



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.1204/2024

alaji Gramin Vikas Shikshan Sanstha and another V Subhash and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.S. Patil, Advocate for the petitioners.
Mr. S.M. Vaishnav, Advocate for respondent no.1/Caveator (through V.C.)
Mrs. M. Barabde, AGP for respondent no.2.

CORAM : N.R. Borkar, J.

DATE : 08-10-2024.

This petition takes exception to the order dated 25-01-2024 passed by the learned School Tribunal, Amravati Division, Amravati in Appeal No.21/2021.

ii. Respondent No.1 herein was working as a Peon with petitioner No.2-School.

iii. By the order impugned, the learned School Tribunal has allowed the appeal filed by the respondent No.1 against the order dated 14-09-2018 passed by petitioner No.1-Management terminating his services from the post of Peon.

iv. The learned School Tribunal has recorded the following findings:-

“19] However, I did not find any merits in this argument. No doubt, in ex-parte proceeding the delinquent employee cannot challenge it on merits. But that does not mean that the management is at liberty to conduct inquiry without following mandatory rules. Challenging to merits of charges is quite different from the challenge to procedural lapses and illegalities. In ex-parte inquiry proceeding, it is for respondent management to show that they had complied with statutory procedural requirement. The inquiry proceeding and inquiry report is filed on record, I have perused the same carefully and I found that the following lacuna of inquiry conducted against the appellant.

i) As per judgment of this Tribunal passed in Appeal No.43/2018, the respondents are directed to reinstate the appellant on his former post of Peon within 40 days from today. However, it appears that the respondent management had not passed any resolution to reinstate the appellant on his former post as per the direction of this Tribunal. Again, the respondent No.1 and 2 have not placed any order to show that the appellant was reinstated as per order passed in Appeal No.43/2018. In the absence of reinstatement of the appellant, the appellant remained terminated. It appears that the respondent No.1 and 2 conducted inquiry against the terminated employee. The inquiry conducted against the appellant is without any reinstating order and hence it is vitiated and therefore it is illegal.

ii) *In this case, the Head Mistress namely Warsha Nikam was complainant/victim against the delinquent act of the appellant. In spite of this, she has acted as C.E.O. and gave opinion to the management against the appellant that his explanation is not satisfactory. This finding of C.E.O. is against the principles of natural justice as C.E.O. is complainant against the appellant. Therefore, further action to initiate inquiry against the appellant is vitiated.*

iii) *On going through the statements of witness, I found that only Awardee teacher has signed those statements and other member (nominee of the management) failed to sign the statements of witnesses. If the inquiry is of two members, then statements of witnesses shall be record before both members. It is transpired from that statements of witnesses that those statements were recorded before one member only. Hence, the inquiry is vitiated.*

iv) *On going through the inquiry report, I found signatures of 3 members. That third member is Shri S.G. Nikam who has signed on inquiry report as member of inquiry committee. However, he is not member of the inquiry committee and due to his signature on the inquiry report, said report become illegal.*

v) *On going through the charges levelled against the appellant, I found that out of total 35 charges, the charges No.1 to 12 are pertaining to the incidents of the year 1997, the charges No.13 to 24 are pertaining to the incidents*

of the year 2000, the charge No.25 is pertaining to the incident of the year 2001, the charges No.26 and 27 are pertaining to the incidents of the year 2002, the charge No.28 is pertaining to the incident of the year 2003, the charges No.29 to 33 are pertaining to the incidents of the year 2004 and charge No.34 is pertaining to the incident of the year 2005. Thus, charge No.1 to 34 are with respect to incidents from the year 1997 to 2005. There is no any explanation given by the management as to why prompt action was not taken against the appellant. There is huge delay of so many years to initiate inquiry against the alleged incidents against the appellant and it vitiate the inquiry and it appears that the management is predetermined and prejudiced against the appellant and hence the management digged previous incidents to terminate the services of the appellant any cost.”

v. I have heard the learned Counsel for the petitioners and the learned Counsel for respondent No.1.

vi. The findings recorded by the learned School Tribunal in paragraph Nos.19(i) and (v) are not shown to be perverse. In that view of the matter, I am not inclined to interfere with the order impugned.

vii. The petition is dismissed.

(N.R. Borkar, J.)