

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 692 OF 2024

Ravindra Umashankar Rai

....Petitioner

: Versus :

Rajasthan Relief Society, through
Its Secretary & Ors.

....Respondents

Alongwith

WRIT PETITION NO. 2815 OF 2024

Rajasthan Relief Society, through
Its Secretary & Ors.

....Petitioners

: Versus :

Ravindra Umashankar Rai

....Respondent

Mr. N.V. Bandiwadekar, Senior Advocate with Mr. Vinayak R. Kumbhar, Mr. Rajendra B. Khaire and Mr. Anand S. Phapale i/by. Ms. Ashwini N. Bandiwadekar for Petitioner in WP-2815/2024 and for the Respondent-Management in WP-692/2024.

Ms. Jai Kanade i/by. Mr. Rahul Shirgavkar, for the Petitioner in WP-692/2024 and for Respondent in WP-2815/2024

Ms. S.D. Chipade, AGP for State.

CORAM : SANDEEP V. MARNE, J.

Dated : 15 April 2025.

P.C. :

1) These are cross petitions challenging the judgment and order 13 July 2023 passed by the Presiding Officer, School Tribunal, Mumbai setting aside the termination order dated 20 September 2016 directing the Management to reinstate the Teacher w.e.f. 30 April 2014 with 70% backwages till the date of superannuation on 31 July 2021.

2) The Management has filed Writ Petition No.2815/2024 challenging the entire order of the School Tribunal directing reinstatement with 70% backwages, whereas the Teacher has filed Writ Petition No.692/2024 to the limited extent of denial of 30% backwages by the Tribunal.

3) I have heard Mr. Bandiwadekar, the learned senior advocate appearing for the management and Ms. Kanade, the learned counsel appearing for the Teacher.

4) It appears that the Teacher faced disciplinary proceedings in respect of the total eight allegations levelled in the Statement dated 1 March 2013. After assessing the evidence on record, the Tribunal has held that Allegation nos.1, 3 and 8 as vague and stale. I am in full agreement with the said findings of the Tribunal as the said three allegations are not only stale but lack material particulars such as dates, period etc. Allegation nos.1, 3 and 8 are thus totally vague.

5) The Tribunal has held that Allegation nos.4, 6 and 7 are not proved on the basis of evidence led by the Management. The findings relating to non-proof of Allegation Nos. 4,6 and 7 are recorded after considering the evidence led before the inquiry committee. This Court would not be in a position to reappreciate the evidence. I do not see any

element of perversity in the findings recorded by the Tribunal relating to Allegation Nos. 4,6 and 7.

6) The Tribunal has however held Allegation nos.3 and 5 to be proved against the Teacher.

7) Allegation no.3 was in respect of immodest behaviour of the teacher towards Smt. Namrata Doshi, Library Assistant on 11 September 2012 and not expressing any remorse when the incident was reported to the Headmaster of the School. Though this allegation is held to be proved by the School Tribunal, it has ultimately held that the said misconduct was not of serious nature warranting the penalty of termination. It also observed that Smt. Namrata Doshi (M.W.1) had left the enquiry without completion of her cross-examination.

8) So far as allegation No.5 is concerned, the same is with regard to setting up a wrong question paper for Mathematics for Standard-8 (Hindi Medium). It was alleged that the Teacher set up the said question paper on the basis of old syllabus. The Teacher did not dispute the position that the concerned question papers were indeed set up on the basis of old syllabus, but sought to accuse the Management for having directed him to do so. This accusation was raised by him in the reply to the said statement of allegations submitted on 7 March 2013. However, since the Teacher accepted the position that the question paper was set on old syllabus but attempted to accuse the Management for doing so, the burden shifted on him to prove that any particular person directed/instructed him to set the question paper on old syllabus. At the end of leading evidence by the Management, the Teacher did not express willingness or desire to lead his own evidence by examining any witness. He however stated during the course of meeting held on 5 August 2016 that he would submit his statement in

writing by 9 August 2016. He did submit his statement of defence on 9 August 2016. However, his Statement in the form of '*examination-in-chief*' did not even contain any averment that the question paper was set on the basis of old syllabus on instructions of any particular individual. Thus, no attempt was made by the Teacher to prove in the enquiry that any person had instructed him to set the concerned question paper on old syllabus. In my view, therefore the Tribunal has rightly held the said allegation to be established against the Teacher.

9) The issue for consideration is whether the Teacher deserved to be terminated on the basis of proof of Allegation no.3 (*immodest behaviour towards Smt. Namrata Doshi*) and Allegation no.5 (*setting up question paper on old syllabus*). The Tribunal itself has recorded a finding in para-103 of the judgment that the Teacher deserved some punishment especially for the charge of setting up of erroneous question paper. The Tribunal however did not remand the proceedings for imposition of substituted punishment nor undertook the exercise of imposing substituted punishment on the ground that the enquiry was held to be vitiated.

10) The Tribunal has held the enquiry to be vitiated only on the solitary point of the three members of the Enquiry Committee submitting three separate reports which is found to be in violation of the judgment of the Apex Court in *Vidya Vikas Mandal & Anr. Versus. The Education Officer and Anr.*¹. However, it appears that after submission of three individual enquiry reports, all the three enquiry committee members met together on 14 September 2016 and prepared a combined statement of proof relating to each article of charge. It therefore cannot be contended that there was total absence of deliberation between the three members of the Enquiry Committee so

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as to attract the ratio of the judgment in *Vidya Vikas Mandal* (supra). I am therefore of the view that the enquiry cannot be held to be vitiated on account of submission of three separate reports by the enquiry committee members. There appears to be enough deliberation between the three members of the Enquiry Committee, who have signed joint statement on 14 September 2016.

11) Once it is held that the enquiry was not vitiated and the Teacher deserved punishment atleast *qua* the misconduct of setting up erroneous question paper, the next issue is the nature of order that the Tribunal could have passed in the facts and circumstances of the present case. It appears that the Teacher has already crossed the age of superannuation on 31 July 2021. It was a second round of litigation before the Tribunal as an order of remand was passed in the earlier round of litigation because of non-grant of opportunity to the Teacher to cross-examine the witnesses. By now, period of more than 11 years has passed since the Teacher was first terminated on 30 April 2014. The Tribunal has imposed the substituted penalty in the form of denying 30% backwages to the Teacher. While doing so, the Tribunal appears to be swayed by its erroneous finding that the enquiry was vitiated. Since this Court has arrived at a finding that the enquiry was not vitiated, ordinarily there ought to have been remand to the Management/Enquiry Committee for deciding the quantum of substituted penalty. However, since substantial period has elapsed since the termination of the Teacher, in my view, it would be appropriate to decide the penalty by this Court rather than making an order of remand. If substituted penalty is to be imposed on the teacher, the same would begin from the penalty of reduction in rank and come down to order for recovery, withholding of increment and censure. If the punishment of reduction in rank is imposed, the same is likely to affect the pensionary benefits payable to the Teacher. In my view, therefore

denial of some portion of backwages to him, which is also the course adopted by the Tribunal, would represent the penalty imposable on him for the proved misconduct. Considering the facts and circumstances of the present case, I am of the view that the Teacher deserves to be punished with denial of backwages to the extent of 60% by awarding only 40% backwages during the intervening period. This would also ease the burden on the Management of paying the backwages for a substantial period of time. As observed above, the Teacher has already superannuated on 31 July 2021. Payment of pension and pensionary benefits would provide him better solace than seeking 100% backwages from the Management. Once two charges are held to be established, it would be inappropriate to direct payment of full backwages by the Management to the Teacher.

12) Mr. Bandiwadekar would rely upon the provisions of G.R. dated 14 March 1978 in support of his contention that after termination of the service of the Teacher, the post was not filled up and kept vacant and therefore the amount of backwages must be borne by the State Government. It would be for the Management to make a representation before the State Government. Payment of backwages to the Teacher need not await decision by the State Government on representation by the Management.

13) Accordingly, I proceed to pass the following order:

- (i) Judgment and order dated 13 July 2023 passed by the School Tribunal in Appeal No.26/2016 is modified to the extent that the Teacher shall be entitled to 40% of the arrears of emoluments payable from 30 April 2014 till the date of his superannuation i.e. 31 July 2021. The rest of the Order of the School Tribunal is upheld.

- (ii) If any subsistence allowance is paid to the teacher, the same shall be adjusted while paying the arrears of salary and allowances to him.
- (iii) The arrears shall be paid by the Management to the Teacher in the first instance within 8 weeks and the Management would be at liberty to make a representation to the State Government to seek reimbursement as per the G.R. dated 14 March 1978.
- (iv) The Management shall also forthwith submit a proposal for payment of pensionary benefits to the Teacher by taking appropriate steps in that regard within a period of 4 weeks. The proposal shall be decided and pensionary benefits shall be released by the concerned department within 8 weeks of receipt of proposal.

14) With the above directions, both the petitions are **disposed of.**

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[SANDEEP V. MARNE, J.]