



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

MISC. CIVIL APPLICATION NO. 838/2024 IN
WRIT PETITION NO.5899/2019

Hemlata Eknath Pise.Vs.Shubham Bahuuddeshiya Sanstha Waddhamna & Ors.

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

Court's or Judge's orders

Mr. N. S. Warulkar, Advocate for applicant.

Ms K. P. Marpakwar, A.G.P. for non applicant Nos. 4 and 5.

CORAM : **ANIL L. PANSARE, J.**

DATE : **SEPTEMBER 25, 2024**

Heard.

2. Applicant – Original respondent No.1, has filed the present application under Section 114 read with Order XLVII Rule 1 of the Civil Procedure Code, 1908 to review order dated 05.09.2024, passed in Writ Petition No. 5899/2019. The petition is disposed of in the following terms.

“Heard.

2. *On 19.06.2024, following order was passed.*

“Heard for some time.

Learned School Tribunal has recorded in paragraph 14 that the management has filed no documents on record to show that the resolution was passed by the management and the secretary was authorised to communicate the allegations to the respondent no.1 – Head Mistress. The School Tribunal has recorded further finding against the management on the ground that the necessary documents were not filed.

As against, the counsel for the management submits that the necessary documents, including the resolution, were placed on record. He further makes a statement that original record of the proceedings before the managing committee as

also the inquiry committee were placed on record and after conclusion of the proceedings, the originals were returned back to the counsel for the management.

Since the finding of the School Tribunal is based on the aforesaid fact of non filing of the documents, let the record and proceedings be called.

Registry shall take steps to get record and proceedings before the next date.

Stand over to 03.07.2024.”

There occurred an inadvertent error in the aforesaid order. Paragraph 14 be read as paragraph 40.

3. Counsel for the petitioner has invited my attention to page Nos.679 to 682 of the Trial Court's record, which is a resolution passed by the managing body. Resolution is dated 28.04.2017. It refers to the details of misconduct committed by respondent No.1, which also refers to the necessity to conduct inquiry and in the end authorized the Secretary to take all necessary steps in this regard. Thus, it is obvious that the School Tribunal has ignored vital documents while rendering a finding against the management and, therefore, matter will have to be relegated back to the School Tribunal to decide the same afresh.

4. Accordingly, the impugned order dated 08.08.2019, passed by School Tribunal, Nagpur in Appeal No.38/2017 is quashed and set aside. Appeal No.38/2017 is relegated back to the School Tribunal, Nagpur to decide it afresh in the light of the documents placed on record so also other relevant points.

All questions are kept open.

The parties shall appear before the School Tribunal, Nagpur on 07.10.2024.

The School Tribunal, Nagpur shall decide the appeal, as expeditiously as possible and preferably within four months from 07.10.2024.”

3. As could be seen, this Court found that the resolution dated 26.04.2007 passed by the Managing Committee was on record. The resolution refers to the details of the misconduct committed by the applicant herein which also refers to the necessity to conduct the inquiry. The Managing Body has authorized the Secretary to take all steps in this regard. The School Tribunal had ignored this vital document and held that there is breach of Rule 36(1) of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981, accordingly set aside the order of termination.

4. Learned counsel for the applicant submits that apart from the aforesaid breach of Rule of the MEPS Rules, the School Tribunal had found other lapses, which were sufficient to set aside the order of termination and, therefore, the appeal ought not to have been relegated back only on one count. The counsel further made an attempt to show that the documents, which were ignored by the School Tribunal, were even otherwise not sufficient to substantiate inquiry. He submits that though the management has allegedly authorized the Secretary to take all necessary steps, the letter dated 06.05.2017 was issued by the Secretary in the capacity of Chief Executive Officer.

5. To my mind, whether the documents that were ignored will substantiate the inquiry or not is a matter which will have to be decided by the School Tribunal. What has been submitted by the counsel for the applicant before this Court can be his argument before the School Tribunal. In any case, Rule 36(1) provides that if an employee is allegedly found to be guilty and the management decides to hold an inquiry, it shall

do so through a properly constituted inquiry committee and such committee shall conduct inquiry only in such a case when major penalties are to be inflicted. It provides that the Chief Executive Officer authorized by the Management in this behalf shall communicate to the employee the statement of allegations. The term “Chief Executive Officer” is defined under Rule 2(c) to mean the Secretary, Trustee, Correspondent or a person by whatsoever name called, who is empowered to execute the directions taken by the Management.

6. In the present case, the Management has authorized the Secretary to take necessary steps. What has been stated by the applicant is that the Secretary signed the letter dated 06.05.2017 communicating the statement of allegations, in the capacity of the Chief Executive Officer. Merely because the words “CEO” is mentioned that by itself will not amount to breach of Rule 36(1) of the MEPS Rules, 1981. Rather, the Secretary was authorized by the Managing Body and has acted accordingly.

7. In addition, what has been stated by the applicant in the review application was not even argued when the order under review was passed. The Counsel for the applicant did not utter a word that apart from the aforesaid breach, there are other breaches committed while conducting the inquiry that would vitiate the entire inquiry and that appeal need not be remanded back. Having not argued the same, this Court did not consider the other aspect. The only request that was made by the applicant’s counsel was to expedite the hearing of appeal, which accordingly was acceded to and the School Tribunal has

been directed to decide the appeal preferably within four months from 07.10.2024.

8. Counsel for the applicant submits that this Court has kept all questions open and has thus given opportunity to the management to fill up lacunae.

9. Firstly, this argument cannot be a valid argument to review the order. Secondly, by keeping all questions open, one cannot really fill up the lacunae in its case. The questions are kept open only in context with the documents that were not considered by the School Tribunal while setting aside the order of termination.

10. In the light of above, it cannot be said that there is any error apparent on the face of record while passing the order or that the application attracts any ingredient envisaged under Order XLVII Rule 1 of the Code. There is no substance in the application. The application is accordingly rejected.

(Anil L. Pansare, J.)