

(2008) 03 BOM CK 0135**Bombay High Court****Case No:** Writ Petition No. 165 of 2008

President/Secretary Pioneer
Education Trust and Others

APPELLANT

Vs

Janardan Mitharam Jangale

RESPONDENT**Date of Decision:** March 11, 2008**Citation:** (2008) 3 ALLMR 406 : (2008) 3 BomCR 575**Hon'ble Judges:** A.M. Khanwilkar, J**Bench:** Single Bench**Advocate:** Suresh Panicker and Pallavi Vishwasrao, for the Appellant; C.R. Sadasivan and N.M. Ganguli, for the Respondent

Judgement

A.M. Khanwilkar, J.

Heard counsel for the parties. Rule. Rule made returnable forthwith by consent. As short question is involved in the petition, taken up for final disposal forthwith by consent. Notice to respondent No. 2 is dispensed with being formal party.

2. This petition takes exception to the judgement and order passed by the School Tribunal, Mumbai dated 29th October 2007 in Appeal No. MUM/22/2006. By the said judgement, the Tribunal has allowed the appeal preferred by the respondent No. 1 thereby setting aside the order of termination dated 10th June 2006 and further directing to reinstate the respondent No. 1 on his original post of Teacher and to pay the arrears of 50% of salary from the date of termination and also costs of Rs. 1,000/- towards expenses of fees. The Tribunal has further ordered that the above said directions should be complied with within 40 days from the date of order. The said conclusion was reached by the Tribunal on the finding that the disciplinary enquiry conducted against the respondent No. 1 was defective in more than one respect as referred to in the order.

3. The argument canvassed before this Court by the petitioner-management is that even if the opinion recorded by the Tribunal about the illegalities committed during

the disciplinary enquiry is to be accepted as it is, the Tribunal completely exceeded its jurisdiction in straight away directing reinstatement of respondent No. 1 with other consequential orders passed on that basis. According to the petitioner, however, the Tribunal at best could have relegated the parties to the stage of illegality noticed by the Tribunal such as framing of improper charges and submission of report beyond stipulated period. This submission is buttressed on the basis of the exposition of the Apex Court in the case of *Vidya Vikas Mandal and Anr. v. The Education Officer and Anr.* reported in 2007(2) All M.R 461 . It is argued on behalf of the petitioners that even in that case after the Apex Court noticed that there was non compliance with the mandatory provisions, proceeded to direct conducting of enquiry from the stage of such illegality by requiring the constitution of fresh committee, as can be discerned from the observations in paragraph 9 of the said judgement. The counsel for the petitioner has also placed reliance on the other decision such *State of Punjab and Others Vs. Dr Harbhajan Singh Greasy*, and in case of *Saindranath Jawanjal Vs. Pratibha Shikshan Sanstha and The Presiding Officer (Additional), School Tribunal, (Full Bench)* and *Adarsh Vidya Mandir Trust and Another Vs. Shri Awadesh Narayan Komal Singh and Others*.

4. Having considered the rival submissions I find substance in the stand taken on behalf of the petitioners that after the finding reached by the Tribunal that illegality was committed in the course of the disciplinary enquiry against respondent No. 1, in stead of straight away directing the petitioners to reinstate the respondent No. 1 in service and pass consequential orders therefor, ought to have relegated the parties to the same stage where illegality has been found by the Tribunal. This position is reinforced in view of the exposition in the aforesaid decisions. Having realised this position, the advocate for respondent No. 1 submits that the respondent No. 1 will have no objection if the enquiry was to commence from the stage of framing of charge afresh and proceed in accordance with law thereafter while ensuring that fair opportunity is given to the respondent No. 1 during the said enquiry coupled with the fact that the enquiry should be concluded within the stipulated period of 120 days.

5. In the circumstances, the impugned decision is set aside and instead the appeal is partly allowed by setting aside the order of termination as also the process of disciplinary enquiry conducted by the petitioner in relation to respondent No. 1 on the basis of which termination order has been passed. Instead, the petitioners will be now free to proceed against the respondent No. 1 afresh from the stage of framing of charges which procedure shall be followed in conformity with the provisions of the Act and the Rules while ensuring that fair opportunity is given to the respondent No. 1 during such enquiry and that the enquiry is concluded not latter than the statutory period of 120 days from 24th March 2008. All questions in the said enquiry are left open to be decided on its own merits in accordance with law.

6. In the mean time, the petitioners will be free to continue to place the respondent No. 1 under suspension while complying with the condition stipulated under order dated 3rd March 2006 passed by the Division Bench of our High Court in Writ Petition No. 237 of 2006.

7. Needless to observe that the respondent No. 1 shall extend full co-operation for early disposal of the enquiry as has been noted by the Division Bench in the above said order.

8. Petition disposed off in the above terms. No order as to costs.