

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5731 OF 2018

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KAILAS
DARADE

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Arun Atmaram Deore

... Petitioner

V/s.

Vivid Vikas Sanghatana Maharashtra
Housing Colony and Ors.

... Respondents

Mr. Girish R. Agrawal with Ms. Naina Boraste for the
Petitioner.

Mr. Ashok T. Gade a/w Ms. Riya John for Respondent
Nos. 1 and 2.

Mrs. V. S. Nimbalkar, AGP for the State-Respondent
Nos. 3 and 4.

CORAM : AMIT BORKAR, J.

DATED : MARCH 21, 2024

P.C.:

1. The petitioner is challenging an order passed by the School Tribunal dismissing his appeal filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service Rules, 1981 (“MEPS Act” for short) for setting aside termination dated 4th June 2010.

2. The petitioner is appointed as Assistant Teacher on 20 January 1998. Initially, the petitioner's services were orally terminated in June 2001—however, the school tribunal-unl set a

determination in March 2006.

3. According to the petitioner, the relations between him and the respondent-Management were strained. He was at loggerheads with the secretary of the institution. Therefore, the Management instituted an inquiry against the petitioner. On 9 November 2009, the respondents served the petitioner with the charge sheet.

4. On 6th November 2009, Management passed an order of suspension. The inquiry was conducted for alleged 19 charges, out of which 12 charges were held to be proved.

5. According to the Management, the principal charge was moral turpitude: having illicit relations with a woman. The respondent terminated the petitioner's services based on the inquiry report holding the petitioner guilty of 12 charges framed against him. He, therefore, filed Appeal No.38 of 2010.

6. The respondent contested the appeal by filing a written statement. It was pointed out that the inquiry was fair and proper after following the procedure required under the law, and the findings arrived at are based on evidence on record.

7. The School Tribunal framed necessary points for consideration, including breach of Rules 36 and 37 of the MEPS Rules and grant of a fair opportunity to the petitioner before the Inquiry Officer. After considering each statement on behalf of the petitioner and recording a finding that all procedural aspects have been complied with, sufficient opportunity was given to the petitioner to defend his case before the Inquiry Committee and, therefore, there is no reason to interfere with the order of

termination based on the report of the inquiry. The petitioner has, therefore, filed a present writ petition.

8. Learned counsel for the petitioner vehemently submitted that the expression "moral turpitude" has been explained by Clause (b) in the said Rule, which includes immodest or immoral behaviour with female or male students or employees. The allegations against the petitioner are of having illicit relations with a female who is neither a student nor an employee, and, therefore, the allegations against the petitioner would not constitute "moral turpitude" as contemplated by Rule 28(5)(b). It is submitted that the relations between the petitioner and the Management were strained as, on an earlier occasion, the petitioner's services were terminated, which order was set aside by the School Tribunal and, therefore, the institution of a complainant by the husband of the lady with whom the petitioner allegedly had illicit relations was at the instance of Management and, therefore, the order of dismissal of appeal by the School Tribunal deserves to be set aside.

9. Per contra, learned counsel for the Management invited my attention to the various paragraphs in the impugned judgment, which consider material produced by the Management in support of charges. Each contention of the petitioner in relation to procedural lapse has been dealt with by observing that the Inquiry Committee conducted the inquiry by following due procedure as per MEPS Rules. He submitted that sufficient evidence is on record to prove moral turpitude as alleged against the petitioner. Therefore, the School Tribunal has rightly dismissed the appeal.

10. Rival contentions fall for consideration.

11. For consideration of the submissions made on behalf of the petitioner, it is necessary to set out Rule 28(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which reads as follows:

“28. Removal of Termination of Service.

(5) An employee shall be liable to be punished on one or more of the following grounds, namely:

- a) misconduct;
- b) moral turpitude;
- c) wilful and persistent negligence of duty;
- d) incompetence.

For the purpose of this Rule -

- a) “Misconduct” shall include the following acts namely;
 - (i) breach of the terms and conditions of service laid down by or under these rules;
 - (ii) violation of the code of conduct; and
 - (iii) any other act of similar nature.
- (b) “Moral Turpitude” shall include the following acts, namely:
 - (i) immodest or immoral behaviour with a female or male student or employee; and
 - (ii) any other act of similar nature.
- (c) “Wilful negligence of duty” shall include the following acts namely:
 - (i) dereliction in, or failure to discharge, any of the duties prescribed by or under these rules;

- (ii) persistent absence from duty without previous permission; and
- (iii) any other act of similar nature;
- (d) “Incompetence” includes the following acts, namely:
 - (i) failure to keep up academic progress and up to date knowledge in spite of repeated instructions in that behalf and provisions of facilities;
 - (ii) failure to complete the teaching of the syllabus determined for the year within the fixed periods for reasons not beyond his control; and
 - (iii) any other act of similar nature.”

12. On careful perusal of Rule 28(5)(b) and expression include therein, it is evident that the expression "moral turpitude" is inclusive in nature which includes immodest or immoral behavior with female or male student or employee. Clause (ii) of the sub-clause (b) assumes importance in the facts of the case. The expression used is "any other act of similar nature". Therefore, it is evident that the said expression derives its colour from Clause (i) of the sub-clause (b) of the MEPS Act.

13. The expression "moral turpitude", even if not defined in any statute or Rules, means anything done contrary to justice, honesty, modesty or good morals. Any act of depravity in private or social duties that a man owes to his fellowmen, or society in general, contrary to the accepted and customary Rule of right and duty between man and man can be termed moral turpitude. Such expression cannot be defined in a straight jacket formula. In general, an act that shocks the conscience of society can be termed

moral turpitude.

14. While interpreting the expression "moral turpitude", the nature of duties performed by an employee is a relevant consideration. The petitioner is a teacher in secondary school. Teachers must inculcate discipline, good morals, and values in their students. He is a role model for the students. The tender age of secondary school students has a long-lasting impression on righteous acts in society. It is, therefore, necessary that the teacher conduct himself in such a manner that he serves as a role model of values and sets an example of virtues in that regard before the students of tender age.

15. The principal charge against the petitioner is having illicit relations with the wife of the complainant. The School Tribunal, in paragraphs 66 to 69, has considered the evidence adduced by the Management before the Inquiry Committee. The evidence of the husband of the female with whom the petitioner allegedly had illicit relations was examined. He produced documentary evidence on record in the form of a complaint filed before the police and stated on oath regarding the petitioner's relations with his wife. The husband's evidence has not been shaken in the cross-examination conducted on behalf of the petitioner.

16. The School Tribunal noted the petitioner's conduct by referring to the notice issued by the Management to the petitioner alleging the misconduct, which the petitioner replied to, stating that it is his personal affair, which he shall decide. Therefore, on overall consideration of the material on record, the School

Tribunal found that the Inquiry Committee has rightly concluded 12 charges to have been proved against the petitioner.

17. The other submissions regarding violation of procedure and breach of principles of natural justice have also been dealt with by the School Tribunal in detail. Therefore, the School Tribunal has rightly recorded a finding that the Management proved 12 charges against the petitioner, including a charge of moral turpitude. Sufficient opportunity for a hearing was granted to the petitioner. The finding of misconduct was based on evidence. In my opinion, therefore, no case for interference is made out.

18. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)