



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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

.....J.

(Dr. AR. LAKSHMANAN)

.....J.

(ALTAMAS KABIR)

New Delhi,

February 7, 2007

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7613/2004

(From the judgement and order dated 14/07/2003 in LPA No. 66/2003  
of The HIGH COURT OF BOMBAY AT NAGPUR)

VIDYA VIKAS MANDAL & ANR.

Petitioner(s)

VERSUS

EDUCATION OFFICER & ANR.

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for interim relief and office report)

Date: 07/02/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Petitioner(s)

Mr. Manish Pitale, Adv.

Mr. Chander Shekhar Ashri, Adv.

For Respondent(s)

Mr. S.S. Shinde, Adv.

Mr. V.N. Raghupathy, Adv.

Mr. Nikhil Nayyar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted. Heard learned counsel for the respective parties.

The Civil Appeal is disposed of in terms of signed reportable

judgment placed on the file. No costs.

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( A.D. Sharma )

( Phoolan Wati Arora )

Court Master

Court Master

(Signed Reportable Judgment is placed on the file)