



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1942 OF 2013

1. Baban s/o Sopan Hon,
Age : 54 Years, Occ. Service,
R/o. Chande-kasare Tq. Kopargaon,
Dist. Ahmednagar. .. Petitioner

VERSUS

1. Rayat Shikshan Sanstha
Satara, Dist. Satara
Through its Secretary
2. Jagdamba Vidyalaya,
Rashin Tq. Karjat,
Dist. Ahmednagar
Through its Headmaster
3. New English School,
Puntamba Tq. Rahata,
Dist. Ahmednagar
Through its Headmaster
4. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar
Through its Headmaster .. Respondents

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Advocate for the petitioner : Mr. Kalyan Patil h/f Mr. S.R. Barlinge
Advocate for Respondent No.1 to 3 : Mr. S.R. Sapkal
A.G.P. for Respondent No.4 : Mrs. R.R. Tandale

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CORAM : S. G. MEHARE, J.
DATE : 15.01.2024

PER COURT :

1. Heard, the learned counsel for the petitioner, the learned counsel for respondent Nos. 1 to 3 and the learned A.G.P for respondent No.4.

2. The brief facts of the case are that the petitioner was appointed as an Assistant Teacher on 22.09.1986. On 31.12.2007, he was promoted to Supervisor and transferred to the New English school at Puntamba, Tq. Rahata Dist Ahmednagar. The petitioner contends that before his promotion to the post of Supervisor, there were no complaints against him. He had a good past. The respondent/management issued a notice against the false complaint made against him and decided to hold an inquiry against him. The petitioner was communicated for nominating a member to be a member of the Inquiry Committee. He had nominated an Advocate on his behalf to be a member of the Inquiring Committee. Since only an employee of any private school would be a nominated member of the employee, his request to appoint a lawyer was rejected. Thereafter, an

opportunity was granted to the petitioner to nominate a member as prescribed under Rule 36(2) (i) of the Maharashtra Employees of Private School (Conditions of Service) Regulation Rules, 1981. (Rules 1981 for short) He did not appoint a nominee and stated before the concerned that he himself would conduct the inquiry. The serious charges of moral turpitude were levelled against him. The management had examined the witnesses. The petitioner had cross-examined them. The charges of moral turpitude were proved against him. Considering the gravity of the charges, the management terminated him on 01.04.2011. Against the said termination, he preferred an appeal before the School Tribunal. The School Tribunal granted him an opportunity, examined the record, disbelieved his defence, and dismissed him on 12.07.2012. Against the said judgment, the petitioner is before this Court.

3. The learned counsel for the petitioner has argued that the opportunity to nominate the member for the employee was not granted. The inquiry, as contemplated under Rule 37(2) (f) of Rules 1981, was not completed within 120 days; therefore, the inquiry was vitiated. He also argued that the principle of natural

justice was not followed. He has submitted that the petitioner's past was unblemished. There were no complaints against him for his long service. However, since he was promoted, somebody was aggrieved, and he had played the role behind a false complaint. The utterance of the indecent words was concocted. The management tutored the students. Hence, they deposed against him. Only four to five years of his services were left. He has been superannuated after his termination. The punishment was disproportionate to his alleged acts. A lenient view may be taken, and appropriate punishment be awarded if the Court concludes that he is liable to be punished.

4. The learned senior counsel for the contesting respondents argued that the charges proved against the petitioner were serious. He has been held guilty of moral turpitude. The evidence of the students was natural. Nobody had tutored the students to depose against the petitioner. The Inquiry Committee considered the evidence and believed the witnesses without prejudice. A good past is not a defence. The Inquiry Committee considered the material before it. Considering the serious charges of moral

turpitude, the management has proportionately imposed the punishment of termination from service. The management is a big institution with a reputation. A fair opportunity was granted to the petitioner. He had exercised his right to cross-examine each witness. He failed to nominate a member of the Inquiry Committee. He made a statement before the concerned that he would conduct the enquiry on his own. Therefore, a two-member committee was constituted, and the committee was said to be legal as provided under Rule 36(4) of the Rules, 1981. He prayed that there was no error either in the inquiry or in the impugned order of the School Tribunal.

5. The first objection raised is regarding the nomination of the employee by the petitioner. The record reveals that he was granted an appropriate opportunity, as contemplated under Rule 36(2) (a) of the Rules, 1981, to nominate a member for the constituting Inquiry Committee. However, instead of nominating an employee of any private School, he nominated an Advocate. As per Rule 36(2) (ii) of the Rules 1981, the employee has to nominate an employee of any private school. The nominee's

qualification to be appointed by an employee has been prescribed in the above rules. Therefore, his request to appoint an advocate on his behalf was correctly rejected. Thereafter, sufficient opportunity was granted to him to nominate a member. He did not nominate a member who was an employee of a private school. The finding of the inquiry report reveals that the petitioner stated to the Inquiry Committee that he wanted to contest and face the inquiry on his own. He consciously did not nominate a member of the Inquiry Committee. Sub Rule 4 of Rule-36 is specific that if the employee fails to communicate the name of his nominee within the stipulated period i.e. 15 days of the receipt of the communication of the proposed Inquiry Committee, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period under Rule 36(3) of Rules, 1981 and such committee consisting of only two members, as provided under sub-rule (2). Considering these facts and legal provisions, the Court recorded the finding that since the petitioner failed to nominate a member as prescribed under sub-rule 2 (a) (ii) of Rule 36 of Rules 1981, the Inquiry Committee consisting of only two members was legal and proper.

6. The next ground raised was that the inquiry was not completed within 120 days as contemplated under clause (2)(f) of Rule 37 of Rules, 1981. It has been vehemently argued that since the inquiry was not completed within 120 days, the complete inquiry was vitiated in toto. However, reading sub-clause 2(f) of Rule 37, it is provided therein that if the inquiry is not completed within 120 days, the employee shall cease to be under suspension and shall be deemed to have rejoined duties without prejudice to the continuance of the inquiry. The consequence of failure to complete the inquiry within 120 days, as provided above, was not vitiating the inquiry. Only the suspension of the employee ceases, and he is deemed to have rejoined the duties. However, the inquiry continues. In view of the above rule, there appears to be no substance in the argument of the learned counsel for the petitioner.

7. The next ground was that the principles of natural justice were not followed. The record reveals that time and again, an opportunity was granted to the petitioner to cross-examine the witnesses and produce the evidence. The petitioner has cross-examined each of the witnesses examined before the Inquiry

Committee. It is not the case that the Inquiry Committee refused him to cross-examine the witnesses, contest the inquiry on merits, and hastily pass the order. The record reveals that the petitioner was granted the fullest opportunity to face the inquiry. Therefore, it is difficult to accept that the principle of natural justice has been violated.

08. The learned counsel for the petitioner has also argued that considering the length of service of the petitioner for more than twenty years, a lenient view may be taken, and his detriment punishment of termination may be reduced to removal from the service with pensionary and other financial benefits. The Court has considered the provisions of law and facts, particularly the nature of charges proved against the petitioner and did not find mitigating circumstances to take the other view to reduce the punishment. Considering the charges proved against him, the Court is satisfied that the punishment is proportionate to the acts of the petitioner. For the above reasons, the petition stands dismissed.

(S. G. MEHARE, J.)

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