

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3444 OF 2019

Shri. Gajanan Gramin Arogya Va Shikshan -- Petitioners
Sanstha, Amravati and another

Vs.

Vilas Krushnarao Gulhane & Another -- Respondents

WITH
WRIT PETITION NO. 176 OF 2022

Vilas s/o Krushnarao Gulhane & Another -- Petitioner

Vs.

Shri Gajanan Gramin Arogya Va Shikshan -- Respondents
Sanstha, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

WP No.3444/2019

Mr. P.S. Patil, Advocate for Petitioners

Mr. A.S. Dhore, Advocate for Respondent No.1

Mrs. S.S. Jachak, AGP for Respondent No.2

WP NO. 176/2022

Mr.A.S. Dhore, Advocate for petitioner

Mr. P.S. Patil, Advocate for Respondent Nos.1 and 2

Mrs. S.S. Jachak, AGP for Respondent No.3

CORAM : MANISH PITALE, J.

DATE : 24th JUNE, 2022

By these two petitions, the management as well as the employee are aggrieved by the judgment and order dated 02/04/2019, passed by the School Tribunal, Amravati.

2. By the said judgment and order, the Tribunal intervened with an order of termination of service issued by the management and directed enquiry to be conducted *de novo* from the stage of Rules 33 and 36(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981.

3. The principal ground on which the School Tribunal intervened with the order of termination of service and directed *de novo* enquiry to be conducted was that the nominee of the management on the enquiry committee was found to be biased and such an apprehension expressed by the employee was accepted by the Tribunal on the basis of material on record. It was found that in these circumstances, the enquiry stood vitiated and that, therefore, *de novo* enquiry was justified. The management is aggrieved by the aforesaid direction and, therefore, the Writ Petition No.3444/2019, was filed at the behest of the management, wherein stay of the *de novo* enquiry was granted.

4. On the other hand, the employee filed Writ Petition No. 176/2022, being aggrieved by the very same judgment and order of the Tribunal, contending that in the present case, when even a proper charge-sheet was not issued, there was no question of the employee facing a *de novo* enquiry. It is submitted that the Tribunal ought to have granted entire relief

by directing reinstatement with back-wages and consequential benefits, upon setting aside the order of termination of service.

5. Mr. P.S. Patil, learned counsel appearing for the petitioner – management submitted that the Tribunal committed an error in passing the impugned order for the reason that *de facto* prejudice was not brought on record by the employee and that on mere apprehension, the Tribunal concluded that nominee of the management i.e. one Mr. Harish Gulhane was biased against the employee. It was submitted that all the mandatory procedures prescribed under the aforesaid Rules were followed and that, therefore, no ground was made out for a *de novo* enquiry to be conducted.

6. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Alok Kumar** reported in (2010) 5 SCC 349.

7. It was further submitted that there was no substance in the Writ Petition filed by the employee for the reason that the material on record would indicate that serious charges were levelled against the employee. It was further submitted that the conduct of the employee had vitiated the atmosphere in the School, as the employee was in the habit of taking up fights and quarrels with the staff and others in the School. Reference was made to certain observations made by the Education Officer in that regard. On this basis, it was submitted that the

Writ Petition of the employee deserved to be dismissed and that the Writ Petition of the management deserved to be allowed.

8. On the other hand, Mr. Dhore, learned counsel appearing for the employee submitted that the Tribunal had copiously referred to numerous documents placed on record to indicate that the aforesaid nominee of the management on the Enquiry Committee was clearly biased against the employee and that it was not mere apprehension that led the Tribunal to hold in favour of the employee. It was further submitted that the management had failed to pay subsistence allowance to the petitioner and this was one of the contributing factor in the delay on the part of the employee to nominate his nominee on the Enquiry Committee. It was further submitted that a perusal of the documents on record would show that the very initiation of the enquiry was vitiated for the reason that the charges were vague and they were levelled against the employee at the behest of said Mr. Harish Gulhane, who was biased against the employee. On this basis, it was submitted that the Writ Petition filed by the employee deserved to be allowed and that the appeal filed before the School Tribunal ought to be allowed in its entirety.

9. This Court has heard the learned counsel for rival parties and perused the material on record. The Tribunal in the impugned judgment and order has appreciated the

documentary material and other evidence placed on record. By referring to such material and the position of law as regards bias during the course of the enquiry, the Tribunal found as a matter of fact that the employee in the present case was able to demonstrate that the nominee of the management was indeed biased and that, therefore, the entire enquiry stood vitiated. It is in this backdrop, that the Tribunal directed *de novo* enquiry to be conducted from the stage of Rules 33 and 36(1) of the aforesaid Rules. It was also noted that the employee was not paid subsistence allowance in terms of the aforesaid Rules, due to which Clause 2 of the operative portion of the order of the Tribunal directs the management to pay subsistence allowance from the date the employee was suspended on 01/09/2014.

10. It was vehemently submitted on behalf of the management that unless de facto prejudice was shown, the arguments pertaining to bias ought not to have been accepted by the Tribunal. Reliance was placed on the judgment in the case of **Union of India and Others Vs. Alok Kumar** (supra). But, a perusal of the aforesaid judgment would show that it is more on the aspect of certain documents not being provided to the employee during an enquiry and other such procedural infirmities, not leading to de facto prejudice to the employee. Such is not the case in the present matter because the employee has made a specific allegation against the nominee of the management on the Enquiry Committee as regards bias.

11. To support such a specific allegation of bias against the nominee of the management, the employee had placed on record number of documents. These were appreciated by the Tribunal and, *inter-alia*, it was found that the said nominee i.e. Mr. Harish Gulhane had in fact preferred an appeal against an order of acquittal passed in favour of the employee and others in a criminal case. It was also recorded that father of the said Mr. Harish Gulhane had filed a criminal case against the brother of the appellant. There were other such documents on record clearly indicating that there was substance in the contention raised on behalf of the employee that the said Mr. Harish Gulhane was on inimical terms with the employee and that, therefore, presence of the said person in the Enquiry Committee was in real terms vitiating the entire enquiry.

12. The Tribunal took into consideration such documents and upon applying the position of law as stated by the Hon'ble Supreme Court in the case of **N.K. Bajpai Vs. Union of India and Another** reported in (2012) 4 SCC 653, found that as a matter of fact, the employee had been able to support his contention that the enquiry stood vitiated because of the presence of the aforesaid nominee of the management on the Enquiry Committee.

13. This Court is satisfied that the findings rendered by the Tribunal in that regard are justified. The management ought to have nominated another person on the Enquiry Committee to

ensure fairness in procedure during the enquiry proceedings. This Court is not in agreement with the learned counsel appearing for the management that it is the sweet will of the management as to who will be nominated on the Committee. If a person is found to have pronounced bias against the employee on the Enquiry Committee under the aforesaid Rules, the entire process of the enquiry is vitiated and, therefore, the findings rendered by the Tribunal in the facts of the present case are found to be sustainable. Therefore, the direction to hold *de novo* enquiry is clearly justified.

14. Insofar as the Writ Petition filed by the employee is concerned, this Court has perused the material on record. It cannot be said that the charges levelled against the employee are vague and that, therefore, no enquiry can be conducted against him on the basis of such charges. The said Writ Petition is found to be without any merit.

15. But, at the same time, Clause No.2 of the operative portion of the impugned order shows that the Tribunal was constrained to give a specific direction as regards subsistence allowance to be paid to the employee while granting liberty to conduct *de novo* enquiry. It appears that the employee was not paid subsistence allowance and this can be said to be a ground justifiably raised by the employee for not being able to be effectively represent his cause in the enquiry proceedings. This Court is of the opinion that the management cannot shirk

the responsibility of paying subsistence allowance strictly in accordance with Rule 34 of the aforesaid Rules. Therefore, the management is directed to comply with Clause 2 of the impugned order forthwith and conduct a *de novo* enquiry in an expeditious manner. Insofar as apprehension expressed on behalf of the management that it is the employee who is responsible for the delay and that he may delay the proceedings by failing to nominate his nominee within a reasonable period of time, this Court is inclined to give appropriate directions in the matter.

16. In view of the above, both the writ petitions are dismissed. The impugned order passed by the Tribunal is confirmed.

17. The parties are directed to proceed with the matter immediately in terms of the directions given by the Tribunal for conducting *de novo* enquiry.

18. The management as well as the employee will specify their nominees on the Enquiry Committee itself within a period of three weeks from today. The respondent – Education Officer is also directed to forward the name of a State Awardee Teacher as a Member of Enquiry Committee within three weeks from today. The enquiry shall proceed strictly in accordance with law. The management is directed to pay the

subsistence allowance to the employee within a period of eight weeks from today.

19. It is made specifically clear that the management shall nominate a person on the Enquiry Committee on its behalf other than Mr. Harish Gulhane and the President of the management (Society).

JUDGE