



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 6068 of 2023

(1) Gondwan Shikshan Prasarak Mandal,
Chandrapur
Through its President Ravindra s/o
Bhagwantrao Khanke R/o Matoshri,
Yamuna Nagar, Tadoba Road, Tukum,
Chandrapur.

(2) Head Master
Matoshri Vidyalaya, Tukum,
Chandrapur, Tah. & Dist. Chandrapur.

... Petitioners

- Versus -

(1) Ku. Manisha Vinayakrao Deogade
Aged about 45 yrs. Occ. Service
R/o Rajmangal Karyalaya, Gutkala
Ward No. 1, Chandrapur,
Tah. & Dist. Chandrapur.

(2) Education Officer (Secondary)
Zilla Parishad, Chandrapur,
Tah. & Dist. Chandrapur.

... Respondents

with

Writ Petition No. 6500 of 2023

Ku. Manisha Vinayakrao Deogade
Aged about - 56 years. Occ.-Nil,
R/o. C/o Shri Bhimrao Bhagat
Behind Little Flower Convent,
Saprem nagar, Naginabag,
Chandrapur,
Ta. & Dist. Chandrapur 442 401.

... Petitioner

- Versus -

(1) Gondwana Shikshak Prasarak Mandal,
Through its President, Chandrapur.
Tahsil & District Chandrapur.

(2) Head Master
Matoshri Vidyalaya, Tukum,
Chandrapur,
Tahsil and Dist. Chandrapur (MS).

(3) The Education Officer (Secondary)
Zilla Parishad, Chandrapur,
Tahsil and Dist. Chandrapur.

... Respondents

Mr. M. P. Khajanchi, Advocate for the petitioners in WP 6068/23 and for respondent no. 1 in WP 6500/23

Mr. N. S. Warulkar, Advocate for petitioner in WP 6500/23 and for respondent no. 1 in WP 6068/23

Mr. H. D. Dube, AGP for the State/respondent no. 3

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 25-07-2024

Date of pronouncing judgment : 31-07-2024

COMMON JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The employee Ku. Manisha Deogade as also employer Godwana Shikshan Prasarak Mandal, Chandrapur are aggrieved by judgment dated 14-07-2023 passed by the Additional School Tribunal, Chandrapur in STC Appeal No. 20/2012. The School Tribunal has quashed and set aside the order of dismissal dated 21-6-2012 passed against the employee. The School Tribunal further directed the employer to reinstate the employee with continuity of service and further directed to pay 75% back wages with effect from 21-06-2012.

3. The employer is aggrieved by the entire order whereas the employee is aggrieved to the extent, the Tribunal directing employer to pay only 75% back wages, which according to the employee, ought to have been 100% back wages.

4. The Tribunal found that the enquiry conducted against the employee suffered from multiple defects. The Tribunal held thus :

“49. The above conduct of the State Awardee Teacher and Convener of the Inquiry Committee show that they wanted to complete the enquiry hurriedly and submit the report in favour of the management. Therefore the act of the State Awardee Teacher and Convener of the Inquiry Committee of conducting inquiry during summer vacation without consent of the appellant, rejecting adjournment applications, recording the evidence of management witnesses in the absence of appellant and her representative is unjustified, bias and illegal. And also the act of State Awardee Teacher and Convener of the Inquiry Committee of recording findings on the charges at the end of meetings of the proceeding without giving opportunity to the appellant to produce her evidence is also unjustified, illegal and contrary to the principal of natural justice. Therefore, on the above count alone the inquiry proceeding is liable to be quashed and set aside.

50. Record shows that on 2/06/2012 in the inquiry proceeding the management examined their witnesses on charge No. 8 to 10 in the absence of appellant and her representative. Record also shows that on that date also the appellant moved application to adjourn the proceeding beyond summer vacation, but same was rejected. The State Awardee Teacher and Convener of the Inquiry Committee

recorded the findings on charge Nos. 8 to 10 holding that the charges are proved against the appellant. Record shows that without giving opportunity to the appellant to produce the evidence, the inquiry proceeding was closed and further explanation of the appellant was decided to be called as per Rule 37(4) of MEPS Rules. Record shows that the appellant submitted her explanation on 12/06/2012 through registered post. In the explanation dated 12/06/2012 which is acknowledged to be received as per inquiry report dated 18/06/2012, the appellant contended that she has not received the copy of the proceeding along with letter dated 4/06/2012 as claimed to be forwarded with the said letter. She raised several objections in her explanation. She reiterated that the charge leveled against her are false and she prayed that she be allowed to examine seven witnesses including herself. The record shows that no opportunity to examine the witnesses was given to the appellant.”

5. It is thus evident that the employer has conducted the enquiry without giving opportunity to the employee to produce her evidence and further some witnesses were examined in her absence. It further appears that the employee was not given opportunity to lead evidence. The School Tribunal has, however, proceeded further to go into the merits of the case on the count that the employer has not prayed for directions to hold *de novo* enquiry and further that the employee had been already punished for the charges and thus the case is hit by the principles of double jeopardy.

6. Learned counsel for the employer submits that even if the case of the employee to the extent that the enquiry under question is

defective, is to be accepted, the matter will have to be remanded back in terms of the judgment passed by the coordinate Bench of this Court in the case of ***Bhartiya Seva Acharya Education Society, Nagpur and anr. Vs. School Tribunal, Nagpur and ors. [2014(2) Mh.L.J. 879]***. This Court by referring to the judgment of Hon'ble Supreme Court held as under.

“8. It is thus apparent that in case where the enquiry is found to be defective, the appropriate relief as has been held in Dr. Harbhajan Singh Greasy's case by the Apex Court is to set aside the order of dismissal with direction to the management to hold an enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as the backwages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry. The case of “defective enquiry” is considered on par with the case of “no enquiry”, even in respect of the cases arising out of disciplinary proceedings conducted under the MEPS Act and the Rules framed thereunder.

9. In view of above law laid down by the Full Bench of this Court, it was not permissible for the School Tribunal to go into the merits of the charges levelled against an employee and the tribunal should have set aside the order of termination and permitted the management to hold an enquiry from the stage the illegality has crept in and that the reinstatement of the respondent no. 3 is required to be treated for the purposes of holding fresh enquiry and no more. The question of payment of backwages in such a situation also does not arise as it would depend upon the final outcome of the fresh enquiry.”

7. The Division Bench held that, where the enquiry is found to be defective, the appropriate relief is to set aside the order of dismissal with the direction to the management to hold an enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as the back wages are concerned, the entitlement thereof will be dependent on the final outcome of the fresh enquiry. The Court further held that the case of “defective enquiry” will have to be considered at par with the case of “no enquiry”, even in respect of the cases arising out of disciplinary proceedings conducted under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as ‘the MEPS Act’) and the Rules framed thereunder.

8. Learned counsel for the employee, by referring to the judgment of the Apex Court in the case of **Anant R. Kulkarni Vs. Y. P. Education Society and others [(2013) 6 SCC 515]** contends that the School Tribunal and even this Court in appropriate cases is empowered to and further ought to examine the case on merit. The Hon’ble Apex Court in this regard held thus :

“31. The conclusion reached by the Division Bench that the Tribunal and the learned Single Judge had found that there was a defect in the manner in which the enquiry was held, and therefore there was no question of it recording a finding on merit to the effect that the charges levelled against

the appellant were not proved, is also not sustainable in law. It is always open for the Court in such a case, to examine the case on merits as well, and in case the Court comes to the conclusion that there was in fact, no substance in the allegations, it may not permit the employer to hold a fresh enquiry. Such a course may be necessary to save the employee from harassment and humiliation.”

9. Thus, the Hon’ble Supreme Court held that it is always open for the Court in such a case, to examine the case on merits as well, and in case the Court comes to the conclusion that there was infact, no substance in the allegations, it may not permit the employer to hold a fresh enquiry.

10. In the present case, the employer levelled following charges against the employee.

- (1) Persistent absence from duty without seeking prior permission from the Headmaster and the office.
- (2) Incompetency i.e. wilful and deliberate negligence in teaching and failure to discharge the duties relating to the school, failure to prepare daily lesson notes properly, violation of undertaking, teaching without pre-preparation.
- (3) Violation of Rule 24 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, Government Resolution vide letter No. AMASHA/4192/C/Directorate of

Education, M. S. Pune, dated 10-01-1992 and other Government Resolutions, defamation of school and institution, furnishing false information to the Superiors.

- (4) Misconduct and wilful dereliction of duty.
- (5) Wilful and conscious disregard of the instructions/orders given by the Headmaster.
- (6) To threaten the Headmaster through third party.
- (7) Violation of sub-rule (1) of Rule 36 of the Rules of 1981.
- (8) To go on indefinite hunger strike in front of the office of the Deputy Director of Education, Nagpur Division, Nagpur.
- (9) To avail leave without giving prior intimations and not submitting even an application.
- (10) To set an incomplete question paper for Second Semester.

11. The Tribunal noted that most of the charges were vague which indeed appears to be. Most importantly, the Tribunal has noted that the employee has been already punished for the aforesaid charges and, therefore, she could not have been punished again. In this regard the School Tribunal has noted as under.

“77. It is the case of the appellant that respondent management has already imposed the penalty of withholding increments for the year 2010-2011 and 2011-2012. The respondent management has not denied the punishment of

withholding increments as alleged by appellant. The Respondent management failed to produce the record regarding order of withholding of increments. The respondent management submitted on affidavit that the relevant record is destroyed. There is nothing on record to disbelieve the appellant that management has withheld her increment for the year 2010-2011 and 2011-2012. Withholding the increment is one of the minor punishment as per Rule 31 of MEPS Rules. If the appellant was punished twice with minor punishment, then it has to be presumed that it covers instances of alleged misconducts prior to the year 2011 and 2012. It is not the case of respondent management that the punishment of withholding increment was imposed for particular misconduct only. Then in such situation the management cannot sustain the charges upon the past instances. Considering the above discussed charges leveled in the chargesheet there is no any serious charge of the year 2011 and 2012 warranting for major punishment.”

12. Thus it appears that the employer has not denied that the employee was punished by imposing penalty of withholding increment. The employer failed to produce record regarding order/resolution of withholding increment. The employer failed to produce before the Tribunal, so also before this Court, any document to disbelieve the employee's version that employer has withheld her increments for the year 2010-2011 and 2011-2012. The instances noted in the charge-sheet, on the basis of which, the statement of allegation has been made, have allegedly occurred during the period 23-11-2002 to 28-2-2012. There is, thus, every reason to believe that the punishment of withholding increment in the year 2011-2012 will cover the instance of

alleged misconduct prior to the year 2012 particularly in absence of any evidence to the contrary. The employer failed to show that any allegation has been made against the employee for the acts done after 28-2-2012.

13. On the point of employee having been already punished by the employer for the charges levelled against her, this Court has on 27-6-2024 passed following order.

“Having heard the parties at length, it transpires from the Judgment of the School Tribunal that the Petitioner – Management has already imposed penalty of withholding increments of the Respondent for the charges levelled against her. The finding of the Tribunal further indicates that the Petitioner – Management has not denied the averments so made by the Respondent. The Tribunal noted that the Management failed to produce on record the documents withholding the increments. The Tribunal further noted that the management has submitted affidavit that the relevant record has been destroyed. Thus, the case of the Respondent that she has been punished for the charges levelled appears to be not in dispute.

2. The learned Counsel for Petitioner seeks time to verify the status and to place on record the affidavit filed by the Management as regards destruction of documents.

3. Stand over to 4th July, 2024.”

14. The employer did not produce the document despite granting one more opportunity on 4th July, 2024. The employee,

ultimately filed it on 25-7-2024. The document indicates that the employer had amended the appeal by incorporating the fact that she has been already punished for the charges under question. The employer has not denied the averments so made by the employee. This itself is sufficient to infer that the employee has been already punished for the alleged allegations. The excuse given by the employer before the Tribunal that documents have been destroyed is unacceptable, given the situation that the matter was pending before the Tribunal. The record, being relevant, ought to have been preserved pending appeal. The conduct of the employer speaks volumes.

15. It further appears from the impugned judgment that the employee has alleged continuous harassment by the employer. It appears that the employee had made a complaint against the then Head Master. The then Education Officer had cancelled the approval of the Head Master against whom charges of harassment was made by the employee. In fact, the issue of harassment to the employee had reached upto SC-ST Commission and vide order dated 04-07-2012, the Commission recorded that there was injustice caused to the employee and the Commission appreciated the Education Officer's prompt action against the management. In the circumstances, the Tribunal took view

that the employer proceeded with predetermined mind in enquiry against the employee.

16. Considering the totality of circumstances, what transpires is that the employer has hurriedly completed the enquiry, employer's witnesses have been examined in the absence of employee and the employee was not granted opportunity to lead evidence. Further, the employee has been already punished by withholding two increments for the charges under question. It further appears that the employer had some grudge against the employee on she having lodged complaint against the then Head Master whose approval was cancelled by the then Education Officer. This is a case where the enquiry appears to have been initiated to harass the employee. The entire enquiry is vitiated for not following the due process of law and, further on the ground of double jeopardy. In view thereof and in terms of the judgment of the Apex Court in **Anant R. Kulkarni's** case, to remand the case back will only cause further harassment and is thus not warranted.

17. The sum and substance of above discussion is that the employer failed to make out a case. So far as the employee's case is concerned, in my view, she is right in claiming 100% back wages. It is so because, once it is found that the enquiry suffered from illegalities or

that the entire enquiry was conducted with *mala fide* intentions, the order of reinstatement should follow full back wages.

18. It appears that the employee had filed an affidavit stating therein that she was not gainfully employed during the period from her termination to which except for a counter affidavit, no evidence has been led by the employer. In the circumstances, the employer having failed to discharge his burden to prove that employee was in gainful employment during the intervening period, the employee was entitled for 100% back wages. The order of School Tribunal, therefore, requires modification to that extent. Resultantly, following order is passed.

ORDER

- (i) Writ Petition No. 6068 of 2023 is dismissed.
- (ii) Writ Petition No. 6500 of 2023 is allowed.
- (iii) The order of School Tribunal, Chandrapur to the extent it directs employer to pay 75% back wages is modified to 100% back wages.
- (iv) The respondents shall pay 100% back wages to the petitioner viz. Ku. Manisha Vinayakrao Deogade within twelve weeks from today.
- (v) Rule is made absolute in above terms.

(Anil L. Pansare, J.)

