

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.21/2005.

Bhimraj Kusan Kotangale,
Aged about 55 years,
Occ- Secondary Teacher at
Govt. Secondary Ashram School,
Halewara, Tq. Etapalli,
Distt. Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai-32.
2. The Addl. Tribal Commissioner,
Department of Tribal Development,
Nagpur.
3. The. Tribal Commissioner,
Department of Tribal Development (M.S.),
Nasik.

Respondents.

Shri V.S. Dhole, the Ld. Advocate for the applicant.

Shri A.P. Sadavarte, the Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 26th August, 2014.

Order

Per: Member (J)

Reversion of the applicant from the post of Head
Master to the post of Teacher is the subject matter of challenge in this
O.A.

2. Facts in a nutshell are thus:

The applicant on 3.7.1981 joined the service of the respondents as Secondary School Teacher. On 9.5.1990, he came to be promoted as Head Master. During the period from 30.7.1998 to 29.9.2001, he was posted as Head Master, Basic Ashram School, Hardoli, District Gadchiroli. This is girls' school. In the year 2001, on behalf of one girl student, a complaint was made to the Minister, Tribal Development, alleging acts of misconduct against the applicant. Officers of the Tribal Development Department visited the school. During enquiry, it was revealed that the applicant was inefficient in running the administration, he was indulging in the act of abusing students and was found engaging some girl students for doing his household work. This resulted in service of chargesheet on the applicant, mainly on three counts, viz., (i) inefficient administration, (ii) abusing girl students and (iii) engaging some students for doing household work. The applicant denied the charges. His defence was, because some staff members bore grudge against him, false case has been fabricated to ruin his career.

3. After appointment of the Enquiry Officer, recording of statements of witnesses began from 21.12.2001. The Enquiry Officer held that out of the three charges, two have been proved and one has been partly proved. The Disciplinary Authority, after hearing the applicant, imposed penalty of reversion vide order dated 28.10.2002.

The applicant preferred an appeal which came to be dismissed on 26.10.2004.

4. Shri Dhobe, the learned counsel appearing for the applicant contended that the report of the Enquiry Officer as well as findings recorded by the Disciplinary Authority are based on conjectures and surmises. According to him, witnesses did not speak a word against the applicant. One or two witnesses who spoke against the applicant, did so because of enmity with the applicant. He further contended that, entire career of the applicant was unscathed and without slightest stigma. At the fag end of his career, he was required to face penalty like reversion and that too on the false ground. He would, therefore, contend that this is a fit case to exercise power of judicial review by quashing the impugned penalty of reversion imposed on the applicant.

5. Shri Sadavarte, the learned P.O. reminded us of our limitations and scope of judicial review while dealing with the challenge to the punishment awarded in a departmental proceedings.

6. With the assistance of the learned counsel for the applicant and the learned P.O., we have gone through the reports of preliminary enquiry, statements of the witnesses recorded before the Enquiry Officer, findings returned by the Enquiry Officer and the order passed by the Disciplinary Authority. It is true that the witnesses like

Savita Bhandari and few others did not support the charge of misconduct levelled against the applicant. This is usual phenomena. What emerges from the record is that one Smt. Wasundhara Naik, Assisant Project Officer and V. S. Thakur, Assistant Commissioner, Tribal Development had visited the said school. During their enquiry, it was revealed that the applicant had no control over the administration. It was found that Savita Bhandari, a girl student was given overnight duty to look after the child of Smt. Mankar, however, this was done when Smt. Mankar had gone out while her husband was present in the house. The officers treated this as an act of grave misconduct, since the fate of young tribal girl was left at the mercy of some stranger. Such objectionable incidents although, were known to the applicant, went without any action. During enquiry, it was revealed that the applicant was engaging girl students to do his household work. It was further noticed that while teaching, he used to abuse girl students.

7. There is a evidence of one Mrs. Tulsia Parate, lady Superintendent, who spoke in support of the charges. One Komal Krishnaji Bhalavi, a girl student also spoke in support of the charges. We are, therefore, of the considered view that this is definitely not a case of "no evidence", as argued by the learned counsel for the applicant. There is a evidence of Shri V. S. Thakur, Assistant Commissioner, Tribal Development, who had conducted enquiry.

Before him all the girl students revealed acts of misconduct of the applicant. On probability factor, the Enquiry Officer and then the Disciplinary Authority found the evidence reliable and, therefore, decided to impose major penalty on the applicant and rightly so.

8. It is well settled that the approach and objection in criminal proceedings and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings, the question is whether the offences registered against him are established. Standard of proof, mode of enquiry and rules governing the enquiry and trial are altogether different. Doctrine of proof beyond doubt has no application in the disciplinary proceedings. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion. (Relied, **Lalit Kumar V/s Canara Bank AIR 2003 SC 1795**).

9. In **Secretary to the Government, Home Department and others V/s Shri Y. Kundan, 1998 (9) SCC 553**, while highlighting the scope of judicial review, their Lordships observed that, Administrative Tribunal neither sits in appeal over the findings of Enquiry Officer nor can examine the nature of evidence which was led.

Reference can usefully be made to the recent decision of the Supreme Court in case of **S.R. Tiwari V/s Union of India 2013 ALL SCR 2368.**

10. Last point needs consideration is proportionality of the punishment. Punishment imposed by the Disciplinary Authority or the Appellate Authority, unless shocking to the conscience of the Court, cannot be subjected to judicial review. Having regard to the gravity of the charges levelled and proved against the applicant, punishment of reversion to the post of Teacher does not appear to be shockingly disproportionate. The Head Master and the Teachers entrusted with onerous responsibilities of teaching tribal girls and who have mainly come from poverty stricken and gullible families are vulnerable to any kind of abuse. To avoid their exploitation and incident of child abuse, basic norms of discipline are required to be followed strictly. Whenever the incident of slightest breach of norm is observed, proper action is warranted, which in this case seems to have been promptly taken by the concerned authorities.

11. For the reasons aforesaid, we do not find any substance in this O.A. Accordingly, the O.A. is dismissed with no order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

