

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

SANTOSH
SUBHASH
KULKARNI

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KULKARNI
Date: 2023.04.03
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WRIT PETITION NO. 1851 OF 2018

- 1** Sangli Shikshan Sanstha, Sangli
A Trust registered under the provisions of
Bombay Public Trust Act, 1950 bearing its
registration No.SS/F4, having its
registered office at City High School,
village Place, Sangli, Dist.
Sangli – 416 416 through Executive Officer
- 2** The Head Master
Guruvarya Dadoji Konddeo Sainiki Shala
Having its office at Datta Mal, Manerajuri
Road, Tasgaon, Previously Charge Head
Master Yogesh K. Khadilkar, now present
Head Master Balkrushna Narayan
Patankar

...Petitioners

Versus

- 1** Shankar Gopal Umrani
Aged 52 years, Occu. Presently Nil
At Golden View, Flat No.5, Golden Park
Bypass Corner, Madhav Nagar Road,
Sangli - 416 416
- 2** Education Officer (secondary)
Zilla Parishad, Sangli, Dist. Sangli.

...Respondents

WITH

CONTEMPT PETITION NO. 130 OF 2020

Shankar Gopal Umarani
Age: 57 years, Occu.: Nil.
R/at. Golden View, Flat No.5, Golden Park,
Bypass Corner, Madhavnagar Road,
Sangli.

...Petitioner

Versus

- 1** Shashikant Sadashiv Deshpande
Working as Executive Officer, Sangli
Shikshan Sanstha, City High School,
Sangli, District Sangli.
- 2** Sudhakar Telang
Working as Education Officer, Zilla
Parishad, Sangli, District Sangli

3 Vijay Rajaram Shendge
Working as the Headmaster
Guruvarya Dadoji Konddeo Sainiki Shala,
Datta Mal, Manerajuri Road, Tasgaon,
District Sangli. **...Respondents**

Mr. N. V. Bandiwadekar, Senior Advocate, i/b Ms. Manjiri
Parasnis, for the for the Petitioner in WP/1851/2018 for
the Respondent in CP/130/2020.

Mr. Ashutosh Kulkarni, a/w Sarthak Diwan, for the Petitioner
in CP/130/2020 and for the Respondent in WP/1851/
2018.

Mr. C. D. Mali, AGP for the State.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 23rd MARCH, 2023

PRONOUNCED ON: 3rd APRIL, 2023

JUDGMENT:-

1. Rule in Writ Petition No.1851 of 2018. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. Writ Petition No.1851 of 2018 calls in question the legality, propriety and correctness of a judgment and order dated 3rd May, 2017 in Appeal No.103 of 2014 passed by the learned Presiding Officer, School Tribunal, Kolhapur, whereby and whereunder the appeal preferred by respondent No.1 came to be partly allowed by setting aside the order of termination dated 13th October, 2014 and the matter was remitted back with liberty to the petitioner to conduct enquiry from the stage of recording of respondent No.1's evidence.

3. Contempt Petition No.130 of 2020 is filed by respondent No.1 alleging willful disobedience of the impugned order.

4. Shorn of unnecessary details, the background facts leading to these petitions can be stated as under:

(a) Petitioner No.1 is a Public Charitable Trust registered under Maharashtra Public Trust Act, 1950 ("the Act, 1950"). It runs Guruvarya Dadoji Konddev Sainiki School, at Tasgaon, petitioner No.2.

(b) On 1st July, 1992 respondent No.1 was appointed as an Assistant Teacher in the City High School, Satara, another school run by petitioner No.1. On 7th July, 1997 respondent No.1 was promoted as the Head-Master in Guruvarya Dadoji Konddev Sainiki School, at Tasgaon.

(c) Alleging various acts of fraud, misappropriation of funds and misconduct in the discharge of duties by respondent No.1 as the Head-Master of the said school, a show cause notice was served on respondent No.1 on 6th July, 2011. The latter gave reply on 23rd July, 2011. By communication dated 25th August, 2011, respondent No.1 was informed that a decision to hold an enquiry in accordance with the provisions contained in Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 & Rules 1981 was taken. By the

said communication, the constitution of a three member enquiry committee comprising of respondent Nos.1's nominee was also conveyed to respondent No.1 by the convener of the enquiry committee.

(d) In the intervening period, a number of proceedings were instituted at the instance of respondent No.1 challenging the institution of enquiry including RCS No.330 of 2011. Eventually, the enquiry commenced. Since the enquiry could not be completed, the Education Officer, Zilla Parishad, Sangli - respondent No.2, sought extension of time for concluding the enquiry. Vide communication dated 3rd September, 2014, Deputy Director, Education, Kolhapur Division, extended time to complete enquiry by 40 days with a rider that time would not be extended thereafter for any reason whatsoever.

(e) Respondent No.1 assailed the said decision to extend the time by filing Writ Petition No.24299 of 2014. By an order dated 15th September, 2014 this Court declined to interfere with the said decision noting, *inter alia*, that the delay in conducting the enquiry was attributable to respondent No.1. This Court, however, granted permission to respondent No.1 to cross-examine the petitioner – management's witness.

(f) Recording of evidence of the petitioners witnesses was concluded on 22nd September, 2014. The petitioner No.1 closed its evidence. Respondent No.1 sought leave to file a list of witnesses and adduce evidence. The matter came to be posted to the following day.

(g) On 23rd September, 2014, Respondent No.1 filed a list of witnesses disclosing the name of Mr. Vishwanath Shridhar Deodhar as defence witness No.1 and sought an adjournment on the ground that Mr. Deodhar was unwell. The enquiry committee by majority decided to reject the prayer for adjournment. Thereupon respondent No.1 closed his evidence. Giving further time to respondent No.1 to submit his further explanation in accordance with Rule 37(4) of the Rules, 1981, the enquiry was adjourned to 4th October, 2014.

(h) Eventually, the enquiry committee submitted report on 10th October, 2014 and respondent No.1 was held guilty of misconduct, and penalty of termination of service under Rule 29(5) of the Rules, 1981 was proposed. Based on the said report, respondent No.1 was terminated by an order dated 13th October, 2014.

5. Respondent No.1 assailed the said order of termination in appeal being Appeal No.103 of 2014 before the School Tribunal,

Kolhapur. After appraisal of the material and hearing the parties, the learned Presiding Officer, School Tribunal, was persuaded to hold that the enquiry stood vitiated on account of breach of the procedure prescribed in Rules, 1981 and the principles of natural justice. Resultantly, the termination of respondent No.1 was quashed and set aside with liberty to the petitioner to conduct enquiry afresh from the stage of recording of respondent No.1's evidence. The petitioners were also directed to reinstate respondent No.1 notionally. During the course of fresh enquiry the respondent No.1 was to be treated to be placed under suspension. Consequential directions to pay the subsistence allowance etc. were also given.

6. Being aggrieved the petitioners have invoked writ jurisdiction of this Court.

7. It would be contextually relevant to note that though the petition was filed on 7th June, 2017 no effective orders have been passed.

8. Alleging that the petitioners have committed willful disobedience of the order of the School Tribunal and deprived respondent No.1 of the benefits which emanated therefrom, respondent No.1 has preferred the contempt petition, being Contempt Petition No.130 of 2020.

9. In the light of the nature of the controversy, the writ petition as well as the contempt petition were heard together.

10. Mr. Bandiwadekar, the learned Counsel for the petitioner, strenuously submitted that the finding recorded by the School Tribunal that the enquiry stood vitiated for not complying with Rules, 1981 and principles of natural justice is completely erroneous. The learned Presiding Officer, School Tribunal, lost sight of the fact that respondent No.1 left no stone unturned to derail the enquiry proceedings. A suit was instituted in the Civil Court seeking stay to the enquiry proceedings. That matter reached upto this Court. Despite the delay being clearly attributable to respondent No.1, the latter resisted the application to seek extension of time to complete the enquiry. When the Deputy Director (Education) extended the period by 40 days, respondent No.1 challenged the said decision in this Court.

11. Laying emphasis on the observations of this Court in the order dated 15th September, 2014 in Writ Petition (St) No.24299 of 2014 Mr. Bandiwadekar would urge that this Court noted that respondent No.1 was responsible for the delay. In this backdrop and in view of the ultimatum given by the Deputy Director education to complete the enquiry within 40 days the Enquiry

Committee was constrained to reject the prayer for adjournment.

12. Mr. Bandiwadekar further submitted that the contention of respondent No.1 that fair opportunity of hearing was not given to him was a mere subterfuge. Inviting the attention of the Court to the list of witnesses dated 23rd September, 2014 and the application for adjournment of even date Mr. Bandiwadekar would submit that only one witness's name was disclosed on 23rd September, 2014, who, to the knowledge of respondent No.1, was suffering from cancer. The stand that respondent No.1 would find out other witness whom he might have examined was clearly in breach of the Rules. Under Sub-Clause (ii) of Clause (a) of Sub-Rule (2) of Rule 37 both the management and the employee were enjoined to notify in writing to the convener of the enquiry committee the names of witnesses whom they proposed to examine within 10 days of the receipts of the copies of the charge-sheet. The enquiry committee was thus justified in declining to grant adjournment on such a flimsy ground. These factors, according to Mr. Bandiwadekar, were completely missed by the learned Presiding Officer, School Tribunal. Therefore, the impugned order deserves to be interfered with.

13. Per contra, Mr. A. M. Kulkarni, the learned Counsel for respondent No.1, submitted that the breach of the provisions of Rules 1981 and principles of natural justice is writ large. Management closed its evidence at about 9.15 p.m. on 22nd September, 2014. On the very next day, the matter came to be posted for recording of defence evidence at 4.30 pm.; under not less than 24 hours. By no stretch of imagination such process can be said to manifest a fair and efficacious opportunity of hearing. Moreover, the reason assigned by respondent No.1 for his inability to examine Mr. Deodhar was not such that it could have been brushed aside as a mere pretext.

14. I have given anxious consideration to the aforesaid submissions. The Presiding Officer, School Tribunal, was of the view that no effective opportunity of hearing was given to respondent No.1 and, thus, the enquiry stood vitiated for breach of the provisions of the Rules, 1981 and the principles of natural justice. Whether the aforesaid approach of the School Tribunal is justifiable?

15. Sub-section (6) of Section 4 of the Act, 1977 mandates that no employee of a private school shall be suspended, dismissed or removed or his services shall be otherwise

terminated or he shall be reduced in rank by the management, except in accordance with the provisions of the said Act and the Rules made in that behalf. Rules 1981 contain elaborate provisions for institution, conduct and procedure of an enquiry. The avowed purpose of Rules 36 and 37 is to ensure that a reasonable opportunity is given to the employee to defend himself in case an enquiry to impose the penalty prescribed under the Rules is instituted against him. The procedure prescribed under Rules 36 and 37 subsumes the elementary principles of natural justice and fair play to ensure that an employee is not condemned unheard.

16. When a disciplinary action is assailed on the ground that the enquiry is vitiated on account of breach of concept of fair play, two issues crop up for the consideration. One, whether the disciplinary proceedings is governed by any statutory or normative frame work. If the proceedings are governed by the rules, then the enquiry would proceed to determine whether there was a breach of those rules. Two, if the disciplinary proceedings is not governed by any rules, then whether the proceedings were conducted in violation of fundamental principles of natural justice. The cases may not fall in these two watertight compartments. Often the dividing line blurs and the

breaches overlap. In a given case, an infraction may amount to breach of the statutory prescription as well as fundamental principles of natural justice.

17. The enquiry does not rest at the finding as to whether there was breach of statutory rule and/or principles of natural justice. Each and every breach does not necessarily entail the consequence of setting aside of the decision of the disciplinary authority and the disciplinary proceedings itself. The Court may be required to consider the nature of the provisions/principles of which breach is alleged. Does it partake a procedural or substantive character. Furthermore, whether the breach of the provisions/principles resulted in such degree of prejudice as to vitiate the sanctity of the proceedings?

18. A profitable reference can be made to the propositions enunciated in the case of *State Bank of Patiala and others vs S.*

*K. Sharma.*¹ They read as under:

“32. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire

1 AIR 1996 Supreme Court 1669.

whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the

person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B. Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.”

19. Reverting to the facts of the case, the breach complained and which found favour with the learned Presiding Officer, School Tribunal, is that of not providing an effective opportunity to lead evidence in defence. In the aforesaid context, it may be expedient to note the relevant provisions of Rule 37. It reads as under:

“37. Procedure of Enquiry

(1)

(2) (a) Within 10 days of the receipt of the copies of the charge-sheet and the statement of allegations by the employee or the Head, as the case may be.

(i)

(ii) If the management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convenor of the Enquiry Committee the names of witnesses whom they propose to so examine, and

(iii)

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the Enquiry Committee shall meet to proceed with the enquiry and give 10 days notice by registered post acknowledgement due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc. if any.

(c) The Enquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case.

(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 on behalf of the employee.

(iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e)

(f) The Enquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of the Enquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Enquiry Committee has, in the special circumstances of the case under Enquiry Committee has, in the special circumstances of the case under enquiry, extended the period of completion of the enquiry with the prior approval of the Deputy Director. In case the enquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the enquiry.”

20. In the case at hand, the breach had allegedly occurred at the stage of providing an opportunity to respondent No.1 to lead evidence. As noted above, the enquiry could not be conducted within a period of 120 days prescribed in Clause (f) of Sub-rule (2) of Rule 37 (extracted above). The Deputy Director extended the time by 40 days. Indisputably, the said period of 40 days would have expired by 13th October, 2014. Again indisputably, the evidence of the management was closed on 22nd September, 2014 and the proceedings stood over to 23rd September, 2014 for filing list of witnesses by respondent No.1 and leading evidence

in defence. Controversy revolves around the legality and propriety of the proceeding of the inquiry committee held on 23rd September, 2014.

21. On that day, respondent No.1 filed a list of witnesses disclosing Mr. Vishwanath Deodhar, resident of Tasgaon and other unknown persons as witnesses. In the application for adjournment, respondent No.1 asserted that the proceedings of the enquiry lasted till 19.15 pm. the day before i.e. 22nd September, 2014 and the enquiry stood over to the following day i.e. 23rd September, 2014 at 4.00 pm. As Mr. Deodhar was suffering from cancer it was not possible to keep him present and adduce evidence. It was further contended that since the enquiry came to be posted to the following day, respondent No.1 could not contact other persons, who could be examined as witnesses and, therefore, an adjournment be granted. The said prayer was resisted on behalf of the petitioners. The enquiry committee was persuaded to reject the application by majority; respondent No.1's nominee dissented.

22. Mr. Bandiwadekar would urge that the matter cannot be looked at only from the perspective of the short interval between the closure of the evidence of the petitioner - management and the date fixed for recording respondent No.1's evidence. The

entire setting of the matter is required to be kept in view. Respondent No.1's persistent efforts to derail the enquiry were properly accounted for by the enquiry committee. Moreover, the time limit fixed by the Deputy Director was to be strictly adhered to.

23. The aforesaid submissions are required to be appreciated in the light of the object of the elaborate prescription contained in Rule 37 of the Rules, 1981. The rules emphasize that the enquiry committee shall ensure that every reasonable opportunity is extended to the employee for his defence. Leading evidence in defence is an inviolable right of the employee under the Rules, 1981. Sub-clause (iii) of Clause (d) of Sub-rule (2) of Rule 37 emphasizes that sufficient opportunity shall be given to examine all witnesses notified by both the parties. I find substance in the submission of Mr. Kulkarni that time of less than 24 hours cannot be said to be a reasonable opportunity by any standard.

24. Mr. Bandiwadekar attempted to salvage the position by canvassing a submission that respondent No.1 had not furnished the list of witnesses within 10 days of the receipt of the charge-sheet as mandated by Sub-clause (ii) of Clause (a) of Sub-Rule (2) Rule 37. This submission does not advance the

cause of the petitioner as on the date the evidence of the management was closed, the enquiry committee had granted permission to respondent No.1 to file the list of witnesses and adduce evidence. The enquiry committee did not deny opportunity to respondent No.1 on the ground that a list of witnesses as mandated by Sub-clause (ii) of Clause (a) of Sub-Rule (2) Rule 37 was not filed.

25. The submission that the enquiry committee was constrained by the time limit stipulated by the Deputy Director (Education) also does not merit acceptance. The respondent No.1's evidence was closed on 23rd September, 2014. On that day adjournment was sought on the ground that Mr. Deodhar, who was to be examined on behalf of respondent No.1, was unwell. The Enquiry Committee could have granted few days time to respondent No.1 to lead evidence in defence and yet adhered to the time limit stipulated by Deputy Director (Education). Instead the enquiry committee straightway proceeded to close the evidence and thereby deprived respondent No.1 of a valuable right to lead evidence in defence. Such infraction surely caused prejudice as the enquiry committee had not had the benefit of the evidence in rebuttal.

26. In the aforesaid circumstances, the learned Presiding Officer, School Tribunal, was justified in recording a finding that the enquiry was vitiated for breach of the provisions of the Rules, 1981 and the principles of natural justice. The Course adopted by the learned Presiding Officer, School Tribunal, in setting aside the termination order with liberty to hold a fresh enquiry from the stage the breach occurred cannot also be faulted at. It is well neigh settled that once the Court/Tribunal sets aside an order of punishment on the ground that the enquiry has not been properly conducted the Court/Tribunal should not preclude the employer from holding enquiry in accordance with law. It must remit the matter to the Disciplinary Authority to conduct the enquiry from the point it stood vitiated, and to conclude the same in accordance with law.

27. Consequential directions to reinstate respondent No.1 notionally for the purpose of conducting the enquiry, and treat respondent No.1 to be under suspension with direction to pay the subsistence allowance are in order. Resultantly, no interference is warranted with the impugned order in exercise of extraordinary writ jurisdiction.

28. The contempt petition filed by respondent No.1 need not detain the Court any more. Section 13 of the Act, 1977

incorporates an efficacious remedy by prescribing penalty for non-compliance of the directions issued by the Tribunal Under Section 11. On conviction the management is liable to be punished with imprisonment or fine or both. The order passed by the Tribunal is also executable as an “order” within the meaning of Section 2(14) of the Code of Civil Procedure, 1908. A petition for contempt on account of alleged willful disobedience of the order passed by the Tribunal is thus not tenable before this Court. A judgment of this Court in the case of *Mohammad Salam Anamul Haque vs. S. A. Azmi and others*² settles this position in law. Consequently, the contempt petition does not deserve to be entertained.

29. The conspectus of the aforesaid discussion is that both the Writ Petition and Contempt Petition deserve to be dismissed.

30. Hence, the following order:

: O R D E R :

- (i) Writ Petition No.1851 of 2018 stands dismissed with costs.
Rule discharged.
- (ii) Contempt Petition No.130 of 2020 also stands dismissed.
- (iii) Pending application(s), if any, stand(s) disposed.

[N. J. JAMADAR, J.]

2 (2001) 1 Mah LJ 249.