



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

WRIT PETITION NO.296/2014

1. Prerna Shikshan Mandal,
Sindewahi, District Chandrapur,
through its President, Rameshchandra
Raut, r/o Shakyaraj Nehru Nagar,
Chandrapur.
2. Chief Executive Officer,
Prerna Shikshan Mandal,
Sindewahi, District Chandrapur.
3. Principal, Samrat Ashok Junior
College, Chichapalli, District
Chandrapur.

.....PETITIONERS

...VERSUS...

1. Sanghamitra d/o Manohar Bankar,
aged 49 years, C/o Shri Vijay
Wasudeorao Meshram, Near Gowardhan
Building, Naginabagh, Ward No.1,
Gadgebaba Chowk, Chandrapur.
2. Presiding Officer, School Tribunal,
Chandrapur.
3. The Deputy Director of Education,
Nagpur Region, Nagpur.
4. Nasik S. Barsagade, Lecturer,
Ashok Samrat Vidyalaya,
Chichapalli, Dist. Chandrapur.

...RESPONDENTS

AND

WRIT PETITION NO.177/2015

Sanghamitra d/o Manohar Bankar,
aged 49 years, C/o Shri Vijay
Vasudeorao Meshram, Near Govardhan
Building, Naginabagh, Ward No.1,
Gadge Baba Chowk, Chandrapur.

...PETITIONER

...V E R S U S...

1. Prerna Shikshan Mandal,
Sindewahi, District Chandrapur,
through its President, Rameshchandra
Raut, r/o Shakyaraj Nehru Nagar, Chandrapur.
2. Chief Executive Officer,
Prerna Shikshan Mandal,
Sindewahi, District Chandrapur.
3. Principal, Samrat Ashok Junior
College, Chichapalli, District Chandrapur.
4. The Deputy Director of Education,
Nagpur Region, Nagpur.
5. Presiding Officer, School Tribunal,
Chandrapur.
6. Nasik S. Barsagade, Lecturer,
Ashok Samrat Vidyalaya,
Chichapalli, Dist. Chandrapur.

...RESPONDENTS

Mr. S. P. Bhandarkar, Advocate for petitioner in W.P.No.177/2015 and
respondent No.1 in W.P.No.296/2024.

Mr. M. P. Khajanchi, Advocate for petitioner in W.P. No.296/2024 and
for respondent Nos. 2, 3 and 6 in W.P.No. 177/2015.

Mr. S. O. Ahmed, Advocate for respondent No.1 in W.P.No. 177/2015
and respondent No.4 in W.P.No.296/2014.

Mr. A. A. Madiwale, A.G.P. for respondents-State.

CORAM:- ANIL L. PANSARE, J.

DATE OF RESERVING THE JUDGMENT :- 19.12.2024

DATE OF PRONOUNCING THE JUDGMENT :- 20.12.2024

JUDGMENT

The employee – teacher and the management are both
aggrieved by the judgment and order dated 20.12.2013 passed by
School Tribunal, Chandrapur in Appeal No. STC/53/2005.

2. The employee namely, Ku. Sanghamitra Bankar had challenged the termination order dated 27.09.2005 issued by the management viz. Prerna Shikshan Mandal, Sindewahi, District Chandrapur and prayed for her reinstatement in service with full back-wages and continuity in service. The learned School Tribunal allowed the appeal and thus set aside the order of termination and directed the management to reinstate the employee on her original post with continuity in service and to pay back wages at 50%.

3. The School Tribunal noted that Three Member Inquiry Committee had taken different views and made different recommendations. The representative of the employee has, amongst other lapses, noted that the Convener of the Committee had a prejudiced approach towards the employee. He also noted that the photocopies of the summary reports were not given to him and the employee as well. He then has noted that Mr.M.V. Ramteke, Head Master has participated in the Inquiry Committee's proceedings though he was not a member of the Committee. According to him, the employee was not guilty.

4. Another member of the Committee viz. the State Awardee Teacher has, in his report dated 19.09.2005, recommended punishment under Rule 31 (i) to (iv) of the Maharashtra Employees of Private

Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the 'MEPS Rules'), which provides for minor penalties namely (i) reprimand, (ii) warning, (iii) censure, and (iv) withholding of increment for a period not exceeding one year.

5. The third recommendation is of Convener himself. He has mentioned that the employee had committed multiple breaches. She used to threaten the other teachers and drag them to the Court by levelling wild allegations. He accordingly recommended her termination. He has also mentioned that similar such recommendation has been made by other members of Inquiry Committee. This statement is admittedly incorrect.

6. This unilateral decision taken by the Convener was faulted with by the School Tribunal. The School Tribunal referred to Rules 37(4), (5) and (6) of the MEPS Rules, to observe that the Inquiry Committee and not the Management, has to take decision. The management has to just implement the recommendations of the Committee. In the present case, however, the decision was not taken by the Committee to remove the employee.

7. Having found the aforesaid discrepancies, the School Tribunal had set aside the order of termination and directed to reinstate the employee with 50% back wages.

8. During the course of hearing, the first question that arose for consideration is whether the Convener can be member of the Committee.

9. Mr.Bhandarkar, learned counsel for the employee has relied upon Coordinate Bench judgment of this Court in *Nandkumar Mahadeo Dengane.Vs.Bhavika Vidya Prasarak Mandal & Ors.[2008 (5) Mh.L.J. 598* wherein this Court has held that Convener cannot be a member of the Inquiry Committee but is associated with the Inquiry Committee with a limited role viz. initiate action pertaining to the conduct of the inquiry and to maintain all the relevant record of the inquiry.

10. As against, Mr. Khajanchi, learned counsel for the management has referred to another judgment of Coordinate Bench of this Court in *Rayat Shikshan Sanstha, Satara through its Secretary and anr. Vs. Appa Bhimrao Pol and anr. [2016 SCC OnLine Bom 6533]*, wherein the Coordinate Bench took a view that the convener of the Inquiry Committee has to participate along with other members of Inquiry Committee and his role is not limited to that of a secretary or only of an administrative nature.

11. I have gone through the *Rayat Shikshan Sanstha's* case. It does not consider the judgment in *Nandkumar's* case. Further, Rule

36(5) of the MEPS Rules provides that 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 Inquiry Committee and shall maintain all the relevant records of the inquiry. Rule 37 provides that the charge-sheet, statement of allegations, explanation of the employee, written explanation to the charge-sheet, desire to examine any witness, etc. shall be routed through the Convener.

12. Thus, the role of Convener, appears to me, is to facilitate the inquiry Committee and to maintain the record. It is, in this sense, a role of assisting the Inquiry Committee in the secretarial characteristic. The Convener in the instant case has, however, played a dominating role in the inquiry, which was not permissible.

13. On the point of submission of three different reports by the members of the inquiry committee, Mr. Khajanchi, learned counsel for management, has invited my attention to the judgment of the Coordinate Bench of this Court in Jaywant Govindrao Sanap Vs. Janki Shikshan Prasarak Sanstha, Kaulkhed, Akola and anr, [2015 (5) Mh.L.J.88], wherein the Court while considering the object of Rule 37(6) of the MEPS Rules, 1981, held that merely because members of the Inquiry Committee submitted separate reports, it cannot be said that the

provisions of Rule 37(6) were not followed. The Court held that the object of the rule is that three members of the Inquiry Committee should have deliberations and consider the material which has come on the record in the inquiry and then submit the report.

14. In the present case, there are three different views and reports of the Inquiry Committee members. The representative of the employee has noted certain lapses and opined that the employee is not guilty. The State Awardee Teacher has made recommendations for minor punishment. The Convener has submitted separate report showing it to be the report of the inquiry committee. He has noted that the report submitted by two other members is indicative of the fact that the entire responsibility is assigned to the Convener. Accordingly, he took a decision and recommended for termination of employee. In doing so, he has noted that such a recommendation is made by other members also.

15. This finding is apparently erroneous. There is nothing on record to show that responsibility was assigned by other members to the Convener. In fact, such an assignment is not permissible under the MEPS Rules, 1981. Further, the recommendation by the representative of the employee and the State Awardee Teacher were altogether different. One was of the view that the employee was not guilty and

other was of the view that the minor punishment is attracted. Report is completely silent on deliberations amongst members of the Inquiry Committee. Thus, the Convener has taken a decision on behalf of the Committee, without any authority.

16. It is worth mentioning here that the Convener carried a blame of prejudice against the employee. The employee's representative has noted the said fact in his report. He has further noted that the objection to his participation in the inquiry was taken by the employee. His report indicates that the employee had lodged report against the Convener and the Head Master. Even police complaint was filed. In this backdrop, the employee had filed an objection against participation of the Convener in the inquiry. On the top of it, the Head Master has also participated in the inquiry when he was not even the member of the Inquiry Committee. Thus, the persons against whom employee had a grievance and had lodged report with the police, have participated in the inquiry despite the employee taking objection for such participation. This is a case where it can be safely pleaded that the Convener had prejudice against the employee. His report speaks volumes about such bias. The inquiry, therefore, stands vitiated on multiple grounds narrated above.

17. At this stage, counsel for the management has relied upon two judgments to argue that opportunity should be given to the

management to prove the charges before the School Tribunal. In

Adarsh Vidya Mandir Trust and anr. .Vs. Awadesh Narayan Komal

Singh and Ors., 2004(4) Mh.L.J. 173, the Coordinate Bench held thus:

“7. Having considered the rival submissions, I have no hesitation in affirming the opinion expressed by the Tribunal that the enquiry conducted by the Management is vitiated on account of breach of principles of natural justice. The Tribunal has recorded reasons to support the said opinion which, to my mind, are unexceptionable. However, there is substance in the argument canvassed on behalf of the petitioners that assuming that the enquiry was bad on that count, the Tribunal had two options either to decide the charges itself on merits or to relegate the parties for further enquiry from the stage where the Tribunal has found fault with the fairness of the disciplinary enquiry conducted against the respondent No. 1.”

Thus, the Court held that once the inquiry was found to be faulty, the tribunal had two options, either to decide the charges itself on merits or to relegate the parties for further inquiry from the stage where the tribunal has found fault with the fairness of the disciplinary inquiry.

18. The Full Bench of this Court in **Saindranath s/o Jagannath Jawanjal .Vs. Pratibha Shikshan Sanstha and anr., [2007 (3) Mh.L.J.753]**, has considered the following issues.

“13. From the order of reference and rival submissions made, the question that arises for consideration is : Whether the School Tribunal hearing appeal against the order of termination/dismissal, reduction in rank etc. can permit the School Management to lead evidence before the Tribunal in

respect of the misconduct alleged against an employee; when the Management did not hold any enquiry before terminating the services of the employee or the enquiry held against the employee is found to be defective?”

The Full Bench then considered various provisions and authorities and answered the issue in following terms.

54. *In the above scenario; the question is : whether the School Tribunal dealing with the appeal under the Act challenging punitive action could cure the defect of enquiry exercising its powers by taking on record additional evidence either on the request of the management or the employee concerned or on its own to find out truth and to do complete justice between the parties. To hold that the School Tribunal dealing with the appeal preferred by the employee, who has been terminated on the ground of major misconduct, has absolutely no power to permit the party to lead additional evidence before it, would result in depriving an opportunity to the party to the appeal in placing his side before the Tribunal, even though, he may be in a position to prove his contentions.*

55 to 57.

58. *The Tribunal, therefore, has power to take additional evidence on record only in the contingency, where the management or employee wants to supplement the evidence already on record by leading additional evidence to prove their contentions, however, subject to the provisions of section 107 read with Order 41, Rule 27 of Civil Procedure Code. After leading the evidence by both the parties in support of their contentions, it is always open to the Tribunal, in exercise of its power of judicial review, to reappraise the said evidence so as to find out whether or not action of the school management can be sustained.”*

19. The entire reading of the aforesaid judgments will show that the School Tribunal is empowered to conduct inquiry from the

stage where it has found fault with the fairness of the disciplinary inquiry and, in a given case, can *suo motu* permit evidence/additional evidence to be brought on record. If, however, the party viz. management or the employee intends to take additional evidence, the same will be permissible subject to provisions of Section 107 read with Order XLI Rule 27 of the Civil Procedure Code, 1908.

20. In the present case, the parties have not led evidence before the School Tribunal. The management in its written statement has pleaded that if the Court comes to the conclusion that the disciplinary inquiry was not just and proper, the management reserves its rights to prove the charges before this Court and permission may be granted in that regard.

21. Such a vague pleading and prayer cannot be interpreted to be a request to lead additional evidence under Section 107 read with Order XLI Rule 27 of the Civil Procedure Code, 1908.

22. Put all together, the disciplinary inquiry conducted against the employee is not in consonance with the MEPS Rules 1981. The participation of the Convener, who is also President of the society and the Head Master in the disciplinary inquiry, despite objections raised by the employee, will further vitiate the inquiry. The management had not led any evidence before the School Tribunal nor is request made for

leading evidence/additional evidence. In fact, once the management chose to not lead evidence, there arises no question of management seeking permission to lead any evidence. The employee has now retired on superannuation.

23. In the circumstances and considering the manner in which the inquiry has been conducted and the Convener taking unilateral decision to terminate the employee, the entire process is hit by the *mala fides* and, therefore, the request made by the counsel for the management to permit it to lead additional evidence is rejected.

There is thus, no merit in the petition filed by the management.

24. So far as the employee's petition is concerned, she has requested to modify order of School Tribunal which directed the management to pay 50% back-wages as according to her, she is entitled for 100% back wages.

25. The employee was terminated on 28.09.2005. The School Tribunal has decided the appeal on 20.12.2013 i.e. after about 8 years. According to the employee, after termination, she was not employed with any establishment of State or Central Government or Semi Government and has not gained any salary from the Government

Treasury or non grant School/Colleges. Thus, it is not her case that she was not in employment at all. What has been stated is that she was not in employment with the State/Central Government or Semi Government. That being so, the School Tribunal having exercised its discretion in granting 50% back wages, which to my mind, is a possible view, I am not inclined to interfere with the said finding in writ jurisdiction. The writ petition filed by the employee is also dismissed.

Rule is discharged. No order as to costs.

(Anil L. Pansare, J.)

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