

(1)

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

WRIT PETITION NO.14758 OF 2021

VIDYA PRASARAK MANDAL, GOREGAON
VERSUS
BABAN BAJIRAO KHILLARI AND ANOTHER

...

Mr V. J. Dhage, Advocate for petitioner;
Mr P. S. Dighe, Advocate h/f Mr V. R. Dhorde, Advocate for
respondent No.1;
Mr P. G. Borade, A.G.P. for respondent No.2

CORAM : SMT. BHARATI DANGRE, J.

DATE : 7th January, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner, the learned Counsel for respondent No.1 and the learned AGP for respondent No.2.

The petitioner Management is aggrieved by an order dated 07/12/2021, passed by the Presiding Officer, School Tribunal, Latur, below Exh.26 in Appeal No.36/2015, by which the prayer of the Management to conduct a fresh enquiry, is rejected.

2. The respondent No.1 instituted an appeal under Section 9 of the Maharashtra Employees of Private Schools Act, being

(2)

aggrieved by issuance of the termination order on 15/10/2015, on the ground that the same is illegal, erroneous and bad in law.

3. Meaningfully read the memorandum of appeal placed on record at Exh. 'P-1', discloses that the appellant was duly recruited by the Management in the year 1987 as an untrained teacher and during the service tenure, he acquired the qualification of the trained teacher. It is alleged by him that on account of some discord with the Management, his increment was stopped in the year 2013 and every attempt was made to harass him. This culminated into issue a show cause notice on 06/04/2015, levelling certain accusations against him and he responded to the said notice by filing a reply on 16/04/2015. He was also placed under suspension and an Enquiry Committee was constituted, which was not in accordance with Rules and though the first meeting of the Committee was scheduled, it came to be cancelled and thereafter no meeting was held. Straightway, he was issued with the termination order on 15/10/2015, by which his services came to be terminated. This constrained him to approach the Tribunal. His appeal is pending before the Tribunal. Realizing the fate of the Management in the said appeal, the Management

(3)

moved an application, on 22/11/2021, in which the following statement is made :-

"2. That the respondent herewith submit that, while doing the enquiry of appellant is serious lacuna remained as mentioned in rules 36 and 37 of M.E.P.S. Rules. However, because of technical aspect the appellant shall not be scaped from the serious charges. The charges against the appellant are very serious in nature as per Rule 28 of M.E.P.S. Act. appellant himself absent from duty without prior permission from the authorities. So causing educational loss of the students the work of the appellant is not satisfactory and not for benefit of the student and school and the same was causing hindrance in the progress of school etc. The respondent / management has very right to conduct the enquiry over the charges leveled against the appellant.

4. In the application, it is prayed that the Management may be permitted to start a fresh enquiry of the appellant by keeping him under suspension and the matter may be remanded back to initiate such enquiry. This application was opposed by the appellant before the Tribunal, by filing his detailed reply and ultimately on 07/12/2021, the Presiding Officer rejected the said application with the following observations :-

(4)

"6. Therefore, considering the rulings cited by both the parties the inference has to be drawn that the inquiry in respect of employee under the M.E.P.S. Act shall be conducted as per provision of Rules-36 & 37 of the rules. However, in this particular matter the appellant has argued final argument at length and thereafter at the time of the reply the respondent have preferred the said application. In this appeal the manner in which the inquiry proceedings were conducted are under challenge and therefore though the respondents have admitted that the inquiry was not as per the rules it cannot be remanded at this stage without hearing the final arguments of the respondents. To give reasons more than this will be expressing the views on the point that whether the inquiry is defective or not and therefore the respondent will not be prejudiced if the appeal is finally heard. If Tribunal comes to the conclusion that the inquiry shall be remanded as there are lacunas then that order can be passed after hearing final argument. Therefore, I answer the point in negative in result pass following order.

1. Application is rejected."

5. On hearing the learned Counsel for the petitioner and the respondents and perusal of the paper book of the writ petition, it is apparent that the attempt is made on the part of the Management to fill up lacuna in the enquiry and this attempt has been rightly frowned upon by the Presiding Officer of the School Tribunal, without expressing his opinion on merits since he is in seisin of

(5)

the appeal filed by the appellant and is duty bound to consider it on its merit, particularly, in the wake that the challenge by the appellant i.e. termination is without following the procedure prescribed in the M.E.P.S. Act and Rules.

6. In view of the aforesaid circumstances, the request made to remand the matter back to the Management for conducting a *denovo* enquiry, in any case, is not a relief which can be granted at the stage when the appeal is pending.

The School Tribunal shall deal with the appeal of the appellant on merits and pass appropriate orders.

In the wake of the above, the relief as claimed in the writ petition cannot be granted and the same is dismissed with the costs of Rs.10,000/- (Rs.Ten Thousand) to be paid to respondent No.1.

(SMT. BHARATI DANGRE, J.)

sjk