

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1074 OF 2023

Mamta Bahuuddeshiya Shikshan Sanstha and ors__ Vs. __ Rekha Gautam Rangari
and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.PBhandarkar Advocate for petitioners
Mr. V.N.Patre, Advocate for Respondent No.1/Caveator

CORAM : AVINASH G. GHAROTE, J.
DATE : 22/02/2023

1] Heard Mr. Bhandarkar, learned counsel
for the petitioners.

2] The petition challenges the judgment of
the School Tribunal dated 09.12.2022, allowing the
appeal, setting aside termination and directing
payment of full back-wages and continuity of service
(page 672). The basic ground as is spelt out is the
vitiation of the enquiry, as the witness No.2 Neha
Kosare was not permitted to be examined. The
record of the enquiry as produced with the petition
indicates that on 21.11.2019 when the said witness
Neha Kosare was produced for examination, the
Committee refused to examine her on the ground
that she had been terminated after holding enquiry.
Surprisingly, though no examination-in-chief was

recorded, the record indicates that she was cross-examined on 28.11.2019 (page 468). This clearly indicates the manner in which the enquiry has been conducted.

3] The learned counsel for the petitioner in order to explain the above position, seeks pass over, considering which, list the matter at 2:30 P.M.

Later on, at 2.30 p.m.

4] Mr. Bhandarkar, learned counsel for the petitioner submits that the witness Neha Kosare in fact was cross-examined, which is reflected from record at pg.468. He therefore submits that the ground on which the termination has been set aside holding that the enquiry has been vitiated is not made out.

5] Mr. Patre, learned counsel for respondent no.1 supporting the impugned judgment, points out that the witness no.2 for the respondent no.1 was one Rehman Mehmood Khan and when he was sought to be examined, the Committee did not permit him to be examined (pg.420), which indicates the attitude of the Committee, as a result of which the enquiry stands vitiated.

6] The respondent No.1 was appointed as a teacher by the order dated 1.7.2000 and thereafter has continuously worked with the petitioners. On 19.9.2018, the employees of the school made a complaint to the Police Commissioner regarding harassment caused by the management. On 3.10.2018 the head-mistress issued show cause notice to respondent no.1, which was replied by denying the charges levelled against her. Various show cause notices were thereafter issued to the respondent no.1 and it was decided to conduct an enquiry against the respondent no.1, as a result of which the statement of allegations was issued to the respondent no.1 on 4.2.2019, to which a reply was submitted by her on 12.2.2019. On 18.2.2019, the petitioner no.3 issued a letter to the employees of the school including the respondent no.1, stating that the employees had started working against the management, to which the respondent no.1 replied on 19.2.2019, stating that a complaint was made to the management as well as the Education Department.

7] The Enquiry Committee was thereafter constituted and the respondent no.1 had appointed

her nominee as Shri Kamaldas Laxman Deshpande, vide her letter dated 25.12.2019. Charge sheet was issued on 17.3.2019. On 20.3.2019 explanation was submitted by respondent no.1. On 8.4.2019 first meeting was held by the Enquiry Committee and the witnesses of management were examined. During the course of the enquiry, the respondent no.1 had submitted a list of 11 witnesses to be examined on her behalf (pg.182).

8] The entire record of the enquiry as produced on record by the petitioners indicates that when witness no. 2 - Rehman Mehmood Khan was sought to be examined by the respondent no.1 - the Enquiry Committee refused to record his evidence on the ground that he had no relation with the school (pg.420). When the evidence of witness no. 3 Neha Ashwin Kosare was sought to be recorded, the Enquiry Committee again refused to record her evidence, on the ground that she was terminated from the school and therefore, there is no necessity for recording her evidence (page. 426). This order is dated 21.11.2019.

9] Though it is contended that subsequently Neha Kosare, the witness no.3, by her

communication dated 27.11.2019 (pg.472) had submitted her written evidence (pages 473 to 478) and is said to have been cross examined on 28.11.2019, the record does not indicate that she was at any point of time permitted to be examined by the respondent no.1 or her statement which was given along with her communication dated 27.11.2019 was accepted by the Enquiry Committee as her examination-in-chief. The endorsement on page 472, is only in respect of receipt of the documents annexed with the communication dated 27.11.2019 and does not amount to treating the documents as her examination-in-chief, as there is no endorsement in the proceedings in that regard (pg. 468), even prior to the commencement of her cross examination. This clearly indicates the manner in which the enquiry has been conducted. The respondent no.1 who was to answer the charges under the provisions of Rule 37(2)(d)(ii) and (iii) of the MEPS Rules, was clearly entitled to examine the witnesses, which has been cited by her in the list of witnesses submitted to the Enquiry Committee (pg. 182). That opportunity however does not appear to have been afforded to her, as is indicated from the above position, which is gleaned from the

record of the Enquiry Committee as filed with the petition.

10] That being the situation, the learned School Tribunal was clearly justified in holding that the enquiry was vitiated on account of opportunity not having been granted to the respondent no.1 to examine her witnesses. I therefore do not see any reason to interfere in the impugned judgment passed by the learned School Tribunal. The petition is without any merits and is therefore dismissed. No costs.

JUDGE

Rvjalit