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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6045 OF 2012

1 Jagdamba Pratishthan Shikshan
Sanstha, Ulkanagari, Aurangabad.
Through it's Secretary
Shri Prakash Sampatrao Jawalkar,
Age : 31 years,
R/o Plot No.10, Shrikrupa,
Ulkanagari, Garkheda Parisar,
Aurangabad.

2 Jagdamba Pratishthan Shikshan
Sanstha Sanchalit Primary School,
Garkheda, Aurangabad.
Through it's Headmaster.

...PETITIONERS

-VERSUS-

1 Smt.Leelatai Annappa Patil,
Age : 43 years, Occ : Nil,
R/o Plot No.50, Shivneri Colony,
Gajanan Multipurpose School,
Garkheda Parisar, Aurangabad.

2 The Education Officer (Primary),
Zilla Parishad, Aurangabad.

...RESPONDENTS

**WITH
WRIT PETITION NO.8419 OF 2012**

Smt.Leelatai Annappa Patil,
Age : 43 years, Occ : Nil,
R/o Plot No.50, Shivneri Colony,
Gajanan Multipurpose School,
Garkheda Parisar, Aurangabad.

...PETITIONER

-VERSUS-

- 1 Jagdamba Pratishthan Shikshan
Sanstha, Ulkanagari, Aurangabad.
Through it's Secretary
Shri Prakash Sampatrao Jawalkar,
Age : 31 years,
R/o Plot No.10, Shrikrupa,
Ulkanagari, Garkheda Parisar,
Aurangabad.
- 2 Jagdamba Pratishthan Shikshan
Sanstha Sanchalit Primary School,
Garkheda, Aurangabad.
Through it's Headmaster.
- 3 The Education Officer (Primary),
Zilla Parishad, Aurangabad.

...RESPONDENTS

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Advocate for Management : Shri Sapkal V.D. and Shri A.B.Jagtap.

AGP for Respondents: Shri S.G.Sangle.

Advocate for Employee : Shri S R Barlinge

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st September, 2015

Oral Judgment:

1 The first petition has been filed by the Employer-Management challenging the judgment of the School Tribunal dated 26.06.2012 delivered in Appeal No.11/2009 filed by Respondent No.1/ herein who is the Employee.

2 The second petition is filed by the said Employee challenging the same judgment delivered by the School Tribunal in Appeal preferred by her for challenging her termination.

3 As such, since both the sides have challenged the same judgment delivered by the School Tribunal, both these petitions are being taken up for hearing together. For the sake of brevity, the Employer shall be referred to as “the Management” and Respondent No.1, who is the original Appellant, shall be referred to as “the Employee” in this judgment.

4 Rule. Rule made returnable forthwith and both the petitions are heard finally by the consent of the parties.

5 Insofar as the first petition is concerned, the grievance of the Management is that the Tribunal has concluded in paragraph 7 of the impugned judgment that Rule 37(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short “the MEPS Rules”) has not been complied with and as such, the enquiry conducted against the Employee deserves to be set aside from the stage contemplated under Rule 37(5).

6 The Management has pointed out from ground Nos.3 and 4 of the memo of the first petition, to indicate that the Enquiry Committee had prepared the summary which was given to the Employee on 12.02.2009 and which was received by the Employee. This is evident from the fact that the Employee offered her explanation on 19.02.2009 and further submitted an additional explanation on 26.02.2009.

7 Shri Sapkal, learned Advocate for the Management, has pointed out from paragraph 6 of the memo of the second Writ Petition preferred by the Employee wherein she has categorically stated that after the submission of the enquiry reports, she was given an opportunity to file her reply and she had accordingly, submitted her reply in respect of the proceedings before the Enquiry Committee. A copy of the said reply has also been placed on record.

8 Shri Sapkal, therefore, submits that the conclusion of the School Tribunal that Rule 37(5) has not been complied with, is an unsustainable conclusion. The first petition deserves to be allowed to the extent of the conclusion of the School Tribunal that sub-rule (5) of Rule 37 has not been complied with.

9 Shri Barlinge, learned Advocate appearing for the Employee,

does not contradict the contentions of the Management that the Employee was supplied with a copy of the summary and was also called upon to explain. The Employee had sought time and had supplied/ submitted her explanation as well as had also forwarded an additional explanation as recorded herein above.

10 In the light of the above, the first petition deserves to be allowed by quashing and setting aside the direction of the School Tribunal in Clause 9(3) of the impugned judgment.

11 Insofar as the second petition is concerned, Shri Barlinge submits that the Employee was appointed as an Assistant Teacher on 24.06.1996. On 21.09.2006, the Employee was directed to submit the salary bills on behalf of all the Employees so as to officiate as a superintendent. He points out that the Education Officer by communication dated 23.03.2006 had further directed the Employee to sign the muster roll as an incharge Headmistress.

12 Shri Barlinge points out that the Employees had preferred Writ Petition No.183/2008 before this Court raising certain issues. The learned Division Bench of this Court by its order dated 15.01.2008 had directed the Director of Education to consider the representation preferred

by the concerned Employees as regards their allegations that Respondent Nos.3 to 5 therein who are the Management and the Headmaster of the School, had deducted amounts from their salary towards recurring deposits and these amounts were not credited to their respective accounts.

13 Shri Barlinge further submits that the said Employees including the Employee in this case preferred another Writ Petition No.3926/2008 before this Court. By the order dated 09.09.2008, the concerned Employees were permitted to challenge their suspension order by resorting to appropriate proceedings. While doing so, this Court had set aside the order dated 15.05.2008 passed by the Education Officer directing action against some of the Petitioners therein.

14 Shri Barlinge further submits that the Employee herein individually preferred Writ Petition No.5867/2008 before this Court. By the order dated 18.11.2008, this Court declined to set aside the suspension of the Employee, but directed the Management to rectify the composition of the three members Enquiry Committee by inducting a serving teacher, who is State/ National Award winner, instead of a retired teacher. Certain conditions and a time limit, were imposed in order to ensure that the Enquiry Committee conducts and completes the enquiry in accordance with the Rules.

15 Shri Barlinge draws the attention of this Court to the grounds set out in the appeal memo. He also points out that the first report with regard to the enquiry conducted against the Employee was submitted by the Management's nominee. The Employee has been held guilty of the charges levelled upon her by the said report.

16 He then points out that the nominee of the Employee submitted a separate enquiry report which has been termed as the second enquiry report dated 27.02.2009. He submits that the Enquiry Committee has not followed the procedure laid down under Rule 37(6) to the extent of submitting a combined report so as to ensure that the Management is properly guided by the conclusions drawn by the Enquiry Committee.

17 Shri Barlinge further points out Rule 37(6) to support his contentions that the decision of the Enquiry Committee is to be implemented by the Management which is obliged to issue necessary orders within seven days from the date of the receipt of the decision of the Enquiry Committee.

18 Shri Barlinge has relied upon the judgment of the Apex Court in the case of *Vidya Vikas Mandal v/s Education Officer*, **2007(3) Mh.L.J.**

801. He contends that the School Tribunal should have considered the effect of two enquiry reports having been placed on record and especially the fact that one report holds the Employee guilty and the second report submitted by the nominee of the Employee exonerates her from all the charges levelled upon her.

19 He, therefore, submits that the Tribunal should have come to a conclusion that Rule 37(6) has not been complied with and should have granted reinstatement to the Employee with continuity and full back-wages. He submits that the School Tribunal has mechanically concluded that the Management was successful in proving the charges and the Management has rightly held the Employee guilty and has rightly acted upon the said report. He, therefore, prays for setting aside of the impugned judgment and allowing the second petition.

20 Shri Sapkal, learned Advocate, has supported the impugned judgment to the extent of the conclusions of the School Tribunal. He submits that the first report was prepared by the Enquiry Committee comprising of two members on 26.02.2009. The nominee of the Employee was informed that the last date to submit the report is 27.02.2009 and hence, the report needs to be prepared with urgency. It is pointed out that the nominee of the Employee had sought extension of time and had filed a

separate enquiry report without participating in the preparation of a combined report.

21 Shri Sapkal, however, submits that the contentions of the Employee as well as the justification of the Management should have been considered by the School Tribunal, inasmuch as the School Tribunal should have dealt with the aspect of two reports having been placed on record and whether, it was permissible for the Employee's nominee to file a separate report.

22 I find from the second petition that the Employee herself has prayed for quashing and setting aside of the judgment of the School Tribunal to the extent of clauses (3) and (4) below paragraph 9 by which the Employee is directed to offer an explanation under Rule 37(5) and the she is relegated to the stage of suspension. The contention of the Employee is that the School Tribunal should have directed her reinstatement with continuity and full back-wages.

23 Insofar as the first petition is concerned, I have already concluded, on the basis of the undisputed position, that the Enquiry Committee cannot be said to have violated Rule 37(5) since the Committee had permitted the Employee to offer her explanation on the

summary forwarded to her and she had done so by initially submitting an explanation and thereafter, with an additional explanation. As a consequence of allowing the first petition, the impugned judgment of the School Tribunal to the extent of Clause 9(3) of the impugned order has already been set aside.

24 The Apex Court, with regard to the Enquiry Committee comprising of three members, filing an enquiry report, has concluded in paragraph 8 in Vidya Vikas Mandal (supra) as under:-

- “8. *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.”

25 It is, therefore, apparent from the observations of the Apex Court that all the three members should normally submit their combined report whether, consenting or otherwise. The report has to be formalised in accordance with the mandatory provisions.

26 In the instant case, the Enquiry Committee should have acted under Rule 37(6) and should have formalized a report by recording the dissenting view of the nominee of the Employee. This aspect has not been dealt with by the School Tribunal and which has merely come to the conclusions that since Rule 37(5) has been violated, the order of dismissal dated 02.03.2009 issued by the Management to the Employee deserves to be quashed and set aside.

27 Considering the fact that Rule 37(5) has not been violated,

the conclusion of the School Tribunal based on the same in allowing the appeal filed by the Employee, naturally needs to be quashed and set aside.

28 In the above backdrop, both the learned Advocates have requested that the School Tribunal be directed to consider all the contentions of the Employee as well as the Management with regard to the applicability and compliance of Rule 37(6) and in the light of the observations of the Apex Court in the case of Vidya Vikas Mandal (supra).

29 As such, the second petition is partly allowed. The impugned judgment and order dated 26.06.2012 delivered by the School Tribunal in Appeal No.11/2009 is quashed and set aside.

30 The said appeal is remitted back to the School Tribunal with the following directions:-

- (a) The litigating sides shall appear before the School Tribunal on 01.10.2015. Formal notices need not be issued to the parties to the appeal by the School Tribunal.
- (b) Since this Court has concluded in the first petition that Rule 37(5) of the MEPS Rules has been complied with, the said issue, therefore, shall not be open for determination by the School Tribunal.

- (c) The School Tribunal shall consider the effect of two enquiry reports having been placed on record as noted above in the light of the observations of the Apex Court in paragraph 8 of it's judgment in the case of Vidya Vikas Mandal (supra).
- (d) All the contentions of the litigating sides with regard to compliance of Rule 37(6) of the MEPS Rules and the ratio laid down by the Apex Court in the case of Vidya Vikas Mandal (supra), are kept open and the School Tribunal shall consider the said contentions on their own merits and in the light of the reports (citations) that may be cited by the litigating sides.

31 Rule is, therefore, made partly absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)