



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16431 OF 2023

Manikchand Yadav

.....Petitioner

Vs.

Vivekanand Education Soc Thr
Chairman and Ors

.....Respondents

Mr. Narayan Bubna for the petitioner
Ms. S. S. Bhende, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 4th MARCH 2024

P.C.

1. This petition takes an exception to the Judgment and Order passed by the School Tribunal dismissing the petitioner's appeal for challenging the termination of his services. The petitioner's services were terminated based on an inquiry report holding the petitioner guilty of misconduct towards a female minor student and an allegation involving moral turpitude.

2. Learned counsel for the petitioner submitted that there was prosecution lodged against the petitioner under the provisions of the Protection of Children from Sexual Offences, Act, 2012. However, the petitioner has been acquitted from the said prosecution. The statements recorded in criminal prosecution and the statements in the inquiry proceedings indicate that there were contradictions in the statements made by the witnesses in support of the allegations made against the petitioner. The contradictions in the statements relied upon by the management have not been appreciated by the Tribunal. The petitioner has been in service since the year 2004 and he has an unblemished career. The penalty imposed on the petitioner is harsh and he should have been given an opportunity for accepting voluntary retirement from service.

3. Learned counsel for the petitioner further raises objections on the reasons recorded by the Tribunal for dismissing the appeal of the petitioner. He relied upon an earlier order passed by the Tribunal by which the appeal of the petitioner was partly allowed and the termination dated 23rd April 2016 was set aside. By the said order, the

matter was remitted back to the inquiry committee for fresh inquiry from the stage of issuing witness summons. Though the petitioner had submitted a list of 4 witnesses, the said witnesses were not examined, and only two were examined in the inquiry proceedings. The petitioner was unable to put forth his case due to the non-examination of the witnesses. The petitioner was not able to support his defence for want of non-examination of the witnesses. The learned counsel for the petitioner thus submitted that the order passed by the Tribunal is without appreciating the contradictions in the statements made by the witnesses against the petitioner. Hence, he submits that the petition requires consideration as a harsh penalty is imposed on the petitioner.

4. The learned counsel for the petitioner also relied upon the observations made by the Tribunal in paragraph 60 of the impugned Judgment and submitted that the learned Presiding Officer has recorded that there is no substance regarding the allegations made against him of intentionally molesting the female student and by relying upon the same evidence has also accepted the findings recorded in inquiry proceedings whereby the petitioner is held guilty of misconduct

against a female student. He thus submitted that the petition would therefore require consideration.

5. I have perused the record. Considered the submissions made on behalf of the petitioner. A perusal of the earlier Judgment of the Tribunal passed on 24th April 2017 indicates that the matter was remitted to the inquiry committee for fresh inquiry from the stage of issuing witness summons. After the matter was remitted back, the inquiry was conducted by examining the witnesses. The impugned Judgment indicates that witness summons were issued by the inquiry committee to the witnesses named by the petitioner. The witness summons were duly received by them. One of the witnesses replied in writing that she was not an eyewitness of the alleged incident and therefore she did not wish to get involved in the matter. So far as other witnesses are concerned, one of them whose examination was sought for by the petitioner informed in writing that no incident had occurred in his presence, hence, he would not appear before the inquiry committee. Thus, both witnesses refused to depose in favour of the petitioner. The remaining two witnesses appeared before the inquiry

committee and the petitioner was allowed to examine them. Accordingly, the petitioner examined said witnesses, and findings were recorded by the inquiry committee holding the petitioner guilty of the charges alleged against him. The Tribunal after going through the record of the inquiry committee has held that the findings of the majority members of the inquiry committee have held the appellant guilty. Thus, the tribunal has held that the inquiry conducted was fair and proper.

6. The School Tribunal has in detail discussed the proceedings of the inquiry committee and the submissions recorded before the inquiry committee. The Tribunal has in detail discussed the submissions made on behalf of the petitioner. The Tribunal in paragraph 60 has referred to the evidence as well as conclusions of the inquiry committee with regard to the conduct of the petitioner. The Tribunal has thus held that there was ample evidence on record based on which the majority of members of the inquiry committee held the appellant guilty of misconduct and allegation involving moral turpitude. The allegation against the petitioner of his misconduct towards a female student is

dealt with by the Tribunal in paragraph 63 of the impugned Judgment which reads as under:

“63. However there was clinching, reliable and inspiring evidence before the inquiry committee in the form of oral evidence of two victim: girls i.e. Ms. A and Ms. B that on 30.09.2013 appellant while taking P.T. examination at P.T. hall of the Respondent No. 2 school had stated to MW-2 Ms. A that he would remove her cloths, make her to stand before everyone and he also had pulled down her frock from the shoulder. Oral evidence of these two victim girls in respect of this incident is corroborated by the FIR lodged by Ms. A with Nehru Nagar Police Station and by their written complaints, which were filed before the inquiry committee. Further the conduct of victim girls to orally complaint to the MW-3 Shashikala Atrade the then supervisor on the same day and the conduct of the parents of those two victim girls to come to the school on the next day further probabalizes the happening of the incident. Therefore the on the basis of preponderance of the probability the alleged incident dt. 30.09.2013 wherein the appellant while taking P.T. examination at P.T. hall of the Respondent No. 2 school had stated to MW-2 Ms. A that he would remove her cloths, make her

to stand before everyone and he also had pulled down her frock from the shoulder, stands proved. Therefore there was ample evidence before the majority members of the inquiry committee to hold appellant guilty for this misconduct.”

7. Learned Tribunal after appreciating evidence regarding aforesaid misconduct has also discussed the decisions of the Hon’ble Supreme Court relied upon in support of the action of the management. The tribunal has appreciated the well-established principles of law regarding the disciplinary action by the management and the scope of criminal prosecution.

8. Thus, by a well-reasoned Judgment, the Tribunal has concluded that there is nothing on record to show that the punishment of termination imposed on the petitioner was disproportionate punishment considering the petitioner's conduct with the minor female student. The allegations against the petitioner and the conduct of the petitioner are held to have been proved and he is found guilty of misconduct and moral turpitude as defined under Rule 28(5) (a) and

(b) of the Rules framed under The Maharashtra Employees of Private School (Conditions of Service) Rules 1981 (“said Rules”).

9. Under the said Rules “Moral Turpitude” includes immodest or immoral behaviour with a female student and any other act of similar nature. In the present case though the petitioner is acquitted from the criminal prosecution, in view of the seriousness of the charges the management found it fit to hold an inquiry. The rules of appreciating the evidence and the burden of proof in criminal prosecution cannot be equated with disciplinary inquiry. In the present case, it is not the petitioner’s contention that he is honourably acquitted from the criminal case. Thus, the petitioner’s acquittal by the court of competent jurisdiction in criminal proceedings would not absolve the petitioner from liability under the disciplinary jurisdiction. After following the due procedure, the inquiry was completed and the petitioner on being found guilty of misconduct and moral turpitude as defined under the said Rules, the management has imposed the penalty of termination from services as permissible under the said Rules. In allegations involving moral turpitude, it is important to take into consideration the

high standard of behaviour expected from a teacher. The relationship between a teacher and a student holds high value in our society. In the present case, considering the seriousness of the charges against the petitioner as discussed above the interference in the order of punishment by the management as affirmed by the Tribunal does not warrant any interference. I do not find any error or any illegality in the reasons recorded in the impugned judgment and order. Hence, I do not see any ground warranting intervention by invoking powers under Article 227 of the Constitution of India.

10. Petition is devoid of any merits. For the reasons recorded above, the petition is dismissed.

[GAURI GODSE, J.]