

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7125 OF 2022.

The Secretary Shri Shantilingeshwar Shikshan
Prasarak Sanstha Hire Jewargi & Anr.

.. Petitioners

vs.

Varsharani Vijaykumar Nanna & Anr.

.. Respondents

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Mr. N. B. Bandivadekar, Senior Advocate, with Pranita P. H., for
the Petitioners.

Mr. Ajit V Alange, for Respondent No.1.

Mr. P.P. Pujari, AGP, for Respondent No.2.

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CORAM: SANDEEP V. MARNE, J.

DATE : 29 AUGUST 2023.

P. C.:

1. By this Petition, the Petitioner-Management challenges the Judgment and Order dated 6th March 2020 passed by the Presiding Officer, School Tribunal, Solapur allowing Respondents' appeal challenging termination of her services.

2. Perusal of the order of the School Tribunal would indicate that the Appeal is allowed on twin grounds of absence of proof of misconduct and invalid constitution of enquiry committee.

3. In paragraph 27 of its judgment the Tribunal has recorded following finding:

“27. The communication of name of members of management nominated by management as per rule 36 (2)(a) (i) of M.E.P.S.(C.S.) Rules, 1981 to the chief executive officer within 15 days from the date of decision of the management is mandatory. However, there is neither appointment of members of management nominated by management as per rule 36 (2)(a)(i) of M.E.P.S. (C.S.) Rules, 1981 nor such communication of name of members of management. Therefore, there is clear breach of provisions of rule 36 (2)(a)(i) of M. E.P.S Rules 1981. It is not the case of respondents that the convener Mr. Dattatray Hanumanth Halli is the members of management and hence the appointment of Mr. Dattatray Hanumanth Halli is contrary to the rule 36 (2)(a) (i) of M.E.P.S Rules 1981. In that view of matter, the constitution of committee contrary to the rule 36 of M.E.P.S.(C.S.) Rules, 1981 becomes contrary and vitiate the decision of the inquiry committee.”

4. Mr. Bandivadekar, the learned Senior Advocate appearing for the Petitioner-Management school would submit that once the School Tribunal has arrived at a finding that the enquiry committee was not constituted properly, it could not have gone into the issue of correctness of findings recorded by the said committee. That in view of invalid constitution of the enquiry committee, the Tribunal at the highest could have remitted the enquiry for being conducted afresh by constitution of another enquiry committee as per Rules.

5. The learned counsel for the Respondent employee would submit that there is absolutely no evidence on record to connect employee with misconduct alleged in the charge-sheet. The Petitioner-Management failed to prove any of the charges leveled against the Respondent and therefore no case is made out by the Petitioner-Management for interference by this Court in the order of the Tribunal.

6. After considering the submissions canvassed by the learned counsels appearing for both the sides, I am of the view that once the Tribunal arrived at a conclusion that enquiry committee was not properly constituted, it was not open for the Tribunal to go into the issue of correctness of findings recorded in the enquiry. If constitution of enquiry itself was invalid, the Tribunal ought to have remanded the enquiry for being conducted afresh by constitution of a valid enquiry committee.

7. After arrival of a conclusion that the constitution of the enquiry committee was invalid, the Tribunal ought not to have ventured to decide whether there was evidence on record for proof of the charges. The impugned judgment and order passed by the Tribunal is therefore unsustainable and deserves to be set aside.

7. The Writ Petition is accordingly partly allowed. The judgment and order dated 6th March 2020 passed by the School Tribunal, Solapur in Appeal No. 7 of 2018, is set aside.

8. The enquiry is remitted to the Petitioner-Management for being conducted afresh by constitution of committee in accordance with the provisions of the M.E.P.S.(C.S.) Rules, 1981.

9. The Respondent shall be placed under deemed suspension from date of her termination. She shall be entitled to payment of subsistence allowance as per rules during the entire period of deemed suspension. The amount of subsistence allowance be paid to the Respondent within a period of four weeks from today. Depending on the finding recorded by the fresh enquiry committee, further course of action be adopted by the Petitioner-Management.

10. The Writ Petition is accordingly disposed of. There shall be no order as to costs.

SANDEEP V. MARNE, J.