

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.5703 OF 2022

Yuvak Bharti Shikshan Sanstha,
Pulgaon, through its Vice-President
Sau. Neha Nitin Ravekar, Having
office at Nachangaon Road, Pulgaon,
Dist. Wardha.

.... **PETITIONER.**

// VERSUS //

1. Sau. Geeta Sunil Telgote, Aged
about 58 years, Occupation-Retired,
R/o Taori Layout, Lumbininagar,
Pulgaon, Tq-Deoli, Dist. Wardha-
442302
2. The Education Officer (Primary)
Zilla Parishad, Wardha, Tq-Deoli
and Dist. Wardha

.... **RESPONDENTS.**

Shri Firdos Mirza, Advocate for Petitioner.
Shri N.S.Warulkar, Advocate for Respondent No.1.
Shri R.R.Dhawad, Advocate for Respondent No.2

CORAM : ANIL S. KILOR, J.
DATED : JULY 27, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The dismissal of the respondent No.1 as Headmistress came to be set aside by the impugned judgment and order dated 11/03/2022 passed by the School Tribunal, Chandrapur in STC Appeal No.26 of 2017, the same is under challenge in this writ petition.

4. The respondent No.1 was appointed on 19/08/1987 on probation. Her appointment was approved by the Education Officer. On 24/06/2013 i.e. after the transfer of management from Pulgaon Cotton Mills Limited to the petitioner society, the respondent No.1 was appointed as Headmistress.

5. Thereafter the enquiry was initiated against the respondent No.1 and after holding the enquiry, the services of the respondent No.1 was terminated. The same was challenged before the School Tribunal, which came to be set aside by the impugned judgment and order. Hence, this petition.

6. Shri Mirza, learned counsel for the petitioner makes following submissions :

- a) The enquiry was conducted in strict compliance of Rules 36 and 37 of the Maharashtra Employees in Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as “the Rules of 1981”), therefore, the findings recorded by the learned Tribunal that the enquiry was not held as per Rules, is erroneous;
- b) Despite the full and sufficient opportunity was given to the respondent no.1 to nominate her nominee on enquiry committee to lead evidence and to cross-examine the witnesses of the petitioner-management, the respondent No.1 failed to avail it and therefore, the findings recorded by the learned Tribunal that sufficient opportunity was not given to the respondent No.1 is contrary to record.
- c) The charge-sheet issued by the petitioner to the respondent No.1 without signature does not vitiate the enquiry proceedings as it was served with the covering letter which bears signature of the Secretary of the petitioner society.

- e) In support of above referred contentions the learned counsel for the petitioner has placed reliance on the judgments in the cases of (i) *Ranjan Kumar Mitra Vs. Andrew Yule and Co. Ltd. and others*, reported in (1997)10 SCC 386, (ii) *Mahalaxmi Shikshan Sanstha Vs. State*, reported in 1998(1) Mh.L.J. 826, (iii) *Anupama Kishor Khanolkar Vs. Abhinav Education Society*, reported in 2017(1) ALL MR 701.

7. On the other hand, the learned counsel for the respondent No.1 and the learned A.G.P. for the Education Officer support the impugned order of the School Tribunal and pray for dismissal of the present petition.

8. In light of the rival contentions of the parties, I have perused the record and impugned judgment and order and examined the matter on merit and thereupon I have reached to the conclusion that the present petition needs to be dismissed for the reasons recorded here-in-below:

9. The charge-sheet issued to the respondent No.1 does not bear any signature. The date and outward number of the charge-sheet and the show cause notice dated 16/01/2017 is the same. The contents of both the documents are the same except the title.

10. The above referred fact leaves no element of doubt that the management even before examining the reply or explanation to the show cause notice and before arriving at any conclusion, whether such reply or explanation is satisfactory and whether charge-sheet needs to be issued, the charge-sheet was ready.

11. In the circumstances, even if it is held that the charge-sheet does not vitiate for the reason that it does not bear any signature, however, it discloses the malafide approach of the management in the present matter.

12. Thus, I find substance in the submission of the learned counsel for the respondent No.1 that the management proceeded in the matter in a pre-decided manner to terminate the services of the respondent No.1.

13. This above referred conclusion and finding further strengthens from the discussion made here-in-below.

14. The record shows that the management issued letter on 09/02/2017 to the respondent No.1 intimating that the Management had decided to constitute three members committee and the appellant

was asked to nominate her member on the Enquiry Committee, within 15 days.

15. Admittedly, within 15 days i.e. on 24/02/2017 the respondent no.1 made a request in writing for granting further 15 days' time to inform the name of her nominee on the Enquiry Committee.

16. From the record it is evident that there is no document produced by the petitioner to show that any decision either rejecting or granting time was communicated to the respondent No.1. Though the petitioner has produced a resolution dated 01/03/2017 to point out that the request was rejected and the communication issued in pursuance to the said resolution dated 04/03/2017, nothing is brought on record to show that the said communication or copy of resolution was served upon the respondent No.1.

17. The Tribunal has therefore, even expressed a doubt whether the resolution dated 01/03/2017 and communication dated 04/03/2017 are the documents prepared subsequently.

18. Be that as it may, the record further shows that the first meeting of the Enquiry Committee was held on 31/03/2017 which was not attended by the respondent No.1. It is the case of the petitioner that the notice of the said meeting was given to the respondent No.1 by Registered Post A/d and she refused to accept the said notice. However, nothing was produced on record to show that any such intimation was given to her as regards meeting dated 31/03/2017.

19. Thereafter, the enquiry was held on 13/04/2017, wherein the Secretary of the petitioner management produced a letter dated 14/04/2017 seeking adjournment and accordingly the matter was adjourned for 17/04/2017.

20. It also appears from the record that on 12/04/2017 the petitioner reiterated her request to permit her to appoint her nominee in the Enquiry Committee.

21. The rejection of the said application was informed to the petitioner vide letter dated 21/04/2017 and thereafter the enquiry was started on 24/04/2017 and examined its Secretary on that date.

22. Thus, after making the application on 24/02/2017 for grant of time to appoint her nominee and thereafter an application on 12/04/2017 to appoint Shri Arun Harsh Bodhi as her nominee, for the first time, on 21/04/2017 the rejection of it was communicated to the petitioner.

23. It is pertinent to note that the evidence of the witness of the management was first time recorded on 24/04/2017 i.e. after rejection of the request of the respondent No.1 to permit her to nominate Shri Arun Harsh Bodhi as her nominee in the Enquiry Committee.

24. In the above referred backdrop, it cannot be said that the respondent No.1 failed to appoint her nominee only for the reason that within 15 days the name of the nominee was not communicated. In fact, the record shows that the respondent No.1 wanted to nominate her nominee on the Enquiry Committee but for that some time was sought by her and that request was never rejected and if it was rejected, it was never communicated to her.

25. It is pertinent to note here that the management sought adjournment in the enquiry proceedings on 13/04/2017 and on

17/04/2017 to take decision on the application of the respondent No.1 to nominate her representative on the Enquiry Committee. Whereas, at the same time, it is the case of the petitioner that such decision was taken vide resolution dated 01/03/2017.

26. Thus, if the resolution was in existence, there was no reason for the management to adjourn the enquiry time and again, to take decision on the application moved by the respondent No.1.

27. Even it has come on the record that the nominee of the respondent No.1 was present before the Enquiry Committee on 13/04/2017 and filed an affidavit along with the consent letter to serve as a nominated member of the respondent No.1 in the Enquiry Committee.

28. Nothing has been pointed out that the period of 15 days to nominate a member on the Enquiry Committee is not extendable and therefore, any prayer for grant of extension to nominate the member cannot be accepted.

29. Any interpretation in a way that the said period is not extendable may cause grave prejudice to the delinquent, particularly when the period fixed for conclusion of the enquiry is extendable.

30. Moreover, the fact that the Secretary of the petitioner society who is a lawyer was present on every date of the enquiry proceeding.

31. It has come on the record that the enquiry proceedings was held on 21/06/2017 i.e. during the vacations and the said proceedings was held in absence of any consent of the respondent No.1 for holding the same during the vacations. The learned Tribunal has relied upon the judgment of this Court in the matter of *Lok Shikshan Sanstha ..vs.. Gajanan Dalal*, reported in 2009 (2) Mh.L.J. 823, wherein it has been held that the meeting of the Enquiry Committee shall be held in the school premises during the normal school hours and consent of employee is required if the enquiry is to be held during the vacations and such enquiry is liable to be set aside in absence of consent. In the circumstance, the enquiry vitiates on this ground also.

32. This Court in paragraph 5 of the judgment in the case of *Lok Shikshan Sanstha* (supra) has held thus :

“5.....On reading this Rule it is clear that Meeting of the Inquiry Committee shall be held in the school premises during the normal school hours or immediately after the school hours if the employee agrees. Admittedly during the vacation the school hours. Therefore during the vacation the meeting of the Inquiry Committee may be held only

with consent of the concerned employee and not without that. It is material to note that this provision was also required to be interpreted by this Court in an unreported judgment in Writ Petition no. 1942 of 1998 Shankar Vs. R.M.ingole and others. After quoting Rule 36(6) this Court had held that the reading of the Rule makes it clear that even for holding meeting of the Inquiry Committee immediately after school hours concerned employee should agree, therefore it is obvious that if the inquiry is to be held during the vacation, consent of the employee would be necessary. In that matter objection was taken that this would not be applicable in case of Head Master because he is required to function during the vacation also. However, that contention was also turned down by this Court I am fully supported by the view taken by this Court in Shankar Vs. R.M.Ingole. In view of this, as the inquiry was held during the vacation without consent of the respondent or his representative, it was in violation of Rule 36(6).”

33. In the circumstances, the judgments in the cases of *Ranjan Kumar Mitra, Mahalaxmi Shikshan Sanstha* and *Anupama Kishor Khanolkar* cited supra by the learned counsel for the petitioner are distinguishable on facts and therefore, are of no help to the petitioner.

34. In that view of the matter, I do not find any error committed by the learned Tribunal in setting aside the order of dismissal dated 11/09/2017 with back wages @ 75% from the date of dismissal till her reinstatement with liberty to initiate *de novo* enquiry.

Accordingly, the writ petition is **dismissed**. No order as to costs.

35. At this stage, learned counsel for the petitioner prays to keep this order in abeyance for four weeks.

36. As the respondent has already got superannuated, I do not find any reason to continue the stay granted by this Court. Accordingly, the request is rejected.

(ANIL S. KILOR, J)

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