IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6868 OF 2016
WITH
CIVIL APPLICATION NO. 3649 OF 2024

Shri. Devidas Bhanudas Toradmal
Age: 50 years, Occu.: Service as
Assistant Teacher Sudarshan Vidyalaya,
Sangvi Patan, Tq. Ashti, Dist. Beed.
R/o. At and post Bahiroba Wadi,
Tq. Karjat, District Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai-32.

2. The Deputy Director of Education,
Aurangabad.

3. The Education Officer (Secondary)
Zilla Parishad, Beed.

4. Shetkari Shikshan Prasarak Mandal,
Ashti, Tq. Ashti, District Beed,
Through its President.

5. Sudarshan Vidyalaya, Sangvi Patan
Tq. Ashti, District Beed,
Through its Headmaster .. Respondents

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Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate for the petitioner.
Mr. P. S. Patil, Additional Government Pleader for respondent Nos.1 to 3.
Mr. S. S. Thombre, Advocate i/b Mr. B. T. Bodkhe, Advocate for respondent Nos.4 and 5.

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CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.
RESERVED ON : 30 JULY 2024
PRONOUNCED ON : 08 AUGUST 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :-

. Rule. Rule is made returnable forthwith. With the consent of the litigating sides, heard finally.

2. Petitioner is a teacher of the respondent No.4 private management, who is challenging order dated 18.04.2016 imposing penalty and further seeking direction to grant him benefits of service like seniority, backwages and consequential benefits. The respondent management imposed punishment of reducing the scale of the petitioner after conducting an inquiry. During pendency of this matter he attained age of superannuation on 31.05.2024.

3. Due to supervening event of superannuation, Civil Application No.3649 if 2024 was filed for fixing present matter for final hearing and for a direction for forwarding the proposal of retiral benefits to the concerned department. In response to the civil application, management submitted reply and disclosed that the proposal for retiral benefits was forwarded on 12.04.2024 and necessary compliance has been made. In view of subsequent development, it is additionally prayed by the petitioner that if the petition succeeds, then revised proposal for retiral benefits be forwarded to the competent authority.

4. Petitioner is a permanent employee of the respondent No.5 School

run by the respondent No.4 institution. He was appointed as Assistant Teacher from 15.06.1992 and his appointment was approved by the respondent NO.3 Education Officer. He was issued appointment orders on 02.06.1993 and again on 13.06.1994. His appointments were approved. He was granted permanent approval from 01.07.1999. The respondents have not disputed the initial appointment of the petitioner and the approvals. Neither have they disputed that petitioner is a permanent employee.

5. It is case of the petitioner that the office bearers of the respondent had exploited him and other employees by extracting money regularly. When the petitioner protested, he was transferred from earlier school of Matkuli to the respondent No.5 School vide order dated 15.06.2015. There was issue in respect of permitting the petitioner to join the transferred place. The petitioner and the respondents have conflicting stands in this regard but those are not relevant for the decision of present controversy. The respondent management proposed disciplinary action against him.

6. To decide the controversy involved in this petition, we propose to narrate the following facts leading to the disciplinary action against the petitioner :-

(i) Education Officer granted permission to suspend the petitioner by order dated 07.12.2015.

(ii) Secretary addressed letter dated 11.12.2015 informing the decision of the management of constitution of inquiry committee and approval given by the Education Officer to suspend him.

(iii) Secretary informed petitioner vide letter dated 08.01.2016 that inquiry committee was constituted and simultaneously informed Education Officer the members of the inquiry committee.

(iv) Petitioner submitted application dated 19.01.2016 that order of suspension was not served upon him and constitution of inquiry committee was illegal.

(v) Simultaneously, on the same date petitioner informed name of Mr. B. S. Khose as his nominee.

(vi) Secretary informed petitioner vide letter dated 27.01.2016 allegations levelled against him, replying his letter dated 23.12.2015.

(vii) Petitioner was informed about the dates of hearing on couple of occasions.

(viii) Statement of allegation was forwarded by inquiry committee to the petitioner on 24.02.2016.

(ix) Inquiry Committee issued the Charge-sheet comprising of five charges to the petitioner vide letter dated 26.02.2016.

(x) Inquiry report was prepared on 09.04.2016 disclosing inquiry on 11 charges, which was signed by two members and imposing penalty of reducing the scale of the petitioner.

(xi) Petitioner was informed decision of punishment of reduction of scale by the Secretary and directed him to resume the duties as the suspension was revoked due to conclusion of the inquiry.

7. Learned Senior Counsel Mr. V. D. Sapkal appearing for the petitioner submitted that the procedure contemplated under Rule 35 to 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the "Rules") was not followed in conducting inquiry. No opportunity was extended to the petitioner. There is gross violation of statutory stages of the inquiry causing grave prejudice to the petitioner. The constitution of the inquiry committee was illegal. Petitioner was not supplied with relevant papers with the charge sheet. The summary of the inquiry and the report was not furnished. The report of the inquiry is *per se* illegal as it was signed by two members only. The committee had no jurisdiction to impose penalty. Entire disciplinary action is vitiated.

8. Learned Counsel for the petitioner seeks to rely upon judgment in the matter of **Thapar Education Society and another Vs. Shyam Maroti Bhasarkars and Ors., [1998 (2) ALL.M.R. 399], Vidya Vikas Mandal and Anr. Vs. Education Officer and Anr, [2007(2) All.M.R. 461]** and **Vijay Singh V. State of U.P. and Ors. [AIR 2012 SC 2840].**

9. As this is a matter of disciplinary action conducted by the private management, the contesting parties are respondent Nos.4 and 5, who have filed affidavit-in-reply. It is contended by the management that petitioner was suspended on 11.12.2015 with prior permission of Education Officer.

The petitioner was aware of the suspension. Due procedure of law was followed in conducting inquiry. He was issued necessary communication disclosing constitution of the inquiry committee and was also served with the charge-sheet. The constitution of inquiry committee was in accordance with law. The petitioner appointed Mr. Khose as his representative. The charge sheet was served on the petitioner on 09.12.2015 and again was forwarded to him.

10. It is further contended that petitioner was informed the dates of hearing. Charges were communicated again vide letter dated 27.01.2016. Petitioner and his nominee were present. Petitioner was extended full opportunity of hearing. After considering the material, report was prepared. Though there was material against petitioner for imposing major penalty, minor punishment was imposed vide order dated 18.04.2016. It is lastly, contended that the petitioner has alternate remedy under Section 4-A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the "Act").

11. Learned Counsel Mr. S. S. Thombre appearing for the respondent Nos.4 and 5 submitted that petition is liable to be dismissed as there is no challenge to the inquiry report. He would further submit that minor penalty was imposed as contemplated by Rule 29 by following procedure

under Rule 32 of the Rules. The petitioner was given opportunity to reply the charges. There is remedy under Section 4A of the Act.

12. We have considered rival submissions of the parties. We are called upon to adjudicate as to the validity of the punishment imposed upon the petitioner. We have already narrated the sequence of events to disclose the manner in which the disciplinary action proceeded against him.

13. It reveals from record that the respondent management proposed disciplinary action anticipating major penalty to be imposed upon the petitioner. Following uncontroverted events would indicate intention to conduct full fledged disciplinary inquiry, which is necessary for imposing a major penalty :-

(a) Prior permission was secured from Education Officer on 07.12.2015 to suspend petitioner and he was suspended.

(b) Inquiry committee was constituted comprising of the members contemplated by Rule 36(2)(a).

(c) Petitioner was permitted to nominate his representative on the committee.

(d) Statement of allegations was given, followed by charge-sheet.

(e) Hearing was conducted on various dates by apprising the petitioner and his nominee to remain present.

(f) Inquiry report was prepared by two members on 09.04.2016 imposing penalty of reduction of pay scale.

14. For imposing minor penalty procedure is prescribed by Rule 32 of the Rules. Normally, it is common knowledge that when the misconduct or the allegations are not serious in nature, employer resorts to minor penalty. The procedure for its imposition is not as elaborate as that of imposition of major penalty. What is expected under Rule 32 is to extend an opportunity to explain the lapses or the omissions, in writing. Considering the explanation, further action needs to be taken.

15. Instead of resorting to the procedure contemplated by Rule 32 respondent management preferred to resort to procedure of Rule 32 to 37. No specific lapse or omission or misconduct was ever conveyed to the petitioner calling upon his explanation. There was no need to resort to constitution of inquiry committee and issuance of statement of allegations/charge sheet when a short procedure was contemplated for minor penalties. We are of the considered view that procedure for imposing minor penalty was not followed by the management. They resorted to cumbersome procedure that too halfheartedly and now a stand is being taken that only minor penalty was imposed. We cannot approve this conduct of the management.

16. Petitioner is imposed punishment of reduction of pay scale by the impugned communication. The classification of the penalties is provided

by Rule 31 of the Rules, which is as follows :-

> "31. Classification of penalties :-
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> :- The penalties shall be classified into minor and major penalties as under:-
> (1) minor penalties:-
> i) reprimand,
> ii) warning,
> iii) censure
> iv) withholding of an increment for a period not exceeding one year,
> v) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the institution by negligence or breach of orders.
> (2) major penalties:-
> i) reduction in rank,
> ii) termination of service"

17. The punishment of reduction of pay scale does not figure either in sub-rule (1) or sub-rule (2) of Rule 31. It is tried to be submitted that it would fall under "withholding of an increment for a period not exceeding one year". It is preposterous to accept this submission of learned Counsel for the respondent. There is a stark distinction in reduction of scale and withholding of increment. The punishment imposed is *ex facie* illegal and liable to be quashed.

18. Learned Senior Counsel would refer to judgment of Hon'ble Supreme Court in the matter of **Vijay Singh Vs. State of U.P. and Ors. [AIR 2012 SC 2840]**. In that matter, punishment of withholding of integrity certificate was imposed upon the delinquent. Delinquent had preferred appeal before in-house mechanism unsuccessfully. However, revisional authority did not interfere. The delinquent was required to approach high Court which resulted in dismissal. Thus, delinquent/appellant was before Supreme Court raising ground that punishment awarded was without jurisdiction.

19. Considering the punishments provided under the relevant rules, following findings are recorded by Hon'ble Supreme Court :-

> "8. Admittedly, the punishment imposed upon the Appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.
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> 9. This Court in State of U.P. and Ors. v. Madhav Prasad

Sharma (2011) 2 SCC 212, dealt with the aforesaid Rules 1991 and after quoting Rule 4 thereof held as under:

> "16. We are not concerned about other rule. The perusal of major and minor penalties prescribed in the above Rule makes it clear that sanctioning leave without pay is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishments prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of "no work no pay" cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms."
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> (Emphasis added)

10. The Authority has to act or purport to act in pursuance or execution or intended execution of the Statute or Statutory Rules. (See: The Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, AIR 1965 SC 555; The Municipal Corporation, Indore v. Niyamatulla (dead) by his Legal representatives, AIR 1971 SC 97; J.N. Ganatra v. Morvi Municipality, Morvi, AIR 1996 SC 2520; and Borosil Glass Works Ltd. Employees Union v. D.D. Bambode and Ors., AIR 2001 SC 378).

11. The issue involved herein is required to be

> examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide: Bachhittar Singh v. State of Punjab and Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. and Ors., (2010) 10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. and Ors. v. Ananta Saha and Ors., (2011) 5 SCC 142).
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> Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules.
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> Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the Appellant."

20. Ultimately Supreme Court allowed appeal holding that there was no jurisdiction to impose punishment. We find substance in the submission of the learned Senior Counsel advanced on the basis of ratio laid down as cited above. The punishment of reduction in scale has not been prescribed by either Rule 29 or 31 of the Rules in the present matter. It is not permissible for the management to impose punishment which is not recognized by governing statute.

21. It transpires from record that respondent management adopted strange procedure for conducting disciplinary action against petitioner. Complete go by has been given by the management to the procedure contemplated by Rule 36(1) and (2) of the Rules. No opportunity was given to the petitioner to know the statement of allegations and to submit written explanation. The action commenced with communication dated 11.12.2015 disclosing intention to constitute inquiry committee. Thereafter letter was issued on 08.01.2016 apprising the petitioner and the Education Officer the names of the members of the inquiry committee. The sequence contemplated by Rule 36 sub-rule (3) and (4) was not followed.

22. The statement of allegations is communicated vide communication dated 24.02.2016, after constitution of the inquiry committee. Immediately, vide letter dated 26.02.2016 charge-sheet comprising of five charges was conveyed. Though it is the contention of the management that charge-sheet was communicated vide letter dated 09.12.2015, even that was not a stage to forward the charge-sheet. On or about 09.12.2015, the inquiry committee was constituted. Pertinently, there is no material on record to indicate that relevant papers were ever forwarded to the petitioner to meet out the charges. The charge-sheet dated 26.02.2016 was communicated to petitioner by Inquiry Committee. The charges would be formulated by management. The management should have served charge-sheet. We find

gross violation of Rule 37(1), 37(2)(a)(b) of the Rules. There is no material to indicate that due opportunity was given to the petitioner as contemplated by Rule 37(2)(c) and there was proper compliance of Rule 37(d).

23. It is not made clear as to whether any oral evidence was adduced. The inquiry report has not been signed by nominee of the petitioner. Its conclusion indicates that the signatories of the report imposed punishment of the reduction of the scale. It is contemplated by Rule 37(6) that inquiry Committee should complete the inquiry and communicate its findings on the charges and its decision on the basis of these findings to the management for specific action to be taken against the delinquent. Thereafter the decision of the Inquiry Committee should be implemented by the management by issuing necessary orders within seven days from the date of receipt of the decision of the Inquiry Committee. In the present matter, Inquiry Committee actually took the decision and imposed the penalty, instead of making any recommendation to the management. Therefore, learned Counsel for the petitioner rightly submitted that Inquiry Committee was not having any jurisdiction to impose the penalty. There is gross violation of statutory procedure.

24. The punishment imposed vide order dated 18.04.2016 is in gross

violation of statutory procedure of Rule 36 and 37 of the Rules. The procedure adopted by the respondent management is unheard of. We have no hesitation to hold that imposition of punishment is ex-facie illegal and arbitrary and liable to be quashed. When the law requires the things to be done in a particular manner have to be performed in that manner only and not otherwise. This settled principle of law has been violated.

25. Though petitioner has not specifically challenged the inquiry report, petition is directed against the imposition of penalty. The scheme of MEPS Act and Rules provides remedy to challenge penalty and not the inquiry report. While examining validity of penalty, it is open for the writ Court to look into the manner in which the disciplinary action is taken and also inquiry report. When Inquiry Report is the basis for imposition of the penalty under challenge, there need not be a separate prayer for putting up a challenge to the Inquiry Report. Writ Court is not powerless to examine entire disciplinary action, albeit no challenge is put up to the inquiry report.

26. The case in hand is neither covered by clause (a) nor by clause (b) of sub-section (1) of Section 4A of the Act. Respondent management conducted inquiry and claims to have imposed minor penalty. Remedy under Section 4A of the Act cannot be availed by the delinquent. Petitioner

has no remedy under Section 4A of the Act. We reject this submission of respondent Nos.4 and 5.

27. The upshot, writ petition deserves to be allowed. Hence, following order is passed :-

ORDER

I) Writ Petition is allowed.

II) Orders/letters dated 18.04.2016 issued by the respondent No.4 are quashed and set aside. Respondent Nos.4 and 5 shall award consequential benefits of seniority, difference of wages from 18.04.2016 to 31.05.2024 (date of superannuation) to the petitioner.

III) Respondent Nos.4 and 5 shall prepare revised proposal of retiral benefits of the petitioner and forward it to the respondent Nos.2 and 3 within a period of six weeks from today.

IV) Rule is made absolute in above terms.

V) The Civil Application is disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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