

(2015) 04 BOM CK 0108

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 2574 of 2007

Lokmanya Tilak
Smarak Mandal and
Others

APPELLANT

Vs

Ravindra Rameshrao
Sambare and Others

RESPONDENT

Date of Decision: April 15, 2015

Acts Referred:

- Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - Section 9

Citation: (2015) 04 BOM CK 0108

Hon'ble Judges: R.K. Deshpande, J

Bench: Single Bench

Advocate: D.L. Dharmadhikari, for the Appellant; S.G. Joshi, Advocates for the Respondent

Final Decision: Allowed

Judgement

R.K. Deshpande, J.

1. The challenge in this petition is to the judgment and order dated 10.04.2007 passed by the School Tribunal, allowing Appeal No. STC/42/2006 filed under Section 9 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (in short MEPS Act), challenging the termination of services with effect from 09.11.2006 on the basis of the charges proved against the respondent no. 1 in the enquiry. The School Tribunal has directed reinstatement of the respondent no. 1 in service to the original post of Assistant Teacher with continuity in service and full backwages.

The matter was admitted on 28.04.2008 and during the pendency of the petition, there was stay to the effect and operation of the judgment and order passed by the School Tribunal. As a result, the respondent No. 1 is out of employment.

2. It is not in dispute that the respondent no. 1 was terminated from service by an order dated 04.10.2006 on the ground that the charges of misconduct levelled against him have been proved. The School Tribunal has set aside the enquiry report along with the order of termination by recording the findings as under;

[I] The Enquiry Committee was not constituted in accordance with Rule 36(2)(a) of the MEPS Rules for the reasons stated below;

(a) The convener of the Enquiry Committee, Shri A.S. Khati was not the member of the Managing Committee and he could not have been appointed as representative of the Management;

(b) The respondent no. 1 was not given opportunity to nominate his representative on the Enquiry Committee;

(c) The Management has failed to produce on record a copy of the Resolution appointing Shri A.S. Khati as the Convener of the Enquiry Committee.

[II] Conjoint reading of Rule 33 and Rule 36(2) of the said Rules shows that the Management has to decide first to conduct the enquiry prior to issue of statement of allegations and again it has to decide in its second turn on placement of explanation to the statement of allegations given by the delinquent employee. In the case in hand, there is nothing on record to show that the Management at any time before issuance of statement resolved or decided to conduct the enquiry and thereafter the statement of allegations were served upon the employee. The School Tribunal has held that resolutions dated 07.03.2006 and 09.03.2006 said to have been passed have not been placed on record. Hence, the Management has failed to establish compliance of requirement of Rule 36(2) of the said Rules.

[III] There is nothing on record to show that the Management asked the respondent no. 1 to nominate his nominee to constitute Three-Member Enquiry Committee and by issuing letter dated 11.03.2006, the respondent no. 1 was asked only to appoint his representative to defend his case. Hence, there is violation of Rule 36(3) of the said Rules.

[IV] As per sub-rule (1) of Rule 37 of the MEPS Rules, the chargesheet was required to be issued by the Secretary or the Chief Executive Officer, however, the chargesheet was signed by the President of the Management and thus, there was violation of the mandatory provision of the said Rules.

[V] Two members of the Enquiry Committee i.e. Shri A.S. Khati and Shri Bhaskar Bhat independently communicated the communication to the respondent no. 1 under the heading "enquiry report". Both the reports are word to word same.

[VI] There is nothing on record to show that the Convener of the Enquiry Committee forwarded the summary of the enquiry proceedings to the respondent no. 1 and allowed him 7 days time to submit his explanation. Thus, there was non-compliance of Rule 37(4) of the MEPS Rules. The findings recorded by the Enquiry Committee are not based upon any trustworthy evidence and hence the same are perverse.

[VII] There is violation of Rules 33, 36 and 37 in conducting the enquiry.

3. With the assistance of the learned counsels appearing for the parties, I have gone through the enquiry report, the other documents placed on record, memo of appeal, reply filed by the management and the judgment of the School Tribunal.

4. Once the School Tribunal records a finding that the Enquiry Committee was not duly constituted in accordance with the mandatory provisions of the M.E.P.S. Act and the Rules thereunder, the Management should have been left with the discretion to hold fresh enquiry and there was no justification and propriety for the School Tribunal to proceed to decide whether the charges levelled against the respondent no. 1 were false, fabricated or were not proved.

5. Basically, there were two main charges levelled against the respondent no. 1 the first was that on 08.10.2005 the respondent no. 1 dashed the head of one of the girl student on the desk as a result she suffered an injury and was required to be taken to the Doctor and the second was that, there was common complaint of the girl students of 9th standard regarding the misbehaviour of the respondent no. 1 with them. The witnesses were examined and the copies of the depositions were also forwarded along with the summary of the proceedings to the respondent no. 1 on 19.08.2006. In the absence of any specific challenge in respect of the perversity of the findings recorded holding the respondent no. 1 guilty of the charges, neither the termination nor the report of the Enquiry Committee should have been set aside.

6. After going through the grounds of appeal, I do not find any specific ground raised to the effect that specific finding recorded by the Enquiry Committee are found to be perverse in the sense that they are not based upon any evidence available on record or they are based upon the irrelevant and inadmissible evidence or that the charges held to be proved were not the part and parcel of the charges or the statement of allegations issued to the respondent no. 1. The finding of the Enquiry Committee has not at all been challenged except to allege that the charges framed were false and fabricated one.

7. The next ground raised to the memo of appeal was that the Management failed to ask the respondent no. 1 to nominate the person on his behalf amongst the employees of any private school on the proposed Enquiry Committee and to forward his name along with the written consent to the Chief Executive Officer as required by Rule 36 of the said Rules. As per rule 36(2)(a)(ii), one member on the Enquiry Committee is required to be nominated by the employee from amongst the employees of any private school. On

11.03.2006, the respondent no. 1 was issued a letter informing him that a Three-Member Enquiry Committee has been decided to be constituted. In accordance with that, Shri A.S., Khati, the representative of the Management and Shri Bhaskar Bhat, a State Awardee Teacher have been appointed as the members of the Enquiry Committee. The respondent No. 1 was called upon to inform the name of the representative on the Enquiry Committee.

8. The respondent No. 1 in response to this communication informed the Management on 23.03.2006 that instead of appointing any representative, he shall himself represent his case whenever it is required. It is thus apparent that an opportunity was given to the respondent no. 1 to submit the name of his representative, to constitute Three-Member Enquiry Committee. Neither the language employed in the communication dated 11.03.2006 issued by the Management, nor the communication dated 23.06.2006 issued by the respondent No. 1 in response thereto is happily worded. However, in my opinion, issuance of such letter has to be understood to mean that in order to constitute Three-Member Enquiry Committee, the respondent no. 1 was asked to submit the name of his representative. The School Tribunal has, therefore, committed an error in holding that no opportunity was given to the respondent no. 1 to appoint his representative on the Enquiry Committee.

9. It is not the ground raised in the memo of appeal that Shri A.S. Khati was not a member of the Managing Committee and he could not have been appointed as a Convener of the Enquiry Committee. The Ground No. 3 raised in memo of appeal is that, the respondent no. 1 was not intimated about the nomination of Shri Khati as a Member of the Enquiry Committee by the Management. It is also not the ground raised that there was no resolution passed by the Management on 07.03.2006 nominating Shri A.S. Khati as the Convener of the Enquiry Committee. In the absence of any such ground, the School Tribunal has committed an error in holding that Shri A.S. Khati was not the member of the Management and that there was no resolution passed appointing him as the Convener on the Enquiry Committee.

10. There is no ground in the memo of appeal that as per Rule 33 of the MEPS Rules, the Management has to first decide whether to hold an enquiry and if it decides, then to authorize the Chief Executive Officer to conduct an enquiry and issue the statement of allegations. It is not the ground raised that there was no such resolution passed by the Management to hold an enquiry and to authorize the Chief Executive Officer to issue a statement of allegation. In the absence of any such factual ground being raised in the memo of appeal, the School Tribunal has committed an error in recording the finding that in the absence of resolution being produced on record, the Management has failed to establish the compliance of Rule 33 in issuing the statement of allegations without following the due process of law.

11. It is also not the ground specifically raised in the memo of appeal that the Convener of the Enquiry Committee failed to forward the summary of enquiry proceedings to the

employee and to grant him 7 days time to furnish his explanation. As pointed out earlier, on 18.08.2006, the summary of enquiry proceedings along with the copies of depositions were sent to the respondent no. 1, calling upon him to furnish his explanation. The respondent no. 1 sent his explanation on 29.08.2006 and the Enquiry Committee submitted the final report after considering the explanation on 05.09.2006.

12. There is absolutely no basis for the findings recorded by the School Tribunal about the violation of Rules 33, 36 and 37 of the MEPS Rules. There is neither any pleading in respect of it nor the proof of its violation. The School Tribunal has committed an error of jurisdiction in taking into consideration the grounds and challenges based on facts without there being any pleadings. There is no material placed on record to show that there is any violation of the mandatory provisions of Rules 33, 36 and 37 of the MEPS Rules to conduct an enquiry against the respondent no. 1. There is nothing on record to show that the enquiry conducted was in breach of the principles of natural justice. There are no grounds of challenges raised in it as to how the findings recorded by the Enquiry Committee are perverse. In the absence of all these, the School Tribunal has committed an error in allowing the appeal. The judgment and order impugned cannot, therefore, be sustained.

13. In the result, the writ petition is allowed. The impugned judgment and order dated 10.04.2007 passed by the School Tribunal, in Appeal No. STC/42/2006 filed under Section 9 of the MEPS Act is hereby quashed and set aside. The said appeal is dismissed.

Rule is made absolute in these terms. No order as to costs.