

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

WRIT PETITION NO.545 OF 2021

Shri Ambika Mandal,
Kavathemahankal & Anr.

.... Petitioners

versus

Gorakhnath Ganpati Patil & Ors.

.... Respondents

.....

- Mr. S. A. Rajeshirke, Advocate for Petitioners.
- Mr. Narendra V. Bandiwadekar, Senior Advocate a/w Vinayak R. Kumbhar i/b. Ashwini Navjyot Bandiwadekar, Advocate for Respondent No.1.
- Smt. V. S. Nimbalkar, AGP for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th MARCH, 2023

P.C. :

1. Heard Mr. S. A. Rajeshirke, learned counsel for the Petitioners, Mr. Narendra V. Bandiwadekar, Senior Advocate for the Respondent No.1 and Smt. V. S. Nimbalkar, AGP for Respondent No.2.

2. The Petitioners have challenged the order dated

31/07/2020 passed by the School Tribunal, Kolhapur, in Appeal No.36/2018. By the said order, the Respondent No.1's (in this Petition) termination order dated 13/06/2018 was quashed and set aside.

3. The Appeal was preferred by the Respondent No.1 herein challenging the termination order dated 13/06/2018. The Petitioners herein i.e. the Management was directed to reinstate the Respondent No.1 to his original post and to pay 50% of back-wages from the date of termination till his reinstatement within 50 days from the date of the order. It was also declared that the Respondent No.1 was entitled to continuity of the service and all other service benefits. This order passed by the School Tribunal on 31/07/2020 is challenged by the Petitioner herein, who are the Management, the Secretary and the Head Master of the concerned school.

4. Learned counsel for the Petitioners raised two issues before this Court. He submitted that the Tribunal had recorded a

finding that the proper enquiry was not conducted. Once this finding was recorded, it was incumbent on the Tribunal to have remanded back the matter for fresh enquiry.

5. Learned counsel for the Petitioner's second submission was that the Tribunal had considered 13 charges faced by the Respondent No.1 herein before the enquiry committee and the Tribunal had re-appreciated the evidence led before the enquiry committee. According to learned counsel for the Petitioners, this approach was not permissible as is held by a Single Judge Bench of this Court in the case of ***Shivaji Education Society through its Secretary A. G. Salway Vs. Presiding Officer, Schools Tribunal & another, as reported in 2001 (Supp.) Bom. C. R. 400***. He submitted that the entire approach of the Tribunal was erroneous and since it is based on the re-appreciation of the evidence led before enquiry committee, the impugned order was liable to be set aside.

6. Learned counsel for the Respondent No.1 submitted

that the Respondent No.1 was continuously victimized by the management. The matter has proceeded further and the Respondent No.1 herein had applied for execution of the order passed by the School Tribunal by filing Regular Darkhast No.67/2022 before the Civil Judge Senior Division, Sangli. In the Darkhast proceedings, the Executing Court has passed an order dated 22/02/2023 wherein the Court Commissioner was appointed to execute the order passed by the school Tribunal which is impugned in the present Petition.

7. Learned counsel for Respondent No.1 submitted that the Respondent No.1 is due to retire on 31/05/2023 and by some way or the other, the management is avoiding to reinstate him. The submissions for remanding the matter back before the enquiry committee, is also part of the efforts of the managing committee to deprive the Respondent No.1 from being reinstated. Learned counsel for the Respondent No.1 further submitted that the judgment relied on by learned counsel for the Petitioner itself mentions that if there is procedural irregularity

in the conduct of the enquiry, then the Tribunal was justified in overturning the order passed by the enquiry committee.

8. Learned counsel for Respondent No.1 relied on Rule 37(2)(d) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981.
9. Learned AGP submitted that it was a dispute between the management and the society and she was submitting to the orders of the Court.
10. I have considered these submissions. I have perused the impugned order. The Tribunal has framed 8 issues. After consideration, the finding was recorded that the enquiry committee was duly constituted but the proper procedure was not followed while conducting the enquiry. The charges levelled against the Respondent No.1 herein were not duly proved. The termination order was held to be illegal and was held as liable to be set aside. It was also held that the

Respondent No.1 herein was entitled to be reinstated with 50% of back-wages.

11. While it is true that the Tribunal has considered 13 charges faced by the Respondent No.1 herein and has discussed the evidence led before the enquiry committee in that behalf, this approach was not necessary because at the very first instance the Tribunal held that the procedure followed while conducting the enquiry was not proper.

12. Therefore, I am not going into the merits and appreciation of evidence as far as the thirteen charges faced by the Respondent No.1 before the enquiry, are concerned.

13. Learned counsel for the Petitioners relied on the judgment of Shivaji Education Society (supra) and he has in particular relied on the observations made in paragraph No.6 and 9 of the said judgment which read thus :

“6. Having considered the rival submissions and the relevant provisions. I am inclined to take a view that the jurisdiction of the Tribunal to entertain the appeal under section 9 of the Act is of a limited nature. Indeed, sub-section(1) of section 10 of the Act invests all the powers of the Appellate Court in the Tribunal. But, the said powers are circumscribed by the provisions of section 11 of the Act. Section 10(1) relates to the general powers of the Tribunal including the procedural powers, while section 11 of the Act relates to the powers of the Tribunal to decide an appeal. In the present case, we are concerned with sub-section (2) of section 11 of the Act. Sub-section (2) of section 11 of the Act provides that the Tribunal shall decide appeal and conclude that the order of dismissal, removal or termination of service or reduction in rank, is either in contravention of any law or contract or conditions of service which is for the time being in force or even when it finds that the impugned order would be otherwise illegal or improper. The expression “otherwise illegal or improper” cannot permit the Tribunal to enlarge the scope of enquiry of reappreciating the evidence of witnesses on record before the Enquiry Committee or for that matter to substitute its own opinion to the one taken by the

Enquiry Committee or the Management, unless it is a case of no legal evidence.”

“9. I am therefore, of the view that the Tribunal has clearly exceeded its jurisdiction in the present case in reappreciating the evidence of each witness. Besides that the Tribunal has appreciated the evidence as if it was trying a criminal case by applying the standard of proof beyond reasonable doubt. The writ petition should succeed on this count alone.”

While it is true that, this Court has held that the Tribunal could not re-appreciate the evidence of witnesses on record before the enquiry committee or substitute its own opinion, to the one taken by the enquiry committee or the management; however, paragraph No.7 of the said judgment is equally important which reads thus;

“7. In so far as the first part is concerned, there is no dispute that the Tribunal has recorded a clear finding that the relevant procedure was followed by the Enquiry Committee and, therefore, there was full compliance of the Rules. In other words, the Tribunal

has not interfered with the impugned termination order being in contravention of any law, contract or condition of service which were for the time being in force. The only reason, therefore, arrived at by the Tribunal, at best can be stated to be that the termination order is otherwise illegal or improper.”

14. Learned counsel for Respondent No.1 has heavily relied on the observations made in this paragraph. As the said paragraph No.7 suggests if the Tribunal has recorded a clear finding that the relevant procedure was not followed, then the situation would be different. In the facts of the case of the judgment in Shivaji Education (Supra) the Tribunal had recorded the finding that the relevant procedure was followed. In the present case before this Court, this particular aspect is important and there is a clear finding that the procedure was not properly followed. This issue is discussed in paragraph No.15 of the impugned order. It was mentioned that certain order of examining the witness was not followed. In the beginning the Respondent No.1's (Respondent No.1 in the present Petition) witness was cross-examined. Thereafter some

witnesses on behalf of the management were examined and then again the witnesses of the Respondent No.1 were examined. Thus, the witnesses were examined without any sequence or order. The convener of the committee had denied the Respondent No.1 his right to lead the available evidence. He did not get sufficient opportunity for examining his own witness and to cross-examine the management witnesses. The committee had directed the parties that they should not ask more than 3 to 4 questions on any occasions. They did not allow the Respondent No.1 herein to ask further questions. The Tribunal recorded that the reasonable opportunity was not extended to the Respondent No.1 herein to defend his case.

15. Considering all these aspects, it was clearly held by the Tribunal that the proper procedure contemplated under the aforesaid Rule 37(2)(d) was not followed. The said rule 37(2)(d) reads thus;

“37(2)

- (d) (i) *The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee.*
- (ii) *The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross-examine the witnesses examined on behalf of the Management.*
- (iii) *Sufficient opportunities shall be given to examine all witnesses notified by both the parties.”*

16. Considering these aspects, it is clear that the proper procedure was not followed. There is clear finding recorded by the Tribunal. There is no reason to take a different view from the observation of the Tribunal in that behalf. Further more, the matter has travelled further and the execution has substantially progressed. Considering this, I do not see any reason to interfere with the impugned order. Resultantly, the Petition is dismissed.

(SARANG V. KOTWAL, J.)