

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2713 OF 2023

1. Late Pandurang Totaram Patil
Shikshan Sanstha, Raver,
Tq. Raver, Dist. Jalgaon,
Through its President.
2. Prathmik Aashramshala, Rasalpur,
Run by Late Pandurang Totaram
Patil Shikshan Sanstha, Raver,
Tq. Raver, Dist. Jalgaon,
Through its Headmaster ..Petitioners

Versus

1. Prakash Ratiram Patil,
Age : 48 yrs, Occu. Service,
R/o Old Savada Road,
Near Water Filter Centre Gate,
Raver, Tq. Raver, Dist. Jalgaon.
2. Project Officer,
Integrated Tribal Development
Project, Yawal, Tq. Yawal,
District Jalgaon. ..Respondents

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Advocate for the Petitioners : Mr. Parag Vijay Barde
Advocate for Respondent No.1 : Mr. Ajinkya R. Reddy

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CORAM : S.G. MEHARE, J.

RESERVED ON : FEBRUARY 29, 2024

PRONOUNCED ON : APRIL 04, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

2. The petitioner is a trust running the school. Respondent no.1 was appointed as a permanent teacher in the school run by petitioner No.1. Respondent No.1 faced the departmental inquiry for various charges. All the charges framed against respondent No.1 were proved and he was held guilty. The management took a decision to impose a penalty of termination of services. Accordingly, by order dated 21.09.2012, the services of respondent No.1 were terminated. He had impugned the termination order. The appeal was allowed.

3. Respondent No.1 had a case in brief that he had made complaints against the other employee namely Prabhakar Patil and his wife Rekha Patil. On his complaint, their services were terminated. Prabhakar Patil was the cousin of the President of the petitioners' society. He also made complaints against another co-employee. Therefore, a false inquiry was initiated against him. Before the present inquiry also, he had faced one inquiry, however, he was successful in getting the punishment set aside. He raised the ground in the appeal memo that the President could not be a member of the inquiry committee. He had a personal bias against respondent no.1. Therefore, the inquiry committee established was in violation of Rules 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'Rules, 1981'). He was kept under suspension illegally. The inquiry was not completed within 120 days. The Inquiry Committee was constituted nine months after his

suspension. Since the inquiry was not completed within 120 days, it was *ab initio* illegal. The charges levelled against him were vague. A fair opportunity was not granted to contest the departmental inquiry. The another committee member Mr. Jangle was a retired awardee teacher. Hence, he was not eligible to be a member of the inquiry committee. He has also the ground that the Management was bent upon to terminate respondent no.1 by hook or crook.

4. The petitioner denied the allegations levelled against it. They had a case that appointing a President of the trust as a member of the inquiry committee is permissible. The principles of natural justice were followed. A fair opportunity was given to him. The copies of the proceedings of the inquiry and documents were also supplied to him. Considering the charges proved against respondent No.1, the punishment of termination proportionate and proper.

5. The learned Presiding Officer, School Tribunal considering the facts of the case, arguments advanced by the respective counsels and the law, held that respondent No.1 established that while constituting the inquiry committee, Rule 36 of Rules, 1981 has been violated.

6. Learned counsel for the petitioner has vehemently argued that Rule 36 of Rules, 1981 does not bar to appoint the President of the institution as a member of the inquiry. He further argued that if the inquiry is defective, the Tribunal cannot order reinstatement the

only option lies with the Tribunal is to remit the matter for de novo inquiry. He also argued that without pleading, no back wages could be ordered. For back wages, it must be proved that the employee was not gainfully employed. He also argued that there was no discussion in the body of the impugned judgment for granting back wages. It was directly reflected in the operative part of the impugned judgment. He assailed the impugned judgment of the Tribunal on the ground that once it has been held that the principle of natural justice has been followed, he could not set aside the termination. To bolster his arguments, he relied on the case of Thapar Education Society and another Vs. Shyam Maroti Bhasarkars and others, 1997 (3) Mh.L.J. 709, The State of Uttar Pradesh and others Vs. Rajit Singh, (2022) 1 SCR 790, Sur Enamel and Stamping Works Ltd Vs. The Workmen, AIR 1963 SC 1914, Anant R. Kulkarni Vs. Y.P. Education Society and Ors, AIR 2013 SC 2098, Head Master, Vivek Vs. Alka Namdeo Khalekar and Others, 2017 (1) Mh.L.J. 105, Zilla Parishad and another Vs. Prakash Nagorao Thete and another, 2009 (4) Mh.L.J. 628, Navin J. Surti Vs. Modi Rubber Limited and another in Writ Petition No.2913 of 2001 decided by the Bombay High Court dated 09.01.2004, Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead), through Lrs, AIR 2018 SC 4534 and Shriramchandra Samaj Seva Samiti Vs. Sanjay Annaji Pohokar, 2022 DGLS (Bom.) 2017. He prayed to allow the petition.

7. Per contra, learned counsel for respondent No.1 has vehemently argued that he has specifically pleaded in the appeal memo that the President was the cousin of the co-employee. He made the complaint of his relatives. On his complaint, they were removed from services. Hence, he had a personal bias. The President did not deny the relation with them. Since his relatives have lost the job, a personal bias was developed in his mind. Earlier also, he made an attempt to terminate him but he could succeed in setting aside the earlier termination. Since one of the member of the inquiry committee i.e. the President of the society had bias, the principle of natural justice could not said to be followed. Before suspension, the permission of competent authority was not obtained. He has referred to certain papers to support his contentions. He has vehemently argued that in the facts and circumstances of the case, there shall be no de novo inquiry because the ultimate result of the de novo inquiry would be his termination. The Tribunal can evaluate whether the charges were proved. He supported the impugned judgment and order and prayed to dismiss the petition. To bolster his arguments, he relied on the case of Kamala Prasad Shukla Vs. S.N. Ingole and others, 1983 Mh.L.J. 348, Hamid Khan Nayyar Habib Khan Vs. Education Officer, Secondary, Zilla Parishad, Amravati and others, 2004 (4) Mh.L.J. 513, Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala (Dead) and others, (2013) 10 SCC 324,

Pradeep s/o Rajkumar Jain Vs. Manganese Ore (India) Limited and Others, (2021) 9 SCR 592, Bhagwanrao Vishwanath Vyawahare and another Vs. Sunita Gopinath Palve and another, 2008 (1) Mh.L.J. 417 and Rajashri Shahu Chhatrapati Shikshan Sanstha and Another Vs. Sau. Mangala w/o Rajesh Mankar and Others in Writ Petition No.743 of 2019 decided by the High Court of Bombay, Nagpur Bench dated 03.07.2019.

8. Hearing the respective counsels, the following points arise for determination of this Court :

- (i) What are powers of the Tribunal under the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 (for short 'Act of 1977') to consider the inquiry report ?
- (ii) Can the Tribunal direct the reinstatement when he finds that the departmental inquiry is defective ?
- (iii) Can the Tribunal award back wages without pleading and proof of non-gainful employment of employee ?
- (iv) Can in the facts and circumstances of the case, de novo inquiry be ordered ?

9. The petitioners' case revolves around the findings of the learned Tribunal that the constitution of the inquiry committee was violative of Rule 36 (2)(a)(i) of the Rules, 1981. The impugned judgment reveals that the termination of respondent has been set

aside only for the reason that the inquiry committee was not constituted strictly as per Rule 36 (2)(a)(i) of Rules, 1981. The objections were that the President cannot be a member of the inquiry committee. Rule 36 of Rules, 1981 provides for constituting the Inquiry committee where the management decides to conduct an inquiry against the employee for imposing a major penalty. Sub-rule 2 has been divided into two parts for constitution of the inquiry committee i.e. constituting the inquiry committee in case of an employee and in case of the Head. This case is concerned with constituting an inquiry committee in case of an employee. Sub-rule (2) (a) (i) provides that where an inquiry committee is to be constituted to conduct the departmental inquiry against the employee, one member shall be from amongst the members of the management. Such member should be nominated by the Management, or by the President of the Management if so authorised by the Management. The serious dispute is the can a President, in the case of inquiry against employee, himself was the member of the inquiry committee. The tone of the objections is that the President who appoints and terminate the employee should not be a member of the inquiry committee. The President had acted as a member of the inquiry committee. He has issued charge sheet under his signature. The termination order was also signed by the President of the society. The President cannot act as a member and a decision maker based

upon the inquiry report. He should not be the part of the inquiry committee which forms an opinion based upon the evidence collected against the delinquent.

10. Learned counsel for the petitioners has relied on the bunch of case laws and argued that in case there is a defect in constitution of inquiry committee, the sole power of the Tribunal is to remit the matter and make a de novo inquiry curing the defect and not to quash and set aside the termination. The facts of the case of Thapar Education Society (supra) were that an inquiry was initiated against the employees who were teachers. The delinquent was held guilty for abduction of a girl with carnal intimacy. In this case, the ratio was laid down that the Tribunal cannot re-appreciate the evidence. It is settled law that the Tribunal has only the power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but

review of the manner in which the decision is made. It is meant to ensure that the conclusion, which the authority reaches, is necessarily correct in the view of the Court or Tribunal. When the conclusions reached by the authority is based on evidence, the Tribunal is devoid of the power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. In the impugned order, the Tribunal did not record any finding that he has re-appreciated the evidence recorded in the departmental inquiry. He has barely framed the issue whether Rule 36 of Rules, 1981 was observed while constituting the inquiry committee.

11. The provisions of Rule 36 (2)(a)(i) specifically provides that there shall be a member of the Management nominated by the Management or by the President of the Management if so authorised by the Management. The rule has explicitly excluded the President of the Management to be a member of the inquiry committee in the case of an employee. The law is well settled that no one would be a judge of his cause. The President is the core member of the Trust, therefore the law took care not appointing him a member of inquiry committee in the case of employee. In the case at hand, the charge sheet was served under the signatures of the President. He become

the member of the inquiry committee and also issued the termination orders.

12. In the case of Bhagwanrao (supra), the Bombay High Court in the facts of the case held that the inquiry was not properly conducted and the inquiry committee was not properly constituted. In that case, statements and allegations were not issued by the President of the Management but by the Chairman of the School Committee. It was the case governed under Rule 36 (2)(b) and 37 which provides that the President was required to be a member of the inquiry committee. Hence it would not assist the petitioner.

13. The Bombay High Court in the case of Children's Educational Uplift Society Vs. Kaushlya Govindsingh Moral, 1981 Bom. C.R. 848 in para 5 has observed thus :

“5. However, the Tribunal has erred in setting aside the order of termination of the services and granting reinstatement only on that ground. Once the Tribunal came to the conclusion that the constitution of the committee was improper the correct course was either to order a fresh inquiry with the constitution of a new committee, or to hold the inquiry itself into the merits of the charges, it appears that the Tribunal is not aware of its powers under the Act. Section 10 and 11 of the Act read together give ample power to the Tribunal as are vested in the Appeal Court under the Civil Procedure Code, 1908. The Tribunal could therefore have remanded the matter for a fresh inquiry or disposed of the matter by recording the evidence itself. The failure on the part of the Tribunal to do so has resulted in an

avoidable delay of about four years and has undoubtedly resulted in hardship to both the parties.”

14. It is an argument of the learned counsel for respondent No.1 that the petitioners have bent upon to terminate his services by hook or crook. The President has a serious grievance against him because due to the complaints, his close relatives have lost the job in the same school. He also argued that even if the matter is remitted, there will be no change and the petitioners would be happy keeping the respondent under suspension in the name of departmental inquiry. They deprived him from discharging active duties by petitioners suspending him for 15 months and then the inquiry was initiated. Such a suspension is not only arbitrary but violating the rights of the employee to discharge his services. He further argued that the hidden intention of the petitioners is apparent that they want to deprive the livelihood of the respondent. The bias against the respondent is apparent from the conduct of the President of the society. The Project Officer Integrated Tribal Development Project had issued a letter to the President on 10.01.2012 directing him to take his suspension back. He did it as per the directions of the Director, State Council of Educational Research and Training, Maharashtra. The learned Tribunal ought to have considered the conduct of the Management. However, these letters have not been properly considered. Therefore, he vehemently argued that the ratio laid down in the case of Rajashri

Shahu Chhatrapati Shikshan Sanstha (supra) would apply to the case in hand. He further argued that in every case, de novo inquiry is not essential if the outcome of the inquiry even after de novo would be the same. The matter may be decided on the basis of the material available before the Court. The respondent already suffered much. He is continuously in the Court. Therefore, it would be unjustifiable to ask him to face the inquiry from the stage of constituting the inquiry committee. The Management is creating the situation that the respondent should himself give up employment.

15. The Bombay High Court in the case of Rajashri Shahu (supra) referring to the judgment of Bhagwanrao (supra) observed that, in the said case also, whether in every case where violation of principles of natural justice and fundamental defects in the inquiry are found, the Management/employer is to be permitted to hold a fresh inquiry. Referring to the facts of the case of Bhagwanrao (supra), it has been further observed that in the said case also a similar question had arisen, because the Management was insisting on its right to hold a de novo inquiry while the employee contended that the Management was hell bent upon removing her by hook or crook and that the Court ought not to come to the assistance of such a Management. In the said judgment, this Court took into consideration the law pertaining to the requirement of holding a de novo inquiry and found that in every case the Management could not be permitted

to hold a de novo inquiry and that on an appreciation of the facts and circumstances of an individual case, if it was found that the Management had acted in a malicious manner, there was no need to permit a de novo inquiry, particularly when the employee was sought to be removed by hook or by crook. In that case also, the headmistress was made a scapegoat for the action taken against a clerk cum member of the Management, who was the relative of the other members of the management. The managing committee was served with a notice for not reporting on duty by the Education Officer. He was actually running a beer bar. Under these premise, suddenly a show cause notice was served upon the headmistress making allegations of disobedience, negligence, misconduct and financial irregularities. It was her plea that every action against her was vitiated by bias, highhandedness and malice. Therefore, this Court discarded the prayer of the Management for de novo inquiry and dismissed the petition. In the case at hand, the learned Tribunal considered the sole ground of violation of Rule 36 of Rules, 1981 in constituting the inquiry committee and held that the inquiry become invalid and unfair and therefore, his termination on the basis of the said inquiry report is unsustainable in the eye of law. The findings of the learned Tribunal does not reflect that it has judicially reviewed the findings recorded by the inquiry committee. Unless such observations are recorded, it would not be appropriate to record the

finding that de novo inquiry could not be ordered. The settled law is that wherever there is defect in the inquiry, the matter should be remitted for de novo inquiry from the stage where the acts of the Management are defective.

16. It is the vehement arguments of the learned counsel for respondent that the respondent has been illegally put under suspension for 15 months. The suspension was without obtaining the permission from the concerned authority controlling the Management of the school. Rule 33 of the Rules, 1981 provides for the procedure of inflicting major penalties. It also provides for the suspension of the employee. For placing the employee under suspension, there should be a reason to believe to the Management that in the event of guilt being proved against the employee, he is likely to be reduced in rank or removed from service and if the Management decide to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools. Suspension of an employee is not a matter of course. Therefore, it has been provided that the suspension of employee should not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. Rule 34 further provides for payment of subsistence allowance. Where the

period of suspension exceeds 4 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first 4 months. The respondent has a specific case that he was put under suspension. He was suspended for 15 months and then the inquiry was initiated against him. Rule 35 provides for the period of suspension shall not exceed four months except with the prior permission of such appropriate authority. Where the employee is suspended by the Management without obtaining prior approval of the appropriate authority, the Management shall make the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of inquiry. The subsistence allowance could not be withheld except in cases of breach of provisions of sub-rule (3) or (4) of rule 33.

17. The thrust of argument of the learned counsel for the respondent/employee is that the Management should not succeed in its ill-intention to put the respondent to the loss of his livelihood. He should be allowed to join his services. The suspension itself was illegal because there were no circumstances as required under Rule 31(a) of Rules, 1981. It was just out of bias and with malice to teach him a lesson. The acts of the Management are violating the provisions of Rules, 1981. If the applicant would succeed and be entitled to reinstatement and the Management is responsible for illegal

termination, there is always a question that who would bear with the back wages. Section 11(3) of the Act 1977 provides that the State Government may be directed to pay the dues only in the case where the Government has participated in the departmental inquiry else such dues are paid and deducted from the grant due and payable to the Management. The Management is always reluctant to pay the back wages. Considering the history of the conflicts between the Management and the respondent, there appears substance in the submissions of the learned counsel for the respondent that he should not be placed under suspension. The facts and circumstances of the case does not show that continuous active services of the respondent would cause embarrassment or hamper the investigation of the case. Therefore, the Management be directed to take back the order of suspension and allow the respondent to continue in active service. In view of the above discussion, the Court is the view that it would be futile to record the finding on the point of back wages.

18. It was also the case of respondent No.1 that fair opportunity to cross-examine the witnesses has not been granted. It is a violation of principle of natural justice. The record, prima facie reveals that the allegations against the employee were not sufficient to reduce his rank or remove him from services.

19. For the above reasons, the Court concludes that the matter is liable to be remitted to the Management for de novo inquiry

from the stage of constituting the inquiry committee. The suspension of respondent No.1 should be withdrawn, reinstated and ordered to be continued in active services till the inquiry is completed and further action is taken.

20. Now, the Court proceeds to pass the following order :

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgment and order of the learned Presiding Officer, School Tribunal, Nashik passed in Appeal No.116 of 2016 dated 08.12.2022 is quashed and set aside.
- (iii) The matter is remitted to the Management to hold the de novo inquiry from the stage of constituting the inquiry committee strictly as per Rule 36 (2)(i) of the Rules, 1981 by granting an opportunity to the respondent/employee to cross-examine the witnesses and lead the evidence, if he desires.
- (iv) The inquiry shall be completed within 120 days from the date of this order.
- (v) The petitioner/Management is directed to reinstate the respondent/employee forthwith and allow him to continue in active services till the the inquiry is completed against him and the management passes an adverse order against respondent No.1, if any, after completing the de novo inquiry.
- (vi) The respondent/employee shall discharge his duties sincerely.

(vii) The Management shall follow the procedure for regular pay of the respondent till he is on duty.

(viii) No order as to costs.

(ix) Rule is made absolute in above terms.

(S.G. MEHARE, J.)