



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 5250 OF 2024

The President,
Mahatma Gandhi Shikshan Mandal ...Petitioner

Versus

Smt. Jayashri Pravin Chavan & Anr ...Respondents

- Mr. B. R. Warma, Advocate for the Petitioner
- Mr. S. S. Deshmukh, Advocate for the Respondent No. 1
- Mr. S. N. Kendre, AGP for the Respondent No. 2/State

CORAM : R. M. JOSHI, J
DATE : APRIL 01, 2025

PER COURT :

1. This Petition takes exception to the judgment and order dated 03.04.2024 passed in Appeal No. 41/2013 by School Tribunal, Nashik whereby Appeal filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short '**the Act**') came to be allowed and order dated 27.05.2013 reverting Respondent No. 1 came to be set aside.

2. The facts as led to the filing of the Petition can be narrated in brief as under:

Petitioner is a Educational Institution

running Secondary School at Chopda. Respondent No. 1 was appointed as Assistant Teacher in the year 1993. She was made permanent in 1997 and thereafter was promoted to the post of Head Mistress. During the tenure as Head Mistress, she was found to have committed employment misconduct and hence, domestic enquiry was initiated against her. On 24.12.2012 Enquiry Committee was constituted as per the provisions of the Act. Charge-sheet was duly served upon Respondent No. 1. Respondent No. 1 in her reply refuted the charges and sought exoneration. Petitioner Management in the domestic enquiry led evidence to prove misconduct. Enquiry Committee submitted his report dated 17.05.2013 holding that Charge Nos. 1, 2 and 5 are duly proved against Respondent No. 1. Petitioner unanimously resolved to issue order of reversion/reducing Respondent No. 1 below the rank of the then post of Head Mistress by way of punishment. Being aggrieved by the said order dated 27.05.2013 of reversal from the post of Head Mistress to teacher, she preferred Appeal under Section 9 of the Act being Appeal No. 41/2013 before the School Tribunal, Nashik. As Tribunal allowed the Appeal and set aside the

punishment, hence present Petition is filed.

3. Learned Counsel for Petitioner submits that having regard to the alleged misconduct against Respondent No. 1 and evidence placed on record, the Petitioner Management has sufficiently proved the misconduct against her. It is his submission that Respondent No. 1 was holding responsible post of Head Mistress and that it was her duty and responsibility to ensure that examination of Navoday School are conducted in proper manner. It is submitted that there is ample evidence so also admissions of Respondent No. 1 in order to indicate that the examination forms submitted by students were not forwarded to the concerned Authorities for conducting said examination. It is his submission that record was not maintained and whenever record is maintained, it was not proper. Log book/service books were not updated. By referring to the reply filed by Respondent No. 1, it is argued that she has accepted the lapses on her part and mistakes committed by her. It is submitted that owing to the nature of misconduct, the Management was fully justified in imposing penalty of reduction in rank

against the Respondent No. 1. In order to support his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in case of State Bank of India vs. A. G. D. Reddy, Civil Appeal No. 11196/2011, to canvass that it was not open for the Tribunal to re-appreciate the evidence led in the domestic enquiry and to arrive at different findings. He also placed reliance on the judgment of Hon'ble Supreme Court in case of Union of India and Others vs. Subrata Nath, Civil Appeal Nos, 7939-7940/2022, in order to argue that the Courts ought to have refrain themselves from interfering in the findings of fact recorded in the departmental enquiry except in the circumstances where the said findings are perverse and grossly incompatible with the evidence on record and based on no evidence on record. He also took aid of judgment of Hon'ble Supreme Court in case of Anil Kumar Upadhyay vs. The Director General, SSB and Others, Civil Appeal No. 2707/2022.

4. Learned Counsel for Respondent No. 1 supported the impugned order. It is his contention by relying upon the Rule 15 framed under the Act to contend that there was no communication of any adverse remark to

Respondent No. 1 and as such, the Petitioner Management was precluded from initiating any charge-sheet and conduct enquiry against Respondent No. 1. By referring to the judgment of the Coordinate Bench of this Court in case of Jaywant Govindrao Sanap vs. Janki Shikshan Prasarak Sanstha, Kaulkhed, Akola and Anothers, 2015 (5) Mh.L.J. 88, it is contended that there is no reason or justification to cause interference in the impugned order. Without prejudice to the above submissions, he argued that the bias and mala fides of management can be seen from admitted facts on record. He drew attention of the Court to the fact that there was charge-sheet issued to a teacher Mr. Pawar, who was responsible for sending exam forms of students as had been assigned said work. According to him, Mr. Pawar was punished with stoppage of two increments, whereas harsh/excessive and disproportionate punishment of reversion has been inflicted upon Respondent No. 1. It is his further submission that even if evidence led in the domestic enquiry is accepted to be correct, Respondent No. 1 cannot be held responsible for the non submission of exam forms. He further submits that in the management of the school Respondent No. 1 is not

expected to do all acts personally and delegation of work is permissible.

5. At the outset, this Court would like to deal with the submissions made by learned Counsel for Respondent No. 1 in respect of Rule 15, which reads thus:

15. Writing of confidential reports etc.

The confidential reports shall be written annually in the respective Form in Schedule "G". The reporting authorities in respect of the employees and the Head shall be the Head and the Chief Executive Officer respectively. Confidential reports shall be written in respect of the employee or the Head who had worked for six months or more during an academic year commencing from June. If the Head or a teacher is the Secretary of the Management the confidential report in his respect shall be written by the President of the Management.

(2) The confidential reports so written in respect of the employees and the Head shall be reviewed by the Chief Executive Officer and the President of the Management, respectively. The confidential report of the Head or a teacher written by the President shall be reviewed by the Managing Committee.

(3) The respective reporting authority shall arrange to communicate confidentially in writing adverse remarks, if any, to the concerned employee or the Head, as the case may be, before the end of August every year.

(4)Representation, if any, from any employee against the adverse remark communicated to him in accordance with sub-rule (3) above shall be decided by the School Committee. Similar representation, if any, from the Head shall be decided by the Managing Committee.

(5)Failure to write and maintain confidential reports and to communicate adverse remarks to the employees within the period prescribed in sub-rule (3) shall have the effect that the work of the employee concerned was satisfactory during the period under report. (Emphasis supplied)

(6)Performance of an employee appointed on probation shall be objectively assessed by the Head during the period of his probation and a record of such assessment shall be maintained.

6. Perusal of this rule no doubt lays down that non communication of adverse remark in academic year would result in deeming that the work of the employee is satisfactory. However, such deeming provision would apply in case Management vaguely states while taking action against the employee for his/her work was not satisfactory during relevant period. This, however, cannot be construed that embargo is created against the management that even if it finds that any employment misconduct having been committed by an employee, it is prevented from taking action in this respect. It is

always open for employer to issue charge-sheet against such employee and to lead evidence to prove the same in the domestic enquiry. This Court, therefore, does not concur to the contention of learned Counsel for Respondent No. 1 that since no adverse remarks were communicated to her and her service during the said period shall be deemed to be satisfactory and that no action could have been taken against her by Petitioner Management.

7. Here in this case Petitioner Educational Institution has issued charge-sheet to the Respondent No. 1 alleging misconduct. Respondent No. 1 has not denied all the allegations but had sought to explain circumstances existing at the relevant time. Petitioner has examined witnesses in the domestic enquiry. Petitioner on conclusion of enquiry imposed penalty of reverting the Respondent No. 1 from the post of Head Mistress to teacher.

8. Though there cannot be any dispute made with regard to the position of law that the jurisdiction of the Courts to re-appreciate the evidence led in the departmental enquiry is extremely limited and it is not

open for the Courts/Tribunal to substitute the findings of fact, however, at the same time it is the duty of the Court to ascertain the misconduct which is proved against employee and when the punishment is shockingly disproportionate to the misconduct, it is open for the Court to cause interference therein.

9. In so far as judgment of Anil Kumar Upadyaya (supra), it indicates that in that case the Petitioner was a member of armed forces. There were two different punishments imposed on two employees. In the context of the said case, it is observed that because one of the employee was inflicted with lessor punishment the same cannot become a ground to hold that punishment imposed on other employee is disproportionate. The reason, therefore, is that there cannot be claim of negative parity. Here in this case admittedly the teacher Mr. Pawar who was responsible for the sending of the forms and conducting examination has been imposed punishment of withholding of two increments whereas punishment of reversion came to be issued against the Respondent No. 1.

10. It is pertinent to note herein that the co-employee who was found to have committed the misconduct and was directly responsible for the same and was also found having attended his duties under the influence of liquor has been punished withholding of two increments whereas Respondent No. 1 has been reversed to lower rank. Not only that the punishment imposed by the Petitioner Management is shockingly disproportionate to the charges leveled against Respondent No. 1 but is also unjustifiable, discriminatory and vindictive. It is also settled law that employer must take into account the length of service, past service record and nature of misconduct committed. Here in this case the Petitioner Management has failed to take into account the said relevant factors into consideration.

11. Though this Court has come to the conclusion that the punishment imposed upon Respondent No. 1 is shockingly disproportionate, however, at the same time, since the Petitioner Employer was able to prove misconduct against Respondent No. 1, Respondent No. 1 would be liable to be imposed at least minor penalty. Learned Counsel for Petitioner, without prejudice to

his contentions, submits that the denial of difference of back wages would be appropriate punishment. This submission is opposed by learned Counsel for Respondent No. 1 by contending that it would be unjust to deny difference of back wages over a period of 13 years. This, according to him, would not be commensurate to the charges proved against Respondent No. 1.

12. Since there is no unanimity between Counsels for both sides with regard to the nature of punishment and as the said aspect has not been considered by the School Tribunal, instead of recording findings on this issue for the first time, this Court finds it appropriate to relegate back the matter to the Tribunal for deciding the quantum of punishment to be imposed upon the Respondent No. 1. Needless to clarify that this is not the case wherein a major penalty can be imposed upon her. Learned School Tribunal to pass appropriate order after hearing both sides keeping in mind the observations made by this Court.

13. In view of above, Petition stands disposed of in following terms:

O R D E R

- a. The order passed by School Tribunal setting aside impugned order dated 27.05.2013 of reverting Respondent No.1 from the post of Head Mistress to the post of Assistant Teacher is upheld.
- b. It is held that this is a fit case for imposing any minor penalty against Respondent No. 1.
- c. Only for limited purpose of determining adequate minor penalty on the Respondent No.1, matter is relegated back to the Tribunal.
- d. Tribunal is expected to decide the said issue within a period of a month from the date of appearance of parties before the Tribunal and after according them opportunity of hearing.
- e. Parties are directed to present before Tribunal on 21.04.2025. Tribunal not to issue fresh notices to the parties.
- f. Pending civil application(s), if any, stand disposed of.

(R. M. JOSHI, J.)