

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6764 OF 2018

1. Rayat Shikshan Sanstha

...Petitioner

V/s.

1. Gajanan Krishna Swami

...Respondent

Mr. Milind Deshmukh, for the Petitioner.

Mr. S.A. Rajeshirke, for Respondent No.1.

Mr. C.D. Mali, AGP for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATED : 14 DECEMBER 2023.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. With the consent of the learned Counsel for the parties, Petition is taken up for final disposal.

2. By the present petition, the Petitioner-Management challenges the Judgment and order dated 27 March 2018, passed by the Presiding Officer School Tribunal, Kolhapur in Appeal No. 7 of 2015. The School Tribunal has allowed the Appeal partly and has set aside the termination Order dated 23 January 2015 and has remanded enquiry for

being conducted afresh from the stage where the illegalities had crept in. The Management is directed to reinstate the Respondent-employee notionally during the course of fresh inquiry and he is directed to be kept under suspension with further directions to pay subsistence allowance.

3. Briefly stated, the facts of the case are that Petitioner No.1 is a Society registered under the provisions of the Societies Registration Act, 1860 and also a Trust registered under the provisions of Maharashtra Public Trust Act, 1950. It runs several High Schools and Colleges. Shri. Shivaji High School, Tulas, Taluka-Vengurla, District-Sindhudurg is one of the Schools run and managed by Petitioner-Trust. Respondent No.1 came to be appointed in Petitioner No.2-School on 31 August 1998. A complaint was made against the Respondent-Employee of misbehavior with a girl student in the 10 Standard. After service of the statement of allegations, the Management decided to conduct the enquiry and constituted Enquiry Committee consisting of Convener and State Awardee Teacher. The Respondent-Employee nominated his Defense Nominee on the Enquiry Committee. After conducting the Enquiry, a Report was submitted by the Enquiry Committee by majority of 2 : 1, by which the charges levelled against the Respondent-Employee were held to be proved. Based on the recommendations of the Enquiry Committee, the Management proceeded to terminate the services of the Respondent-Employee by Order dated 23 January 2015. The

Respondent approached the School Tribunal, Kolhapur, by filing Appeal No.07 of 2015. The School Tribunal has proceeded to partly allow the Appeal filed by the Respondent-Employee and has set aside the termination Order dated 23 January 2015. The enquiry has been remanded for being conducted afresh from the stage of commission of illegalities. The Management is directed to reinstate the Respondent in service on notional basis with further directions to keep him under suspension and to pay subsistence allowance till the conclusion of the Enquiry. The Petitioner-Management is aggrieved by Tribunal's decision dated 27 March 2018 and has filed the present petition.

4. Mr. Deshmukh, the learned counsel would appear on behalf of the Petitioners and submit that the solitary ground on the basis of which the Tribunal has partly decided to allow the Appeal, is failure on the part of the Defence Nominee of the Respondent-Employee to sign the Enquiry Report. He would take me through the Enquiry Report to demonstrate that Shri. Subhash Dnyanoba Jadhav has signed on each page of the Enquiry Report, except the conclusion portion under the heading 'Decision'. Mr. Deshmukh would submit that serious charge of misbehaviour with a girl student studying in the School has been proved against the Respondent-Employee and therefore the Tribunal ought not to have set aside the termination order based on technicalities. He would submit that the enquiry was conducted after affording full opportunity of defence to the Respondent-employee and therefore the order passed

by the School Tribunal setting aside termination order cannot be sustained. He would pray for setting aside the order passed by the School Tribunal.

5. *Per-contra*, Mr. Rajeshirke the learned counsel appearing for Respondent No.1 would oppose the petition and support the Order passed by the Tribunal. He would submit that the order passed by the Tribunal merely envisages remand of the enquiry and that no prejudice would be caused if the enquiry is conducted afresh by grant of opportunity of defence to the respondent. He would therefore submit that this Court would not interfere in the order of remand passed by the School Tribunal. Mr. Rajeshirke, would justify the order of remand of the School Tribunal by inviting my attention to the report of the Enquiry Committee. According to him, the entire report of the Enquiry Committee was prepared at the behest of the Management and Respondent No.1's Defense Nominee was called upon to sign the same. That he rightly did not sign the same. Shri. Balasaheb Pandurang Dombale was not given an opportunity to submit a separate report with reasons for not agreeing with the findings of the other two members of the Enquiry Committee. The Tribunal has rightly held that an opportunity needs to be given to the Defense Nominee to record his reasons for disagreement with the findings of the other members of the Enquiry Committee.

6. Mr. Rajeshirke, would further submit that the constitution of the Enquiry Committee, was illegal in that in addition to the Convener, State Awardee Teacher and Defence Nominee, Shri. Subhash Dnyanoba Jadhav participated in the Enquiry proceedings as the representative of the Management. He would further submit that the report of the Enquiry Committee is however not signed by Shri. Subhash Dnyanoba Jadhav, who admittedly acted as a part of the enquiry. He would submit that since the constitution of the Enquiry Committee itself is illegal, the order of remand passed by the Tribunal need not be disturbed. He would pray for dismissal of their petition.

7. I have also heard Mr. Mali, the learned AGP for State.

8. I have considered the submissions canvassed by the learned counsel appearing for the parties. The Respondent-employee undoubtedly faced serious allegation. In the enquiry, two charges were levelled against him. In the first charge, it was alleged that on 26 November 2013 when a girl student studying in the 10th Standard had visited the school for extra classes, Respondent No.1 called her in the 8th standard classroom and misbehaved with her. In the second charge, it was alleged that reputation of the School- Management was maligned on account of publication of news in the newspapers about misbehavior by Respondent No.1 with a girl student of the School.

9. Perusal of the order passed by the School Tribunal would indicate that a specific finding has been recorded in para-26 of the judgment that the Enquiry Committee was properly constituted. Therefore, the contention sought to be raised now that four members acted as a part of the Enquiry Committee or that the constitution of the Enquiry Committee was erroneous, is totally misleading. Mr. Subhash Dnyanoba Jadhav has acted merely as a Presenting Officer on behalf of the Management, and he was not part of the Enquiry Committee. He has not participated in the decision-making process and is not a signatory to the Enquiry Committee Report. Therefore, the contention about improper constitution of Enquiry Committee deserves no consideration and is therefore rejected outrightly.

10. The solitary ground based on which the School Tribunal has proceeded to set aside the termination order is failure on the part of the Defence Nominee of Respondent No.1 to sign the report of the Enquiry Committee. In this regard, the relevant findings recorded by the School Tribunal in para-26 of its Order read this :

26. Thus inquiry committee was properly constituted and the Appellant submitted the name of his representative but Appellant was not properly represented as Appellant's representative failed to submit his report. Representative of Appellant has not submitted his report assenting or dissenting. Very purpose of 3 members committee is frustrated. The Appellant contended that convenor Shri. Rajendra Shankarrao Salunkhe and Shri.R.B.Darekar awardee teacher acted as prosecutors and judge in inquiry committee of the appellant. Thus when allegation of bias was

made report of report of representative of Appellant becomes very important. One chance must be given to representative of Appellant why he hasn't signed report or submitted his separate report. Every member is independent, hence he must be informed that his separate verdict may be accept, however it must be given on same date. It is not clear whether such information was given to him or not ? It is not clear when he signed other pages of report why he didn't sign final verdict.

10. Perusal of the report of the Enquiry Committee would indicate that the Defence Nominee, Balasaheb Pandurang Dombale has signed on each page of the Enquiry Committee Report, except the last page under the heading 'Decision'. Furthermore, after discussing each Article of charge, the Enquiry Committee has recorded opinion of each of the Members of the Committee about that charge. In respect of Charge No.1, the Convenor, as well as the State Awardee Teacher agreed with the finding that Charge No.1 was proved. The Defence Nominee did not agree with the said conclusion and there is a specific statement to that effect with regard to the finding on Charge No.1, which is signed by the Defence Nominee. Similarly, is the case in respect of Charge No.2 where the Defence Nominee has put his signature below the finding that he did not agree with the finding of proof of Charge No.2. It is therefore cannot be contended, by any stretch of imagination, that the Enquiry Committee Report is prepared at the behest of the Management or that the Defense Nominee was merely asked to sign the same. The report on the other hand, clearly indicates that the discussion has taken place between the three members before transcribing the Report and the disagreement by the Defence Nominee is to both the Articles of Charge

has specifically been incorporated in the Enquiry Committee Report and the signature of the Defence Nominee about his disagreement is specifically obtained thereon.

11. After observing that the Defence Nominee did not agree with the finding of proof of both the Articles of Charge, the other two Members proceeded to declare the Report by majority of 2 : 1. In fact, there is an endorsement at the foot of the Report that Balasaheb Pandurang Dombale (Defence Nominee) was requested to sign the report and to record his specific finding/opinion and that he refused to do so and left the Enquiry Committee Meeting at 3:20 p.m. In my view, such an action on the part of the Defence nominee would not inure to the benefit of Respondent-employee. The Defense Nominee had already disagreed with the findings of proof with regard to both the Articles of Charge. If he desired to record any reasons for his disagreement, he was free to do so and was in fact called upon to do so. He however, refused to record his independent reasons and opinion and chose to abruptly leave the Enquiry Committee Meeting. For such action of the Defence Nominee, the Respondent-Employee cannot be rewarded by setting aside the penalty order. Thus, the finding recorded by the School Tribunal about the irregularity of the enquiry on account of failure of Shri. Subhash Dnyanoba Jadhav to sign the last page of the Report are totally perverse and unsustainable.

12. There is sufficient evidence on record to hold both the articles of charge to be proved against Respondent No.1. Serious charge of misbehavior with a girl student in the School has been proved against Respondent No.1. The School Tribunal should have been little more sensitive about the nature of allegations found to be proved against Respondent No.1-Employee and ought to have avoided hyper technical approach while deciding the Appeal filed by Respondent No.1. There is sufficient evidence on record to prove the charges. The penalty imposed on Respondent No.1 is commensurate with the misconduct alleged. There was thus no valid reason for the Tribunal to interfere in the order of termination of Respondent No.1.

13. The School Tribunal's order is this indefensible and liable to be set aside. The petition accordingly succeeds. The Judgment and Order dated 27 March 2018, passed by the Presiding Officer, School Tribunal, Kolhapur, is set aside. The Writ Petition is accordingly **allowed**. Rule is made absolute. There shall be no order as to costs.

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SANDEEP V. MARNE, J.