

## **Vidya Vikas Mandal & Anr vs The Education Officer & Anr on 7 February, 2007**

**Equivalent citations: 2007 AIR SCW 1141, (2007) 52 ALLINDCAS 190 (SC), 2007 LAB IC 1570, 2007 (2) AIR BOM R 623, (2007) 1 LAB LN 667, (2007) 3 MAH LJ 801, 2007 (11) SCC 352, (2007) 3 SERVLR 373, (2007) 2 ALLMR 461 (SC), (2007) 2 SUPREME 19, (2007) 2 SCALE 589, (2007) 2 SERVLJ 496, (2007) 114 FACLR 542, (2007) 2 SCT 32, (2007) 3 BOM CR 281**

**Author: Ar. Lakshmanan**

**Bench: Ar. Lakshmanan, Altamas Kabir**

CASE NO.:

Appeal (civil) 640 of 2007

PETITIONER:

VIDYA VIKAS MANDAL & ANR

RESPONDENT:

THE EDUCATION OFFICER & ANR

DATE OF JUDGMENT: 07/02/2007

BENCH:

Dr. AR. LAKSHMANAN & ALTAMAS KABIR

JUDGMENT:

JUDGMENT (@ S.L.P.(C) No.7613/2004) Dr. AR. Lakshmanan, J.

Heard Mr. Manish Pitale, learned counsel for the appellants, Mr. S.S. Shinde, learned counsel for the Respondent no.1 and Mr. Nikhil Nayyar, learned counsel for the Respondent no.2. Leave granted.

This appeal is directed against the final judgment and order dated 14.7.2003 in L.P.A. No.66 of 2003 passed by the High Court of Bombay, Nagpur Bench, Nagpur. A charge-sheet was served on the delinquent employee. Seven charges were leveled against him. Apart from the charge of harassment and misbehaviour with girl students, other charges of inefficiency, in-subordination and corruption were also specified against respondent no.2, namely, Subhash Lingawar. A Inquiry Committee consisting of three members was constituted, which consisted of Mr. P.S. Donadkar (Nominated by the Management), Mr. P.V. Madamshettiwar (Deliquent's representative) and Mrs. V.S. Ramteke (State Awardee teacher). Respondent no.2 submitted his reply to the aforesaid charge sheet. The inquiry was initiated and the first meeting was held on 10.10.1998. During the pendency

of the inquiry, respondent no.2 was not suspended and he continued to attend to his duties. In the inquiry proceedings, it was found that the respondent no.2 was being non-cooperative, two members of the Inquiry Committee, i.e. Nominee of respondent no.2 and the State Awardee teacher were trying to stall the proceedings. Upon conclusion of the inquiry, as required under Rule 37 (4) of the Rules, the Inquiry Committee sent to respondent no.2 the summary proceedings and copies of statements of witnesses for him to submit his explanation within 7 days under Rule 37 (5). Thus, respondent no.2 had time of 7 days till 28.2.2000 to submit his explanation. The respondent no.2 failed to submit his explanation to the Inquiry Committee. Thus, under Rule 37 (6), the Inquiry Committee was required to communicate its findings to the Management within 10 days. The requirement was mandatory and the period of 10 days expired on 9.3.2000. Mr. P.S. Donadkar, the management nominee and the Convenor of the Inquiry Committee sent his report and findings to the Management. In this report, the aforesaid Member and Convenor of the Inquiry Committee found all charges proved against respondent no.2 and having been found guilty, punishment of termination from service was recommended against respondent no.2. It was also recorded in the aforesaid report and findings that the other two members of the Inquiry Committee had not submitted their findings and that during the course of inquiry they had sought to favour respondent no.2 and that their attitude was not appropriate. As the appellant Management received the findings of only the Convenor of the Inquiry Committee within the period of 10 days mandated by Rule 37 (6) of the Rules, it decided to terminate the services of respondent no.2 on the basis of the recommendation and the findings received. The appellant Management issued order terminating the service of respondent no.2 w.e.f. 1.4.2000, thereby terminating the service of respondent no.2.

The findings of the other two members of the Inquiry Committee dated 21.3.2000 and 29.3.2000 were received by the appellant Management. According to the appellant, these findings were no findings in the eyes of law because the period of ten days mandated by Rule 37 (6) of the Rules whereby findings were to be submitted to the appellant Management, had expired on 9.3.2000 itself. Therefore, Mr. Manish Pitale, learned counsel appearing for the appellant-Management submitted that the aforesaid findings of the two members were meaningless. The findings of the State Awardee teacher leveled wild allegations against the Convenor and Management nominee Member of the Inquiry Committee. The third member, the nominee of respondent no.2, simply adopted the findings of the aforesaid State Awardee teacher. In their findings both these members exonerated the respondent no.2.

The respondent no.2 filed an appeal bearing Appeal no.41 of 2000 before the Presiding Officer School Tribunal, Nagpur, challenging the aforesaid order of termination of service passed by the appellant Management. The said Tribunal allowed the appeal of Respondent no.2 mainly on the ground that two of the three members of the Inquiry Committee had exonerated the respondent no.2. The Tribunal directed to reinstate respondent no.2 and to pay full back wages to him. Aggrieved by the aforesaid order, the Management challenged the same before the Nagpur Bench of the Bombay High Court by filing a writ petition. The Learned Single Judge of the High Court dismissed the writ petition only on the ground that two of the three members had exonerated the respondent no.2. Aggrieved by the said order, the Management filed Letters Patent Appeal no.66/2003 before the Division Bench of the High Court. In this appeal, the Management specifically raised the question of interpretation of Rule 37(6) of the aforesaid Rules to show that

findings of the two members given after the expiry of the mandatory period of ten days were no findings in the eyes of law and that the Management was not bound to accept the same.

The Division Bench, however, dismissed the appeal again only on the ground that two of the three members of the Inquiry Committee had exonerated the respondent no.2. The present appeal was filed against the said order. The Management also filed review before the Division Bench of the High Court, which passed the orders in the Letters Patent Appeal. This review application was also withdrawn with liberty to approach this Court by way of special leave petition to challenge the order dated 14.7.2003 passed in L.P.A. no.66/2003.

We heard the learned counsel appearing for the respective parties. Mr. Manish Pitale, learned counsel for the appellants, submitted that the courts below were not justified in holding against the appellants ignoring the provision of Rule 37 (6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. According to the learned counsel, the said Rule is mandatory in nature. It is further submitted that the findings given by two members of the Inquiry Committee exonerating the respondent no.2 were submitted after the mandatory period of ten days specified in Rule 37 (6) of the aforesaid Rules had expired. Therefore, he submitted that the findings given by the two members of the Inquiry Committee after expiry of the mandatory period cannot be binding on the appellant-Management while deciding the question of taking action against respondent no.2. In support of the above submission, our attention was drawn to sub-Rule (4) (5) & (6) of Rule 37 of the aforesaid Rules, which read thus:

"37 (4) The Convenor of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgment due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.

(5) The employee or the Head, as the case may be shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc. either personally or by registered post acknowledgment due. (6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall 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."

Our attention was also drawn to Rule 36 sub-clause 2(a), which applies to the case of an employee and reads thus:

"36 (2)(a) In the case of an employee-

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorized by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management.

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred."

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 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. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

In view of the order now passed by this Court, the Rule 36(2)

(a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of

any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.

The Civil Appeal is disposed of on the above terms. No costs.