Mr. Rahul Temak, Advocate for the petitioner.
Smt. R.P. Gaur, A.G.P. for respondent Nos.1 and 2.
Mr. V.D. Patnurkar, Advocate for respondent No. 3.
Mr. S.S. Jadhavar, Advocate for respondent Nos. 4 to 6.

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CORAM : **C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : **12 JULY 2022**

ORDER :

The petitioner came before this Court challenging constitution of the Inquiry Committee on the ground that it is not in accordance with Rule 36 (2) (a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the 1981 Rules, for short). It is contended on behalf of the petitioner that the representative of the Management on the Inquiry Committee was not authorised to represent the Management as his Change Report was pending before the Charity Authorities. Now it is undisputed that the Change Report has been accepted and the name of the representative is taken on record in Schedule-I.

2. The learned Counsel for the petitioner now raised a contention that the Change Report is accepted subsequent to the constitution of the Inquiry Committee which was done somewhere in April 2021 and the acceptance of the Change Report cannot relate back to the date of constitution of the Inquiry Committee. Secondly, it is submitted that the representative is working on a post which is subordinate to that of the petitioner. As the petitioner is working as an Assistant Teacher and the representative of the Management, who in a given case, may be an employee in the school, cannot be subordinate to the post of the petitioner against whom departmental enquiry is proposed to be held.

3. The learned Counsel for the respondent – Management submitted that the resolution about inclusion of the name of the representative as a Member of the Trust is prior to the constitution of the Inquiry Committee and only the Change Report was accepted subsequently. It is submitted that Rule 36 (2) (a) of the 1981 Rules does not contemplate any particular status about the representative of the Management, as he has to represent the Management on the Inquiry Committee.

4. We have considered the circumstances and the submissions made. Rule 36 (2) which is relevant for the purpose, reads thus :

“36 (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, -

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1) -

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.]”

It can be seen that the Change Report now having been accepted, would relate back to the induction of the concerned

representative as a Member / Trustee of the Trust. Thus, he would be entitled to be the representative of the Management as per Rule 36 (2) (a) (i) of the 1981 Rules. At least nothing is brought to our notice in Rule 36 (2) (a) of the 1981 Rules to support the contention that in a given case, such representative also happens to be an employee in a school, cannot hold a post inferior to that of a person against whom the inquiry is proposed. Therefore, for want of any provision pointed out in that regard, it is not possible to accept the said contention.

5. The learned Counsel for the petitioner then made an alternate submission stating that there are repeated attempts made by the Management to harass the petitioner on account of their illegal demand, which the petitioner could not meet. It is submitted that there are police complaints lodged by the Management against the petitioner as well as by the petitioner against some of the Members of the Management.

6. A limited request was made to direct that the result of the Departmental Enquiry may not be declared till disposal of the criminal complaints.

7. Such relief is neither sought for nor substantiated in the petition, and therefore, we are unable to consider or grant the same.

8. In that view of the matter, the petition is disposed of. However, the petitioner would be entitled to raise all such

contentions which may be available to him, both in law and on facts, before the Inquiry Committee as well as the subsequent challenge, if any.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.