

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

WRIT PETITION NO. 4227 OF 2012

Netaji Shikshan Sanstha,
Through Secretary And Ors.

...Petitioners

Versus

State of Maharashtra And Ors.

...Respondents

Mr. Sandeep S. Salunkhe, for Petitioners.

Mrs. V. S. Nimbalkar, AGP for Respondent Nos.1 & 2.

Ms. Kumud A. Bhatia, for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 10 OCTOBER 2023.

PRONOUNCED ON : 26 OCTOBER 2023.

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of learned counsels appearing for the parties, petition is taken up for final hearing.

2. Petitioner-Management has filed the present petition challenging the Judgment and order dated 21 January 2012 passed by Presiding Officer, School Tribunal Pune (**Tribunal**) in Appeal No. 60 of 2010. The Appeal was instituted by Respondent No.3 challenging the order of termination of his services without holding disciplinary enquiry.

By the impugned Judgment and order, the Tribunal has set aside the termination order dated 04 October 2010 as well as the findings of the inquiry committee. Tribunal has directed reinstatement of Respondent No.3 with effect from 04 October 2010 with further directions to conduct fresh enquiry from the stage of calling for the explanations of Respondent No.3 under Rule 37 of the Maharashtra Employees of Private Services (Conditions of Services) Rules 1981 (**Rules of 1981**). The management is directed to seek permission from the Education Officer to keep Respondent No.3 under suspension and to pay him subsistence allowance during pendency of enquiry. The Tribunal has held that Respondent No.3 shall not be entitled to backwages but has granted him liberty to claim the same as and when any contingency arises.

3. Petitioner is a Trust registered under the provisions of the Maharashtra Public Trusts Act 1950 and also a Society registered under the Societies Registration Act 1860. It runs a school by name Jawaharlal Vidyalaya. Respondent No.3 was initially appointed as Assistant Teacher in Nehru Shikshan Sanstha in its School Nageshwar Vidyalya, Nimone, Tal. Shirur. He was declared surplus and came to be absorbed in Petitioner's School with effect from 17 July 1995. Respondent No.3 claims that an attempt was made in the year 2006 to terminate his services without issuance of show cause notice on allegation of misbehavior with a girl student. That Deputy Education Officer, after conducting enquiry, held the charge as not proved and directed Respondent No.3 to join duties.

4. The present case arises out of a complaint lodged against Respondent No.3 on the allegation of misbehavior and molestation of a girl student. F. I. R. came to be registered against Respondent No.3 on 02 March 2010. After conduct of enquiry into the charges, Respondent No.3 came to be dismissed from service by Order dated 04 October 2010. He filed Appeal No.60 of 2010 before the School Tribunal challenging his dismissal order. The School Tribunal has partly allowed the Appeal by its Judgment and order dated 21 January 2012 by setting aside termination order directing the management to reinstate Respondent No.3 in service with further direction to conduct a fresh enquiry from the stage of calling for the explanation of Respondent No. 3 as per Rule 37 of Rules of 1981. Respondent No.3 was directed to be placed under suspension with further direction to pay him subsistence allowance. Backwages were denied with liberty to Respondent No.3 to claim the same if he succeeds in subsequent Appeal against termination if and when effected. Petitioner-Management is aggrieved by the Judgment and order dated 21 January 2012 of the Tribunal and has filed the present petition.

5. Though this Court did not pass any interim order staying the Tribunal's decision dated 21 January 2012, it is admitted position that the Petitioner-Management did not issue reinstatement order nor conducted enquiry in pursuance of Judgment and order passed by the Tribunal. That Respondent No.3 also did not file any proceedings for execution of Tribunal's order. He attained age of superannuation on 31 December 2019. Now therefore there is no question of his reinstatement in service.

6. Mr. Salunkhe, the learned counsel appearing for Petitioner-Management would submit that Respondent No.3 faced a serious charge of misbehavior and molestation of a girl student. That the charge was proved by recording statement of the student concerned, her parents and other teachers, etc. Once such a grave charge is held to be proved, the Tribunal ought not to have set aside the dismissal order merely on technicalities. That the enquiry proceedings were conducted by duly following the principles of natural justice. Despite conduct of several meetings of Enquiry Committee, Respondent No.3 failed to participate in the enquiry even on one occasion. That in such circumstances the Tribunal could not have remanded enquiry. He would submit that if the impugned order is not set aside, the same would impose a huge financial burden on the Petitioner-Management, which will not be in a position to bear the same. He would pray for setting aside the Order passed by the School Tribunal.

7. *Per contra* Ms. Bhatia, the learned counsel appearing for Respondent No.3 would oppose the petition and support the order passed by the School Tribunal. She would submit that enquiry was conducted in gross violation of principles of natural justice. That the procedure mandated under Rule 37 of the Rules of 1981 was not followed. That petitioner was repeatedly threatened and assaulted, on account of which he was prevented from participating in the enquiry. That he was not allowed to cross-examine the witnesses nor allowed to produce his own defence. That in such circumstances, the Tribunal's

order directing remand of enquiry is required to be upheld. That previously also, also Respondent No.3 was sought to be implicated in a similar form of allegation, in which he was given a clean cheat in the year 2006. That he has been acquitted in the criminal case which would indicate falsity in the allegations levelled against him. Petitioner-Management committed breach of the Tribunal's order by not conducting any enquiry against Respondent No.3 till he attained the age of superannuation on 31 December 2019. That Respondent No.3 was made to survive without payment of any salary. That therefore exemplary costs must be imposed on Petitioners while dismissing the petition.

8. I have also heard Mrs. Nimalkar, the learned AGP appearing for State who would submit that in the event if this court not finding any merit in the petition, the entire burden of backwages be borne solely by Petitioner-Management and the State Government cannot be held responsible for payment of any backwages.

9. Rival contentions of the parties now fall for my consideration.

10. Respondent No.3 faced serious allegation in the domestic enquiry wherein he was charged with the misconduct of molesting a girl student. Records indicate that Respondent No.3 was served with charge-sheet on 13 April 2010 by registered post. He replied the charge-sheet on 24 April 2010. He denied the charges and accused the management of deliberately implementing him in a false complaint with a view to somehow throw him out of service.

11. The Enquiry Committee consisting of (i) convener—Pramod Hiralal Lunkar, (ii) National Awardee Teacher - Ms. Mrugaja Prakash Kulkarni and (iii) defence nominee - Ravindra Bhila Patil commenced the enquiry. That Respondent No.3 however addressed later dated 28 April 2010 stating that he faced threat to life and was unable to remain present at the headquarter. On that pretext Respondent No.3 failed to attend proceedings of enquiry. Proceedings show that the enquiry committee met at 06 occasions on 17 June 2010, 17 July 2010, 02 August 2010, 21 August 2010, 04 August 2010, and 18 September 2010. None of the meetings of the Enquiry Committee were attended by the Respondent No.3. His defence nominee however used to attend some of the meetings of the Enquiry Committee. Respondent No.3 addressed communication dated 31 July 2010 stating that he had received 13 documents vide letter dated 19 June 2010. In that letter, he gave justification for his own absence as well as absence of his defence nominee on Enquiry Committee meeting held on 17 July 2010. He thereafter addressed letter dated 03 August 2010 alleging that when he remained present for Enquiry Committee meeting on 02 August 2010, he was assaulted and was driven away. Respondent No.3 thereafter addressed later dated 17 August 2010 to the Convener of the Enquiry Committee wherein he dealt with statements of witnesses recorded during the course of enquiry and once again reiterated assault allegedly committed on him on 02 August 2010. He therefore conveyed his inability to remain present for Enquiry Committee meeting scheduled to

be held on 21 August 2010. Respondent No.3 addressed one more communication dated 20 August 2010 replacing his defence nominee Ravindra Bhila Patil and nominated new nominee Chavan Hanumant Vishwanath. He requested for cancellation of proceedings held on 21 August 2010. On 20 August 2010, he addressed one more communication expressing his desire to record his statement that on the ground of threat given to him, he cannot remain present in the School and requested for shifting venue of enquiry. Respondent No.3 thereafter addressed one more letter dated 28 August 2010 to the convener complaining that his defence nominee Ravindra Bhila Patil had remain present only for one date of enquiry, after which he had remain absent. He therefore requested that Mr. Chavan Hanumant Vishwanath be allowed to participate in the enquiry as his defence nominee. By another letter dated 02 September 2010, he requested convener not to permit participation of Ravindra Bhila Patil as his defence nominee. Similar communication was addressed by him on 03 September 2010. On 06 September 2010, Respondent No.3 addressed one more communication stating that he reached the venue of inquiry late at 1.00 p.m. on 04 September 2010 by which time his nominee, Shri. Chavan informed him about refusal by the convener to permit the nominee to participate in the enquiry. He acknowledged the receipt of statements of witnesses recorded on 21 August 2010 and stated that the said statements were false. He requested for an opportunity to cross-examine those witnesses.

12. This is how Respondent No.3 merely kept on addressing several communications without actually participating in the enquiry proceedings. It appears that the entire proceedings of the enquiry were dispatched to Respondent No.3 by convener by letter dated 04 September 2010. Respondent No.3 claims that he received the same by post on 23 September 2010. By letter dated 04 September 2010, Respondent No.3 was given time of 07 days to submit his explanation. He had submitted his explanation only on 24 September 2010. In the meantime, Ravindra Bhila Patil - defence nominee of Respondent No.3 submitted letter dated 18 September 2010 to the convener in the form of his report stating that the charges levelled against Respondent No.3 were serious and that Respondent No.3 failed to remain present in enquiry proceedings. On the same day i.e. on 18 September 2010 the National Awardee teacher-Mrugaja Kulkarni submitted her report which did not contain any specific findings. The convener prepared report of the Enquiry Committee after considering, reports of the other two committee members, holding that the charges levelled against Respondent No.3 proved and recommended dismissal of Respondent No.3. Thus, before Respondent No.3 actually submitted his explanation on 24 September 2010, report of the Enquiry Committee was already finalized on 18 September 2010. The said report was dispatched to the Respondent No.3. After receipt of report, Respondent No.3 addressed letter dated 05 October 2010 requesting for copies of individual reports submitted by 03 members. However, Petitioner-Management had already passed order

dated 04 October 2010 imposing the penalty of dismissal from services on Respondent No.3.

13. The above chronology of events in respect of conduct of enquiry leading to Management dismissing Respondent No.3 would indicate that Respondent No.3 failed to remain present in the enquiry proceedings. The pretext of threat to life cited by him cannot be accepted as he admittedly travelled to the School for attending enquiry meeting on 04 September 2010. It is his case that he reached Kedgaon - the venue of enquiry by 1.00 p.m. by which time, the proceedings of enquiry were already concluded. If Respondent No.3 did not feel any threat of life to attend enquiry on 04 September 2010, it is difficult to believe that the threat of life could be the actual reason for his absence during previous dates of enquiry on 17 June 2010, 17 July 2010, 02 August 2010 and 21 August 2010. It is therefore difficult to hold that Respondent No.3 was not given sufficient opportunity of defence during enquiry. Respondent No.3 must blame himself for remaining absent in enquiry proceedings. The Tribunal has also held in its order that management followed the procedure under Rule 37 up to the stage of recording of evidence of management witnesses.

14. The only error that the Tribunal has traced in the enquiry proceedings is failure on the part of management to call for 'further explanation' of Respondent No.3 after completion of the management evidence. The Tribunal also held that the Enquiry Committee did not

issue summary of proceedings and copies of statement of witnesses to Respondent No.3 for calling his further explanation under Rule 37(4)(5) of the Rules of 1981. On this count, the enquiry is held to be vitiated. However, letter of Respondent No.3 dated 06 September 2010 contains a specific admission that he was served with the statements of witnesses recorded during the course of meeting held on 21 August 2010 along with notice of enquiry for 04 September 2010. This will show that well before 06 September 2010, Respondent No.3 was served with all the statements of witnesses. It appears that by letter dated 04 September 2010, convener once again sent the entire Roznama, affidavit, recorded statements to Respondent No.3 at his residential address at village Kedgaon. He was called upon to submit his explanation within a period of 07 days. Respondent No.3 claims that he received the letter dated 04 September 2010 by registered post on 23 September 2010. By that time, the enquiry report was already finalized on 18 September 2010. However, since Respondent No.3 admits receipt of affidavits and statements of witnesses before 06 September 2010, late receipt of letter dated 04 September 2010 would not constitute the breach of principles of natural justice. He sent his reply on 24 September 2010 giving his detailed explanation. In the meantime, he was served with a copy of the report of the convener, and he demanded copies of reports of each member of the Committee by letter dated 05 September 2010. But that time, he was already dismissed from services by letter dated 04 September 2010.

15. Perusal of the report of the Enquiry Committee would indicate that the defence nominee of Respondent No.3 Shri. Patil Ravindra Bhila submitted report dated 18 September 2010. It appears that Respondent No.3 had specifically communicated to the Convener that Shri. Patil Ravindra Bhila should not act as his defence nominee and he has nominated Shri. Chavan Hanumant Vishwanath as his defence nominee as early as on 20 August 2010. Again, on 28 August 2010 and 02 September 2010 Petitioner communicated to the Convener that Shri. Patil Ravindra Bhila is not his defence nominee. The letter dated 03 September 2010 was addressed to Shri. Patil Ravindra Bhila requesting him not to act as his defence nominee. It appears that his new nominee Shri. Chavan Hanumant Vishwanath was present in the enquiry proceedings on 04 September 2010 but was not permitted to participate in the same. In such circumstances the question as to how Shri. Patil Ravindra Bhila could submit a report on 18 September 2010 as defence nominee of Respondent No.3 begs an answer.

16. So far as report submitted by the National Awardee teacher Mrugja Kulkarni is concerned, the same is inconclusive. She merely recorded observation that Respondent No. 3 did not appear during enquiry meetings held on 17 June 2010, 17 July 2010, 02 August 2010 and 21 August 2010. That she did not remain present for Enquiry Committee meeting on 04 September 2010. She further stated that Respondent No.3 did not remain present even for a single meeting and

on that count, the truth in charge could not be established. Thus the Awardee teacher-Mrugaja Kulkarni did not hold Respondent No.3 guilty of the charge.

17. Thus the Convener had before him two report. One was by Shri. Patil Ravindra Bhila, whose nomination was already withdrawn by Respondent No.3 as early as 20 August 2010 and had apparently no authority either to represent as defence nominee of Respondent No.3 or to prepare a report as member of Enquiry Committee. Even otherwise in his report dated 18 September 2010 the said nominee has not discuss any evidence and has merely held that the charges levelled against Respondent No.3 was of serious nature and that Respondent No.3 always remained absent in the Enquiry. Thus, even defence nominee did not hold Respondent No.3 guilty of charge. The Second Report was of the awardee teacher in which she did not record any finding to hold Respondent No. 3 guilty of charge. Thus the Convener was faced with two reports of awardee teacher and defence nominee, both were inconclusive. The Convener prepared a report which is treated as 'Enquiry Committee Report' on 18 September 2010. After considering both reports, he held that it was not advisable to continue the services of Respondent No.3. He therefore recommended that Respondent No.3 be dismissed from services. Apart from reports of Awardee teacher and defence nominee, the Convener discussed the evidence in his report.

18. Ms. Bhatia has placed reliance on Judgment of the Apex

Court in *Vidya Vikas Mandal Vs. Education Officer*, 2007 (2) All M.R. 461 in which the Apex Court in paragraph No.8 held as under :-

8. As rightly pointed out by the learned counsel for the appellants, Rule 37(6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37(6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37(6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37(6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

19. Thus, under the Rules of 1981 once the Committee of 03 members is nominated to inquire into the charges, a combined report is

required to be prepared. Furthermore, two of the Enquiry Committee members did not conclude that Respondent No.3 was guilty of the charges.

20. Therefore, though I am unable to agree with the findings recorded by the School Tribunal about vitiation of enquiry on account of failure to grant opportunity of giving 'further explanation' as per Rule 37(4) and (5) of Rules of 1981, I am of the view that Enquiry Report prepared by the convener is unsustainable.

21. Based on the faulty Enquiry Report, the School Management has proceeded to dismiss Respondent No.3 from services by adopting a resolution in a meeting on 03 October 2010 and dismissal order was accordingly passed on 04 October 2010.

22. Having held that the Enquiry Committee Report is faulty, the question is what relief can be granted in favour of Respondent No.3. Now there is no question of his reinstatement or remanding the Enquiry since he has attained the age of superannuation on 31 December 2019. He faced serious charges of misbehavior and molestation of girl student. He has not participated in any enquiry proceedings. In such circumstances, there is no question of granting the relief either of reinstatement or backwages to respondent No.3. The termination order is required to be set aside only on account of technical defects committed in preparing Enquiry report. Though the Enquiry Committee recorded statements of as many as 07 witnesses, including concerned girl student,

the Committee has committed a blunder in not preparing a common report. Despite availability of evidence of 7 witnesses, awardee teacher and defence nominee did not record any conclusive findings. The issue therefore is about the exact nature of relief that can be granted for such technical breaches.

23. No doubt Respondent No.3 has put in considerable period of service earlier in Nehru Shikshan Sanstha and subsequently in Petitioner school since 17 June 1995. On account of penalty of dismissal from services, he would be deprived of pension and pensionary benefits. Though Petitioner was charged with serious misconduct, the same has not been properly proved by the Management, on account of technical breaches committed by the Enquiry Committee. In such circumstances, in my view, denial of any wages to him from the date of his dismissal till the date of attaining age of superannuation would act as a sufficient punishment for him. At the same time, on account of failure on the part of Management to prove charges, he cannot be denied pension and pensionary benefits. In my view therefore, ends of justice would meet if Respondent No.3 is directed to be reinstated in services by setting aside penalty of dismissal from services for limited purpose of grant of pension and pensionary benefits. He shall not be entitled to any benefits from the date of his dismissal. Such period shall not be counted as qualifying services except for qualifying services for pension. I accordingly proceed to pass following order :

ORDER

- i) Judgment and order dated 21 January 2012 passed by the School Tribunal in Appeal No.60 of 2010 is set aside.
- ii) Penalty of dismissal from services imposed on Respondent No.3 on 04 October 2012 is set aside and the Petitioners are directed to reinstate Respondent No.3 in service with effect from 04 October 2010 for the limited purpose of sanctioning his pension proposal.
- iii) Respondent No.3 shall not be entitled to any benefits in respect of services with effect from 04 October 2010 onwards till the date of attaining age of superannuation i.e. 31 December 2019, except counting that service as qualifying service for pension. The services of Respondent No.3 from the date of initial appointment till 31 December 2019 be accordingly computed as qualifying service for determining his pension and pensionary benefits.
- iv) Petitioners are directed to send a proposal to the Education Officer / Deputy Director of Education for

payment of pension and pensionary benefits to Respondent No.3 within a period of 02 months. Upon receipt of such proposal, the concerned Education Officer / Deputy Director of Education shall process and sanction the proposal within a period of 08 weeks from the date of receipt of proposal.

24. With the above directions, Writ Petition is disposed of. Rule is made absolute.

SANDEEP V. MARNE, J.

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2023.10.26
14:54:38 +0530