



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

WRIT PETITION NO.2039/2020

Manish Prakashrao Bargat and Ors. .Vs. Shiksha Mandal, Wardha and anr.

AND

WRIT PETITION NO.1715/2021

Shiksha Mandal, Wardha and anr. .Vs. Manish Prakashrao Bargat and Ors.

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

Court's or Judge's orders

Mr. A. D. Mohogaonkar, Advocate for petitioner – Employee.
Mr. A. C. Dharmadhikari, Advocate for petitioner – Management.
Mrs. M. S. Naik, A.G.P for respondent – State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 3, 2025

Heard.

2. Management and Employee are both aggrieved by judgment and order dated 21.11.2019 passed by School Tribunal, Chandrapur in School Tribunal Case No.1/2016. The operative part of the judgment of the School Tribunal reads thus:

- “1) The appeal is partly allowed with costs.
- 2) Order of termination dated 14.12.2015 issued by respondent No.1 is quashed and set-aside.
- 3) Inquiry initiated against the appellant is quashed and set-aside from the stage of communication of statement of allegations.
- 4) Respondent No.1 Management is directed to communicate to the appellant statement of allegations and demand from him a written explanation as per rule 36. (1) of the M.E.P.S. Rules 1981.
- 5) Respondent No.1 shall conduct the inquiry strictly in accordance with Rule-36 to 37 of the M.E.P.S. Rules.
- 6) Respondent No.1 is directed to complete the said inquiry as expeditiously as possible and it, should be completed within the period of 120 days from the date of first meeting of the inquiry-committee as provided in Rule-37(2) (f) of the M.E.P.S. Rules.

7) *The Appellant was placed under suspension at the relevant time, shall therefore be construed to be under suspension and the said suspension may continue till the conclusion of the enquiry.*

8) *As an opportunity to conduct fresh enquiry has been granted to the management, the entitlement of the appellant for the back wages and other benefits will depend upon the outcome of the enquiry.*

9) *Respondent 'No.1 Management shall pay to the appellant Rs.10,000/- towards the costs of the appeal within 30 days from the date of this order.'*

3. As could be seen, the order of termination has been quashed and set aside with directions to the Management to commence inquiry *de novo*. Reasons for such directions was non compliance of the Rules of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (hereinafter referred to as the "Rules of 1981") particularly Rules 36 and 37 thereof.

4. Having heard both sides, there appears no dispute that the statement of allegations was not served on the Employee in terms of Rule 36(1) of Rules of 1981. Further, the constitution of the Committee was not in accordance with Rule 36(2). Non compliance of Rule 36(3) is also not in dispute.

5. Mr. A. D. Mohogaonkar, learned counsel for the Employee, submits that the School Tribunal could not have relegated back the inquiry inasmuch as the Employee has been honourably acquitted in the sessions trial vide judgment dated 28.09.2018. According to him, the charges faced by the Employee in sessions trial were identical to the charges alleged for commencement of the inquiry.

6. I have gone through the charges in both the cases viz. sessions trial and the departmental inquiry. The charge, which employee faced before the Sessions Court was as regards incident that occurred on 23.05.2025. The employee faced trial for the charge viz. physical contact with victim girl, aged 16 years, who was his

student by advancing and involving unwelcome and explicit sexual overtures by making sexually coloured remarks by putting his hands on her waist and hand.

7. As against, in the departmental inquiry, the Employee is facing one more charge, which relates to calling students to his chamber from time to time and to indulged into objectionable conversations, unwarranted touches etc. Thus, in addition to the incident that occurred on 25.03.2015, which was reported to the police which resulted into filing of charge-sheet and facing trial for the said charges, the employee is also facing charges, which were reported to the Management by other students, which was not subject matter of sessions trial. Thus, it cannot be said that the employee has been honourably acquitted from all the charges levelled against him in the departmental inquiry.

8. As such, the counsel for the Employee has relied upon the judgment of the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and anr.; [(1999) 3 SCC 679]**, wherein the Supreme Court on the point of effect of acquittal in the criminal case in context with the factual matrix of the case before it, held thus:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom." The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were

examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

9. As could be seen, acquittal in the criminal case was found to be yet another reason for discarding the whole of the case of the respondent. The finding further indicates that the facts and the evidence in both proceedings namely; sessions trial and the departmental inquiry were the same without there being any iota of difference and, therefore, the Supreme Court held that the distinction, which is usually drawn as between departmental inquiry and criminal case on the basis of the approach and burden of proof, would not be applicable in the said case.

10. Such is not the case here. As noted above, the employee, in addition to the charge which he faced in criminal case, is facing another charge. That being so, the judgment cited will be of no assistance to him.

11. Mr. Mohogaonkar, learned counsel for the Employee has then invited my attention to Section 11 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, to argue that the Tribunal has no jurisdiction to issue directions

as are found in operative clause No.4 onwards. According to him, the Tribunal committed an error of law by directing the Management to communicate to the Employee, the statement of allegations and demand from him a written explanation in terms of Rule 36(1) of Rules of 1981. He further submits that directions to complete inquiry within 120 days was also uncalled.

12. I may here, however, note that during the course of argument, the petitioner's counsel made a grievance that the direction to complete inquiry within 120 days was not complied with by the Management. Thus, it appears that the rule of convenience is invoked while criticizing the judgment of the School Tribunal. The directions which favour the Employee are taken aid of and the directions which go against him are complained of.

13. Be that as it may, the law as regards the mode to be adopted by the School Tribunal and the course once inquiry is found to be in violation/breach of the Rules of 1981, is well settled. The Supreme Court in the case of State of Punjab and Others Vs. Dr. Harbhajan Singh Greasy, U. P. State Spinning Co. Ltd. Vs. R. S. Pandey and another [(2005) 8 SCC 264] and U. P. Textile Corporation Ltd. Vs. P. C. Chaturvedi and Others; [(2005) 8 SCC 211], observed that in case of no inquiry or defective inquiry, proper relief is to set aside the dismissal with direction to the management to hold inquiry from the stage the illegality has crept in and it would not be proper to direct reinstatement with consequential benefits. So far as the back-wages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh inquiry. This is what precisely has been done by the School Tribunal. The directions issued by the School Tribunal may, therefore, be viewed in the light of proposition of law as spelt out by the Supreme Court in above noted cases.

14. So far as Management's challenge is concerned, Mr. A. C. Dharmadhikari, learned counsel contends that services of the Employee were terminated on 14.12.2015. He was acquitted on 28.09.2018 and since the order of acquittal was passed subsequent to order of termination, no benefit could be extended to him.

15. The argument is not convincing inasmuch as once the inquiry is found to be vitiated for non compliance of the mandatory rules of inquiry and once the order of termination is set aside, while conducting inquiry afresh, the Management will be bound to consider the effect of acquittal in the case faced by the Employee for the charges akin to the charges in the departmental inquiry, of course, in terms of settled law on this point, as held by the Supreme Court in *Capt. M. Paul Anthony's* case. If the facts and the evidence in the departmental inquiries and criminal cases are same, without there being iota of difference and if the acquittal is based on examination of witnesses which are cited in the departmental inquiry as well, the employee will be entitled for the benefit of acquittal. In other cases, different approach will have to be adopted.

16. Viewed thus, I find no substance in the challenge raised by the Management as well as the Employee. Both the petitions are dismissed accordingly. No order as to costs.

(Anil L. Pansare, J.)