

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

WRIT PETITION NO.15413 OF 2019

Shri Subhash s/o Jagannath Jadhav
Age: 56 years, Occu: Nil,
R/o CIDCO, N-6, Sinhgad Colony,
M-2, 39/6, Aurangabad, Tq. & Dist. Aurangabad

... Petitioner
[Orig. Appellant]

Versus

1. The President,
Vasantao Naik Shikshan Prasarak Mandal,
Behind Vasantao Naik College, Jalna Road,
Aurangabad
2. The Head Master,
Baliram Patil Vidyalaya,
CIDCO, N-9, New Aurangabad
3. The Education Officer (Secondary),
Zilla Parishad, Aurangabad

... Respondents
[Orig. Respondents]

...

Mr. Yogesh B. Bolkar, Advocate for Petitioner
Mr. V. D. Gunale, Advocate for Respondent Nos.1 & 2
Mr. S. N. Kendre, AGP for Respondent No.3

...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 14th July, 2022
PRONOUNCED ON : 5th September, 2022**

JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the respective parties.

2. This petition filed under Article 226 & 227 of the Constitution of India impugns the decision of School Tribunal, Aurangabad in Appeal No.7/2016, thereby rejecting the appeal filed by the petitioner challenging his termination order dated 07-01-2019.

3. The Petitioner was appointed on 15-06-1989 as Assistant Teacher in Respondent No.2 – School, run by Respondent No.1/Management. On 26-03-2008, a charge-sheet was served on him leveling following charges;

(i) He is remaining absent without prior permission of the Headmaster and he has committed misconduct under Rules 28 (5) (A) (C) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

(ii) He has illegally accepted amounts from the people residing at Barshi, Mehkar, Bhadgaon, Aurangabad, for giving them employment. Since the employment could not be given, a person approached the School and the Petitioner gave him a cheque. The cheque was dishonoured and a criminal case under Section 138 of the Negotiable Instruments Act, 1881 is lodged against him.

(iii) Various criminal complaints were lodged against him and he was arrested in the School on 09-12-2006, 23-02-2007 and 10-12-2007 during the School hours, in the presence of Students, Parents and Teachers, which has caused defamation of School.

(iv) He has indulged in illegal money lending business.

(v) On 15-12-2007, he was arrested from the School by a Police Constable Shri. K. R. Sable (Buckle No.2374). When an explanation in that behalf was called from him, he failed to submit any explanation.

(vi) He illegally made two colleague Teachers as guarantor for the loan obtained by him from Janta Sahakari Bank Ltd., Jalgaon, Branch Divan Deodi.

(vii) He obtained the said loan without obtaining prior permission of the Headmaster.

4. The Petitioner was suspended by order dated 30-04-2008. The Petitioner, thereafter, filed reply to the charge-sheet on 03-05-2008. A departmental inquiry was conducted against the Petitioner. The Petitioner nominated his representative, namely, Ratan Asaram Wagh on the Inquiry Committee, which consisted of three persons. The Petitioner failed to attend the inquiry. The Inquiry Committee submitted a report finding the Petitioner guilty of all charges levelled against him. By order dated 07-01-2009, Petitioner's services were terminated.

5. The Petitioner, thereafter, approached the Education Department by making representation on 11-09-2014, requesting that he be reinstated in service by withdrawing suspension order dated 30-04-2008. The Education Officer (Secondary), Zilla Parishad, Aurangabad/Respondent No.3 by communication dated

05-07-2011 directed the Management to reinstate the Petitioner in service. Since this direction was not implemented, the Petitioner filed Writ Petition No.812/2015, seeking direction against the Respondent/Management. The said writ petition was withdrawn, as the Petitioner was informed that his service was terminated by order dated 07-01-2009.

6. The Petitioner on 06-05-2015 filed appeal No.7/2016 before the School Tribunal, Aurangabad challenging his termination order dated 07-01-2009. He contended that he was not well during the period from 01-09-2008 to 17-06-2011. By relying on the discharge certificate from Government Hospital, he sought condonation of delay. The Tribunal condoned the delay in filing the appeal.

The Management challenged the order of delay condonation by filing Writ Petition No.8482/2018. This Court partly allowed the petition filed by the Management with certain directions. One of the direction is that in the event Petitioner/Appellant succeeds in the appeal, his statement as regards waiver of 50% back wages and 100% back wages after the appointment of a new employee in his place, would be kept in mind by the School Tribunal. The Tribunal thereafter heard the appeal and dismissed it. Hence, the present petition.

7. Heard the learned Advocate for the Petitioner, the learned Advocate for Respondent Nos.1 & 2 and the learned Assistant Government Pleader for Respondent No.3.

8. The learned Advocate for the Petitioner has vehemently urged that the procedure prescribed under Rules 36, 37 and 38 is grossly violated in the present matter. Chief Executive Officer was not appointed. Charge-sheet is not signed by the Management, but it is signed by the Headmaster, even the termination order is signed by the Headmaster and not by the Chief Executive Officer. The statement of allegations is signed by Headmaster, so also inquiry report. Therefore entire inquiry is vitiated. He further submits that no opportunity of hearing was given to him and entire inquiry is conducted behind his back. His representative was also not present during the course of inquiry and therefore, the entire inquiry is vitiated. The Petitioner, due to his ill-health, was unable to attend the inquiry. Since the entire inquiry is held in absence of the Petitioner, the same is conducted in gross violation of principles of natural justice and therefore, the inquiry is liable to be quashed and set aside. The Tribunal has failed to take into consideration these aspects and has erroneously dismissed the appeal. The impugned decision of the Tribunal therefore is unsustainable in law and facts of the present case.

9. In support of his submission, the learned Advocate for the Petitioner relied on **Ramdas s/o Tejram Bhojar Vs. Education Officer (Secondary), Zilla Parishad, Nagpur & Others** reported in **2015 (6) Bom. C.R. 76**, **Vijaysingh s/o Bhaidas Patil Vs. Shri Dhanorkar Adhunik Gram Jeevan Shikshan Prasarak Mandal Dhanora (Kh.) & Others** reported in **2015 (6) Bom. C.R. 292**, **Venkatrao Deshmukh Shilwanikar, Shaikshanik va Samaji Sanstha & Anr. Vs. Sharad Shridharrao Deshmukh & Ors.** reported in **2016 (4) Bom. C.R. 442**, **Nandkumar Mahadeo Dengane Vs. Bhavika Vidya Prasarak Mandal & Others** reported in **2008 (5) Mh.L.J. 598**, **Bhagwanrao s/o Vishwanath Vyawhare & Anr. Vs. Sau. Sunita w/o Gopinath Palve & Anr.** reported in **2008 (1) Mh.L.J. 417**, **Adarsh Vidya Mandir Trust & Anr. Vs. Awadesh Narayan Komal Singh & Ors.** reported in **2004 (4) Mh.L.J. 417**, **Loknete Aamdar Kai. M. N. Rajput & Thansing Jibhau Shikshan Prasarak Mandal, Shindkheda and Anr. Vs. Gorakh Pandit Malche and Anr.** In **Writ Petition No.7313/2019** and **Secretary Taluka Co-operative Educational Society Limited & Ors. Vs. Suklal Manga Kuwar** In **Writ Petition No.505/1997**.

10. Per contra, the learned Advocate for the Respondent/Management supported the impugned judgment. He submits that Rules 36, 37 and 38 are followed in the present case.

There is no substance in the contention of the Petitioner that the inquiry was conducted in violation of those rules. He submits that Headmaster was appointed as Chief Executive Officer and therefore, he has signed the charge-sheet, statement of allegations etc. as Chief Executive Officer. Though initially the Petitioner participated in the inquiry, subsequently, he has failed to attend the departmental inquiry. The Management has time and again issued notice to the Petitioner. Ultimately, public notice was issued to the Petitioner calling upon him to attend the inquiry. The charges involving moral turpitude are proved against the Petitioner. Considering the seriousness of charges, the Management has rightly dismissed the Petitioner from service. He further submits that Petitioner has already reached the age of superannuation in the month of March-April, 2022. By supporting the impugned order, he submits that there is no substance in the petition and the petition may be dismissed.

11. The learned Assistant Government Pleader has supported the impugned order.

12. Heard the learned Advocate for the Petitioner, the learned Advocate for Respondent Nos.1 & 2 and the learned Assistant Government Pleader for Respondent No.3 at length. Perused the record.

13. It is a matter of record that the Headmaster has signed the documents in the capacity of Chief Executive Officer. There is no prohibition in the rules for appointment of Headmaster as Chief Executive Officer. Therefore, there is no substance in the argument of the Petitioner that since the Headmaster has signed the charge-sheet and the documents of departmental inquiry, there is violation of Rules 36 and 37 of Rules, 1981. For the same reason, it is not possible to accept the argument of the Petitioner that since the termination order is not signed by Chief Executive Officer and it is signed by the Headmaster, there is violation of Rule 38 of Rules, 1981.

14. The record reveals that the Petitioner has attended the first meeting of Inquiry Committee on 07-06-2008. On that day, copies of the documents relied upon by the Management in support of charges levelled against the Petitioner were handed over to the Petitioner. Thereafter, the Petitioner and his representative were absent on the second date and on subsequent dates. On 30-07-2008, statements of four witnesses were recorded by the Inquiry Committee. The said statements were forwarded through RPAD to the Petitioner on 31-07-2008 and the Petitioner was informed about the next date i.e. 07-08-2008. The Petitioner and his representative remained absent on that date. The next date thereafter was kept on

12-08-2008 for recording the evidence of the Petitioner. On this date also, the Petitioner and his representative were absent.

With a view to follow principles of natural justice and as the Petitioner was completing 120 days of suspension, on 30-08-2008 and since the Petitioner was consistently remaining absent in the inquiry, the Inquiry Committee decided to issue public notice calling upon the Petitioner to resume duty on 05-09-2008.

15. On 03-09-2008, a public notice in '*Daily Sakal*' and '*Daily Lokmat*' was published, wherein, it is mentioned that the Petitioner is repeatedly remaining absent before the Inquiry Committee and the Petitioner is completing 120 days suspension period on 30-08-2008. Therefore, in keeping with the principles of natural justice and with a view to give opportunity of hearing, the Petitioner was called upon to resume duty w.e.f. 05-09-2008. The notice made it clear that if the Petitioner fails to attend the School, his salary would not be paid.

16. In spite of the said public notice, the Petitioner failed to resume the duty and appear before the Inquiry Committee thereafter. The Inquiry Committee therefore proceeded with the inquiry. After completion of the inquiry, the Inquiry Committee has submitted its report on 08-12-2008. The inquiry report is signed by the Petitioner's representative Ratan Asaram Wagh along with two

other members of the Inquiry Committee i.e. national awardee teacher and representative of Management. The Inquiry Committee unanimously held that all the seven charges levelled against the Petitioner are proved. The Inquiry Committee has unanimously held the Petitioner guilty of serious misconduct involving moral turpitude and recommended termination of the Petitioner. Accepting the recommendation of the Inquiry Committee, petitioner's service is terminated.

17. It is a matter of record that the Petitioner was arrested thrice i.e. on 09-12-2006, 23-02-2007 and 10-12-2007, during the School hours by the Police Officers, in front of Students, Parents, Teachers and others, which has defamed the School. The record indicates that various criminal complaints were lodged against the Petitioner by the residents of Barshi, Mehkar, Aurangabad, from whom, the Petitioner had accepted money on the pretext of giving them employment. The Petitioner was also arrested from the School, during School hours by Police Constable Mr. K. R. Sable on 15-12-2007 in respect of Criminal Court Case at Aurangabad. During the inquiry, it is also brought on record that without obtaining permission from the Headmaster, the Petitioner has obtained loan of Rs.50,000/- from Janta Sahakari Bank, Jalgaon, by illegally using a salary certificate and for his benefits, he made his two colleague

Teachers as guarantor. The Petitioner failed to give explanation in this behalf. Thus, serious charges of misconduct involving moral turpitude are proved against the Petitioner in the inquiry.

18. The learned Advocate for the Petitioner strenuously urged that no opportunity of hearing was given to the Petitioner and therefore, the inquiry is vitiated. The Petitioner has relied on certificate issued by the Casualty Medical Officer, Government Medical College & Hospital, Aurangabad, counter signed by Civil Surgeon, wherein, it is stated that "as per his history, he was ill from 01-09-2008 to 11-06-2011 under treatment as depressive disorder". It appears from the certificate that history of ailment is given by the Petitioner himself. The Petitioner claims that due to the said ailment, he was unable to attend the inquiry, as he was admitted in the Government Medical College and Hospital on 01-09-2008 and was discharged on 18-01-2011.

19. It is pertinent to note here that the Petitioner has placed on record document at Serial No.18 at Exhibit-P, in the appeal, which is a compromise deed between the Petitioner and the person, who had filed criminal complaint against the Petitioner for dishonor of cheque given by the Petitioner. A compromise was arrived at in the said complaint and the compromise deed was filed before the Sessions Court on 09-04-2009. On that day, the Petitioner and the

complainant in the said case were present in the Sessions Court and they admitted the contents of the compromise. It is therefore clear that the Petitioner was present in the Sessions Court, Aurangabad on 09-04-2009 and has signed the compromise deed on that day and he has paid an amount of Rs.80,000/- to the complainant therein. In this view of the matter, it is not possible to accept the Petitioner's claim that he was admitted in the Government Medical College and Hospital from 01-09-2008 to 18-01-2011. If the Petitioner could attend the criminal case in the Sessions Court, Aurangabad, why he did not attend the inquiry, is not explained by the Petitioner.

20. Fact remains that repeated notices were issued to the Petitioner, so also a public notice calling the Petitioner to resume the duty and to attend the inquiry. However, the Petitioner has failed to attend the inquiry.

In these peculiar facts, it is not possible to accept the submission of the Petitioner that the inquiry was conducted in violation of principles of natural justice.

The reliance of the Petitioner on the order passed by this Court in rejecting the Management's petition to the delay condonation order passed by the Tribunal is misplaced and misconceived. This Court refused to interfere in the delay condonation order on the ground that if the delay is not condoned,

the doors of the Court would be permanently closed on the Petitioner. That by no stretch of imagination can be claimed to be acceptance of ground of illness of the Petitioner by this Court.

21. Taking into consideration the record of this case, it is clear that even if the Petitioner would have attended the inquiry, the order which is now passed would have been passed against him. In the facts of this case, only one conclusion is possible, which is arrived by the disciplinary authority. Hence, observance of principles of natural justice would have been a futile exercise in the present case (vide **Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board & Ors., 2010 AIR SCW**).

22. For the aforesaid reasons, there is no merits in the submission of the Petitioner that there is violation of Rules 36, 37 and 38 of Rules, 1981.

23. In **Union of India & Others Vs. G. Annadurai** reported in **(2009) 13 SCC 469**, the Apex Court was considering ex-parte enquiry held against the delinquent, who had failed to participate in the enquiry despite sufficient opportunity being given to him by sending notices at his home address by registered post. Enquiry report also was sent, but no reply was received from the delinquent. In these facts, it was held that in spite of giving ample

opportunity, the delinquent failed to effectively participate in the inquiry proceedings and to avail opportunities. In these facts, the Apex Court set aside the decision of the High Court interfering in the order passed by the disciplinary authority.

24. In the present case also, several opportunities were given to the Petitioner to participate in the departmental inquiry. Notices were sent, so also statements of witnesses recorded during the course of inquiry were forwarded to him, even public notice was issued to the Petitioner calling upon him to participate in the inquiry. However, he has failed to participate in the inquiry. In these facts, the departmental inquiry held against him cannot be said to be in violation of principles of natural justice.

25. The Tribunal has properly appreciated the record and the rival submissions and has passed a well reasoned order, which need not be interfered in extraordinary writ jurisdiction. There is no illegality or perversity in the order passed by the Tribunal, which is impugned in the present petition.

26. In the result, writ petition is dismissed. Rule discharged. No costs.

[NITIN B. SURYAWANSHI, J.]

Sameer