

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5493 OF 2008
WITH
INTERIM APPLICATION NO.14236 OF 2023
IN
WRIT PETITION NO.5493 OF 2008

Devdas Devram Tamhane

Age 42 years, Occ. Service

Harshal Residency Building B-2

Falt No.9, Vatannagar, Chakan Road,

Talegaon Dabhade, Tal. Maval,

Dist. Pune

...PETITIONER/APPLICANT

V/S

1 The Presiding Officer,
School Tribunal, Pune Region,
17, Dr. Ambedkar Road, Pune.

2 Vidya Prasarini Sabha
having its office at 19/2
T.P. Scheme Shivajinagar,
Pune 411 005.
through its Chairman/Secretary

3 Bharat English School
Shivajinagar, Pune 411 005
Through its Head Master.

4 Education Officer (Secondary)
Zilla Parishad, Pune – 411 001.

5 The State of Maharashtra
Education and Employment Department,
Mantralaya, Bombay - 32.

....RESPONDENTS

...

Mr. Rajesh G. Panchal with Mr. Sarang Gandajwar, Mr. K.S. Jadhav, Mr. V.G. Panchal for the Petitioner/Applicant.

Mr. P.P. Pujari, AGP for Respondent Nos.1 and 5/State.

Mr. S.V. Pitre for Respondent No.2.

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CORAM : **SANDEEP V. MARNE, J.**
RESERVED ON : **DECEMBER 01, 2023.**
PRONOUNCED ON: **DECEMBER 06, 2023.**

JUDGMENT:

1 The Petition is filed by Petitioner challenging judgment and order dated 7 May 2008 passed by the Presiding Officer, School Tribunal dismissing Appeal No.12 of 2017 filed by Petitioner challenging termination order dated 24 February 2007.

2 Briefly stated, facts of the case are that Petitioner came to be initially appointed on the post of Assistant Teacher in Shri Vidya Prashala on 27 April 1994. On 7 February 1998, he was transferred to the Respondent-School. While serving in the Respondent-School Petitioner was served with statement of allegations dated 23 January 2006 under Rule 28(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (**Rules of 1981**). Petitioner was called upon to submit written explanation within seven days. By letter dated 30 January 2006, Petitioner requested for time to file Reply upto 3 March 2006 by requisitioning certified copy of charges and documents for drafting of

Reply. The Management however proceeded to institute an enquiry committee by nominating the convener and award winning teacher and called upon Petitioner to communicate name of his nominee vide letter dated 6 February 2006. On 20 February 2006 Petitioner nominated name of Shri R.B. Patil as his defence convener. The Management thereafter issued chargesheet dated 25 February 2006 under provisions of Rule 37(1) of the Rules of 1981. Enquiry was conducted into the charges by examining six witnesses. However apparently all the cited witnesses were not examined. It also appears that out of 27 charges leveled against Petitioner charges at serial nos.4 and 5 were dropped. Petitioner's defence nominee conducted cross-examination of the witnesses. The Management had nominated a Presenting Officer to present the case on behalf of the Management. The enquiry committee gave report holding some of the charges as proved. The Management thereafter proceeded to pass order dated 24 February 2007 terminating the services of Petitioner with effect from 1 March 2007. Aggrieved by the termination order dated 24 February 2007 Petitioner filed Appeal No.12 of 2007 before the School Tribunal, Pune. By its judgment and order dated 7 May 2008, the School Tribunal has proceeded to dismiss the Appeal filed by Petitioner. Aggrieved by the decision of the School Tribunal, Petitioner has filed the present Petition.

3 Mr. Panchal, the learned counsel appearing for Petitioner would submit that the entire proceedings of the enquiry are vitiated on account of irregularity in constitution of enquiry committee and issuance of

charge-sheet. Drawing attention to the provisions of rule 36(2) of the Rules of 1981, Mr. Panchal would submit that the Chief Executive Officer or President is required to consider the explanation submitted by an employee before placing the matter before the Management who can thereafter take a decision about conduct of an enquiry or for dropping the proposal. In the present case the statement of allegations were served on 23 January 2006 and before Petitioner would reply to the allegations, decision was taken to constitute an enquiry committee on 6 February 2006. That Petitioner's application dated 30 January 2006 seeking extension of time is erroneously treated as explanation/reply to the chargesheet. That there is clear violation of rule 36(2) of the Rules of 1981 and on this ground alone the entire proceedings or enquiry are liable to be set aside. He would rely on judgment of this Court in ***National Integration and Education Welfare Society vs. Presiding Officer and others***, (2021) 6 ALL MR 789.

4 Mr. Panchal would further submit that all the witnesses examined against Petitioner were those against whom Petitioner had made complaints and thus reliance is placed on evidence led by inimical witnesses who were interested in ensuring punishment to Petitioner. That the disciplinary proceedings were initiated by way of a counterblast to the Complaints made by Petitioner. That there is no provision for appointment of Presenting Officer. Even if Presenting Officer can be appointed, opportunity must be given to Petitioner to appoint his defence assistant which is not done in the present case. That Petitioner's defence

nominee, who was member of enquiry committee exceeded his role by cross-examining the Management witness. That Petitioner had requested for change of the defence nominee which request was erroneously rejected which has resulted in an undesirable person representing Petitioner on the enquiry committee as his defence nominee. He would submit that Petitioner was declared surplus during pendency of disciplinary proceedings and therefore the management did not have any jurisdiction to conduct any disciplinary proceedings or to punish Petitioner Mr. Panchal would submit that the entire management was bias against Petitioner and the conduct of disciplinary proceedings is a farcical exercise since the Management had made up its mind to terminate the services of the Petitioner. He would rely on judgment of the Apex Court in ***State of Punjab vs. V.K. Khanna & Ors.***, (2001) 2 SCC 330. Lastly, Mr. Panchal would submit that the penalty of termination is grossly disproportion to the misconduct alleged and proved. He would therefore pray for setting aside the judgment and order passed by the School Tribunal as well as the termination order.

5 *Per contra*, Mr. Pitre the learned counsel appearing for Respondent Management would oppose the Petition and support the order passed by the School Tribunal. He would submit that the School Tribunal has considered all the points raised by Petitioner and has dismissed the Appeal. That the findings recorded by the School Tribunal do not suffer from any jurisdictional error and therefore interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is

not warranted. Mr. Pitre would further submit that the findings which recorded in the enquiry are supported by evidence on record. That the Petitioner has been given full opportunity of defence in the enquiry. He has cross-examined all the witnesses. Since there is some evidence to prove the charges, this Court cannot go into the aspect of adequacy of evidence. That finding recorded in domestic enquiry cannot be interfered by this Court in absence of a case of perversity being made out. He would pray for dismissal of the Petition.

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

7 Petitioner was subjected to disciplinary enquiry by the School Management by leveling 27 charges. It appears that charge nos. 4 and 5 are not pressed during the course of enquiry. The final report of the enquiry committee is not placed on record by either of the parties. However, from finding recorded by the School Tribunal in para 28 of its order it appears that majority of the charges have been proved against the Petitioner. Based on the report of the enquiry committee (given by majority as Petitioner's nominee did not agree with the views of other two members), the Management has proceeded to terminate the services of Petitioner.

8 The first point raised by Mr. Panchal is about violation of mandatory provisions of sub-rule 2 of Rule 36 of the Rules, 1981 which reads thus:

“36. Inquiry Committee

(1)

(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee –

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the pane of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1) -

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.”

(3)

(4)

(5)

(6)”

9 Reliance is placed on judgment of this Court in ***National Integration and Education Welfare Society*** (supra) in which it is held in paras 16 and 19 as under:

“16. It is thus apparent that Rules 33 to 37 of the MEPS Rules imbibe in themselves the principles of fair play, reasonability and natural justice [see Dyaneshwar Samaj Prabodhan Sanstha; S.C. Girotra; Vijaysingh Bhaidas Patil (supra)]. Rule 33 (1) of the MEPS Rules necessarily requires, the satisfaction of the Management to hold an enquiry, which satisfaction has to be reflected from the record. Similar is the position, where the Management decides to place an employee/Head under suspension. Rule 36 (2) of the MEPS Rules requires two stages of satisfaction (a) by the CEO or the President as the case may be, upon receipt of the reply of the employee/Head, to the statement of allegations communicated to such employee/Head as it is only if the CEO/President finds that the explanation submitted by the employee/Head, is not satisfactory, then only the Rule obligates the CEO/President to place it before the Management. It is axiomatic that in case the CEO/President, finds the explanation to be satisfactory, the further requirement as contemplated by Rule 36 (2) of the MEPS Rules would not come into picture and the matter would then stand dropped, without going any further and (b) the satisfaction of the Management, who has upon receipt of the report of the CEO/President along with the statement of allegations and reply of the employee/Head to decide whether to conduct the enquiry or not. The procedure prescribed for the conduct of an enquiry has therefore to be strictly followed [see Mathura Prasad (supra)] and the employee has to be treated fairly [see Saroj Kumar Sinha (supra)] and an interested party must not be allowed to participate in the enquiry [see Kai. Venkatrao Deshmukh Shilwanikar and another (supra)].

19. The statement of allegations as required under Rule 36 (1) of the MEPS Rules, was Issued to the respondent no.3 on 9/6/2015, which as per the report of the Postal Department was delivered to the respondent no.3 on 10/6/2015. The respondent no.3 by her communication dated 18/6/2015 requested for one month's time to submit her explanation, which communication was received by the petitioner on 19/6/2015. The President of the petitioner, by his communication date 19/6/2015 addressed to the Secretary/ Managing Committee of the petitioner, stated that the explanation tendered by the respondent no.3, was not satisfactory and therefore, an appropriate decision was to be taken in the meeting of the Managing Committee slated to be held on 22/6/2015. This action on part of the President of the petitioner, was clearly unwarranted for the reason, that by the communication dated 18/6/2015 the respondent no.3, had merely sought time to submit her explanation and therefore, there was no explanation whatsoever on record, in view of which, the question of the President of the petitioner finding the same to be unsatisfactory did not arise at all. It would have been permissible for the President to simplicitor state that since the communication dated 18/6/2015, seeking time, which was received on 19/6/2015, was beyond the period of seven days, as contemplated by Rule 36 (1) of the MEPS Rules, he was not considering the same, however, this is not the case, as the report dated 19/6/2015 addressed by him to the

Secretary/Managing Committee of the petitioner, specifically taking into considering the above position, goes a step ahead to state that the explanation was not satisfactory, which clearly indicates not only the violation of the requirement of Rule 36 (1) of the MEPS Rules, but also, the mindset of the President of the petitioner in the matter.”

10 Based on provisions of rule 36(2) of the Rules, 1981 and the judgment in ***National Integration and Education Society*** (supra) Mr. Panchal has submitted that the entire proceedings of enquiry are vitiated and are liable to be set aside. The contention of violation of Rule 36(2) of the Rules, 1981 is raised essentially on account of alleged non-grant of proper opportunity to file explanation to the statement of allegations. It is contended by Petitioner that the statement of allegations were served on 23 January 2006 and he had requested for extension of time to file Reply vide a letter dated 30 January 2006. It is Petitioner’s case that he did not file any Reply to the statement of allegations and his letter for extension is illegally treated as reply and the management proceeded to constitute enquiry committee vide a letter dated 6 February 2006. The statutory scheme under sub-rules 1 and 2 of rule 36 of the Rules, 1981 is such that the allegations are first required to be communicated by the Chief Executive Officer of the Management calling for written explanation within seven days of receipt of statement of allegations. The employee is thus expected to submit written explanation within the stipulated time limit of seven days. It must be borne in mind here that submission of explanation to the statement of allegations is only for the purpose of determining whether enquiry committee is to be constituted or not. In the present case, Petitioner submitted letter dated

30 January 2006 by Registered Post A.D. requesting for time upto 3 March 2006 for submission of Reply to the statement of allegations. Petitioner also vaguely stated that he should be supplied true copies of allegations and other information. In my view, when the statutory provision under rule 36 (1) of the Rules, 1981 contemplates submission of explanation within seven days, Petitioner's demand for grant of extension of more than two months upto 3 March 2006 was totally baseless. The reason for seeking such extension was again absolutely vague. There is no provision under the rules to provide true copies of allegations. The demand for supply of 'other information' was totally vague and lacked material particulars. Also of relevance is the fact that Petitioner has not disclosed the date of receipt of statement of allegations issued to him vide a letter dated 23 January 2006, in his Appeal filed before the School Tribunal or in the present Petition. He has not made any grievance about non-grant of opportunity to file Reply to the statement of allegations. After the charges were served on Petitioner vide a letter dated 25 February 2006, he submitted his reply dated 2 March 2006, in which he did not raise any issue about any error in framing charges without submission of explanation to statement of allegations. The order of the School Tribunal also indicates that after receipt of Petitioner's letter dated 30 January 2006, the Management proceeded to appoint enquiry committee and called upon Petitioner to nominate his defence nominee by letter dated 6 February 2006. Far from raising any objection to the constitution an enquiry committee, Petitioner nominated his defence nominee by letter dated 20 February 2006. It thus clearly

appears that Petitioner did not raise any grievance about violation of provisions of rule 36(2) of the Rules 1981 during the course of enquiry. In that view of the matter, it cannot be stated that the enquiry is vitiated on account of non-submission of Reply on merits by Petitioner to the statement of allegations. The judgment of this Court in ***National Integration and Education Welfare Society*** (supra) is clearly distinguishable on facts.

11 I am therefore of the view that the proceedings or the enquiry are not vitiated for the reason of failure on the part of the Petitioner to file explanation to the statement of allegations. He was granted adequate opportunity of submitting his reply but he himself give up the said opportunity by raising vague and baseless demand of grant of time of more than two months against the statutory time limit of seven days for submission of explanation to the statement of allegations. The contentions of the Petitioner about violation of rule 36(2) of the Rules, 1981 therefore do not deserve any consideration.

12 Various other points sought to be raised by the Petitioner with regard to the motive of the management behind initiation of the disciplinary proceedings and allegations on bias do not merit any consideration. Bias cannot be lightly presumed in absence of concrete material produced on record. Merely because Petitioner made any complaints of some witnesses would not lead to drawl of presumption of existence of bias in the mind of the management. Therefore, judgment of

the Apex Court in *V.K. Khanna* (supra) has no application to the facts of the present case.

13 Petitioner is seeking to blame his own defence nominee for cross-examining the witnesses. The Petitioner did not want his defence nominee to cross-examine the witnesses. He ought to have prevented in from those. Petitioner's demand for nomination of defence assistant in view of nomination of Presenting Officer by management again does not merit in consideration. There is no provision in the Rules under which the employee can be granted an opportunity to appoint a defence assistant in addition to his nominee in the enquiry committee. The contention therefore deserves to be rejected. Petitioner has also not made out a case of perversity in findings of proof of charges against him.

14 The last aspect is about proportionality of penalty. I have gone through the charges levelled against Petitioner. I do not find that any of the 27 charges levelled against him were serious enough to entail extreme penalty of termination. The broad nature of charges levelled against Petitioner are as under:

- i) Non-completion of work of result of class 8th B,
- ii) Refusal to complete work relating to examination despite instructions by superiors,
- iii) Refusal to accept letter of Head Mistress,
- iv) Award of 26 marks to a student who had actually secured 66 marks and failure to submit explanation despite being called upon to do so,

- v) Lightly treating the conduct of giving 26 marks to student in place of 66 marks,
- vi) Non-expression of any remorse for serious misconduct of awarding lesser marks to student,
- vii) Making baseless allegations against colleagues,
- viii) Non-maintenance of discipline and failure to show respect to seniors, leveling of reckless allegations against Headmaster,
- ix) Exhibition of bias by revaluation of answer-sheets of students and failure to improve conduct despite issuance of letter by the Head Master on 27 April 1998,
- x) Refusal to follow instructions of superior officials,
- xi) Making false allegations in letter addressed to President of School Committee of instigation to commit suicide.

15 On the above broad allegations, which are found to be proved, Petitioner's services have been terminated. While proof of the above charges does indicate an element of negligence and overt acts of commission of misconduct on the part of the Petitioner, it is difficult to hold that the charges were so serious that services of Petitioner could be terminated. It must be borne in mind that Petitioner has rendered service since 27 April 1994 till 1 March 2007 for 13 long years. His termination has resulted in denial of not only job, but also pension and pensionary benefits. It also appears that some efforts were made to declare Petitioner as surplus with a view to ensure that he is absorbed in some other school. Therefore, it appears that the School Management was not in favour of continuing services of Petitioner and this appears to be the reason why extreme penalty of termination is imposed in respect of non-serious charges levelled against Petitioner. Therefore, some

interference by this Court would be warranted in the area of proportionality of penalty.

16 Petitioner has been terminated from service on 1 March 2007. He has attained age of superannuation on 31 May 2023. As observed above, termination of his services has resulted in denial of pension and pensionary benefits in addition to loss of job. In my view, considering the nature of allegations, Petitioner deserves to be granted atleast pension and pensionary benefits. He however would not be entitled to backwages during the intervening period considering the fact that the charges are held to be proved against him and this Court has not interfered in the findings of the enquiry committee and of the School Tribunal with regard to proof of the charges. Therefore, some penalty deserves to be imposed on the Petitioner for having committed the misconduct. Now that Petitioner has already crossed the age of superannuation, there is no question of his reinstatement nor any other (lesser) penalty can now be imposed against him. In my view, denial of backwages as well as treatment of intervening period for any purpose except qualifying service would act as the sufficient penalty for Petitioner for having committed the misconduct alleged and proved in the enquiry. However, the intervening period is required to be counted for limited purpose of qualifying service for pension.

17 I accordingly proceed to pass the following order:

- i) The judgment and order dated 7 May 2008 passed by the School Tribunal in Appeal No.12 of 2007 as well as the termination order dated 24 February 2007 are quashed and set aside;
- ii) Petitioner shall be deemed to have been reinstated in service with effect from 1 March 2007 for the limited purpose of making him eligible for pension and pensionary benefits;
- iii) Petitioner shall not be entitled to any backwages in respect of the period from 1 March 2007 to 31 May 2023. The said intervening period shall also not be counted for any other purposes such as pay fixation, seniority, promotions etc, but shall be computed only as qualifying service for pension.
- iv) Petitioner shall be deemed to have been superannuated from service on 31 May 2023.
- v) The Respondent-Management shall send a proposal to the appropriate authority for payment of pension and pensionary benefits consequent to his retirement with effect from 31 May 2023. Such proposal be submitted within a period of eight weeks from today.
- vi) Upon receipt of proposal from Respondent-Management, the appropriate authority shall consider and take a decision thereon within a period of two months from the date of receipt of proposal. The arrears of pension and pensionary benefits to be paid to Petitioner immediately after sanction of pension proposal.

18 To the above extent, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no orders as to costs.

19 In view of the disposal of the Writ Petition, the Interim Application does not survive and the same is disposed of accordingly.

(SANDEEP V. MARNE, J.)