

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5847 of 2019

(1) Kelzara Panchasheel Magas
Vargiya Mahila Shikshan Sanstha,
Kelzara, Through the President,
Tq. Arni, Distt. Yavatmal.

(2) Samyak Vidyalaya, Umarsara,
Tahsil and District Yavatmal,
Through Headmaster

... Petitioners

... Versus ...

(1) Sheikh Khalil Sheikh Rasul,
Aged Major, R/o Digra, Occ. Nil,
At Post Patan, Tq. Zari Jamni,
Distt. Yavatmal.

(2) Education Officer (Secondary),
Zilla Parishad, Yavatmal.

(3) Hon'ble School Tribunal,
Amravati Division, Amravati thr. Member

... Respondents

Ms. Radhika Bajaj, Advocate for the petitioners

Respondent no. 1 in person

Mrs. M. A. Barabde, AGP for respondent nos. 2 and 3

CORAM : MANISH PITALE, J.

DATED : 8-9-2022

ORAL JUDGMENT

Heard learned counsel for the petitioner and the contesting
respondent no. 1, who has appeared in person.

2. Rule. Rule made returnable forthwith.

3. By this petition, the petitioner - management and school have approached this Court challenging the judgment and order dated 5-7-2019 passed by the School Tribunal at Amravati (Tribunal) whereby an appeal filed by respondent no. 1, who appears in person, has been allowed. The order of termination of service dated 18-6-2011 issued by the petitioner no. 1 – management was set aside and the petitioners were directed to reinstate respondent no. 1 with payment of 50% back wages and other benefits.

4. Ms. Radhika Bajaj, learned counsel for the petitioners submitted that in the present case, the Tribunal has erred in allowing the appeal of respondent no. 1 in its entirety, after finding that the enquiry proceedings stood vitiated due to violation of the relevant rules, particularly Rules 37(3) to 37(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (MEPS Rules). It is submitted that as per settled law, if the Tribunal had come to the conclusion that there was violation of the relevant rules and hence violation of principles of natural justice, the parties ought to have been put back to the same stage of the enquiry where such violation had occurred and appropriate directions ought to have been given for

conducting enquiry from the said stage. It is further submitted that as regards the charge against respondent no. 1 of remaining absent from duty, although the Tribunal did not accept the contention of the petitioners that respondent no. 1 had remained absent for as many as 1441 days, it was found that at least to the extent of about 600 days of absence, the respondent no. 1 did not have any cogent explanation.

5. It is further submitted that the Tribunal was influenced by other factors, including allegations made by respondent no. 1 about financial loss suffered due to actions of the petitioner no. 1 – management, as a consequence of which, instead of following the mandate of the settled position of law, the Tribunal allowed the appeal in its entirety.

6. Learned counsel appearing for the petitioners fairly invited attention of this Court to judgment and order of this Court passed by Division Bench at Principal Seat dated 27-2-2009 in ***Letters Patent Appeal No. 403/2008 (Bhavika Vidyaprasarak Mandal and ors. Vs. Mrs. Rekha Hemant Khairnar and ors.)*** and connected appeals. It is submitted that since in the present case, the convener of the enquiry committee had also acted as a Member, the relevant clauses of Rule 37 of the aforesaid Rules stood violated as per the law laid down in the

said judgment and, therefore, to that extent, the petitioners could not dispute the findings rendered by the Tribunal. The emphasis of the challenge on behalf of the petitioners was on the Tribunal having allowed the appeal in its entirety by granting reinstatement along with back wages, despite rendering finding that for at least about 600 days, respondent no. 1 had remained absent from duty and according to the petitioners, such absence was without cogent explanation. On this basis, the learned counsel for the petitioners submitted that this Court could direct enquiry to be conducted from the stage where violation of relevant Rules had occurred and if the respondent no. 1 cooperates, the petitioners shall make an endeavor to finish the enquiry at the earliest.

7. On the other hand, the contesting respondent no. 1 appearing in person, submitted that he has been harassed for many years by the petitioners. It is submitted that this is the second round of litigation because on an earlier occasion also, the services of the petitioner were illegally terminated due to which respondent no. 1 had to approach the School Tribunal by filing an appeal. An attempt was sought to be made by respondent no. 1 to contend that the said appeal was withdrawn by his counsel without specific instructions. Nonetheless, the respondent no. 1 conceded the fact that earlier appeal was withdrawn and thereafter, he had indeed joined duties in the

petitioner no. 2 school. On pointed queries put to respondent no. 1 as to why he allegedly remained absent from duty after the earlier appeal was withdrawn, the respondent no. 1 referred to number of letters written to the authorities making allegations against the petitioners. Apart from this, respondent no. 1 was unable to place material before this Court to indicate as to what efforts he made to continue performing duties in the petitioner no. 2 school and, if he was prevented by the petitioners from doing so, whether any documentary material was placed before this Court. Respondent no. 1 was unable to show any such material. In any case, the thrust of the arguments of the respondent no. 1 was to the effect that the petitioners were repeatedly harassing him and that therefore, no interference was called for in the impugned judgment and order passed by the Tribunal.

8. Mrs. Barabde, learned Assistant Government Pleader appeared on behalf of respondent nos. 2 and 3.

9. Perusal of the impugned judgment and order of the Tribunal would show that there is a specific finding rendered against the petitioner as regards violation of various clauses of Rule 37 of the MEPS Rules. The petitioners could not dispute the finding of fact that the convener of the enquiry committee had indeed acted as a Member, which clearly violated the mandate of the said Rules. Therefore, the

aforesaid finding rendered by the Tribunal is not seriously challenged on behalf of the petitioners, conceding to the fact that position of law in that regard was entirely in favour of respondent no. 1, as per the judgment in the case of ***Bhavika Vidyaprasarak Mandal and ors. Vs. Mrs. Rekha Hemant Khairnar and ors.*** supra.

10. In this backdrop, the question that arises for consideration is, as to whether the Tribunal ought to have followed the settled position of law and the parties should have been relegated to the stage of the enquiry where there was violation of relevant rules, indicating violation of the principles of natural justice. There are exceptional circumstances and cases where such mandate of law is not adhered to and the concerned Tribunal or Court grants full relief to the employee. Such exceptional circumstances are, where it is found that the management has been repeatedly harassing the employee and that holding of an enquiry is a ruse and further that charges levelled against the employee are on the face of it found to be unbelievable.

11. In the facts and circumstances of the case, this Court is of the opinion that it cannot be said that an exceptional case is made out in that regard by respondent no. 1. A reference to the findings of Tribunal in the impugned judgment and order itself would show that such an exceptional case cannot be said to have been made out. It is

significant that on the aspect of absence of respondent no. 1 from duty, the petitioners asserted that respondent no. 1 had remained absent for as many as 1441 days. The Tribunal analyzed the aforesaid aspect of the matter on the basis of material on record and partly accepted the explanation sought to be put forth by respondent no. 1. Even after partly accepting the explanation given by respondent no. 1, in paragraph no. 28 of the impugned judgment and order, the Tribunal itself rendered finding that at least up to 600 days, the respondent no. 1 had remained absent from 2008 to 2011.

12. The allegations made by respondent no. 1 against petitioner no. 1 – management about passbook having been detained were not accepted by the Tribunal. In such circumstances, the Tribunal further held in paragraph 32 that even if, it was an admitted position that respondent no. 1 had remained absent from the duties, the punishment of termination of service was apparently disproportionate. After recording such finding, the Tribunal ultimately allowed the appeal, almost in its entirety by not only setting aside the order of termination of service but directing reinstatement with 50% back wages and other benefits.

13. This Court is of the opinion that having found that to a substantial extent, the absence from duty was not apparently explained

by respondent no. 1, the proper course to have been followed by the Tribunal was to have relegated the parties to a fresh enquiry, from the stage where there was violation of Rules 36 and 37 of the aforesaid Rules. This Court is refraining from commenting upon the explanation sought to be given by respondent no. 1 for absence from duty, but nonetheless, it is found that even if, the findings by the Tribunal are to be upheld, the appeal could not have been allowed in its entirety.

14. The approach of the Tribunal appears to have been affected by allegations of harassment made by respondent no. 1 against petitioner no. 1 – management. But, having rendered findings partly in favour of management as regards various aspects highlighted by the respondent no. 1, the Tribunal ought not to have allowed the appeal in the manner in which it was done by impugned judgment and order.

15. This Court is of the opinion that insofar as the two charges other than absence from duty are concerned, the Tribunal has already held in favour of respondent no. 1. This Court is inclined not to allow the petitioner no. 1- management to reopen the said charges and, therefore, if at all, an enquiry has to be conducted again from the stage where there was violation of Rules 36 and 37 of the aforesaid Rules, the enquiry will be restricted to the charge of absence from duty.

16. In view of the above, writ petition is partly allowed.

17. The impugned order passed by the Tribunal is modified to the extent that clause (2) of the impugned order setting aside the order of termination of service is upheld but clauses (3) to (7) of the impugned order are quashed and set aside. Instead, it is directed that respondent no. 1 will be treated as under suspension and petitioner no. 1 – management shall conduct the enquiry from the stage where there was violation of Rules 36 and 37 of the MEPS Rules as recorded by the Tribunal. The enquiry committee, which is properly constituted, shall now proceed with the enquiry. The enquiry shall proceed in accordance with the MEPS Rules.

18. Respondent no. 1 shall cooperate with the enquiry committee for expeditious disposal. The enquiry shall be completed within the period specified under the Rules. It is made clear that the enquiry shall be limited to the charge of absence from duties as levelled by the petitioner against respondent no. 1.

19. It would be appropriate that considering the findings rendered by the Tribunal about the defective nature of the enquiry committee, the matter proceeds from the stage of Rule 36 which pertains to the nomination of members of the enquiry committee.

Respondent no. 1 would be at liberty to name his nominee on the enquiry committee.

20. It is expected that the petitioners as well as respondent no. 1 shall proceed in terms of the provisions of the aforesaid Act and Rules, so that the enquiry is completed in terms of the timelines provided under the aforesaid Act and Rules.

21. The period of 120 days shall be counted from the date the enquiry committee is constituted in terms of the Act and Rules. The learned counsel for the petitioners, on instructions, submits that the process shall be initiated forthwith.

22. The writ petition is disposed of in aforesaid terms.

JUDGE

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