

SHUBHAM BAHUJDESHIYA SANSTHA, WADDHAMANA & ANR. A

v.

SHRI DNYANESHWAR GOVINDRAO DAIGAVHANE & ORS.

(Civil Appeal No.9161 of 2017) B

JULY 17, 2017

[ABHAY MANOHAR SAPRE AND R. BANUMATHI, JJ.]

Service law: Termination – Charges levelled against school teacher-respondent no.1 – Said charges upheld by the Inquiry Committee – School Management concurred with the Committee Report and terminated the services of respondent no.1 – In appeal, the School tribunal upheld the termination order – During pendency of the writ petition, dispute between two rival groups of Management Committee wherein one supporting respondent's termination and other filed intervention application making a statement of cancelling the termination order and reinstating respondent no. 1 – High Court on basis of the statement, cancelled the termination order of respondent no. 1 and permitted him to withdraw the writ petition – Held: There being a split between the Members of the Managing Committee, the High Court should not have accepted the stand of one group and should have proceeded to decide the writ petition on its merits, the legality of the tribunal's order – Manner, reasoning and the conclusion of the High Court, cannot be concurred with and is set aside – Writ petition is revived for being heard on merits in accordance with law – Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act. C D E F

Partly allowing the appeal, the Court

HELD: 1.1 The disputes which had surfaced in the meantime between two rival groups of Management Committee in regard to managing the affairs of the School wherein one group was supporting respondent No.1's termination and the other group opposing the termination should not have been taken note of much less relied on by the writ court for disposal of the writ petition nor these facts, could be made subject matter of writ petition filed by respondent No.1-they being wholly irrelevant for deciding the lis involved in the writ petition. Had there been G H

A unanimity between the Members of the Managing Committee of the School resolving to settle the issue with respondent No.1 amicably on terms agreed upon then perhaps, compromise between respondent No.1 on the one hand and the Management of School on the other would have been permissible subject to obtaining of any sanction from the authorities, if provided under the Rules for giving effect to it. However, such was not the case. There is a split between the Members of the Managing Committee - one group saying that there should be a compromise with respondent No.1 and the other group saying that there should be not be a compromise with respondent No.1. In such situation, the High Court should not have accepted the stand of one group and should have proceeded to decide the writ petition on its merits regardless of the differences between the Management with a view to find out as to whether the order of the Tribunal impugned by respondent No.1 is legally sustainable or not. [Para 19-22] [372-E-H ; 373-A-B]

D 1.2 In view thereof, the manner, reasoning and the conclusion of the High Court, which on the one hand allowed respondent No.1 to withdraw his writ petition and on the other hand proceeded to set aside the order of the School Tribunal without examining its legality and correctness on merits and at the same time proceeded to set aside the termination order also by accepting the statement of one group of Management, cannot be concurred with. The impugned order is set aside and the writ petition filed by respondent No.1 is revived for being heard on merits in accordance with law [Para 23, 24] [373-C-D]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9161 of 2017.

From the Judgment and Order dated 16.03.2017 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 1958 of 2015.

G Ms. Meenakshi Arora, Sr. Adv. Amol B. Karande, Adv. for the Appellants.

H R. Basant, Sr. Adv., Satyajit A. Desai, Anagha S. Desai, Kishor Lambat, Sachin Pahwa (for M/s Lambat And Associates), Suvendu Suvasis Dash, Ms.Swati Vaibhav, Advs. for the Respondents.

The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 16.03.2017 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 1958 of 2015 whereby the High Court set aside the judgment and order of the School Tribunal, Nagpur, cancelled the termination order of respondent No.1 and permitted him (writ petitioner) to withdraw his writ petition.

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3. In order to appreciate the short controversy involved in this appeal, the relevant facts need mention in brief infra.

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4. There is a Trust called "Shubham Bahuuddeshiya Sanstha, Waddhamana, Nagpur-23". It is registered under the provisions of the Bombay Public Trust Act, 1950 (hereinafter referred to as "the Act"). The Trust is running one school by and under the name of "Swami Vivekanand High School" at "Waddhamana" in Tah. Hingna, District Nagpur, Maharashtra. The affairs of the school is managed and looked after by the Managing Committee of the Trust. Respondent No. 1 was working as Assistant Teacher in this school.

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5. On 26.06.2003, Respondent No. 1 was served with charge-sheet as per the procedure prescribed under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (hereinafter referred to as "MEPS Rules"). The charge-sheet contained as many as 17 charges levelled against Respondent No. 1 which he is alleged to have committed in discharge of his duties as Assistant Teacher. It is not necessary to set out the details of the charges here except to mention that perusal of the charges would reveal that most of them were quite serious in nature.

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6. The Managing Committee of the School then appointed Three-Member Inquiry Committee to hold an inquiry into the charges levelled against respondent No.1 as per the provisions of the MEPS Rules and submit the report. Respondent No.1, felt aggrieved of this action of the School Management, filed a civil suit and sought stay of the proceedings initiated against him. The matter eventually went to the High Court at the instance of the respondent in writ petition (W.P. No. 892/2004) wherein the High Court disposed of the writ petition with the consent of the parties by order dated 22.11.2005 and directed the Inquiry Committee

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A to conclude the inquiry within 4 months strictly in accordance with the provisions of the MEPS Rules.

7. The Inquiry Committee then held an inquiry wherein respondent No.1 appeared and participated through his representative-one Mr. Keshavarao Dahake. He filed his reply and denied the charges levelled against him. Both parties, i.e., the appellant (School Management) and respondent No.1, filed documents and examined the witnesses in support of their case. The Inquiry Committee held several sittings.

8. The Inquiry Committee on 20.03.2006 submitted the report, which runs into 43 pages (Annexure-P-3). The Committee (by majority) held all the 17 charges proved against respondent No. 1. The School Management concurred with the report and keeping in view the gravity of the charges which stood proved, terminated the services of respondent No.1 by order dated 01.02.2010 (Annexure-P-5).

9. Respondent No.1, felt aggrieved of his termination order, filed appeal being Appeal No. STN10/2010 before the School Tribunal at Nagpur as provided in the Rules. The School Management (Employer) on being noticed of the appeal filed reply and defended the termination order including the inquiry report. By order dated 30.01.2015 (Annexure-P-6) the School Tribunal dismissed the appeal and upheld the termination order holding it legal and proper.

10. Respondent No.1, felt aggrieved of the order of the School Tribunal, filed writ petition (W.P.No. 1958 of 2015) out of which this appeal arises before the High Court.

11. It appears from the record that during the pendency of the writ petition, the disputes started *inter se* Members of the Management Committee of the Trust resulting in emerging of two rival groups in the Management of the school.

12. One group of the Committee, who are prosecuting this appeal, supported the termination order of respondent No.1 before the School Tribunal and the High Court in the writ petition and wanted the termination to be upheld whereas the other rival group was opposing the termination order and was keen to settle the matter with respondent No.1 by withdrawing his termination order and reinstating him in service. This rival group of Committee Members, therefore, filed intervention application in the writ petition and made a statement that they have resolved to

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reinstate respondent No. 1 and are also ready to cancel his termination. A
The intervener also stated that having regard to the fact that respondent
No. 1 was in school since long and secondly, some charges have also
not been proved against him, particularly the charge in relation to mass
copying, the Management Committee has resolved to withdraw his
termination and reinstate respondent No.1 in service of the school. B
It was opposed by other group who was supporting the termination, i.e.,
the group which has filed this appeal.

13. The writ Court accepted the aforementioned statement of the
intervener and on that basis set aside the order of the Tribunal impugned
by respondent No. 1 in his writ petition and at the same time also allowed
respondent No.1 to withdraw his writ petition. This is how the writ Court C
(single Judge) dealt with the issue in para 8 of the impugned order.

**“8. As referred to above, in the peculiar circumstances,
when the management is ready to reinstate the petitioner
and to cancel the termination order on the backdrop of
the facts that the petitioner is served in the institute for
more than 16 years. In addition, the charge leveled
against the petitioner of his involvement in mass copy
was not supported by any material in the investigation
carried out by the investigation agency and the
investigation agency sought discharge of the petitioner D
from the criminal charges leveled against the petitioner. E
In this situation, the petitioner is permitted to withdraw
the petition in view of the resolution passed by the
management committee dated 15.1.2017. On the
backdrop of the resolution passed by the management
dated 15.1.2017, the judgment and order passed by the
learned Presiding Officer, School Tribunal is quashed and
set aside.” F**

14. It is this order, which is impugned in this appeal by one group,
who had been defending the termination of respondent No.1 before the
Tribunal and the High Court and opposing the prayers made by the G
intervener in the writ petition which found acceptance to the writ Court
resulting in passing of the impugned order.

15. It may be mentioned that the effect of the impugned order is
that firstly, the order of Tribunal dated 30.01.2015 stands set aside; H

A secondly, the termination order dated 01.02.2010 of respondent No.1 also stands set aside; and thirdly, respondent No.1 stands reinstated in services of the School. It is stated at the bar that respondent No. 1 has since been reinstated in service and now serving.

B 16. Heard Ms. Meenakshi Arora, learned senior counsel for the appellant, Mr. R. Basant, learned senior counsel for respondent No.1 and Mr. Kishor Lambat, learned counsel for respondent No.2.

C 17. Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and while setting aside the impugned order restore the writ petition filed by respondent No. 1 to its original file and request the High Court to decide the writ petition on merits in accordance with law.

D 18. In our considered view, the question before the High Court (writ court) was only one, namely, whether the order passed by the School Tribunal dated 30.01.2015, which upheld the Inquiry Report and, in consequence, the termination of respondent No.1, is legal or not? It is this question, which the High Court had to answer on its merits in accordance with law, one way or the other.

E 19. The disputes which had surfaced in the meantime between two rival groups of Management Committee in regard to managing the affairs of the School wherein one group was supporting respondent No.1's termination and the other group opposing the termination should not have been taken note of much less relied on by the Writ Court for disposal of the writ petition nor these facts, in our view, could be made subject matter of writ petition filed by respondent No.1-they being wholly irrelevant for deciding the *lis* involved in the writ petition.

F 20. Had there been unanimity between the Members of the Managing Committee of the School resolving to settle the issue with respondent No.1 amicably on terms agreed upon then perhaps, compromise between respondent No.1 on the one hand and the Management of School on the other would have been permissible subject to obtaining of any sanction from the authorities, if provided under the
G Rules for giving effect to it.

H 21. However, such was not the case. Here, as mentioned supra, appears to be a case where there is a split between the Members of the Managing Committee - one group saying that we should compromise with respondent No.1 and the other group saying that we should not compromise with respondent No.1.

22. In such situation, the High Court should not have accepted the stand of one group and should have proceeded to decide the writ petition on its merits regardless of any internal differences between the Management Committee Members with a view to find out as to whether the order of the Tribunal impugned by respondent No.1 (writ petitioner) is legally sustainable or not? A

23. It is for these reasons, we are of the considered view that we cannot concur with the manner, reasoning and the conclusion of the High Court, which on the one hand allowed respondent No.1 to withdraw his writ petition and on the other hand proceeded to set aside the order of the School Tribunal without examining its legality and correctness on merits and at the same time proceeded to set aside the termination order also by accepting the statement of one group of Management. B C

24. In view of foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the writ petition filed by respondent No.1 is revived for being heard on merits in accordance with law. D

25. We, however, consider it apposite to make it clear that the writ Court would only decide the main question which is involved in the writ petition as to whether the order passed by the School Tribunal, which is impugned by the writ petitioner (respondent No.1) is legally sustainable or not? Depending upon the outcome of the writ petition, consequential orders would be passed. We also make it clear that the writ Court would consider the Management (employer) to be the contesting respondent who would be supporting the order of the Tribunal and opposing the writ petition. We also make it clear that the writ Court would not probe into any internal issues arising between these warring groups of Managing Committee of the School nor they would be allowed to take inconsistent stand *qua* the writ petitioner except the one mentioned above. We also make it clear that we have not gone into the merits of the controversy which is subject-matter of writ petition before the High Court and hence writ court would decide the writ petition strictly in accordance with law on merits uninfluenced by any observations made in this order. E F G

26. During the pendency of the writ petition, respondent No. 1 will not be allowed to work (if he is already reinstated pursuant to the impugned order). In other words, so long as the termination order remains H

- A and not set aside by the competent Court, respondent No. 1 would remain out of employment of the appellant - Trust-School. We also grant liberty to the Members of Managing Committee (two rival groups) to settle their internal disputes, if any, in appropriate forum in accordance with law and in doing so, this order would not, in any manner, come in their way.
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27. We request the writ Court to ensure early disposal of the writ petition preferably within 6 months as an outer limit.

Nidhi Jain

Appeal partly allowed.