

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1189 OF 2016

1. The Secretary,
John Wilson Education Society,
Wilson College, Mumbai,
Taluka and District Mumbai,
 2. Dr.Fraser Boy's High School, Jalna,
Taluka and District Jalna,
(Wrongly mentioned)
Near Shanoormiya Dargah,
Shahanoorwadi, Jalna,
Taluka and District Jalna,
Through its Head Master
- PETITIONERS

VERSUS

1. Sanjay Premanand Athavale,
Age-55 years, Occu-Assistant Teacher,
Dr.Fraser Boys High School, Jalna,
Taluka and District Jalna,
R/o Shraddha Christen Housing Colony,
Behind JES College, Jalna,
Taluka and District Jalna,
 2. The Education Officer (Secondary),
Zilla Parishad, Jalna,
Taluka and District Jalna
- RESPONDENTS

Mr.V.G.Sakolkar, Advocate for the petitioners.
Mr.R.J.Godbole, Advocate for respondent No.1.
Mr.P.N.Kutti, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 05/10/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have heard the learned Advocates for the respective sides at length on 04/10/2016 as well as today.

3. There is no dispute that respondent No.1 / employee was appointed on 14/06/2011 and while he was under probation, a show cause notice dated 30/07/2012 was issued to him leveling allegations against him. After completing the enquiry under the MEPS Rules, the employee was awarded the punishment of reduction in rank by order dated 29/03/2014.

4. The employee approached the School Tribunal in Appeal No.3/2014. By the impugned judgment dated 09/10/2015, the enquiry was held to be unsustainable from the stage as prescribed under Rule 36(1) of the MEPS Rules, 1981. The petitioner is, therefore, permitted to conduct a fresh enquiry. The observation of the School Tribunal that the appellant be treated under suspension and be paid suspension allowance from the date his termination, has been subsequently corrected since the appellant was never terminated and hence there was no question of keeping him under suspension as he was reduced in rank and he continued in employment.

5. After considering the submissions of the learned Advocates and upon going through the voluminous record available, I do not find any reason to cause an interference in the impugned judgment, except to consider the request of the petitioner that the Chair Person / President of the petitioner John Wilson Education Society, would find it impossible to be a party to the Enquiry Committee.

6. Rule 36(2)(b) requires that the President shall be the Member of the Enquiry Committee, if the Head of the Institution is being subjected to disciplinary proceedings. In the instant case, the appellant is the Head of the particular Institution at Dist. Jalna. Therefore, the President will have to be the Representative of the Management in the Enquiry Committee.

7. The learned Division Bench of this Court in the matter of Ganesh Mahadeorao Thawre Vs. Central Hindu Military Education Society, Nashik and another, [2007(6) Mh.L.J. 589] has concluded in paragraph Nos.12 to 15 as under :-

“12. Rule 36(2)(b) of the MEPS Rules undoubtedly requires that in case of an enquiry into misconduct of head, one of the members of the Committee shall be the President of the

Management. The word “management” has defined in Clause 12(c) of section 2 of the MEPS Act which does not necessarily require “management” to be the incorporated society. It can be a body of persons administering such school within such incorporated entity. How the school is to be administered is prescribed by the bye-laws of the society and since such bye-laws empower the Branch Managing Committees to control the affairs of the school, chairman of such Branch Managing Committee would be the President of “management” for the purpose of Rule 36(2)(b) of MEPS Rules.

12. The learned Advocate Shri Anjan De then placed reliance on judgment in National Education Society Vs. Mahendra, reported in 2007(3) Mh.L.J. 202. This is a judgment of Full Bench of this Court rendered in reference case. The reference pertained to manner in which the situation should be dealt with when the Head Master would himself to be Chief Executive Officer, is a delinquent to be charge-sheeted. This judgment does not, in any manner, help the petitioner’s arguments that no one except President of the society would answer the description of the management and therefore, the President of the Branch of the society cannot take part in the disciplinary proceedings.

14. Such inference also pragmatically follows, if one were to consider the plight of the President of a society running hundreds of schools. If by interpreting the provisions of section 2(12) of the MEPS Act and Rule 36(2)(b) of MEPS Rules, such a president was required to participate at all enquiries against the heads of his schools, he would have nothing else to do.

15. We further observe that the entire emphasis or the

mandatory part of Rule 36 is on the point of manner of service of charge-sheet. This rule is totally silent on the point of delegation. It does not deal a situation as to whether in the given facts of the case compelled due to circumstances would it be wholly impermissible even if the constitution or bye-laws of the trust do not prohibit for deletion of power of President in relation to the matter of employment, discipline etc. being prohibited. We, therefore, see that in absence of prohibition to delegate found in the said rules, why as in present case the Branch President cannot be the "Management"."

8. It was thus concluded that since the MEPS Rules do not wholly prohibit delegation of authority, in an appropriate case, such authority can be delegated by the President so as to nominate the Representative of the Manager.

9. Mr.Sakolkar, learned Advocate for the petitioner has placed on record a list of Colleges and Educational Institutions under the John Wilson Education Society headed by the President. The said list is marked as Exhibit "X" for identification. It, therefore, appears that there are about 15 Institutions in Mumbai, Jalna, Pune, Nagpur and Miraj. So also, he is the Head of about 64 other Institutions under the Gujarat Christian Service Society.

10. He, therefore, submits that it would be humanly impossible for the said President to be a party to the Enquiry Committee wherever such inquiries are commenced against the Heads of the Institutions under the MEPS Rules. He, therefore, prays that the view taken by this Court in Ganesh Mahadeorao Thawre (supra) be made applicable to the present case.

11. Mr.Godbole submits that he would not canvass against the ratio laid down by the learned Division Bench. He, however, submits that the issuance of the statement of allegations under Rule 36(1) is also unsustainable. He, therefore, submits that though the President of the Institution may delegate authority to a Branch Head of the Institution at issue in the light of Ganesh Mahadeorao Thawre (supra), the Management will have to initiate the enquiry from the stage prescribed under Rule 36(1).

12. In the light of the above, this petition is partly allowed only to the extent of permitting the President of the petitioner/Institution to delegate authority to a Branch Head either from Mumbai or Pune or Jalna and shall ensure that the said person shall not be equivalent to the respondent/employee, who is being subjected to an enquiry. As such, the petitioner shall commence the enquiry afresh from Rule

36(1) and shall be conducted in accordance with the rules.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)