

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7972 OF 2003

1. The Secretary,
Vidya Prasarak Sanstha Balkum, Thane

2. The Head Master
Vidya Prasarak Sanstha Vidyalay Balkum, Thane ...Petitioners

Versus

1. Shri. Arvind Ramchandra Bhalerao
R/o Viratdham Co-operative Society Ltd.
Block No. 16, 3rd Floor, Swami Vivekanand
Nagar, Near A.V.M. Kulgaon, Badlapur, District
Thane.

2. The Education Officer (Secondary)
Zilla Parishad, Thane

3. The Presiding Officer,
Addl. School Tribunal,
New Mumbai ...Respondents

Mr. Vaibhav Jagdale a/w Mr. Pandurang Andhale for the Petitioner.
Shri. Arvind Ramchandra Bhalerao – Respondent No. 1 present in
person.

Ms. Sulbha Chipade, AGP for Respondent/State.

CORAM : M.M. SATHAYE, J.
DATE : 2nd SEPTEMBER, 2026

ORAL JUDGMENT :

1. Invoking Article 226 and 227 of the Constitution of India, the
Petitioners (Educational Institute and School) are challenging the order
dated 07.10.2003 passed by Presiding Officer, Additional School
Tribunal, Navi Mumbai in Appeal No. 58 of 2002, allowing appeal filed
by Respondent No. 1, thereby setting aside the termination order dated

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10.07.2002 and directing the Petitioners to reinstate Respondent No. 1 on the post of Headmaster with continuity of service and all consequential benefits. The Petitioners are also directed to pay full back wages to Respondent No. 1 from the date of termination till date of reinstatement.

2. Hereinafter in this judgment, The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 is referred to as 'the said Act' for short and Rules of 1981 made thereunder, are referred to as 'the said Rules' for short.

BRIEF BACKGROUND

3. The Respondent No. 1 was appointed as an Assistant Teacher on 15.06.1981. He was promoted to the post of Headmaster on 14.06.1998 and was working as such. The Education Officer (Zilla Parishad, Thane) issued a letter dated 08.03.2002 to the Petitioner-Management informing that it is found that for 3 Academic years, some divisions of various standards have been conducted without informing the reduction in student strength and by running bogus divisions resulting into loss of the government to the tune of Rs.8,64,000/-. It was directed that such expense be recovered from concerned teachers, Headmaster and clerk.

4. The Petitioner-Management took decision to hold an inquiry against Respondent No. 1 in respect of the alleged illegal activities. Legal notice was issued to Respondent No. 1. Inquiry committee was constituted and charges were communicated. Respondent No. 1 was called upon to nominate his representative, which he nominated. Thereafter, the committee conducted inquiry and by final report, the Respondent No. 1 was found guilty of the charges. On 10.07.2002,

Respondent No.1 was terminated.

5. The Respondent No. 1 filed the said appeal before the Tribunal, contending *inter alia* that the inquiry committee is not properly constituted; that no charge sheet is prepared and served along with documents; that the procedure under Rule 37 of the said Rules is not followed; that the punishment is predetermined; that no reasons are stated in resolution about imposing major penalty of termination; that during the course of inquiry, no witness is examined; that inquiry committee has not given its opinion about the guilt of the Respondent No. 1.

6. The Petitioners filed their written statement contending *inter alia* that the allegations made against Respondent No. 1 about students strength is found to be correct; that memo of allegation is issued along with show cause notice for the purpose of suspension; that objections regarding formation of the inquiry committee are denied. It was contended that six meetings were conducted by the inquiry committee, however, Respondent No. 1 did not co-operate and defend his case and his nominee was present only in two meetings. That sufficient opportunity was given to the Respondent No. 1 to appear before the inquiry committee and explain/defend his case. That by a specific delegation, the Vice President was empowered to conduct the inquiry. That procedure under Rule 37 of the said Rules, is followed. Allegation about predetermination of guilt is denied. It was contended that Respondent No. 1 by his own act of not appearing before the committee waived right of cross examining witnesses and therefore he cannot be permitted to contend that there is breach of principles of natural justice. That notice of all the meetings were given to the Respondent No. 1 and his nominee, which were duly received by them. That Respondent No. 1

was non-cooperative since beginning.

7. After hearing both sides and on appreciation of evidence, the Tribunal has passed the impugned order.

8. In these circumstances, the Petitioners have challenged the impugned order. This Court after hearing both sides including Respondent No. 1 (party in person) admitted the petition and interim arrangement was recorded by consent of both sides. The said order reads as follows.

“CORAM : D. B. BHOSALE,J.

DATE : 19th NOVEMBER, 2003

PC:

1. Heard Mr. Sawant, learned counsel for the petitioners, the learned A.G.P. for respondent-State and respondent no.1 in-person.

2. Rule. Returnable early.

3. The petitioners and respondents agreed for the following interim relief pending this writ petition for final disposal.

i) Respondent no.1 will be allowed to work as an Assistant Teacher in Vidya Prasarak Sanstha's Vidyalaya, Balkum, Thane, till the disposal of this writ petition. He shall not claim any equities.

ii) Respondent no.2 is directed to sanction and release the salary of the Assistant Teacher to be paid to respondent no.1 from the date of his reporting on duty as and by way of provisional arrangement pending disposal of this petition.

iii) There shall be interim relief in terms of prayer clause (b), subject to clauses (i) and (ii) aforestated,

Prayer clause (b) reads thus:

"Pending the final hearing and disposal of the present petition, this Hon'ble Court be pleased to stay the operation,

implementation and execution of the Judgment and order dated 7.10.2003 passed by the learned Presiding Officer, Addl. School Tribunal in Appeal No. 58/2002.”

It is open for the institution to pursue the recovery proceedings as directed by the Education Officer in accordance with law. Needless to say that the aforesaid interim arrangement is subject to result of this petition.

Parties to act an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.”

9. It is not disputed that pursuant to above interim order, the Respondent No. 1 continued to work and draw salary as assistant teacher (with deductions) and has retired on 31.10.2013 and he is also drawing pension.

SUBMISSIONS

10. Learned Counsel Mr. Jagdale, appearing for the Petitioner-Management submitted as under.

10.1. That the charges are serious inasmuch as correct information about student strength and permissible divisions was suppressed which has resulted in concerned education officer issuing specific direction under letter dated 08.03.2002.

10.2. That since the Management decided to initiate action imposing major penalty of termination, inquiry committee was duly constituted following applicable Rules.

10.3. That no reply was filed. That if the proceedings of the inquiry committee are perused, then it is more than clear that representative appeared only twice and the Respondent No.1 only appeared once before the inquiry committee but did not co-operate and walked out.

Finally report was submitted holding him guilty.

10.4. That a delinquent employee who chooses not to co-operate with the inquiry committee cannot turn around and make a grievance about principles of natural justice not being followed. He submitted that since Respondent No. 1 has chosen not to co-operate before the inquiry committee, he cannot contend that opportunity was not given.

10.5. That the Tribunal has allowed the Appeal on technical grounds as listed in paragraph 13 of the impugned order; however, unless the Respondent No. 1 proved actual prejudice, the technical reasons stated by the Tribunal cannot vitiate the inquiry and be considered as fatal.

10.6. Relying on an order dated 22.03.2006 passed by the Division Bench of this Court in Writ Petition No. 2453 of 1997, he submitted that one Mr. Pramod Bhangale had challenged the seniority of present Respondent No. 1 and after hearing both sides, this Court has held that said Mr. Bhangale was senior to Respondent No. 1 and therefore, in any case reinstatement to the post of Headmaster, is not possible.

10.7. That the impugned order requires interference.

10.8. That under interim order of this Court, Respondent No. 1 resumed services as Assistant Teacher from 24.11.2003 and as such the real dispute that survives is about back-wages from 10.07.2002 (date of termination) till 24.11.2003 (date of resumption as Assistant Teacher under interim order of this Court).

11. The Respondent No. 1 has appeared in person and made submissions as party in person, pursuant to permission granted by concerned Committee of the Registry. He has made submissions in vernacular (Marathi language) which were heard and considered. He has filed affidavit in reply affirmed on 27.08.2026. For better

understanding and clarity in the matter, the submissions made by Respondent No. 1 as reflecting from his affidavit, are being considered. He contended as follows. That the petition is liable to be dismissed on the ground of delay and laches inasmuch as the petition has been kept pending for 23 years. That the Petitioner-Management has kept the petition deliberately and willfully pending, resulting in delay and laches in hearing of the petition. That the sole purpose of interim stay was to prevent the implementation of the Tribunal order and under interim order, he was compelled to work as Assistant Teacher (on lower post) until his retirement on 31.10.2013. That he is entitled to full back wages from the date of termination till the date of retirement along with all consequential benefits. That the aspect of seniority between him and Mr. Bhangale is not at all concerned with the present petition because the present petition is about termination pursuant to an illegal inquiry. That the question of seniority between himself and Mr. Bhangale was not a subject matter before the Tribunal and therefore, cannot have any effect. That the judgment given in the petition filed by Mr. Bhangale will not validate the illegal termination. That condition of not claiming equity will not have any bearing on the final consideration of petition. That his salary deduction from 2003 to 2013 must be set aside and an amount of Rs.8,64,000/- deducted from his salary must be refunded to him along with interest @ 12% per annum. He has supported the impugned order.

12. Learned AGP relying upon affidavit-in-reply filed by the Deputy Education Officer, (Secondary) Zilla Parishad, Thane contended that the Respondent No. 1 had indulged into serious mal-practices resulting into loss to the State Exchequer and it was brought to the notice of the Management. She submitted that neither in the Appeal nor

in this petition, any prayer is made about deductions already effected from the salary. She submitted that whether the inquiry is faulty for technical reason or otherwise, it is a matter between Management and the employee and the State Exchequer cannot be burdened. She submitted that as on today, the recovery is over and therefore, no interference is warranted so far as recovery is concerned. She finally submitted that if this Court is not inclined to interfere, the Petitioner Management be held responsible for payment and not the State.

REASONS AND CONCLUSION

13. I have considered the rival submissions and perused the record. At the outset, it is necessary to note that the Tribunal has interfered with the decision of termination, broadly on technical grounds summarized in paragraph 13 of the impugned order, such as :

- (a) The awardee retired Headmaster was appointed as convener and it should have been the President of the Trust.
- (b) Appointment of Vice President as CEO is illegal. Delegation of power to Vice President is illegal.
- (c) Charge-sheet issued by the Vice President is illegal.
- (d) No documents and list of witnesses were supplied to the Respondent No. 1 and his nominee.
- (e) Procedure under Rule 37 of the said Rules are not followed.
- (f) Punishment was pre-determined and inquiry committee have not endorsed on every page of the record and has not given findings on charges framed.
- (g) Specific punishment is not recommended.

14. Most of the above reasons are technical in nature. Rule 36 of

the said Rules provides for the inquiry committee which is mandated to conduct inquiry in case of major penalty like the present case where termination is imposed. Under Sub-Rule 5, the convener of the committee is provided to be nominated by the President and in the present case, the awardee Headmaster has been appointed as convener as nominee of the President. There is no illegality in appointment of convener as such.

15. In the present case, the Headmaster himself is a delinquent and as such he could not have acted as Chief Executive Officer and therefore, Vice President was appointed as CEO about which no illegality is found.

16. No reason or specific rule is indicated to hold that delegation of power by President to Vice President is illegal. Also no bar is shown to nominate retired awardee Headmaster as convener, provided under Rule 36(5) of the said Rules.

17. On perusal of minutes of inquiry proceedings produced on record, along with charge sheet, it is seen that the Management through its President has issued legal notice clearly informing the charges on 08.04.2002. The appointed CEO has also sent chargesheet on 06.05.2002 clearly mentioning all the charges. The first meeting of the inquiry committee took place on 14.05.2002 when both the Respondent No.1 and his nominated representative remained absent. Thereafter, on 18.05.2002 again Respondent No. 1 and his nominated representative remained absent. Thereafter, on 28.05.2002 again Respondent No. 1 and his nominated representative remained absent. Thereafter on 15.06.2002, Respondent No. 1 remained absent; however, his representative was present, who demanded documents and evidence in

support of the charges, which request was accepted and next date was given. On 22.06.2002, again Respondent No. 1 remained absent, but his representative was present. The letter sent by Respondent No. 1 giving reasons for not remaining present was read out and it was recorded that the reasons are not appropriate and therefore, again an opportunity was given to remain present on next meeting. On this day, the objection regarding President of the institution should be one of the committee members, was raised. However, it was informed that in the Executive Committee meeting dated 18.04.2002 under Resolution No. 3, the President has specifically given rights/authority to Vice President and therefore, the technical objection was overruled. From the minutes of this meeting, nothing can be seen that any objection regarding non receipt of documents and evidence was raised.

18. Thereafter, on 29.06.2002, the Respondent No. 1 as well as his representative both remained present. The charges were again read over to Respondent No. 1. The authorized officer of the Management made submissions stating that the allegations are serious in nature which has resulted in the image of the institution being tarnished. It was contended that the conduct of the Respondent No. 1 has been not befitting for the post of Headmaster, who has indulged in suppression and misappropriation, resulting in Education Officer issuing specific letter. It is recorded in this meeting that on Management's representative making submissions, Respondent No. 1 created a ruckus and made irrelevant submissions for 15 minutes and left the meeting without taking any permission and did not show any further interest in participation. The minutes further indicates that thereafter, the documents and evidence produced in support of the charges were considered.

19. In this backdrop, finally the inquiry committee has given its report specifically holding Respondent No. 1 guilty of all the charges. Hence, it cannot be said that punishment was pre-determined.

20. In view of such record, it cannot be said that the charges were not known to the Respondent No. 1 or sufficient opportunity was not given. In fact, the Respondent No. 1 himself and his representatives have attended the inquiry proceedings. No grievance about non supply of documents or witness list was raised. Respondent No. 1 has adopted method of non-co-operation and walked out. In such circumstances, unless Respondent No. 1 proved that there was any actual and real prejudice caused to him, the inquiry could not have been held as vitiated for technical reasons.

21. From the aforesaid discussion and material available on record, it is clear that till the last meeting, the Respondent No. 1 chose not to participate in the inquiry proceedings and finally on the last meeting, he created a ruckus, made irrelevant submissions, adopted non co-operation and walked out. No reply is shown to have been filed by the Respondent No. 1.

22. In **Indra Bhanu Gaur v/s Committee Management of M. M. Degree College and Ors. (2004) 1 SCC 281**, Hon'ble Supreme Court while considering the case of termination and prejudice caused to the delinquent, has held that it is only a person who is ready and willing to avail the opportunity given, who can make a grievance about denial of any opportunity and not a person who despite repeated opportunities exhibits defiance and total indifference to cooperation.

23. Also in **Thapar Education Society and Ors. v/s. Shyam Maroti Bhasarkar and Anr. 19973(3) Mh.L J. 709** while considering Rule 33,

36 and 37 of the said Rules, the Hon'ble Supreme Court has observed that non supply of documents would be innocuous if the employee could not show actual prejudice on account of such non-supply of documents.

24. In the present case, as is observed above, the charges were clearly communicated, the representative had demanded documents which were agreed to be supplied. Subsequent minutes do not indicate any grievance made about non receipt of documents. The participation of Respondent No. 1 has been only once and that too was of non-co-operation with the inquiry committee. In such circumstances, a party who chooses not to respond or does not remain present or does not co-operate before the inquiry committee, cannot turn around and contend that documents were not supplied unless actual prejudice is established.

25. In the facts and circumstances narrated above, in my considered view real prejudice was not established at all and therefore, the proceedings of inquiry committee could not have been held as illegal or vitiated.

26. It has come on record that by way of interim relief, by consent of both sides, the Respondent No. 1 was allowed to work as Assistant Teacher and his salary of Assistant Teacher was directed to be released. However, under the same impugned order, this Court clarified that it is open for the Petitioner-Management to pursue the recovery proceedings as directed by the Education Officer in accordance with law. The same order also records that Respondent No. 1 shall not claim any equities. In the teeth of such clear interim arrangement and Respondent No. 1 working during pendency of the petition drawing salary of Assistant Teacher with deductions, when the inquiry proceedings are found to be

not vitiated, it is not possible to interfere in the recovery made as directed by the education officer.

27. It is important to note that pendency of the petition cannot be considered as delay or latches on the part of the Petitioner. The said argument of Respondent No.1 is completely misconceived. The argument of Respondent No.1 (party in person) that the Judgment of Division Bench of this Court in Mr. Bhangale's petition is 'oral Judgment' and therefore, should not be considered as authentic, is only stated to be rejected. Similarly, the argument of Respondent No. 1 that he can claim equity for recovery of deductions is without merit, in view of interim order. The Court can not lose sight of the fact that by consent of the parties, it was directed that Respondent No. 1 shall work as Assistant Teacher without claiming any equity. It is important to note that at the time of passing interim order dated 19.11.2003, this Court had perfectly balanced the equity inasmuch as , the Petitioner-Management, despite finding Respondent No.1 guilty of all charges, had consented/agreed to allow him to work as Assistant Teacher and permitting him to draw salary of Assistant Teacher and in reciprocation, Respondent No.1 had agreed not to claim any equity.

28. Learned AGP is right in her submission that neither in the appeal before Tribunal nor in this Court, any prayer is made about the order of recovery, which was specifically permitted to continue during pendency of the petition. Perusal of the Appeal memo in the Tribunal supports this submission. In view of the fact that the inquiry proceedings are found to be not vitiated and since it is found that no real prejudice has been established by Respondent No. 1, it is not possible to pass any order in respect of the amount already recovered by the State from the salary of Respondent No. 1.

29. The prayers made in affidavit-in-reply about salary deductions, are without challenging the order of the Tribunal.

30. After hearing Mr. Bhangale and Respondent No.1 in person, the Division Bench of this Court has passed an order way back in March 2006 holding that Respondent No. 1 was junior to Mr. Bhangale. Nothing is brought to the notice of this Court to indicate that this order of the Division Bench about seniority has been challenged by Respondent No. 1. In that view of the matter, reinstatement to the post of Headmaster is also out of question, as the same would be contrary to seniority held by this Court.

31. In the aforesaid facts and circumstances and for reasons indicated above, interference by the Tribunal in inquiry committee report and consequent termination, has been found to be perverse.

32. Therefore, the petition succeeds. The impugned order dated 07.10.2003 passed by the Tribunal is set aside. Appeal No. 58 of 2002 is dismissed. However, since Respondent No.1 has worked as Assistant Teacher during pendency of the petition and is already retired and is duly receiving pension and other benefits as per salary of the Assistant Teacher, the said position will not be disturbed and he shall continue to receive the post retirement benefits as he is receiving today.

33. **The Writ Petition is disposed of and Rule is made absolute in above terms. No order as to costs.**

34. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)