



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 849 OF 2019

1. Anjuman Mufidul-Islam Education Society,
through its President/Secretary,
Nandura Road, Khamgaon,
Tq. Khamgaon, District – Buldhana.
2. Anjuman Junior College,
through its Principal, Anjuman Campus Nandura Road,
Khamgaon, Tq. Khamgaon, District – Buldhana.

...PETITIONERS

Versus

1. Gulnaz Yasmeen w/o Sye Riyazuddin,
aged about 48 years, Occ. Service,
R/o Ziya Colony, Khamgaon,
Tq. Khamgaon, District – Buldhana.
2. The Deputy Director of Education,
Amravati.

...RESPONDENTS

Ms Geeta Tiwari, Counsel for the petitioners.
Shri P.S. Patil, Counsel for respondent no.1.
Ms D.I. Charlewar, A.G.P. for respondent no.2.

WITH

WRIT PETITION NO. 3021 OF 2019

Smt. Gulnaz Yasmeen w/o Syed Riyazuddin,
aged about 52 years, Occupation : Service,
R/o Ziya Colony, Khamgaon,
Tq. Khamgaon, District – Buldhana.

...PETITIONER

Versus

1. Anjuman Mufidul-Islam Education Society,

through its President/Secretary
Nandura Road, Khamgaon,
Tq. Khamgaon, District – Buldhana.

2. Anjuman Junior College,
through its Principal, R/o Anjuman Campus Nandura Road,
Khamgaon, Tq. Khamgaon, District – Buldhana.
3. The Deputy Director of Education,
Amravati Division, Amravati,
Tq. & District Amravati.

...RESPONDENTS

Shri P.S. Patil, Counsel for the petitioner.
Ms Geeta Tiwari, Counsel for respondent no.1.
Ms D.I. Charlewar, A.G.P. for respondent no.3.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : FEBRUARY 12, 2024

JUDGMENT IS PRONOUNCED ON : FEBRUARY 16, 2024

JUDGMENT :

Rule. Rule made returnable forthwith and heard the
learned Counsel for the parties.

WRIT PETITION NO. 3021/2019

2] The petitioner was working as Junior College
Teacher with respondent no.2 – College. She is aggrieved by
Clauses 3 and 5 of the operative part of the judgment and

order dated 5/1/2019 passed by the learned Presiding Officer, School Tribunal, Amravati in Appeal No. 10/2018. The operative part reads thus :

“ORDER

- 1) *The appeal is partly allowed;*
- 2) *The termination order dated 04.10.2017 of the appellant is quashed and set aside for above reasons;*
- 3) *As per section 11(2) read with section 30 of the Act, the appellant is held guilty for above charges and as a penalty for that, the respondent management shall withhold her first due one year increment. The increment withheld shall be exclusive (except casual leave) of the leave taken during the period;*
- 4) *Respondent No. 1 and 2 are directed to reinstate the appellant on her previous post of Assistant Teacher in respondent No.2 college till 15.02.2019. If they fails to comply this order then they are liable to pay full salary from today till the date of her reinstatement;*
- 5) *Relief of back salary is not allowed;*
- 6) *The absence of the appellant w.e.f. 04.10.2017 till her reinstatement be deemed to be her continuous service for all purposes. The respondents are directed to take necessary entries accordingly;*
- 7) *Both the parties shall bear their own costs;*
- 8) *The copy of this order be sent to the Education*

Officer for information and necessary action.”

3] The respondent no.1 is a registered Society under the Maharashtra Public Trusts Act, 1950. It runs respondent no.2 – College. On 2/2/2017, the petitioner attended the College. There occurred quarrel between her and Assistant Headmaster on the count of marking her presence. The petitioner has allegedly abused the Assistant Headmaster and also slapped him. An enquiry was conducted and the Enquiry Committee found her guilty on one out of the three charges. Accordingly, the petitioner’s service was terminated vide order dated 4/10/2017.

4] The said order was challenged before the School Tribunal in Appeal No. 10/2018. The School Tribunal noted that there is no evidence on the charge of abuse by the petitioner to the Assistant Headmaster. However, there is ample evidence on the charge of slapping him. The School Tribunal noted that the witness examined by the petitioner has buttressed the incident of slapping because in cross-

examination, the said witness has deposed that the petitioner had slapped Assistant Headmaster by her right hand. Accordingly, the School Tribunal has held that charge of slapping is only proved and the other charges have been not proved.

5] Considering the background and overall evidence, the School Tribunal has quashed and set aside the order of termination and reduced the punishment to withholding an increment for the first year. The relief of back salary was not allowed. However, the absence of the petitioner with effect from 4/10/2017 till her reinstatement was considered as continuous service for all purposes.

6] The learned Counsel for the petitioner contends that the petitioner has been falsely implicated by the Management by attributing bias on the ground that the petitioner lodged complaint for defamation which resulted into passing adverse order against the Management directing it to pay Rs.50,000/- as compensation. This order is under

challenge.

7] I do not find any connection between the aforesaid proceedings and the incident of slapping. The charge of slapping has been proved in cross-examination of the petitioner's witness. The case of false implication is ruled out. There is, thus, no substance in the aforesaid argument.

8] The learned Counsel for the petitioner then made an attempt to find fault in the judgment of the School Tribunal by contending that the Assistant Headmaster has himself stated that the incident occurred because of misunderstanding. The learned Counsel for the respondents states that the stand of Assistant Headmaster will have to be understood keeping in mind the fact that Assistant Headmaster was also chargesheeted for the incident.

9] I find substance in the submission made by the learned Counsel for the respondents. The Assistant Headmaster was also chargesheeted and, therefore, there is every reason to believe that by taking such a stand he has made an attempt to

neutralize the charge. In any case, the fact remains that the charge of slapping has been proved against the petitioner in the testimony of the petitioner's witness and, therefore, the stand taken by the Assistant Headmaster is immaterial.

10] Another limb of argument of the petitioner is that the Enquiry Committee is constituted in complete contravention to Rule 36(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "Rules of 1981"). Rule 36 reads as under :

"36. Inquiry Committee

(1) If an employee is allegedly found to be guilty on any of the grounds specified in sub-rule (5) of rule 28 and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head

referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say,-

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1) -

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.

(3) The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgement due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the

name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer of the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule (2).

(5) The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.

(6) The meetings of the Inquiry Committee shall be held in the School premises during normal school hours or immediately thereafter, if the employee agrees and even during vacation.”

11] As could be seen, the Committee consists of a Member nominated by the Management or by the President of the Management, if so authorized, a Member nominated by employee and a Member chosen by the Chief Executive Officer from the panel of teachers on whom State/National award has been conferred.

12] In the present case, two employees were chargesheeted, one is the petitioner and another is the Assistant Headmaster. Both the employees were entitled to nominate one Member and, therefore, the learned Counsel for the petitioner is correct in contending that there has to be two different Committees to conduct enquiry.

13] The learned Counsel for the respondents has, however, rightly countered the aforesaid submissions by pointing out that two different Committees were constituted. She submits that both the employees failed to nominate Member and accordingly the Committee consists of the Member nominated by the Management and the Member nominated by the Chief Executive Officer, i.e., State awardee teacher has been constituted. She further submits, and correctly so, that merely because these two Members were same, the Committee so constituted to conduct enquiry of both the employees would not become a Common Enquiry Committee. Had the employees nominated their Members, the Committee would have comprised of two common Members

and the third Member nominated by the employees. The employees have not nominated Member and, therefore, the common Members continued to form the Committee, which by itself will attain a status of Single/Common Enquiry Committee.

14] The learned Counsel for the petitioner then submits that the Committees have been constituted and the charges have been formulated, though under different Resolutions, but on the same date i.e. 13/6/2017 and, therefore, the Committee could be said to be a Common Enquiry Committee.

15] I do not find any merit in the aforesaid contentions inasmuch as merely because two Committees have been constituted by two different Resolutions of even date and merely because the charges were thereafter formulated against two delinquent employees by other two different Resolutions of the same date, one cannot jump to the conclusion that Common Enquiry Committee was constituted for two delinquent employees. There is thus no substance in the

contentions raised by the petitioner.

16] The School Tribunal has dealt with these contentions and recorded detail reasons to reject the challenge. The Tribunal found that the charge proved, *viz.*, slapping the Assistant Headmaster, was not of such a gravity to attract order of termination but was found to be serious enough to withhold an increment. I do not find any error in the view taken by the School Tribunal inasmuch as the permissible benefit in the form of leniency is already shown. Further, there appears no reason why should the relief of back salary be allowed, particularly when the absence of the petitioner has been given up and benefit of continuous service has been granted.

17] There is, thus, no merit in the petition. The same stands dismissed. Rule discharged.

WRIT PETITION NO. 849/2019

18] The petitioners, who are respondent nos. 1 and 2 in Writ Petition No. 3021/2019, have sought the following relief :

“I. quash and set aside the impugned judgment dated 5/1/2019 (Annexure I) passed by the Learned Presiding Officer, Amravati thereby partly allowing the appeal no. 10/2018 by setting aside the termination and modifying the punishment, preferred by the Respondent no.1 against the termination order dated 4/10/2017 (Annexure IX) and dismiss the said appeal in the interest of justice;”

19] Having found that the view taken by the School Tribunal in reducing the punishment of termination to reduction of increment to be justified and having certified the same, there arises no question to restore the order of termination of respondent no.1 (petitioner in Writ Petition No. 3021/2019). Hence, for the reasons stated in Writ Petition No. 3021/2019, the present Writ Petition is dismissed. The order of the School Tribunal is, thus, upheld. Rule discharged.

JUDGE

Sumit