

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3729 OF 2008**

Yadav Bandu Kamble

... Petitioner

versus

Chairman/Secretary – Shikshan Prasarak Mandal, Respondents
Kolhapur and ors.

Mr. Anand Patil with Mr. Tanaji Mhatugade, Advocate for the Petitioner.
Mr. Burhan V. Bukhari, Advocate for Respondent Nos. 1 and 2.
Mr. P. G. Sawant, AGP for the State.

CORAM : R. M. JOSHI, J.

DATE : 5th SEPTEMBER, 2024.

P.C. :

1. Heard finally by consent of both sides.
2. This petition takes exception to the order passed by School Tribunal in an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (for short “MEPS Act”) dated 3rd May 2008 dismissing the appeal, preferred by petitioner.
3. The facts which lead to filing of this petition can be narrated in brief as under :

The petitioner was appointed as Assistant Teacher on 14th August 1978 by Shikshan Prasarak Mandal, Kolhapur (Respondent No.1), which is a public charitable trust registered under the provisions of Maharashtra Public Trust Act. It is the contention of the petitioner that in due course,

he was transferred to Vadgaon High School in the year 2000. Since then, he was working as Assistant Teacher in the said school. In the year 2004, there was a vacancy for the post of Assistant Headmaster in the school run by respondent No.1 and that the petitioner was entitled to the said post. It is further contended that the respondent-management did not consider his claim for the said post. The petitioner has also made reference to the proceedings initiated in this regard. It is further contention of the petitioner that he was transferred to Nyaymurti Ranade Vidyalaya, Senapati Kapasi. Thereafter, he was issued with charge-sheet dated 7th March 2005. An enquiry was initiated pursuant to the said charge-sheet without considering the reply of the petitioner properly. It is the case of the petitioner that he was absent from duty as he was on hunger strike. The enquiry was concluded and the report of the Inquiry Committee was forwarded to the respondent for taking decision. There is no dispute about the fact that the petitioner had participated in the enquiry and was represented by authorized representative. The petitioner, however, claims that without giving the report of the Inquiry Committee, his services came to be terminated by letter dated 25th March 2006. Being aggrieved by this order of termination, Appeal bearing No.17 of 2006 was filed under Section 9 of the MEPS Act before the School Tribunal and since it was dismissed by passing the impugned order, this petition.

4. Learned counsel for the petitioner submits that he is restricting the challenge to the impugned order only to the extent of proportionality of

punishment imposed upon the petitioner by respondent – management. He drew attention of the Court to the fact that the petitioner has superannuated on 31st May 2008 and thereafter, he died on 9th May 2021. It is his submission that the charges levelled against the petitioner were only of alleged unauthorised absence and failure to accept the communication addressed by the management. According to him, since the petitioner has been dismissed from service, he is not entitled for receiving pension and thereby now his family is also denied such benefits. The challenge to the petition is, therefore, restricted to the above extent. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in case of **Krushnakant B. Parmar versus Union of India and anr. (2012) 3 SCC 178.**

5. Learned counsel for respondent No.1-management vehemently opposed the petition by contending that this is a case, where in a school, petitioner has resorted to hunger strike by causing educational loss to the students. It is his submission that the Inquiry Committee was appointed as per the rules prescribed under the MEPS Act. He drew attention of the Court to the finding recorded by the School Tribunal to the effect that the petitioner was given opportunity of hearing and participation in the enquiry. It is also pointed out that the petitioner has neither led his own evidence nor examined any other witness in his defense in the enquiry. Attention of this Court is also drawn to the averment of the petitioner in the petition to the effect that during the period of 45 days of unauthorised absence, in

fact, he went on hunger strike and this according to him is without considering the loss caused to the students. Having regard to these facts, it is his submission that this is not a case wherein any interference is required in the impugned order. To support his submissions, he placed reliance of the judgment of the **Hon'ble Supreme Court in Tushar D. Bhatt versus State of Gujarat and anr. (2009) 11 SCC 678.**

6. Admittedly, the petitioner is no more. Further he has superannuated from services w.e.f. 31st May 2008. There is no dispute about the fact that in view of dismissal of the petitioner from service, the petitioner has lost right to get pensionary benefits and after his death, his widow and family is deprived of any service benefits. In the light of these peculiar facts, the present petition is decided.

7. Perusal of the charge-sheet dated 7th May 2005 indicates that there were four charges levelled against the petitioner i.e. absence without leave, failure to comply with the directions of the superiors, refusal to accept communication and non-compliance of rules applicable to the educational institution. Impugned order passed by the Tribunal, more particularly, the observations made in paragraph 21 indicate that the petitioner was supplied the statement of allegations and necessary documents along with the charge-sheet. It is also seen from the record that the petitioner has replied to the charges which shows that after understanding the charges, the same were responded to. There is further no dispute about the fact that the petitioner had participated in enquiry

before the Committee and was also represented by a representative of his choice. Thus, learned School Tribunal has rightly held that the petitioner was given fair opportunity to defend himself and, as such, finding is rendered that the enquiry is fair and proper. Having regard to the facts of the case, this Court has no reason to cause interference in the said findings in exercise of writ jurisdiction.

8. The issue now remains for consideration is as to whether the order of dismissal of the petitioner from services is justified in the facts of the case. At this stage, this Court wishes to clarify that the conduct of the petitioner of going on hunger strike for 45 days without considering the loss caused to the students of the school is not at all acceptable. It is not possible to countenance, conduct of such a nature in a school from any employee, much less a teacher. However, at the same time, it needs to be seen under relevant rules, whether it was open for the management to dismiss him from services.

9. Rule 31 of MEPS Rules. provides for classification of penalty and sub-rule (2) provides for major penalties i.e. reduction in rank or termination of service. It is thus clear from these provisions that it was open for the management to terminate the services of the petitioner without affecting his right to get pensionary benefits. The management instead has chosen to dismiss the petitioner, which has resulted into denial of pensionary benefits to the petitioner.

10. Though this Court finds substance in the submissions of the learned counsel for the respondent -management that the act of a teacher in school of not joining the place of transfer and going on hunger strike cannot be permitted to go unpunished, question arises as to whether in this case, dismissal of the petitioner is justified. Petitioner has rendered 28 years of long service and there is nothing on record to indicate that even any memo/show cause notice was issued to him by the respondent – Management. Moreover, petitioner has superannuated w.e.f. 31st May 2008 and, thereafter, he died on 9th May 2021. As a result of his dismissal, he was deprived of even pensionary and other benefits and after his death, family too suffers. All these facts are certainly relevant for decision of this petition.

11. The Hon'ble Supreme Court in **Tushar D. Bhatt (Supra)** was dealing with the issue wherein there was absenteeism for more than six months. In the light of these facts, it was held that the termination of the service of teacher therein was found to be proper. First of all, absence is of 45 days and subsequent facts are peculiar herein this case. Thus, the said judgment cannot be applied to the present case. In the instant case, there was option available to the management to impose punishment for termination of his service without affecting his right to get pensionary benefits instead of dismissal. In the facts and circumstances of the case and considering the long services rendered by the petitioner, the said punishment would have been appropriate and as a result of which, it

needs to be held that punishment of dismissal is not commensurate to the charges proved against petitioner. This Court, therefore, finds that the punishment of dismissal imposed upon the petitioner deserves to be modified and the same is treated as termination of his service without affecting his right to get pensionary benefits and other statutory benefits, except salary post termination w.e.f. 1st April 2006 till superannuation.

12. It is, however, clarified that the petitioner would not be entitled for any salary, wages or any benefits during the period from 1st April 2006 till the date of his superannuation. Resultantly, the petition is partly allowed in following terms :

- (I) For proved misconduct, service of petitioner stands terminated w.e.f. 1st April 2006 without affecting his right to get pension and statutory benefits.
- (ii) Petitioner shall not be entitled to any other benefit including any salary etc. for the period from his termination till the date of his superannuation".

(R. M. JOSHI, J.)