***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***
***CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 7762 OF 2003***

Smt.Lata Ashok Ukidve,
R/o 18-A/102, Ashok Nagar,
Bhiwandi, Dist. Thane. … Petitioner

v/s

1. The Secretary,
   Shishu Vihar Sanstha, Dandekar Wadi,
   Bhiwandi, Dist. Thane.

2. The President,
   Shishu Vihar Sanstha, Dandekar Wadi,
   Bhiwandi, Dist. Thane.

3. The Education Officer (Primary),
   Zilla Parishad, Thane.

4. The Administrative Officer,
   Municipal Council School Board,
   Bhiwandi Nijampur Municipal Council,
   Bhiwandi, Dist. Thane.

5. Shri Shantaram Ramchandra Phondse,
   Head Master, Dadasaheb Dandekar
   Vidyalaya, Primary Section,
   Bhiwandi, Dist. Thane.

6. The Presiding Officer,
   Addl. School Tribunal, New Mumbai. … Respondents

***ALONG WITH***
***WRIT PETITION NO. 4507 OF 2004***

Smt.Lata Ashok Ukidve,
R/o 18-A/102, Ashok Nagar,
Bhiwandi, Dist. Thane. … Petitioner

v/s

1. The Secretary,
   Shishu Vihar Sanstha, Dandekar Wadi,
   Bhiwandi, Dist. Thane.

2. The President,
   Shishu Vihar Sanstha, Dandekar Wadi,
   Bhiwandi, Dist. Thane.

3. The Education Officer (Primary),
   Zilla Parishad, Thane.

4. The Administrative Officer,
   Municipal Council School Board,
   Bhiwandi Nijampur Municipal Council,
   Bhiwandi, Dist. Thane.

5. Shri Shantaram Ramchandra Phondse,
   Head Master, Dadasaheb Dandekar
   Vidyalaya, Primary Section,
   Bhiwandi, Dist. Thane. … Respondents

Mr.Sanjay Thokade for the petitioner in W.P. No.7762 of 2003.

Mr.Sandesh Patil for the petitioner in W.P. No.4507 of 2004.

Ms.Gauri Godse for Resp. Nos.1 and 2 in both petitions.

***CORAM: N.M. JAMDAR, J.***

***DATED : 4 DECEMBER 2015***

***ORAL JUDGMENT:***

Both these petitions are filed by the same Petitioner against the same Respondents and the facts being similar, by consent of parties, are disposed of by this common judgment.

2. The Petitioner was appointed as a Assistant Teacher in the Respondent School on 22 September 1975. She was promoted as a Head Mistress on 1 June 1983. The Petitioner, on 14 January 2000 addressed a letter to the President/Secretary of the Respondent management stating that she wishes to tender her resignation. She stated in the resignation letter that she was being harassed, even assaulted by a clerk working in the Respondent management and the Respondent management did not take any action and in fact supported the actions of the concerned clerk, who was her real brother. She stated that, in view of this situation and the fact that the Respondent management was not taking any action, she was tendering her resignation on 14 January 2000 with effect from 20 January 2000. Thereafter the Petitioner addressed a letter on 21 January 2000 to the management stating that she is withdrawing the said letter of resignation. There is some dispute as to when this letter reached to the management. According to the Respondent management it reached on 24 January 2000. On 22 January 2000 the Respondent management sent a letter to the Petitioner stating that all the allegations made by the Petitioner in the resignation letter against the management were being denied. The management made attempts to bring about a settlement between the Petitioner and her brother on many occasions. In the

circumstances, the Respondent management accepted the resignation and relieved the Petitioner from service. The Petitioner thereafter addressed a communication on 24 January 2000 stating that she had resigned from services and her resignation was rightly accepted and she was relieved from service, however, said action taken by her was in a disturbed state of mind and she tendered her apology. There were two more letters given by her tendering apology which were endorsed by her husband and her brother, concerned clerk, also tendered his apology. The Petitioner thereafter, pursuant to the apology tendered by her, was taken back in service as a Assistant Teacher.

3. The Petitioner thereafter filed Appeal No.9 of 2000 in the School Tribunal, New Mumbai, contending that there was no valid resignation and acceptance of the resignation is contrary to Rules, the resignation stood withdrawn and therefore the resignation tendered by her on 14 January 2000 and its acceptance on 22 January 2000 were illegal and therefore the order of 28 January 2000 appointing her as Assistant Teacher was a reduction in rank which should be quashed and set aside with consequential benefits. The appeal was filed along with the application for condonation of delay which application was allowed. By the impugned order passed in this appeal on 16 November 2002, the appeal was dismissed. The decision given in this Appeal No.1 of 2003 is the subject matter of Writ Petition No.4507 of 2004.

4. While this appeal was pending, a show cause notice was given to the Petitioner on 26 March 2002 listing 23 charges against her. The petitioner was called upon to submit her explanation along with the documents and witnesses, if any. The enquiry proceedings thereafter were held from time to time. In the preliminary meetings held on 18 September 2001 and 3 December 2001, an enquiry committee was constituted including the representative of the Petitioner. The Respondent management submitted list of twenty two witnesses and also around hundred documents. The proceedings continued on several dates and on various dates the Petitioner remained absent. In the enquiry, seventeen assistant teachers, a Head Mistress of Primary School, two assistant teachers and one non-teaching staff from the Respondent management deposed and their evidence was recorded. The enquiry committee considered their evidence, so also the documentary evidence produced. The Petitioner did not cross-examine any of the witnesses and thereafter the enquiry was concluded and report was submitted on 4 December 2002, holding the Petitioner guilty of the charges which were proved by examination of witnesses and the evidence. Pursuant to the enquiry report so submitted, the Petitioner was terminated from service on 30 July 2002.

5. The Petitioner thereafter filed an appeal bearing No.1 of 2003 in the School Tribunal, New Mumbai. The School Tribunal by an order dated 17 September 2003 dismissed the appeal holding that

the proceedings in the enquiry were fair and proper and the charges were proved. The School Tribunal took note of the fact that the Petitioner was absent on various dates and had not extended her cooperation to the enquiry committee. Accordingly, by the impugned order, the appeal was dismissed. This order is challenged in Writ Petition No.7762 of 2003.

6. Mr.Sandesh Patil, learned counsel for the Petitioner in Writ Petition No.4507 of 2004 contended that, if the acceptance of the resignation of 14 January 2000 is held to be illegal, then, there is no question of any further proceedings, including the one which is subject matter of Writ Petition No.7762 of 2003. He submitted that the resignation tendered on 14 January 2000 was not given by free will and the tenor of the resignation letter would show that it was under duress and coercion. He submitted that the resignation letter, even assuming was given by free will, was not for stepping outside the services of the Respondent management altogether but was only resignation from the post of Head Mistress and the acceptance by the management of this resignation letter was a resignation from services altogether, was illegal. Mr.Patil submitted that, even otherwise before the resignation letter was accepted, the Petitioner had withdrawn the same and therefore it could not have been accepted. Mr.Patil submitted that no importance can be given to the undertaking stated to be given by the Petitioner and her request for taking her back in service as Assistant Teacher, as the language of the letters would show that, they were under duress.

He submitted that the resignation and its acceptance was not as per Section 7 read with Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 Act and Rules, 1981. Mr.Patil submitted that since the Petitioner never wanted to resign from the services altogether and her resignation is accepted as if she wanted to resign from services altogether, parties were not *ad idem* and therefore there was no valid acceptance of the resignation. Learned counsel relied upon the decision of the Apex Court in the case of ***Mayawanti v/s Kaushalya Devi,*** reported in ***(1990) 3 SCC 1***. Mr.Patil submitted that since the acceptance of the resignation letter is bad in law, the appeal of the Petitioner ought to have been allowed and the Petitioner be reinstated on the post of Head Mistress.

7. In Writ Petition No.7762 of 2003, Mr.Sanjay Thokade, learned counsel for the Petitioner, while challenging the dismissal of appeal arising from the report of the enquiry committee, submitted that the entire enquiry was a farce and it was a malafide exercise. He submitted referring to various dates, that the enquiry committee proceeded in haste and without any cogent reasons drew conclusion against the Petitioner. Mr.Thokade submitted that, on various dates the Petitioner had genuine reasons for not remaining present and none of these reasons have been considered by the enquiry committee as well as by the School Tribunal. He submitted that the charges levelled against the Petitioner are totally vague and no conclusion could have been drawn against the

Petitioner on the basis of such vague charges. He relied upon the decision of the Apex Court in the case of ***Anant R. Kulkarni v/s Y.P. Education Society & ors.,*** reported in ***2013 Lab.I.C. 2341***. He also relied upon the decision of the Apex Court in the case of ***Anil Kumar v/s Presiding Officer & ors.***, reported in ***(1985) 3 SCC 378***, to contend that a reasoned enquiry report is a part of principles of natural justice and since the report of the enquiry officer is unreasoned, the entire enquiry and the consequential finding ought to be set aside. Mr.Thokade also contended that, all the charges levelled against the Petitioner are during her tenure as a Head Mistress and the enquiry committee constituted by the Respondent management to enquire into the charges is not a enquiry committee mandated to be established to enquire into the charges against the Head Mistress. He submitted that therefore there is a breach of Rule 36 of Rules of 1981. For that purpose Mr.Thokade relied upon the decision of the Division Bench of this Court in the case of ***Kankubai Shravikashram Trust & ors. v/s Kamal & ors.***, reported in ***1992 Mah.L.J. 216,*** and the decision of the Single Judge of this Court in the case of ***Ganpati Kondbaji Sant v/s Sant Gulab Baba Shikshan Sanstha, Umrer & ors.,*** reported in ***2000 II CLR 833.*** Mr.Thokade submitted that the enquiry therefore was vitiated and the School Tribunal ought to have accepted the contention of the Petitioner to have effect and granted her reinstatement in service.

8. Ms.Gauri Godse, learned counsel for the Respondent

management in both the petitions, dealing firstly with Writ Petition No.4507 of 2004 submitted that the resignation dated 14 January 2000 is clearly a resignation from services altogether as it cannot be that the Petitioner would resign from the post of Head Mistress and automatically continue as a Assistant Teacher. She submitted that the resignation letter was to be effective from 20 January 2000 which was accepted on 22 January 2000 and the letter of withdrawal issued by the Petitioner, as per the report of the postal authority, was received by the Respondent management on 24 January 2000. Ms.Godse submitted that, once the date specified in the resignation letter came into effect and after that date the Respondent management had accepted the resignation letter, there was no illegality in the same. She further submitted that the Petitioner thereafter tendered unconditional apology which was also endorsed by her husband and brother and the Respondent management, taking sympathetic view, took the Petitioner back in service as a Assistant Teacher. She submitted that having once accepted the post of Assistant Teacher and joined on the same post, there is no question of the Petitioner then raising the issue of acceptance of her resignation. She submitted that the act of resignation was purely voluntary and it was out of domestic problem and no coercion, neither any due influence on the part of the management is even indicated in the resignation letter. She submitted that, therefore, there was no question of any withdrawal of the resignation which was a completed action. Ms.Godse submitted that the decision relied upon by Mr.Patil is not applicable

as it arises from completely different decisions of law, such as, contract law and specific performance, which has no bearing to the facts of the present case.

9. As regard Writ Petition No.7762 of 2003, Ms.Godse pointed out from the enquiry report and also from the documents that, initially whenever adjournments were sought by the Petitioner, the Petitioner was accommodated, however, the Petitioner did not cooperate with the enquiry and on frivolous grounds kept seeking adjournments. She pointed out with reference to each date of enquiry how the attitude of the Petitioner was only to delay the enquiry proceedings. She submitted that the enquiry committee which had before it twenty two witnesses and voluminous record with no response or cross-examination by the Petitioner, had no other option but to proceed and hold that the Petitioner was guilty of the charges. She submitted that none of the decisions cited by Mr.Thokade arise from facts and circumstances wherein there is a complete non-cooperation by the delinquent in the enquiry. She also submitted that the charges are not vague and the Petitioner never cooperated in the enquiry nor made such grievance and, therefore, at this stage, cannot be permitted to take up the said issue. Ms.Godse also submitted that the contention that the charges levelled against the Petitioner were during her tenure as Head Mistress and, therefore, enquiry committee constituted is bad in law, is incorrect as not all the charges were during that period and even otherwise the constitution was proper. She also

submitted that the Respondent management showed enough indulgence to the Petitioner and after holding a proper enquiry the services of the Petitioner were dispensed with. Ms.Godse submitted that therefore there is no perversity in either of the orders and both the petitions be rejected.

10. First Writ Petition No.4507 of 2004 is taken up for consideration. The controversy involved in this petition centers around the resignation tendered by the Petitioner. The resignation dated 14 January 2000 is a detailed resignation letter. The entire grievance appears to be made against the clerk Mr.Kulkarni, who is the real brother of the Petitioner. Though the Petitioner has made a grievance that a clerk working in the school, who is not accepting the orders of the Head Mistress and even going to the extent of trying to physically assault her, it is in essence a purely personal dispute of the Petitioner with her brother. This letter does not refer to any kind of coercion or pressurizing by the management. The resignation refers to the fact that the management has not taken a stringent action against her brother, but that does not necessarily mean that the management was actively supporting her brother and was instrumental in instigating her brother to assault her. On what basis an argument is advanced that the resignation letter is given under the coercion of the management is not understood. The resignation letter refers to the Petitioner's domestic issues and there is no question of any kind of pressurizing or coercion by the management. Management in fact tried to bring about a

reconciliation. The resignation letter itself gives a week's time for its taking effect and whatever state of mind the Petitioner was in, she being an educated lady, she could have reconsidered her position or made a grievance about any kind of forcible resignation within a period of one week which was specified in the resignation letter. There is absolutely no merit in the contention that the resignation was a forcible one. Needlessly, a deep rooted controversy is alleged. In fact, such an stand of a Head Mistress of tendering resignation out of her domestic problems, then attributing malafides against the management is an irresponsible conduct.

11. Mr.Patil, then advanced an alternate submission that, even assuming the resignation letter is valid, it was not a resignation from the services of the Respondent management. It is contended that there was no resignation from the services entirely and all that the Petitioner meant was stepping down from the post of the Head Mistress and the action of the Respondent in accepting the resignation letter and relieving her from service altogether is bad in law. As it is rightly contended by Ms.Godse, the Petitioner was promoted from the post of Assistant Teacher to the post of Head Mistress which she held and there is no question of automatic stepping down to that post. Even in the last line of the resignation letter the Petitioner has stated that she is ready to work for the benefit of the institution whenever she is called upon, clearly meant that she was stepping out of the services. If it was a grievance of

the Petitioner that her brother who was working as a clerk could assault even a Head Mistress, then it does not stand to reason she would continue in the same institution on a lower post. The management therefore was justified in interpreting the letter as resignation from the services.

12. Mr.Patil then submitted that before the resignation was accepted, it was withdrawn. There is no merit in this contention. Before the School Tribunal, the Respondent management had produced a communication from postal authorities that the letter withdrawing the resignation was received on 24 January 2000, after it was accepted on 22 January 2000. Even otherwise, the Petitioner on her own showing, addressed a communication for withdrawal after the effective date specified in the resignation letter. No position of law is shown that in the circumstances the acceptance after the effective date would be bad in law. There is absolutely no reason given as to why inspite of consciously specifying a week's time in the resignation letter, withdrawal letter was not sent earlier.

13. As regard the contention that the parties were not *ad idem* on the resignation letter, it has no merit and it has to be rejected. The Petitioner, after resignation was accepted, herself made communications to the Respondent management tendering her apology. These letters were endorsed by her husband and brother. In these letters, she has clearly stated that she had resigned from

services and the acceptance of her resignation letter was valid and she wanted to come back into the service. The submission of Mr.Thokade based on a statement in the record that the letters were dictated by the management and therefore were under coercion, is baseless. The letters may have been dictated but it does not mean that they were under dictate. The management appears to have brought about a reconciliation between the Petitioner and her brother, and after taking the undertakings from both of them, took the Petitioner back in service as a Assistant Teacher. Ms.Godse is justified in submitting that it was only out of the goodness that this step was taken. If the management was really against the Petitioner as contended, the management need not have taken such a action and would have driven the Petitioner to file an appeal. Having once accepted the post of Assistant Teacher, then the Petitioner cannot turn around and find faults with her acceptance of resignation.

14. Ultimately, the basic argument is that the Petitioner wanted only to resign from the post of Head Master and to work as a Assistant Teacher. Once the management, upon request of the Petitioner, took her back as Assistant Teacher, in a writ jurisdiction, I am not inclined to scrutinize the issue any further. Even otherwise as stated above, there is no illegality committed by the management in accepting the resignation of the Petitioner and it is out of goodness that the Respondent management offered the post of Assistant Teacher to her, which she accepted. From the tenor of resignation letter, its withdrawal and the letters of apology, it

appears that the management was needless embroiled in a purely domestic dispute of the Petitioner with her brother. It was sought to be contended that there is overwriting in the letter regarding acceptance of resignation but Ms.Godse has pointed out that in every other communications the Petitioner has carried out such overwriting.

15. On Petitioner's own undertaking, she was appointed as a Assistant Teacher after having validly resigned. Reliance placed by Mr.Patil, learned counsel for the Petitioner in the case of *Mayawanti* (supra), is entirely misconceived. The case arose from a contract and a suit for specific performance. It is in that context that the Apex Court referred to acceptance and the necessity that the parties need to be *ad idem*. Not only this decision arise from a completely different position of law, but the Petitioner in the subsequent communications have clearly indicated that the interpretation of the Respondent of the said resignation letter is correct. There is absolutely, no ground made out for interference in the impugned order as there is no reversion at all. In the circumstances, there is no merit in this petition.

16. Turning now to the Writ Petition No.7762 of 2003. In this petition, the Petitioner challenges her dismissal from service consequent to an enquiry held against her. The first submission of Mr.Thokade, learned counsel for the Petitioner is that the enquiry report does not give any reasons at all. For that purpose he relied

upon the decision of the Apex Court in the case of *Anil Kumar* (supra). Mr.Thokade submitted that the conclusion of the enquiry and stated that it only states that all charges are proved and therefore the entire report is unreasoned. There is no merit in this contention. If the enquiry report is perused, it lists the proceedings as they progressed date-wise. It states that the Petitioner was given an adequate opportunity. It refers to the documents produced by both the parties. It refers to the attitude of non-cooperation of the Petitioner. It refers to the fact that twenty two witnesses were examined and 115 documents were exhibited. Thereafter the enquiry committee has observed that the Petitioner is only interested in prolonging the matter. The enquiry report states that, for 23 charges twenty two witnesses and voluminous evidence was led which was perused. None of the assertions made by the witnesses have been controverted by the Petitioner. All that the Petitioner has done is to delay the proceedings and considering the voluminous record the charges are proved. There are depositions of twenty two witnesses, there is material on record which is exhibited and there is no cross-examination. The enquiry report refers to the material on record and draws inferences. The enquiry report therefore is not unreasoned. The decisions cited by Mr.Thokade did not arise from the factual matrix where there was a complete non-cooperation by the delinquent.

17. Next contention of Mr.Thokade is that, all the charges pertain to the period when the Petitioner was working as a Head Master

and therefore the enquiry constituted on the basis that she was a Assistant Teacher, is bad in law and in contravention of Rule 36 of Maharashtra Employees Private Schools (Conditions of Service) Rules, 1981. There is no merit in this contention. There is nothing in Rule 36 which indicates that if the charges are pertaining to the period when the delinquent was working as a Head Mistress, the enquiry should be held as if the delinquent was Head Mistress even though at the time of enquiry she was a Assistant Teacher. All that the Rules contemplate is, when an enquiry is to be held against a Head, then a particular composition of the committee is to be resorted to. The plain language of the Rule does not indicate that even if a person is on the post of Assistant Teacher and the charges pertain when she was Head of the school, then the enquiry should be as if she was the Head of the school. Even otherwise, Ms.Godse has shown that most of the charges are regarding the behaviour, arrogance, quarrelsome attitude and insubordination and they did not pertain to the Petitioner's services as a Head. Twenty two witnesses deposed in the matter and most of the allegations made against the Petitioner regarding her general conduct were found to be proved by the enquiry committee. There is therefore no merit in the contention raised by the learned counsel for the Petitioner. Furthermore, the argument based on Rule 36 was not made before the School Tribunal and it is being taken for the first time in this Court.

18. Learned counsel for the Petitioner then submitted that the

enquiry was held hurriedly and malafide. This submission has to be rejected as baseless. The enquiry committee has shown more than enough patience in dealing with the attitude of complete non-cooperation by the Petitioner. Learned counsel for the Petitioner has sought to tender explanations for the 6-7 dates on which the Petitioner did not remain present before the enquiry committee. Ms.Godse objected for furnishing these explanations as, according to her, these were never tendered in such form before the School Tribunal. I have gone through the material regarding explanations. Even considering these explanations, the finding of the Tribunal and the enquiry committee of non-cooperation by the Petitioner cannot be disturbed. There is absolutely no explanation for the dates on which the Petitioner did not remain present. The enquiry is not akin to a criminal trial. Broadly, principles of natural justice have to be followed and it is expected that a delinquent cooperates in the enquiry. In the present case, all that the Petitioner had attempted to do is to only create legal grounds so that the enquiry can be subsequently challenged or throttled.

19. On 26 March 2002, charge-sheet was given to the Petitioner, The enquiry committee was constituted in which representative of the Petitioner was included. Twelve sittings were held. The management examined twenty two witnesses and produced 115 documents. The Petitioner, out of twelve sittings, remained present only for two and even when she remained present, she raised technical objections. Her representative remained present only for

three sittings. The Petitioner did remain present on 12 July 2002. On 12 July 2002, the charges were re-arranged. The Petitioner was given 7 days' time to submit her explanation. When the proceedings were adjourned, Petitioner's representative was not present. On a subsequent date the Petitioner's representative remained present and stated that he has remained present under the protest as the Petitioner has told him not to remain present. When on 14 August 2002, none remained present on behalf of the Petitioner. Grievance was made by the Respondent management that the witnesses are being inconvenienced and the evidence be recorded and the Petitioner can carry out the cross-examination subsequently. Accordingly, on 14 August 2002, six witnesses were examined and their depositions were recorded. Letters issued by the Petitioner were also taken on record. Thereafter, on 24 August 2002, 15 witnesses were examined. The Petitioner and her representative did not remain present. The proceedings were again adjourned and held on 11 October 2002. The Petitioner and her representative were not present and the matter was adjourned on 21 October 2002. Thereafter, it was held on 25 October 2002. On that day, Petitioner and her representative were not present and the matters were adjourned to 31 October 2002. On 31 October 2002, the enquiry committee waited till the evening but none appeared on behalf of the Petitioner. Thereafter, the enquiry was concluded and finding of guilt was recorded against the Petitioner. After showing an attitude of complete non-cooperation and giving frivolous excuses for not remaining present on some dates, legal

submissions are advanced as regard to the fairness of the enquiry, which cannot be permitted. The explanations given by the Petitioner are accepted, they only relate to few dates and there is absolutely no explanations for the remaining dates. The School Tribunal has, in detail, examined what happened on each and every date and has drawn a conclusion that there was complete non-cooperation. It is not possible to re-appreciate the evidence as if it is a first appeal from the order of the School Tribunal. The factual findings recorded by the School Tribunal, after taking totality of the circumstances, is not perverse.

20. As regard the argument that the charges are vague and the reliance on the decision of the Apex Court in the case of *Anant R. Kulkarni* (supra), it does not lie in the mouth of the Petitioner to state so when the Petitioner did not even bother to attend the enquiry. The purpose of giving a charge-sheet is to make delinquent aware of the allegations. Since the Petitioner completely disregarded the enquiry and did not participate in it at all and a cogent evidence is led in support of the charges, the Petitioner cannot now make a grievance that the charges were vague. Similar is the situation for rejecting the argument that some dates in the enquiry were in the school vacation. The charges were primarily about insubordination, improper behaviour and the conduct vitiating the atmosphere in the school. Twenty one teaching staff and one non-teaching staff deposed against her in this regard. The Petitioner did not even bother to cross-examine

them. The Petitioner, it is informed, has crossed the age of superannuation.

21. Considering the overall facts and circumstances, it cannot be said that the School Tribunal has committed any illegality or perversity in passing the impugned order.

22. In view of the above position, both the writ petitions are dismissed. Rule is discharged. No costs.

***( N. M. JAMDAR, J. )***