

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

WRIT PETITION NO. 237 OF 2018

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| <p>1. Manorama Bahuuddeshiya Vikas Mandal,
Lashkaribagh, Nagpur, through its
Secretary, Shri.Jaidas Somkuwar</p> <p>2. Akhilesh High School, Mahuli,
Tah. Parshiwani, District – Nagpur,
through its Headmaster</p> | } | .. Petitioner |
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Versus

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| <p>1. Devnand Umraoji Somkumar,
Age Major, R/o. Nazul Layout,
Near Angulimal Buddhavihar,
Post – Bezanbag, Nagpur – 440004</p> <p>2. Education Officer (Secondary),
Zilla Parishad, Civil Lines, Nagpur.</p> <p>3. The Presiding Officer,
School Tribunal, 2nd Floor,
Administrative Building No.1,
Civil Lines, Nagpur</p> | } | .. Respondents |
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Mr. B. H. Shambharkar, Advocate for petitioner.

Mr. P. N. Shende for respondent Nos.1.

Ms. S. S. Jachak, AGP for respondent No.2 and 3.

CORAM : MANISH PITALE, J.

DATED : 10/06/2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the rival parties.

(2) By this writ petition, the petitioners i.e. Management and the School have challenged judgment and order dated 18/03/2017, passed by the School Tribunal, Nagpur, whereby an appeal filed by the respondent No.1 was allowed, directing reinstatement in service with 40% back-wages. This is the second round before this Court for the reason that when the appeal was allowed in the first instance by the Tribunal, the petitioners had filed Writ Petition No.2082/2008. The said writ petition was disposed of by order dated 22/08/2016, whereby the order of the Tribunal was set aside and the matter was remanded back for fresh consideration in terms of the direction given in the said order by this Court.

(3) Briefly stated the facts leading up to filing of the present writ petition are that the respondent No.1 was appointed as Junior Clerk with the petitioner No.2 – School on 01/07/1999. On 20/11/2006, a charge-sheet was issued to the respondent No.1 for

four charges, including having reported on duty under the influence of alcohol, indulging in abusive behaviour as also insubordination.

(4) It was the case of the petitioner–Management that the procedure prescribed under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, and the Rules framed thereunder was followed in the present case and that at every stage of the enquiry, the respondent No.1 was communicated with necessary notices and documents. This included a notice to the respondent No.1 to appoint his nominee on the enquiry committee in terms of Rules 36 and 37 of the aforesaid Rules. It was submitted that the respondent No.1 failed to respond to any of the communications, as a consequence of which the enquiry proceeded against him, which was conducted by nominee of the Management and a State awardee teacher. The enquiry committee rendered findings adverse to the respondent No.1 and consequently by order dated 29/01/2007, the service of the respondent No.1 was terminated.

(5) Aggrieved by the same, the respondent No.1 filed appeal before the Tribunal. As noted above, the appeal was allowed, against which the petitioners approached this Court by filing Writ

Petition No.2082/2008, which was partly allowed in the aforementioned manner and the matter was remanded back to the Tribunal. It is significant that in the order dated 22/08/2016, while partly allowing the petition filed by the petitioners, this Court recorded that the statement of allegations was indeed served on the respondent No.1 about which there was no dispute. This Court found that much reliance was placed on behalf of the respondent No.1 on a medical certificate dated 16/10/2006 and that the respondent No.1 had claimed that he was suffering from illness for the period from 16/10/2006 to 28/02/2007. But, it was found that the medical certificate could not have been admitted in evidence unless the doctor issuing the certificate was examined. On this basis, the petition was allowed and the matter was remanded back to the Tribunal for the concerned doctor to be examined in the context of the medical certificate. Upon remand, a doctor was examined. He was cross-examined on behalf of the petitioners; wherein crucial admissions were brought out.

(6) The petitioners contended before the Tribunal that in view of the admissions given in cross-examination by the said

witness (doctor), the medical certificate in question was wholly unbelievable and that therefore, the main ground of challenge raised on behalf of the respondent No.1 did not deserve consideration. The Tribunal took into consideration the evidence of the doctor and rendered findings in favor of respondent No.1, to hold that the certificate was believable. On this basis, it was found that when the respondent No.1 was indeed suffering from serious illness between 16/10/2006 to 28/02/2007, the entire enquiry proceedings were vitiated, to justify grant of relief to the respondent No.1. On this basis, the appeal was partly allowed. The respondent No.1 was directed to be reinstated with 40% back-wages and other ancillary benefits.

(7) Aggrieved by the impugned judgment and order of the Tribunal dated 18/03/2017 the petitioners filed the present writ petition, wherein notice was issued on 16/01/2018 and ad-interim stay was granted. The interim order has continued to operate.

(8) Mr. Shambharkar, learned counsel for the petitioner submitted that the impugned judgment and order passed by the Tribunal was rendered unsustainable because of the manner in which the evidence of the doctor was appreciated. It was submitted that this

Court had specifically remanded the matter for leading evidence in the context of the aforesaid medical certificate. It was further submitted that a perusal of the cross-examination of the doctor would show that crucial admissions were given, demonstrating that the certificate was not believable at all. Yet, according to the learned counsel of the petitioners, the Tribunal held in favour of the respondent No.1 on the basis of perverse findings rendered in that regard. It was further submitted that while all other findings were rendered in favour of the petitioners, only on the basis that the medical certificate was believable, the tribunal held that the entire enquiry proceedings were conducted behind the back of respondent No.1. The attention of this Court was invited to the serious charges levelled against the respondent No.1 and it was submitted that the impugned order deserved to be set aside.

(9) On the other hand, Mr. Shende, learned counsel appearing for the contesting respondent No.1 submitted that the fact of issuance of the aforesaid medical certificate was indeed proved by the doctor by entering into the witness box. The findings of the Tribunal in the context of the said certificate could be said to be a

reasonable view in the facts and circumstances of the present case. It was submitted that once the medical certificate was found to be believable, the Tribunal was justified in partly allowing the appeal. The learned counsel further emphasized upon certain letters said to have been sent by the wife of respondent No.1 regarding the ailment of the said respondent, demonstrating that the petitioner–Management was throughout aware about the medical condition of the respondent No.1 and yet it chose to continue with the enquiry proceedings. It was submitted that there was gross violation of the procedure contemplated under the aforesaid Act and Rules and that therefore, the Tribunal was justified in passing the impugned judgment and order.

(10) It was further submitted that the respondent No.1 was ready to face a fresh enquiry, if this Court was proceeding on the basis that due to the violation of principles of natural justice the Tribunal could at the most have granted relief of placing the parties back to the stage where there was violation of principles of natural justice during the course of the enquiry.

(11) Heard learned counsel for the rival parties and

perused the material on record. It is significant that in the present case, this Court while partly allowing Writ Petition No.2082/2008 filed by the petitioners specifically found that the medical certificate dated 16/10/2006 in question could not have been admitted in evidence unless the doctor issuing the certificate was examined. It is for this purpose that the matter was remanded back to the Tribunal. It is found that the entire thrust of the contentions raised on behalf of the respondent No.1 was that he was unwell during the period between 16/10/2006 to 28/02/2007 and that therefore, the entire enquiry proceedings were conducted behind his back, which demonstrated that the order terminating his service issued on 29/01/2007, was vitiated.

(12) Upon remand of the matter a doctor entered the witness box and deposed in support of the aforesaid medical certificate issued on 16/10/2006. In the examination-in-chief, the doctor stated that since the doctor who had issued the medical certificate was not well, he was authorized by the Civil Surgeon to depose in respect of the certificate. Thus, the doctor who issued the certificate was not examined as witness to prove the said medical certificate, which was in gross violation of the specific direction of this Court to examine the

doctor issuing the certificate. In cross-examination the said witness (doctor) gave crucial admissions, including a statement that he could not exactly state what treatment was given to the respondent No.1. He did not bring any of the registers to show the history of the treatment given to respondent No.1. He also conceded to the fact that he could not bring any document to demonstrate that the respondent No.1 had been to the Government Hospital (Mayo) at Nagpur on 16/10/2006. He also conceded to the fact that he did not file any reports dated 16/10/2006 along with medical certificate at Exhibit 67. There was no prescription that was produced and he did not even bring the outward register to show entry of the medical certificate at Exhibit -67 for the date 16/10/2006. No test reports like CT-Scan, MRI or X-ray were produced and it was voluntarily deposed by the said witness that the aforesaid medical certificate did not contain anything about brain hemorrhage.

(13) The whole theory of respondent No.1 that he suffered from brain ailment stood completely destroyed by the admissions given by the aforesaid witness in cross-examination. Yet, a perusal of the findings rendered by the Tribunal on issue No.3 shows

that the Tribunal ignored all such admissions and instead held that the medical certificate was duly proved, making observations to the effect that the Management was unable to demonstrate as to why such a certificate would be issued and there was nothing to show that there were any strained relation or grudge of the witness against the Management for issuing such certificate. It was also observed that it was the petitioner – Management who failed to prove that the medical certificate was forged and fabricated and that therefore, the medical certificate deserved to be believed.

(14) This Court is of the opinion that the manner in which the evidence of the doctor was appreciated by the Tribunal shows that the crucial admissions given in the cross-examination were ignored and that extraneous reasons were attributed for finding that the certificate was believable. There was no question of placing any burden on the petitioner–Management to prove that the certificate could not be believed or that it was forged and fabricated. Instead the burden was on respondent No.1 to prove the certificate, which was clearly not discharged in the light of the evidence of the aforesaid witness (doctor). Thus, it is found that the Tribunal erred in rendering

findings in favour of respondent No.1 on issue No.3.

(15) As a consequence, the reasons put forth on behalf of respondent No.1 for his absence during the course of enquiry cannot be accepted. The entire argument of the respondent No.1 revolved around his assertion that he was unable to respond to the notices received from the petitioner-Management or to participate in the enquiry proceedings because he was rendered unfit due to brain illness between 16/10/2006 to 28/02/2007. Apart from the aforesaid medical certificate, no other material was placed on record by respondent No.1 to support the aforesaid assertion. As the said certificate is not believable, the aforesaid contentions raised on behalf of the respondent No.1 cannot be accepted.

(16) As regards the letters sent by the wife of the respondent No.1 to the petitioner-Management, they would be of no avail for the reason that it was for the respondent No.1 to prove through cogent evidence that he was prevented by sufficient cause for not responding to the notices issued by the petitioner-Management and for not participating in the enquiry proceedings. Once the theory of illness is found to be unbelievable, the Court has to proceed on the

basis that the respondent No.1 chose not to respond to the notices issued by the petitioner–Management and failed to participate in the enquiry proceedings for which he himself was responsible. In such a situation, it cannot be said that the enquiry proceedings were vitiated and that for the same reason the order of termination of service could be set aside. The entire approach of the Tribunal is found to be erroneous and unsustainable. The contentions raised on behalf of the respondent No.1 that he is even now ready to face a fresh enquiry cannot be accepted for the simple reason that this Court has not accepted his theory that the enquiry proceedings were conducted behind his back or that there was violation of the provisions of the MEPS Act and Rules. Therefore, there is no question of relegating the parties back to the stage of conducting enquiry against respondent No.1.

(17) A perusal of the charges shows that they were indeed serious in nature, including a charge that the respondent No.1 had reported on duty under the influence of alcohol and he indulged in abusive behaviour. There is also a charge of insubordination, apart from other charges against the respondent No.1. Although mere

seriousness of the charges cannot lead to findings against the employee but, when it is found that the procedure mandated under the statute was followed and findings were rendered on merits by an enquiry committee, which included a State awardee teacher, this Court has no hesitation in holding that no case is made out for relegating the parties for fresh enquiry against the respondent No.1 on the aforesaid charges.

(18) In view of the above, the writ petition is allowed. The impugned order is quashed and set aside and the appeal filed by the respondent No.1 is dismissed.

(19) Rule is made absolute in above terms.

[MANISH PITALE J.]

KOLHE/P.A.