

SHRI YOGIRAJ SHIKSHAN PRASARAK MANDAL & ORS. A

v.

VIDYA (DEAD) THRU LRS. & ANR.

(Civil Appeal Nos. 5296-5297 of 2019)

JULY 09, 2019

B

**[DR. DHANANJAYA Y CHANDRACHUD AND  
INDIRA BANERJEE, JJ.]**

*Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 – rr.36 and 37(6) – Inquiry Committee and Procedure of Inquiry – Original respondent (since deceased) was terminated from the services after a disciplinary enquiry – Appeal was filed before the School Tribunal, however, same was rejected – Writ petition was filed by the respondent – High Court held that there was breach of r.37(6) of the Rules, 1981 and order of the termination was set aside – Review application filed by the appellants was dismissed – On appeal, held: The report of the Enquiry Committee was duly signed by all the three members – Two members concluded that the charges were duly proved – The third member of the Enquiry Committee, however, recorded his dissent while signing the Report – It was evident that the requirements of r.37(6) were duly fulfilled – Also, High Court did not consider all the contentions on behalf of the contesting parties – Thus, the basis on which the High Court allowed the writ petition was misconceived – However, remanding the case would not serve the ends of justice since employee has died and proceeding is pursued by her legal representatives – Therefore, appellant-management directed to pay Rupees one lakh fifty thousand to the respondents purely as an ex gratia payment on humanitarian grounds in full and final settlement.*

The original respondent was engaged as a head mistress by the third appellant. A charge-sheet was issued to the employee levelling many charges including a charge of misappropriation. A disciplinary inquiry was initiated against the respondent. A combined report was submitted by the Enquiry Committee. One of the three members of the Committee expressed a dissenting view. The services of the employee came to be terminated. An appeal was filed before the School Tribunal,

C

D

E

F

G

H

A however, same was rejected. Following, a writ petition was filed by the respondent. High Court held that there was a breach of rule 37(6) by the Committee, hence, order of the termination was set aside. A review application filed by the appellants was dismissed. Hence the present appeals.

B **Disposing of the appeals, the Court**

**HELD:** 1. The Report of the Enquiry Committee was duly signed by all the three members. Two members concluded that the charges were duly proved. The third member of the Enquiry Committee, however, recorded his dissent while signing the

C Report. It is evident that the requirements of Rule 37(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 were duly fulfilled. [Para 10] [938-G]

2. The basis on which the High Court allowed the writ petition filed by the employee was misconceived. The impugned

D judgments and orders of the High Court are accordingly set aside. The High Court has also observed, in the course of its judgment, that the learned counsel appearing on behalf of the contesting parties had made submissions on “various points”. The High Court did not consider it appropriate to deal with all the contentions on the basis that the decision of this Court in *Vidya*

E *Vikas Mandal* governs the case. This Court would have ordinarily remanded the proceedings to the High Court for considering those grounds of challenge. However, the respondents have stated before the Court that an order of remand, at this stage, would not serve the ends of justice since the employee has died

F and the proceedings are being pursued by her legal representatives. Hence, the respondents have submitted that it would be appropriate if the management pays some *ex gratia* amount in full and final settlement. Therefore, an amount of Rupees one lakh fifty thousand shall be paid to the respondents purely as an *ex gratia* payment on humanitarian grounds in full

G and final settlement. [Paras 13-15][940-C-G]

*Vidya Vikas Mandal v. the Education Officer*  
2007 (2) SCALE 589 : [2007] 2 SCR 340  
– distinguished.

Case Law Reference

A

[2007] 2 SCR 340      distinguished      Para 5

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5296-  
5297 of 2019

From the Judgment and Orders dated 16.12.2015 and 01.03.2017 B  
of the High Court of Judicature of Bombay, Nagpur Bench, Nagpur in  
Writ Petition No. 3143 of 2006 and in Civil Application (O) No. 1071 of  
2016 in Writ Petition No.3143 of 2006 respectively.

Manish Kumar Gupta, T. R. B. Sivakumar, Advs. for the  
Appellants. C

Pratik R. Bombarde, Jitendra Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

**DR DHANANJAYA Y CHANDRACHUD, J.**

1. Leave granted. D

2. These appeals arise from the impugned judgments and orders  
of the High Court of Judicature at Bombay dated 16 December 2015  
and 1 March 2017.

3. The dispute relates to the termination of the services of the  
original respondent (since deceased) after a disciplinary enquiry. The  
original respondent was engaged as a Head Mistress by the third appellant,  
Anjanabai Zode Kanya Vidyalaya, Ashti in the District of Wardha in  
Maharashtra. A charge-sheet was issued to the employee on 15 January  
1998 levelling as many as 53 charges, including a charge of mis-  
appropriation. An Enquiry Committee of three members was constituted E  
under Rule 36 of the Maharashtra Employees of Private Schools  
(Conditions of Service) Rules 1981<sup>1</sup>. Following the disciplinary enquiry,  
a combined report was submitted by the Enquiry Committee on 29 June  
1998. One of the three members of the Committee expressed a dissenting  
view. The services of the employee came to be terminated on 3 July  
1998. An appeal was filed before the School Tribunal. The Tribunal, by F  
its decision dated 27 April 2005, rejected the appeal following which a  
writ petition was filed by the respondent before the High Court. G

---

<sup>1</sup> “1981 Rules”

H

- A        4. The sole ground which weighed with the High Court was that there was nothing on record to show that the three members of the Enquiry Committee had assembled and carried out deliberations before preparing and submitting their respective reports. Hence, there was a breach of Rule 37(6). The order of termination was set aside. However, since the employee had retired on attaining the age of superannuation in 2009 and had died on 26 September 2013, the management was directed to pay 50% of the arrears of salary for the period from 3 July 1998 until August 2009. The claim of the respondents for family pension was denied. A review application filed by the appellants was dismissed on 1 March 2017.
- C        5. Assailing the judgment of the High Court, learned counsel appearing on behalf of the appellants submits that the requirements of Rule 37(6) of the 1981 Rules were duly fulfilled. It was urged that the decision of this Court in *Vidya Vikas Mandal v the Education Officer*<sup>2</sup> is clearly distinguishable since, while construing the provisions of Rule 37(6)
- D        of the 1981 Rules, it was found that the findings by two members of the three member Committee had been submitted after the period prescribed to submit the report had expired. This Court held, it was urged, that when a Committee of three members is appointed to enquire into a particular matter, all three members should submit a combined report, whether consenting or otherwise. Hence, the decision is distinguishable.

- F        6. Learned counsel appearing for the appellants produced a compilation of documents in support of the submission that the Enquiry Committee met on several prior dates. After a meeting on 14 June 1998, copies of the findings were received on 18 June 1998. On 29 June 1998, the Report, which was compiled by the Convener, was read over before the Committee and was approved with certain amendments. Hence, it was urged that the requirement of Rule 37(6) of the 1981 Rules has been fulfilled.

- G        7. On the other hand, learned counsel appearing on behalf of the respondents adverted to an affidavit which was filed by the third member of the Committee before the Tribunal raising his objections to the procedure which was followed by the Committee, in support of the submission that the requirements of Rule 37(6) were not fulfilled.

<sup>2</sup> 2007(2) SCALE 589

8. From the record which has been produced before the Court, it A emerges that on 18 June 1998, the following minutes were recorded by the Enquiry Committee:

“(2) Subject No.2 : Submission of findings of the Committee Members.

Explanation: As resolved in the meeting dtd. 14-6-98, the copies B of the findings of all the three members of the Committee are received.

(1) Shri A.S. Gavarshettiwar – Total Pages 5 of the copies of C findings.

(2) Shri Mukteda Hasan – Total 10 pages of his findings

(3) Shri A.R. Zode – Total Pages

The Members of the Committee has taken the decision that, instead D of writing all these findings in the Proceeding Book, it should be kept in the concerned file for reference and for having decided so, there is need to take its entry in it which is resolved by the Committee unanimously.”

Thereafter, it was agreed that:

“It is unanimously resolved that, the Convener should prepare the E Compiled Report and Decision from the findings received and by putting up it in the next meeting of the Inquiry Committee dtd. 29-6-98 and obtaining approval of the Committee to it, it should be sent to the Management Committee.”

9. Subsequently, on 29 June 1998, the Enquiry Committee recorded F the following minutes:

“Subject No.(2): To submit the Compiled Report as per findings received from the Members of the Inquiry Committee and to obtain approval to it.

Details: The Compiled Report prepared by A.R. Zode, Convener G of the above Inquiry Committee was put up and read over before the Committee. After reading, it was approved with some amendments.

H

- A      Subject No.(3): To approve the Final Report of the above Inquiry Committee with findings and Decisions and recommendations therein.
- Details: The Final Report prepared by Shri A.R.Zode, Convener of the above Inquiry Committee on the basis of the finding was read over with the Decisions and Recommendations before the Meeting. Upon it, two Members of the Inquiry Committee, namely, Shri A.R.Zode and Shri Gavarshettiwar have decided that Smt. V.D. Deshpande is guilty. There is unanimity of these two Members in this regard. As per Shri Mukteda Hasan, the decision as taken is not proper and the Head Mistress is guiltless. However, as per the Final Report, findings, decision and recommendations of the Inquiry Committee it is passed with unanimity of the above two members of the Inquiry Committee.
- B      Subject No.(4): Conducted and completed the proceeding of the Inquiry Committee as per the Rules. Therefore, this was the Final Meeting. It is unanimously resolved in this meeting that the further action which is to be taken henceforth under the Rules in the Maharashtra Employees of Private Schools (Conditions of Service) Regulations, 1981 should be taken by the Convener.
- C      Subject No.(5): As the proceeding in respect of the inquiry by the Inquiry Committee before the today's Final Meeting is completed, the Convener of the Inquiry Committee has paid thanks to all the Members and as all the Members have given cooperation to the Inquiry Committee by remaining present in all the meetings within time, the Convener Shri A.R. Zode, by paying thanks to all the Members of the Inquiry Committee and all the concerned, has declared that this Final Meeting is over."
- D      10. The Report of the Enquiry Committee dated 29 June 1998 was duly signed by all the three members. Two members concluded that the charges were duly proved. The third member of the Enquiry Committee, however, recorded his dissent while signing the Report. It is evident that the requirements of Rule 37(6) of the 1981 Rules were duly fulfilled. Rule 37(6) of the Rules provides as follows:
- E      "37(6). On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall
- F
- G
- H

complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgment due. Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgment due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.”

11. In the decision of this Court in *Vidya Vikas Mandal (supra)*, two of the three members forming a part of the Committee had submitted the report beyond the time period stipulated, while only one member had submitted the report within the period prescribed. This Court observed, thus:

“9. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their

A

B

C

D

E

F

G

H

- A combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages..."
- B 12. The factual position in *Vidya Vikas Mandal (supra)* is clearly distinguishable from the facts of the present case. We have already noted that the requirements of Rule 37(6) of the 1981 Rules were fulfilled.
- C 13. For the above reasons, we are of the view that the basis on which the High Court allowed the writ petition filed by the employee was misconceived. The impugned judgments and orders of the High Court are accordingly set aside.
- D 14. The High Court has also observed, in the course of its judgment, that the learned counsel appearing on behalf of the contesting parties had made submissions on "various points". The High Court did not consider it appropriate to deal with all the contentions on the basis that the decision of this Court in *Vidya Vikas Mandal (supra)* governs the case. We would have ordinarily remanded the proceedings to the High Court for considering those grounds of challenge. However, learned counsel appearing on behalf of the respondents has stated before the Court that an order of remand, at this stage, would not serve the ends of justice since the employee has died and the proceedings are being pursued by her legal representatives. Hence, learned counsel appearing on behalf of the respondents has submitted that it would be appropriate if the management pays some *ex gratia* amount in full and final settlement.
- E F 15. Learned counsel appearing on behalf of the appellants has stated that the retiral dues of the deceased employee of approximately Rupees eight lakhs were duly paid and she was gainfully employed after her termination. Be that as it may, it has been stated that an amount of Rupees one lakh fifty thousand shall be paid to the respondents purely as an *ex gratia* payment on humanitarian grounds in full and final settlement.
- G 16. Acceding to the request, we close the proceedings in the above terms. The aforesaid payment shall be made over to the respondents

H

within a period of one month from the date of receipt of a certified copy A  
of this order.

17. The appeals are accordingly disposed of. There shall be no  
order as to costs.

Ankit Gyan

Appeals disposed of.

B