

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11263 OF 2018

Shankar Keshav Sawant

Age : 53 years, Occupation : Nil,

R/o Kolhar, Taluka : Rahata,

District : Ahmednagar

.. Petitioner
(Orig. Appellant)

Versus

1] State of Maharashtra,
Through Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32

2] Educational Officer,
(Secondary, Zilla Parishad, Ahmednagar)

3] The Commandant / Headmaster,
Padmashri Dr. Vitthalrao Vikhe Patil,
Sainiki School, At/Post : Pravaranagar (Loni)
District - Ahmednagar.

4] The President, Pravara Grahmin Shikshan Sanstha
Through it's Secretary
At/Post : Loni Khurd, Taluka :- Rahata
District:-Ahmednagar

.. Respondents

...

Mr. Pathan Zafar M., Advocate for petitioner
Mr. K.B. Jadhavar, AGP for the respondent nos. 1 and 2
Mr. V.D. Hon, Senior Advocate h/f. Mr. A.V. Hon, Advocate
for respondent nos. 3 and 4

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CORAM : MANGESH S. PATIL, J.

RESERVED ON : 09 JUNE 2022
PRONOUNCED ON : 14 JULY 2022

JUDGMENT :

Heard. Rule. Rule made returnable forthwith. The learned AGP and learned advocates waives service for the respective

respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. By way of this writ petition, the petitioner is challenging the judgment and order passed by the Presiding Officer of the School Tribunal dismissing his appeal preferred under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("**the Act**") and Rules, 1981 ("**the Rules**") against the order passed by the respondent - management holding him guilty in a disciplinary proceeding and terminating his services as Education Co-ordinator in the respondent no. 3 - school.

3. It was alleged by the management that the petitioner was incharge of the activities at the swimming pool of the respondent no. 3 - school which is a boarding school. While he was supervising the swimming activities of students, a student of fifth standard - Darshan died by drowning. It was alleged that the petitioner was responsible for the death. He was put under suspension. The management decided to conduct disciplinary enquiry. A notice was served to him. He replied the notice. Charge was framed. The disciplinary enquiry was conducted and he was found guilty and after extending an opportunity of being heard, his services were terminated.

4. The learned advocate Mr. Pathan for the petitioner submitted that it was a sheer accident but the petitioner is being blamed only because there was agitation by the parents of the child.

He has been made a scapegoat. No sufficient time was extended to him to respond to the notice. He was also not given sufficient opportunity to examine the witnesses. The witnesses who were examined had no direct knowledge as to how the incident had occurred. There was no evidence except in respect of the fact that the petitioner was present at the swimming pool. There were several other causative factors. Petitioner was orally asked to permit class 5 students to swim though it was the specific timing for the class 11 students. One of the life guards was on leave. The other one had also left the workplace. The petitioner was alone overseeing the activities of number of students. He was neither negligent nor remiss in his duties. Though it was unfortunate that the child drowned, it was a sheer accident and the petitioner could not have been held guilty of any of the charges.

5. Learned advocate would further submit that the petitioner was also prosecuted under section 304A of the Indian Penal Code but has been subsequently acquitted. If the petitioner was to be blamed, even the Commandant of the school and Physical Director were also guilty. The Physical Director was let go with minor penalty. The Commandant was not even proceeded against.

6. The learned advocate would further submit that though the enquiry was conducted by appointing a three member committee as required by law, it was not an unanimous report by all the three

members. One of the members Mr. Kadlak had found him not guilty. The procedure as was required under the Rules was not followed.

7. The learned advocate would submit that in any case, assuming that the petitioner was responsible for the death, it was not a misconduct involving moral turpitude. The punishment was grossly dis-proportionate. The Tribunal has not considered these aspects and has reached an incorrect conclusion dismissing the complaint.

8. The learned AGP supports the judgment of the Tribunal.

9. Learned Senior advocate Mr. Hon would submit that this being a proceeding arising from the decision of the School Tribunal in an appeal under section 9 of the Act, this Court cannot interfere in exercise of the writ jurisdiction unless it could be demonstrated that the observations and the conclusions of the Tribunal are perverse, arbitrary or capricious. He would also submit that the scope for judicial review in such matters is limited. It is only if it is a case of no evidence that the Courts can interfere and proof beyond doubt is seldom necessary.

10. Mr. Hon would submit that apart from the evidence recorded during the course of disciplinary enquiry, the petitioner himself admitted that he was overseeing the swimming activity of the students. Though, admittedly, the time schedule was earmarked for the activity of class 11 students, he had permitted even the class 5 students to swim. He was aware that the life guards were not on duty and he alone was

to look after the swimming activity. The petitioner admitted that just before the incident the child - Darshan was unable to swim and he himself thereafter had tied the floater to his waist. Further the petitioner had stated that he had asked Darshan not to enter into the water and while asking all the other students to come out of the swimming pool, Darshan had not returned. It is suggestive of the fact that the petitioner was aware that Darshan could not swim and he ought to have taken an extra precaution to see to it that Darshan would not enter into the swimming pool alone. All these circumstances are clearly indicative of the rash and negligent manner in which the petitioner allowed Darshan to enter into the water. It was, therefore, clearly a case of sufficient evidence pointing to the negligence on the part of the petitioner which had resulted in unfortunate death of a child and punishment of termination is not shockingly dis-proportionate.

11. Mr. Hon would submit that the petitioner had participated in the disciplinary enquiry. A fair opportunity of being heard was extended to him. It was not necessary that there should have been an unanimous decision of the committee. The majority consisting of two members had concluded that the charges were proved. The management had considered all the afore-mentioned aspects and inflicted the punishment proportionate to the gravity of the charge. No error was committed by the Tribunal and the petition be dismissed.

12. I have carefully considered the rival submissions and perused the record and particularly the reasoning assigned by the Tribunal.

13. As far the actual incident is concerned, there was ample evidence before the enquiry committee to demonstrate that the petitioner was actually on duty and overseeing the swimming activity of the students. In reply to the charge, the petitioner specifically admitted that he alone was overseeing the swimming activity at the relevant time. As many as 72 students had arrived at the swimming pool. It was an earmarked time for class 11 students and still, the students of 5th standard had arrived for swimming. It was not his case that he had prevented the class 5 students from entering into the swimming pool. The fact that there were two life guards but one of them was already on leave and the petitioner had permitted the other to leave the duty and, thus, except him there was no-one overseeing the swimming activity.

14. True it is that no witness to the actual incident was examined in the sense that there is no evidence as to how and when child - Darshan entered into the water and died. But then the petitioner in his reply while explaining his version of the episode had mentioned that at around 4:45 pm, he noticed that Darshan was drowning and, therefore, he asked some of the 11th standard students to take him out of water. He then himself tied a floater around his waist and since the timing was about to end, he asked Darshan to remove the floater and

wear the clothes and asked him to go towards the bathroom. He then stated that while Darshan was going towards bathroom, he signalled all the other students to come out of the water but saw that there was some commotion near the swimming pool ladder. He saw that a floater was on the surface of the water and the other floater was lying by the side of the swimming pool and started asking the other students as to if they had seen Darshan. He started looking for Darshan and thereafter asked some students to check under the water and found Darshan to have drowned. He was taken out. He then gave him artificial breathing and even immediately shifted to the hospital but unfortunately he died.

15. All these circumstances and the petitioner's stand are clearly indicative of the fact that he was supervising the swimming activity. Even if it is assumed for the sake of arguments that it was not a part of his job, the fact remains that he had conceded and was looking after the swimming activity of the students. He was also aware that Darshan was not knowing how to swim. He was also aware that he had asked Darshan and other students to come out of the water since the time was over. If such is the state-of-affairs, and if Darshan entered into the water, the evidence and the petitioner's stand would be sufficient to reach a reasonable conclusion that *in spite* of being incharge of overseeing the swimming activity he allowed Darshan to enter into the water. An extra precaution was expected of him when he was knowing that Darshan was not knowing swimming. Though

perhaps rightly, he has been exonerated for causing the death by rash and negligent act in a criminal proceeding, the degree of proof required in a disciplinary enquiry is not the same.

16. The afore-mentioned circumstances are indicative of the fact that indeed the petitioner was negligent in his duties and the negligence has caused death of a student. By no stretch of imagination can it be said that it was a case of no evidence without which there is inherent limitation in undertaking a judicial review. The School Tribunal has minutely considered the evidence and has demonstrated as to how the conclusion drawn by the majority of the enquiry committed was proper and constituted “misconduct” under rule 28(5)(a), “willful and persistent negligence of duty” under rule 28(5)(c) and “incompetence” under rule 28(5)(d) of the Rules. I find no hesitation in concurring with the conclusion drawn by the Tribunal that the enquiry was conducted in a fair manner and the principles of natural justice were followed.

17. Some emphasis was laid by the learned advocate for the petitioner on the fact that the report submitted by the enquiry committee constituting three members was not unanimous and that petitioner’s representative Mr. Kadlak had submitted a separate report exonerating him and absence of such joint report goes to the root of legality of the enquiry, in view of Rule 36(2) of the Rules.

In the matter of **Vidya Vikas Mandal Vs. Education Officer and another; (2007) 11 SCC 352**, following observations have been made touching the application of this rule, in paragraph 8 which reads as under :-

“8. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.”

As can be appreciated, only the management's representative in the matter before the Supreme Court had submitted a

report holding employee guilty and the other two members had found him not guilty.

18. In the matter in hand, admittedly, it was a matter of 2:1. Two members of the committee had submitted a joint report holding the petitioner guilty of the charges whereas the petitioner's representative who was the third member - Mr. Kadlak did not concur with the other two members and submitted a separate report exonerating him. The report of the majority was submitted on 16-07-2016 having signatures of the other two members and though the name of Mr. Kadlak was also typed alongside their names, he was not the signatory and submitted a separate report on 25-07-2016 by specifically conveying to the respondent no. 4 - management that he was not concurring with the views of the other two members and, therefore, was submitting a separate report. The fact situation in the matter in hand is clearly peculiar. The majority has concluded that the petitioner was guilty and his representative who was the third member had dissented.

19. It needs to be appreciated that when the Rules contemplate a three member committee; one representative of management, a representative of the employee and third, a state awardee employee, it would certainly be difficult to conclude the enquiry unless all the three members concur to sign the joint report. In a given case, the representative of the employee may not co-operate which would lead to a stalemate.

20. In the matter in hand, two members of the committee had submitted the report and the third member who was the representative of the petitioner expressing his dissent, submitted a separate report. If such is the scenario, in my considered view, it cannot be said that the Rules have been not followed in letter and spirit. The submission of the learned advocate for the petitioner on this count, therefore, is not tenable.

21. The learned advocate for the petitioner would then submit that the chargesheet was served upon the petitioner by Dr. Kharde but he was a member of the enquiry committee when it should have been served by the respondent no. 4 - management. He would submit that Mr. Kharde being a convenor was therefore guilty of bias inasmuch as he was a judge in his own cause.

22. Though attractive is the submission, in my considered view, it is not tenable. It is true that the charges were served to the petitioner under the signature of Dr. Kharde. However, at the most this can be said to be a mere irregularity not going to the root of the validity of the enquiry. Merely because the chargesheet was articulated under the signature of the convenor of the three member committee, it cannot be said that Dr. Kharde was being a judge in his own cause. The notice to the petitioner and the statements of the allegations were served under the signature of the secretary of the respondent no. 4 - management. He had responded by addressing the communication to

the secretary and it is thereafter that the chargesheet was apparently served upon him under the signature of Dr. Kharde. This cannot be said to be a material irregularity much less resulted in causing any prejudice to the petitioner.

23. So far as proportionality of punishment is concerned, causing death of a fifth standard student by drowning due to sheer negligence is indeed a grave and serious charge and the punishment of termination in the circumstances cannot be said to be grossly dis-proportionate.

24. The judgment and order of the Tribunal cannot be said to be perverse, arbitrary or capricious and does not require any interference.

25. The writ petition is dismissed.

26. Rule is discharged.

[MANGESH S. PATIL]
JUDGE

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