

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.355 OF 2008

IN

WRIT PETITION NO. 5218 OF 2007

Subhash Vishnu Kapileshwari,
Age 58 years, Occupation Nil,
C/o. Mr. S.V. Kudale,
B/704, Asoka Complex, Ranade Road,
Dadar (West) Mumbai -400 028

.....Appellant
(Original Petitioner)

Vs.

- 1) Nagrik Sahayya Kendra
C/o. Dnyaneshwar Vidyalaya,
Dnyaneshwar Nagar, Wadala,
Mumbai – 400031
through its Secretary.
- 2) Dnyaneshwar Vidyalaya,
Dnyaneshwar Nagar, Wadala,
Mumbai – 400031,
through its Head Master.
- 3) The Chief Executive Officer,
Dnyaneshwar Vidyalaya,
Dnyaneshwar Nagar, Wadala,
Mumbai – 400031.
- 4) The State of Maharashtra,
Through the Government Pleader,
High Court, Bombay.

.. Respondents
(Original Respondents)

Mr. Vinayak R. Kumbhar a/w Mr. Rajendra Khaire and Mr. Aniket S. Phaple for the Appellant.

Mr. G.V. Salunke for the Respondent Nos.1 & 2.

Mr. P.P. Kakde, G.P. a/w Mr. O.A. Chandurkar Addl.G.P., and Mrs. R.A. Salunkhe, AGP for Respondent Nos.3 & 4-State.

CORAM : A. S. GADKARI &

SHYAM C. CHANDAK, JJ.

DATE : 13th FEBRUARY, 2024.

ORAL JUDGMENT (PER: A.S. GADKARI, J.) :-

1) By this intra-Court Appeal under the Letters Patent Act, the Appellant/original Petitioner, has impugned Order dated 14th September 2007, passed in Writ Petition No.5218 of 2007, rejecting his petition.

1.1) By the said petition the Petitioner had impugned Judgment and Order dated 8th February 2005 passed by the Presiding Officer, School Tribunal, Mumbai in Appeal No.GEN/259/Bom/134/1994, dismissing the said Appeal preferred by Appellant, under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981 (for short, '*the said Act*').

2) Heard Mr. V.R. Kumbhar learned counsel for the Appellant, Mr. G.N. Salunke, learned Advocate for the Respondent Nos.1 and 2 and Mr. P. P. Kakde learned G.P. for the Respondent Nos.3 and 4. Perused the record.

3) Record indicates that, since 13th April 1991, till 18th July 1992, three statements of allegations were issued to the Appellant by the Respondent No.1, for his alleged misconduct noticed by the School Management. An Inquiry Committee was constituted by a Communication/Letter dated 20th November 1992. As the said inquiry could not be completed within the stipulated period as mandated under the said Act, the Respondent No.1 cancelled the said proceedings. The said fact was communicated to the Appellant vide letter dated 5th December, 1992. A fresh Statement of Allegations dated 29th December 1992, was issued by the Respondent No.1 to the Appellant. The said statement was consisting of 25 grounds of misconduct committed by the Appellant. After filing of reply by the Appellant, a charge-sheet was served upon him on 9th April 1993, with 6 specific charges, more specifically mentioned therein. After conducting due inquiry as contemplated under the provisions of the said Act, the services of the Appellant were terminated with effect from 22nd October, 1994, by an Order dated 18th October 1994, issued by the Respondent No.1.

3.1) Feeling aggrieved by the Order of termination dated 18th October 1994, the Appellant preferred Appeal No. GEN / 259 / Bom / 134 /1994 under Section 9 of the Maharashtra Employees of Private School(Conditions of Service) Regulation Act, 1977 before the School

Tribunal, Mumbai.

3.2) The learned Presiding Officer, School Tribunal, Mumbai by its Judgment and Order dated 8th February, 2005, had dismissed the said Appeal and confirmed the Order dated 18th October 1994, passed by the Respondent No.1.

3.3) Appellant preferred Writ Petition No.5218 of 2007 under Article 227 of the Constitution of India, before learned Single Judge of this Court, against the said Order dated 8th February 2005, passed by the School Tribunal, Mumbai.

3.4) The learned Single Judge of this Court, after hearing the Petitioner was pleased to reject the said Petition by its speaking Order dated 14th September 2007. As noted earlier, the said Order is impugned in the present Appeal.

4) Mr. Kumbhar, learned Advocate for Appellant submitted that, the Management had issued the said fresh statement on allegations dated 29th December 1992 with same and/or similar allegations which were issued in statement of allegations dated 13th April 1991, 18th October 1991 and 18th July 1992. That, the Management had terminated the earlier inquiry proceedings by its communication dated 5th December 1992 and therefore it ought not have issued fresh statement of allegations with improved version. He submitted that, report of Inquiry

Officer was not given to the Appellant before the termination of his services and therefore his termination is vitiated. He submitted that, proper opportunity to cross-examine the necessary witnesses was not given to the Appellant, which also caused breach of principles of natural justice. He submitted that, the learned Single Judge of this Court also did not take into consideration the said vital aspect and therefore the impugned Order may be set aside by allowing the Appeal or in the alternative the said Petition be remanded to the learned Single Judge for hearing afresh.

5) Mr. Salunke, learned Advocate for the Respondent Nos.1 and 2 opposed the Appeal and submitted that, the School Tribunal after taking into consideration the voluminous record produced by both the sides has recorded its findings in favour of the Respondent Nos.1 and 2. That, the Appellant was afforded an opportunity to cross-examine the witnesses cited by the Management. However, on many occasions he refused to cross-examine them and therefore now at such a belated stage, he cannot raise the said grievance. He submitted that, the School Tribunal so also learned Single Judge of this Court, have taken into consideration all the relevant aspects of the present case and have dismissed the Appeal of the Petitioner, confirming his termination by the Respondent Nos.1 and 2. He submitted that, there are no merits in the

Appeal and therefore it may be dismissed.

6) Perusal of record indicates that, it is a fact that the Respondent Nos.1 and 2 on earlier three occasions i.e. 13th April 1991, 18th October 1991 and 18th July 1992 had issued statements of allegations against the Appellant with same and/or similar or rather little improved version of allegations. By a communication dated 5th December, 1992, the Management cancelled the said proceedings as there were technical infirmities while concluding the same. In this admitted background, the Respondent No.1 issued a fresh statement of allegations dated 29th December 1992. The said statement of allegations consists in all 25 allegations against the Appellant. After receipt of reply from the Appellant, a charge-sheet was served upon him with specific/rather precise, six charges. The services of the Appellant were terminated by the impugned Order dated 27th October 1994, issued by Respondent No.1 after giving him proper opportunity and adhering to the principles of natural justice by the Respondent No.1.

6.1) It be noted here that, the School Tribunal, Mumbai in its Judgment dated 8th February, 2005, has observed that, when the evidence of witnesses cited by the Management was being recorded, the Appellant refused to cross-examine those witnesses. That, by producing sufficient evidence before Inquiry Committee, the Management

succeeded to substantiate the charges levelled against the Appellant. It is further observed that, the Inquiry Committee rightly came to the conclusion and held Appellant guilty for the same. Learned Single Judge in its impugned Order dated 14th September, 2007, in para No.3 has held that, the Appellant was given an opportunity to defend himself at the time of inquiry and thereafter the Management was successful in proving the charges against him.

7) Perusal of record reveals that, the Respondent Nos.1 and 2 have conducted the said inquiry against the Appellant not only within the conformity of Rule 37 of M.E.P.S. Rules, 1981, but has also conducted it fairly and properly and the principles of natural justice have been complied with. We are in agreement with the learned Single Judge that, the Petitioner was given sufficient opportunity to defend himself by the Inquiry Officer so also, by the School Tribunal before passing the impugned Judgment. The charges framed against the Petitioner have been duly proved on the inquiry. According to us, the Tribunal has rightly held that, the Order of dismissal of the Petitioner was correct.

8) After perusing entire record and taking into consideration overall view of the present case, we are of the considered opinion that, the dismissal of the Appellant from services of Respondent No.1 was legal and proper. No error at all either in law or on facts can be noted

from the impugned Order dated 14th September 2007 passed by the learned Single Judge.

9) Appeal being de hors of merits and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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by SANJIV
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