

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

WRIT PETITION NO. 9951 OF 2012

Ajaz Ahmad Khan S/o Abdulla Khan,
Age : 46 Yrs., Occ: Service,
R/o Plot No. 66, New ST Colony,
Katkot Gate, Aurangabad.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
2. The Joint Director of Vocational Education and Training,
Bhadkal Gate, Aurangabad.
3. Anjuman Ishaat-E-Taleem Trust,
Aurangabad, through its Secretary,
C/o Seema Nursing Home,
Roshan Gate, Aurangabad.
4. Dr. Abdul Gaffar Quadri,
Convener of the Enquiry Committee,
C/o Seema Nursing Home,
Roshan Gate, Aurangabad.
5. Maulana Azad High School & Junior College,
Town Hall, Aurangabad,
through its Principal.

.. **Respondents**

Mr Ajay S. Deshpande, Advocate for the petitioner
Mr U. S. Mote, AGP for respondent/State
Mr S. S. Kazi, Advocate for respondent No. 3
Mr Gundre, Advocate for respondents No. 4 and 5

ALONG WITH

CIVIL APPLICATION NO. 283 OF 2014

IN
WRIT PETITION NO. 9951 OF 2012

ALONG WITH

CIVIL APPLICATION ST NO. 16863 OF 2014
IN
WRIT PETITION NO. 9951 OF 2012

**CORAM : A.V. NIRGUDE &
V. K. JADHAV, JJ.**

DATED : JANUARY 12TH, 2015.

ORAL JUDGMENT : - (PER A. V. NIRGUDE, J.)

1. The facts leading to this case can, in short, be summarized as under :

In 1993, the petitioner sought employment with respondent No. 3 - Society, as Full Time Teacher under MCVC stream. He was appointed as Full Time Teacher. In July 1994, for sometime the management was not getting grant-in-aid for providing salary to the petitioner but, subsequently such grant-in-aid was also given under a communication of respondent No. 2 dated 1st March, 1995. The petitioner then continued his work as Teacher without any interruption or difficulty. In 2009, apparently a dispute arose between the members of management of the Society and an application under Section 41 D. of the Bombay Public Trusts Act, 1950, was lodged against respondent No. 4,

who was then President of the Society. In support of this complaint, the petitioner himself filed an affidavit in which he made serious allegations against respondent No. 4. He alleged that respondent No. 4 demanded bribe and received it from the petitioner as well as persons in similar position. The intervenor wrote to respondent No. 3 - Society that petitioner had indulged in misconduct inasmuch as he did business as Contractor even after he was appointed as Teacher in 1993. He also alleged that the petitioner received thousands of rupees from the Government pursuant to the Contract given to him by the Government. On 10th June, 2011, the petitioner recorded his deposition in a Criminal Case No. 932 of 2010, against respondent No. 4. It is thereafter in February - 2012 a show-cause notice was issued to the petitioner as to why disciplinary action should not be taken against him. The allegations made in this notice are : (i) the petitioner indulged in trading while he was working as Full Time Teacher with the School run by respondent No. 3 - Society (ii) A criminal complaint was lodged against the petitioner in 2007 with the Police Station at Aurangabad. (iii) The petitioner is still carrying on business though he is Full Time Teacher. The petitioner submitted his reply and disclosed therein that his father prior to year 1993, was working as Contractor and was providing ready-made garments to the Government. His father died in 1985 and, thereafter though the business continued, it was continued in the name of the

petitioner. At that time, the petitioner was young and the business was run by his mother. The business continued by his mother even after 1993 and the petitioner's name was used as a Contractor. The petitioner received various cheques and he handed over those cheques to his mother. He further mentioned that his mother closed down the business in February-1995. The petitioner denied the other charges levelled against him. Despite of this reply, a charge-sheet was given to the petitioner on 7th May, 2012. The Society constituted an Enquiry Committee as provided under Rule 36 of the Maharashtra Employees of Private Schools Rules, 1981 (in short "MEPS Rules"). The petitioner submitted reply in which he challenged the legality of the constitution of the Enquiry Committee. He alleged that a person (respondent No.4) having personal grudge against him could not have been convener of such Committee. He also alleged that other member of the committee i.e. Shri L. G. Kale, could not have been member of the Committee because he was not in service as Teacher as he had long been retired. For sometime, the enquiry was carried on but, on 3rd December, 2012, the petitioner was advised to file this petition.

2. As expected, the respondents opposed the petition mainly on the ground that petition was not maintainable and the petitioner should wait till the Enquiry Committee submits its reply. The law on this subject

is well settled. The Supreme Court in the case of **Union of India & Anr. Vs Kunisetty Satyanarayana** reported in 2006(12) SCC 28 clearly held that, a mere charge-sheet or show-cause notice does not give rise to any cause of action to a delinquent and therefore he is not entitled to file a writ petition against such action.

3. Indeed, the Courts are reluctant to interfere in domestic enquiries unless there is a gross misuse of powers. Therefore, we have to find out whether facts of this case would compel us to interfere in the action initiated by the respondents. The answer to this is in affirmative. As mentioned above, respondent No. 4 is known adversary of the petitioner. Therefore, the management should not have selected respondent No. 4 as convener of the Enquiry Committee. It is not the case that they were not aware of the personal spite that had been going on between the petitioner and respondent No. 4. Respondent No. 4 ought to have recused himself because admittedly at least two complaints he was facing in which the petitioner was a witness and had made grave allegations against him. On this point, the constitution of the Enquiry Committee was greatly affected. It must be held that such Enquiry Committee should be disbanded immediately.

4. The learned Counsel for respondent No. 1 - Mr Kazi, tries to assert that the petitioner participated in the enquiry and, therefore, he is

not debarred from raising objection in respect of the lawfulness or legality of the Enquiry Committee. Indeed there occurred delay in approaching to this Court. The domestic enquiry belatedly started in May-2012, and after attending some sessions of the enquiry, the petitioner rather belatedly approached this Court. But, in the facts referred to above, we may hold that the petitioner should not debar from coming to this Court probably he received legal advise rather belatedly and, therefore, he cannot be blamed or debarred from coming to this Court belatedly. The other allegation made by him in the reply is in respect of the other member of the Enquiry Committee i.e. Shri L. G. Kale, who is made member of the Committee. This person is no doubt recipient of State Award for ideal teacher but admittedly on the date of his appointment as Member of the Committee, he had retired from his service. He was not a teacher at that time. Rule 36 of MEPS Rules provides as to how Enquiry Committee is constituted, which reads as under :

36. Inquiry Committee:

(1) If an employee is allegedly found to be guilty on ¹[any of the grounds specified in sub-rule (5) of rule 28] and the Management decides to hold an inquiry, it shall do so though a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive

Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

¹[(2) *If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decided to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner; that is to say, -*

(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 authorised 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;*

- (b) *in the case of the Head referred to in sub-rule (1) -*
- (i) *one member who shall be the President of the Management;*
 - (ii) *one member to be nominated by the Head from amongst the employees of any private school;*
 - (iii) *one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.]*
- ²[(3) *The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgement due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.]*
- (4) *If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry Committee of three members shall be deemed to have been constitute on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of*

his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule(2).

²[(5) *The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.]*

(6) *The meetings of the Inquiry Committee shall be held in the school premises during normal school hours or immediately thereafter, if the employee agrees and even during vacation.*

Clause (2)(a)(iii) clearly provided that one of the members should be from the panel of teachers on whom State or National Award has been conferred.

5. The Division Bench of this Court in **Writ Petition No. 5867 of 2008** (Leelatai d/o Annapa Patil versus The State of Maharashtra & ors.) (Unreported Judgment) held that, member of Panel of Teachers would mean that such person should be “in service Teacher”. Similar view is expressed by the learned Single judge of this Court in the case of **Kranti Junior Adhyapak Mahavidyalaya & Anr. Vs. The State of**

Maharashtra & Ors. reported in 2011(6) All MR 625. The law is now settled that a retired teacher cannot be made member of Panel of Teachers on whom award has been conferred, no matter whether he is really an awardee.

6. The allegation that the petitioner violated code of conduct prescribed for teachers itself is not convincing at all. Rule 28 *inter alia* provides as to when an employee of a private school should be liable to be punished over misconducts. Rule 28 of MEPS Rules reads as under:

28. Removal or Termination of Service :

- (1) *The services of a temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calender month's notice or by paying one month's salary (pay and allowances, if any) in lieu of notice.*
- If the case of an employee entitled to vacation, the notice shall not be given during the vacation or so as to cover any part of the vacation or within one month after vacation.*

¹[***]

- (4) *If a permanent employee in a secondary school or Junior College of Education who is appointed to the 1st April, 1966, or a permanent employee in a primary school who is appointed prior to the 1st April 1979 be relieved from service in the school for being found medically*

unfit as certified by the Civil Surgeon or the Superintendent of Government Hospital, as the case may be, he shall be given gratuity at the rate of half a month's salary (pay and D.A.) for every completed year of service but not less than 3 months' salary (pay and D.A.), whichever is higher:

²[Provided that, an employee receiving gratuity under this sub-rule shall not be held eligible to receive in addition, compensation as provided under sub-rule (2) above.]

(5) *An employee shall be liable to be punished on one or more of the following grounds namely :*

- (a) misconduct;*
- (b) moral turpitude;*
- (c) wilful and persistent negligence of duty;*
- (d) incompetence.*

7. Rule 22 of MEPS Rules provides 'Duties and Code of Conduct', which reads as under:

22. Duties and Code of Conduct :

- (1) The duties of Head, Assistant Head, Supervisor, teachers and non-teaching staff (clerks) shall be as specified in Schedule "I".*
- (2) All teachers and employees shall observe the following Code of Conduct namely :*

- (a) *An employee shall treat all students without discrimination on political ground or for reasons of race, religion, caste, language or sex or any other reason of arbitrary or personal nature and shall refrain from instigating students against other students or other employees or school administration.*
- (b) *A teacher shall not misuse the facilities of the school while exercising freedom of academic thought or expression.*
- (c) *An employee shall not make use of the resources and facilities of the institution or Management for his personal use or for commercial, political or religious purposes.*
- (d) *A teacher shall be impartial in assessment for students and shall not deliberately overmark or undermark or victimise students on any ground.*
- (e) *A teacher shall not conduct or be employed in any private coaching classes or give private tuitions on commercial basis, except as otherwise provided in rule 23.*
- (f) *An employee shall communicate change in address, if any, during vacation or leave period to the Head, Chief Executive Officer or President as the case may be.*

- (g) *Full-time teaching staff shall not accept part-time employment on payment or for any consideration in another educational, cultural or literary institution without obtaining prior written permission from the authorities of the school in which he is employed on full-time basis. Such work shall, however, be limited to two hours per day including private tuitions. In respect of a full-time non-teaching employee desirous of working in Nigh School, he shall be so allowed for the entire working period of the Nigh School.*
- (h) *The behaviour of an employee with male and female students and employees shall be modest.*
 - (i) *an employee shall strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being.*
 - (ii) *not consume any intoxicating drink or be under the influence of any intoxicating drink or dug, during the course of his duty; and shall also take due care that the performance of his duties at any time is not affected in any way by the influence of any such drink or drug;*

- (iii) *refrain from consuming any intoxicating drink or drug in a public place;*
- (iv) *not appear in a public place in a state of intoxication;*
- (v) *not use any intoxicating drink or drug in excess so that he is unable to control his behaviour.*

8. Clause (g) of Sub-Rule 2 of Rule 22 clearly mentions that a member of teaching staff should not accept part time employment without obtaining prior written permission of the management of a School. Besides the case against the petitioner, certain business was carried on in the name of the petitioner though he was then a Full Time Teacher of a School. But, if we read clause (g) as quoted above carefully, it would be clear that this condition of Duty and Code of Conduct is provided in the statute book to prevent a member of a teaching staff from remaining absent from his duty for the purpose of attending his business. Besides, the said clause provides that a member of teaching staff may, after obtaining written prior permission from the management of a School, seek employment for limited period such as teaching in Night school etc.

9. Learned Counsel for the respondent No. 1 - Mr Kazi, also placed reliance on Clause 71.2 of Secondary Schools Code (Revised

Edition, 1979) which reads as under ; -

71.2 *All employees, shall, during the period of their service, employ themselves honestly and efficiently under the orders of the Head of the school and shall make themselves in all respects useful to the school. They shall not on their own account or otherwise, either directly or indirectly, carry on or be concerned in any trade or business.*

10. In a way the petitioner carried on trading activity while he was working as Full Time Teacher but, there is no allegation against him that for carrying on this trading activity he remained absent from duty without permission and was guilty of absenteeism in 1993-95 etc. The allegation is so absurd and belatedly made that it is max of spiteful vengeance. The incident that occurred in the petitioner's life in 1994-95, was long back over. Had there been no enmity between the petitioner and respondent No. 4, this disclosure would not have prompted the management to any enquiry and action against the petitioner. Thus, on the face of it the allegation made against the petitioner is based on stale and by no stretch of imagination this Court would agree with the respondents that they should carry on with this enquiry. The other two allegations against the petitioner are equally baseless. The second allegation is about a criminal complaint alleged against the petitioner. The charge-sheet does not mention whether in the criminal complaint the

petitioner was charge-sheeted. It only mentions that a complaint was lodged against the petitioner in a police station. The respondents did not take pains to make enquiry as to what had happened to the criminal case. This allegation is also baseless. In the third allegation it is said that the petitioner is still carrying on trading activity. No particulars are mentioned in the charge-sheet or in show-cause notice the allegations are made for the purpose of making the stale. There is no substance in it.

11. The petitioner rightly placed reliance on the certain judgments of the Supreme Court in which Supreme Court indicated as to under what circumstances the Court should interfere in domestic inquiries. These judgments are in the cases of **State of A.P. v. N. Radhakishan** reported in **AIR 1998 SC 1833 (1)**, **P. V. Mahadevan v. M.D., T.N. Housing Board** reported in **AIR 2006 SC 207** and **Tilak Chand Magatram Obhan Versus Kamala Prasad Shukla and others** reported in **1995 SUPP (1) SCC 21**. In the case of State of A.P. (cited supra), the Supreme Court was trying to decide as to whether any predetermined principles can be laid down for making them applicable to all cases where there is delay in concluding the disciplinary proceedings. The Supreme Court held that if the disciplinary proceeding is delayed, depending upon the facts and circumstances of each case the Court has

to find out whether the delay has vitiated the court proceedings. The case before us is worst. The charge-sheet itself is based on an old incident which was long back forgotten. The charge-sheet was filed to take revenge of the petitioner. The judgment in the case of P. V. Mahadevan (referred supra) laid down that the management cannot raise a plea that they were not aware of commission of irregularities by delinquent and so their belated action should be condoned. The Supreme Court held that such plea is not maintainable. These two judgments would seal the fate of this enquiry. The third judgment is in respect of a bias. We have already discussed above as to how respondent No. 4 ought to have recused himself in this enquiry. The fact that he did not recuse himself and the fact that respondent No. 3 is insisting on his continuation as Member or Convener of the Enquiry Committee clearly indicates failure of natural justice and strong bias of the persecution against the petitioner. The enquiry is an excellent example of persecution.

12. Having regard to the facts of this case, we are of the view that the petition should succeed. The petition is allowed in terms of prayer clause 'B' of the petition. Rule made absolute.

13. In view of observations made above, applications for intervention no more survive and stand rejected.

[V. K. JADHAV, J.]

[A.V. NIRGUDE, J.]

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