

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4999 OF 2016

The Head Master,
Vivek Vardhini Madhyamik Vidyalaya,
Malizap, Tq.Akole, Dist.Ahmednagar,
Mr.Raosaheb S/o Punja Mandlik,
Age-49 years, Occu-Service,
R/o Malizap, Tq.Akole, Dist.Ahmednagar -- PETITIONER

VERSUS

1. Alka Namdeo Khalekar,
Age-46 years, Occu-Service,
R/o Malizap, Tq.Akole,
Dist.Ahmednagar,
2. The President,
Samata Gram Vikas Va Shikshan
Sanstha, Akole, Tq.Akole,
Dist.Ahmednagar,
3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar -- RESPONDENTS

Mr.S.K.Chavan, Advocate for the petitioner,
Mr.A.N.Kakade, Advocate for respondent No.1.
Mr.R.J.Godbole, Advocate for respondent No.2.
Mr.S.D.Kaldate, AGP for respondent No.3/State.

WITH

WRIT PETITION NO.5826 OF 2016

Sonu Punja Mandlik,
Age-57 years, Occu-President,
R/o Santa Gramvikas Va Shikshan Sanstha,
Tq.Akole, Dist.Ahmednagar -- PETITIONER

VERSUS

1. Alka Namdeo Khalekar,
R/o Malizap, Tq.Akole,
Dist. Ahmednagar,
2. The Head Master,
Vivek Vardhini Madhyamik Vidyalay,
Malizap, Tq.Akole, Dist.Ahmednagar,
3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar -- RESPONDENTS

Mr.R.J.Godbole , Advocate for the petitioner,
Mr.A.N.Kakade, Advocate for respondent No.1.
Mr.S.D.Kaldate, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/08/2016

ORAL JUDGMENT :

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

2. Considering the submissions of the petitioner/Management, I am framing the following issue for decision :-

“How many times should the Management be permitted to conduct a denovo enquiry after the first departmental enquiry and the subsequent enquiry is quashed and set aside for being vitiated on account of the non-compliance of Rule 36 and/or 37 of the MEPS Rules, 1981 or for any other connected reason ?”

3. The first petition has been filed by the Head Master namely Mr.Raosaheb Mandlik, who is the real brother of the President of the Educational Institution and who is himself interested in occupying the post of Head Master, which was earlier held by respondent No.1 Smt.Alka Namdeo Khalekar. This petitioner, therefore, challenges the judgment and order of the School Tribunal dated 30/03/2016 by which Appeal No.35/2014 filed by respondent No.1 Smt.Alka Khalekar has been allowed.

4. The second petition is filed by Mr.Sonu Mandlik, who is the President of the Educational Institution, challenging the same judgment of the School Tribunal. For the sake of brevity, the petitioner in the first petition is referred to as the brother of the President. The petitioner in the second petition is referred to as the President. The original appellant before the School Tribunal, who is respondent No.1 in both the petitions, is referred to as the appellant.

5. The president and his brother are aggrieved by the judgment of the School Tribunal by which the appeal of the appellant has been allowed and her termination from service by order dated 11/04/2014 effective from 16/04/2014 has been quashed and set aside and she is granted reinstatement with continuity and 50% back wages. The de-

novo enquiry conducted against her has been set aside.

6. Mr.Godbole, learned Advocate appearing on behalf of the President, supported by Mr.Chavan, learned Advocate appearing on behalf of the brother of the President, have contended that there is no prohibition on conducting a third *denovo* enquiry even if the first and the second departmental enquiry has been set aside for being vitiated.

7. I have heard the learned Advocates for the respective sides at length and with their assistance, I have gone through the petition paper book and the judgments cited.

8. The appellant was appointed as an 'Assistant Teacher' w.e.f.June 1999. The school, at the relevant time, was operated on 'no grant' basis. Subsequently, the appellant was appointed as an 'In-charge Head Mistress" sometime in 2000. After completion of about 5 years in employment, the appellant was promoted as the Head Mistress. In 2004, the School received some percentage of grants. Approval is said to have been granted to the appellant appointed as 'Head Mistress'.

9. On 15/07/2010, the President claims to have issued a show cause notice to the appellant, who contends that she received an envelope containing blank papers so as to mislead her. After she heard about the show cause notice, she approached the Management and the Management stated that they would indulge in correspondence with her only through post. Again she received an envelope containing blanks papers. Thereafter, she heard from the School that a charge sheet was sent to her. She then received a copy of the charge sheet after it was placed on her table. The enquiry was conducted by the Management and the appellant was finally awarded the punishment of reduction to the position of an 'Assistant Teacher'.

10. Appeal No.70/2011 filed by the appellant before the School Tribunal was allowed by judgment dated 07/10/2013. Order of reduction in rank dated 28/06/2011 was set aside and the Management was granted the opportunity of conducting a *denovo* enquiry after the Tribunal concluded that the enquiry was conducted in violation of Rule 36 and 37 of the MEPS Rules.

11. The appellant herself filed WP No.10153/2013 before this Court challenging the permission granted by the Tribunal for conducting a fresh enquiry. This Court, by its order dated 17/12/2013, has

disposed of the writ petition by granting liberty to the Management to conduct a fresh enquiry as the earlier enquiry was set aside. It is noteworthy that the Management did not challenge the directions of the Tribunal dated 07/10/2013 and in fact made a statement before this Court in the appellant's petition that they are desirous of conducting a fresh enquiry. It is from this stage that the second chapter of the litigation has commenced.

12. On 24/12/2013, the President, under his signature, issued the statement of allegations. 12 charges were set out in the said document. This was followed by the charge sheet dated 06/01/2014 by which the appellant was directed to furnish her explanation. Thereafter, by communication dated 15/01/2014, the Management formed an Enquiry Committee and informed the appellant that she may participate in the enquiry by appointing her representative.

13. It is the case of the appellant that blank documents were again sent to her through envelopes and a record of the post department in the form of registered letters and an acknowledgment receipts was created only to project that the relevant documents were duly supplied to the appellant.

14. It is the contention of the Management that the Enquiry was conducted ex-parte since the appellant did not participate in the enquiry and did not appoint her nominee. On 28/03/2014, at 11.30 a.m., the President conducted the enquiry proceedings since he was representing the Management and the State Awardee Teacher Mr.P.B.Hingmire was present. The documents placed on record dated 28/03/2014 indicate that it was the last date of the enquiry. 6 witnesses were said to have been examined and the charges levelled upon the appellant were held to be proved. All the charges were held to be serious in nature and it was concluded that the appellant deserves to be dismissed from service and the said decision of dismissal from service be conveyed to her. Accordingly, by order dated 11/04/2014, the President himself signed the order of termination w.e.f.16/04/2014.

15. It needs mention that the President Sonu Mandlik has signed the statement of allegations dated 24/12/2013, he has signed the charge sheet dated 06/01/2014, he has issued the order of formation of the enquiry committee dated 06/01/2014 and has, therefore, appointed himself as the convenor of the enquiry committee. He has signed the enquiry report as the convenor, has issued the final notice and has passed the order of punishment of dismissal.

16. The appellant preferred Appeal No.35/2014 before the School Tribunal. By the impugned judgment, the appeal has been allowed and reinstatement with continuity and 50% back wages have been granted.

17. It appears from the impugned order that the contention of the appellant that the Management has consistently inserted blank papers in the envelope to project that the charge sheet and enquiry notices served upon her and as such the statement of allegations, the charge sheet and the notices of enquiry have been camouflaged, has been turned down by the Tribunal. The Tribunal has concluded that this allegation of the appellant cannot be said to be established as there are postal receipts and acknowledgment receipts and hence it cannot be believed that blank papers are inserted in the envelope to mislead the appellant. The appellant has not challenged these findings before this Court. Hence, I am not required to go into this aspect.

18. The strenuous submissions of Mr.Godbole and Mr.Chavan are that the Tribunal should have only considered that the appellant boycotted the enquiry and hence the Tribunal was not required to scrutinize whether the charges are vague and ambiguous or as to

whether Rule 36 and 37 has been violated by conducting the enquiry. They further contend that the absence of the appellant in the enquiry is in itself sufficient for the Tribunal to dismiss her appeal and refuse to entertain her contentions. According to the learned Advocates, as the appellant failed to defend herself, she cannot be permitted to challenge the enquiry.

19. Notwithstanding the position that the appellant did not participate in the enquiry, it would not mean that the doors of the Court are closed for the appellant. Only because she may have abstained from the enquiry, she cannot be prevented from challenging the charges levelled upon her and the manner of conducting the enquiry. If the submissions of the learned Advocates for the petitioners is accepted, it would virtually amount to rendering the appellant remediless by preventing her from assailing the disciplinary proceedings on the basis of the records and proceedings of the departmental enquiry and thereby accept the dismissal order without a challenge.

20. Rule 36 and 37 of the MEPS Rules read as under :-

“Rule 36 :- Inquiry Committee :

(1) If an employee is allegedly found to be guilty on (any

of the grounds specified in sub-rule (5) of rule 28) and the Management decides to hold an inquiry, it shall do so through 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 acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(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 decides 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.*

(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 acknowledgment 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 constituted 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).*

(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 schools hours or immediately thereafter, if the employee agrees and even during vacation.*

37. Procedure of inquiry :

1. *The Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convener of the Inquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgment due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.*

- 2 (a) *Within 10 days of the receipt of the copies of charge-sheet and the statement of allegations by the employee or the Head, as the case may be, -*
 - (i) *If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convener of the Inquiry Committee in person or send it to him by the registered post acknowledgment due.*
 - (ii) *If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convener of the Inquiry committee the names of witnesses whom they propose to so examine, and*
 - (iii) *If the Management desires to tender any documents by way of evidence before the Inquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the document relied upon by the Management is a register or record of the school it shall permit the employee or the Head as the case may be, to take out relevant extracts from such register or record. The employee or the Head as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence.*

- (b) *Within 3 days after the expiry of the period of 10 days specified in clause (a), the Inquiry Committee shall meet to proceed with the inquiry and give 10 days*

notice by registered post acknowledgement due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

- (c) *The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defense of his case.*
- (d)
 - (i) *The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee.*
 - (ii) *The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross-examine the witnesses examined on behalf of the Management.*
 - (iii) *Sufficient opportunities shall be given to examine all witnesses notified by both the parties.*
- (e) *All the proceedings of the Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.*
- (f) *The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.*

3. *The Management and the employee or the Head, as the case may be shall be responsible to see that their nominees and the witnesses, if any, are present during the inquiry. However, if the Inquiry Committee is convinced about the absence of either of the parties to the dispute or any of the members of the Inquiry Committee on any valid ground, the Inquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.*
4. *The Convener of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgement due within four days or completion of the above steps and allow him a time of seven days to offer his further explanation, if any,*
5. *The employee or the Head as the case may be shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgement due.*
6. *On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgement due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the*

Education Officer or the Deputy Director, as the case may be, by registered post acknowledgement due. Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgement due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.”

21. It is, therefore, apparent that if the employee is the head of the Educational Institution, the President shall be the Member of the Enquiry Committee. The Management has to then ensure that the charge sheet containing specific charges are to be handed over to the convener of the enquiry alongwith the statement of allegations and the explanation of the employee. In short, the Enquiry Committee has to be formed after the employee submits her explanation to the charges.

22. There can be no dispute that the employee has to participate in the enquiry and failure to participate would in fact be to the detriment of the delinquent. The Tribunal has found fault with the enquiry on the ground that the charge sheet is not properly formulated as required by Rule 37(1) which mandates that the charge sheet must contains specific charges. The Enquiry Committee was formed on 06/01/2014 which is the same date on which the charge

sheet was issued. As noted in paragraph 15 above, the President has signed and issued the statement of allegations, the charge sheet, the formation of the enquiry committee, the enquiry report and the dismissal order.

24. The above fact situation needs to be considered in the light of the submissions of Mr.Godbole and Mr.Chavan. So also, a single glance at the charge sheet dated 06/01/2014, which is in Marathi language, does easily convince me that the charges levelled therein are totally vague and ambiguous. No details are set out. Notwithstanding this aspect, I have gone through the statement of allegations on the basis of which the charge sheet has to be filed. 12 allegations are set out in Marathi language, brief translation of which would read as under :-

- [a] You have been disobeying various orders and directions, instructions etc. of the Office bearers and the Head Master.
- [b] You have a habit of remaining absent without permission.
- [c] You have taken undue advantage of the freedom and facilities provided by the Management and have misused the letterhead, seal / stamp of the Management, prepared false documents and defrauded the school.
- [d] You don't get the 'Daily Noting's Book' inspected by the Head Master and you have committed an unpardonable misconduct.
- [e] You frequently come late to school, leave early from school, you

are arrogant, you insult superiors.

- [f] You have not submitted your address and telephone number of your residence.
- [g] You do not plan the Unit Tests, annual tests and your teaching is not impressive.
- [h] You make false allegations against the Management.
- [i] You spread rumours against the Management and submit false complaints to the Education Department.
- [j] You have illegally deducted LIC installments as against Mr.Raosaheb Punja Mandlik (brother of the President of the Institution) from July 2004 to February 2005 and have misappropriated Rs.6,994/-.
- [k] You have not deducted Profession Tax from the salaries of the teachers and the non teaching staff.
- [l] You have misappropriated Rs.5,167/- in relation to the loan taken by Mr.Raosaheb Punja Mandlik from Ahmednagar Society.
- [m] You have kept the record of Vidyavardhini Secondary School at your residence.

25. After considering the above, I have no hesitation to conclude that the statement of allegations coupled with the charge sheet can be said to be vague, ambiguous and raises stale charges, except charge No.10(3), regarding misappropriation. A cursory glance at each of these charges would indicate that specific acts and the dates of incidents have not been set out. An old charge of the year July

2004 till February 2005 is dug out as is mentioned in clause 10(1).

Clause 10(3) mentions that the appellant has deducted an amount of Rs.10,000/- towards the contribution of President's brother to the Ahmednagar Society and that Rs.5,167/- were misappropriated. To that extent, there is no charge formulated in the charge sheet dated 06/01/2014. In short, there is no charge levelled upon the appellant that she is guilty of misappropriation. It was, in these circumstances, that the Tribunal has concluded that the charges are vague and ambiguous and no specific charge has been levelled upon the appellant.

26. In my view, charge no.10(3) does appear to be a serious charge, and is not a stale charge, since it was first levelled upon the appellant in the first charge sheet dated 17/09/2010, which enquiry was subsequently set aside. However, the fact that the charge of misappropriation was not levelled upon the appellant through the charge sheet, would therefore amount to the Management having given up the said charge.

27. Learned Advocate for the petitioner/President has canvassed that once the enquiry is set aside, there cannot be an order of reinstatement with other benefits. The employer is legally entitled

for an opportunity of conducting a fresh enquiry and the employee can be placed under suspension keeping in view the ratio laid down by the Hon'ble Apex Court in the matter of Vidya Vikas Mandal & Anr vs The Education Officer & Anr 2007(3) Mh.L.J. 801 = 2007(11) SCC 352.

28. In support of this contention, the petitioner has relied upon the following judgments.

- [1] State of Punjab Vs. Harbhajan Singh Greasy, [1996(5) Supreme 187 = 1996(9) SCC 322].
- [2] Unreported judgment dated 23/10/2007 by the Division Bench of this Court in the matter of Shri Bhagwanrao Vishwanath Vyavhare and another Vs. Sunita Gopinath Palve in LPA No.158/2007.
- [3] Full Bench judgment of this Court in the matter of Saindranath S/o Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha and another, [2007(3) Mh.L.J. 753],
- [4] Bhartiya Seca Acharya Education Society, Nagpur and another Vs. School Tribunal, Nagpur, [2014(2) Mh.L.J. 879].

29. The issue that the Management has a legal right to conduct a fresh enquiry if Rule 36 and 37 have been violated, is no longer res-integra. In so far as industrial jurisprudence is concerned, such a right to conduct an enquiry would be subject to the right being

reserved in the written statement in the light of the Hon'ble Apex Court judgment in KSRTC Vs. Laxmidevamma (5 Judges Bench) [2001 (5) SCC 433]. Even in the judgment of the Full Bench in the matter of Saindranath Jagannath (supra), the law as was laid down in the matter of Workmen, Motipur Sugar Factory Pvt.Ltd.,Vs. The Motipur Sugar Factory Pvt.Ltd., [AIR 1965 SC 1803], Workmen, Firestone Tyre and Rubber Co, India Pvt.Ltd., Vs. The Management and others, [AIR 1973 SC 1227] and and KSRTC (supra), has been considered.

30. However, the submissions made by the learned Advocates for the petitioners do not appear to be restricted to conducting a fresh enquiry after the first enquiry has been set aside for the first time. Their submission is that it is immaterial as to how many times, an enquiry is set aside. The moment it is set aside, the employer would get the legal right to conduct a *denovo* enquiry. Mr.Godbole submits that principles of natural justice require that the employer should be given a right to conduct a fresh enquiry whenever the enquiry is set aside. I find the said submission to be fallacious for the reason that the intention of law would not only stand frustrated, but if his submissions are accepted, it would result in perpetuating injustice.

31. In the instant case, the enquiry was set aside by the judgment of the Tribunal dated 07/10/2013. Fresh enquiry was ordered. The appellant approached this Court in WP No.10153/2013 challenging the permission to conduct a fresh enquiry. By order dated 17/12/2013, this Court disposed of the writ petition by recording the statement of the Management that a fresh enquiry would be conducted.

32. The School Tribunal has once again set aside the enquiry for violation of Rule 36 and 37. Notwithstanding the same, I have gone through the entire statement of allegations and the charge sheet and the manner in which the President has involved himself in the enquiry. I have concluded earlier in this judgment that the charges are totally vague and ambiguous and the allegation of misappropriation was not levelled upon the appellant in the charge sheet dated 06/01/2014. Even if the enquiry was to be sustained, the order of dismissal deserves to be set aside since all the charges levelled upon the appellant were vague and ambiguous and no details or particulars of the dates and events and nature of offences, were set out.

33. Be that as it may, in catena of judgments, the Hon'ble Supreme

Court has held that once the enquiry was set aside for being vitiated, in industrial jurisprudence, the whole enquiry stands watered down and a *denovo* enquiry needs to be conducted before the Labour Court or the Tribunal, as the case may be. In service law relating to the MEPS Act, 1977 r/w the Rules of 1981, if the enquiry is vitiated at a particular stage in the employment, a fresh enquiry needs to be commenced from the stage at which it was vitiated. In the event, the enquiry is vitiated from the stage of issuance of statement of allegations or constitution of the Enquiry Committee or the issuance of the charge sheet, a fresh enquiry could be ordered.

34. The principles of natural justice are not like a rubber band or an unruly horse. These principles are not to be stretched till they snap or result in causing injustice than intended justice. After the first opportunity for conducting a *denovo* or fresh enquiry is granted to an employer, it would not mean that a fresh enquiry needs to be permitted on every occasion when the enquiry is vitiated. This would lead to an unending process and while the Managements would reap the benefits of conducting *denovo* enquiry on umpteen occasions, the employee would have to suffer the rigours of litigation, accompanied by unemployment, poverty and ignominy.

35. The Division Bench of this Court, dealt with a challenge to the employer conducting a de-novo enquiry, in the matter of Omkar Sitaram Rane Vs. Maharashtra State Khadi and Village Industries Board Bombay [2003(1) Mh.L.J.643]. The employee had questioned the propriety of allowing an employer to correct its mistakes/flaws/illegalities in an enquiry by conducting a de-novo enquiry. Considering the challenge posed, the Court recorded his contentions as under :-

“Contention No.1 : Giving an opportunity to the employer to prove misconduct/charges before court/tribunal, when the domestic/ departmental enquiry is vitiated on one or several grounds, will lead to allow unfair labour practice to continue.

Contention No.2 : Dismissal of employee/workman without proper enquiry, or without any enquiry is itself unfair labour practice, as prescribed under Schedule IV Item No.1(I) of Act of 1971, and once it is noticed that the enquiry is vitiated and dismissal is illegal, the court/tribunal hearing the dispute has no authority to allow the employer/management to prove charges by leading evidence to justify its action.

Contention No.3 : While deciding Amravati Bank's case, this court has adopted the principles governing the Industrial Disputes Act (hereinafter referred to as the Act of 1947), as both the enactments i.e. Act of 1971 and Act of 1947, occupy different field. The principle that govern the trial of dispute under Act of 1947, cannot be applied while deciding complaint under Act of

1971. The Amravati Bank's case, needed a second look."

36. After considering the contentions and the challenge, the Court concluded as under :-

"Before this court a preliminary objection was raised by the employees regarding propriety of the court allowing the bank to lead evidence to prove the charges against the employees as the Labour Court held that the domestic inquiry conducted by the bank against the employees was illegal, improper and against principles of natural justice. By the same order, the court allowed the bank to lead evidence and prove charges against the employees because the bank had asked in alternative form an opportunity to lead evidence to prove the charges against the employees before the court it was held by the court that domestic inquiry was illegal but allowed the employer to prove misconduct. The Industrial Court while hearing revision applications held that the court deciding the complaint under the Act of 1971 had no power to allow the employer to lead evidence in court for establishing the charges which were the subject matter of the departmental enquiry. It was contended before this court by the employees that the evidence recorded at the instance of the bank before Labour Court could not be read and since it was already found that the domestic inquiry was in utter disregard of the principles of natural justice. As the inquiry itself was vitiated for not following the principles of natural justice the writ petition require to be rejected, this was the preliminary objection taken at the time of hearing of the writ petition. In short

the contention of the employees was that the court/tribunal has no jurisdiction to allow the employer to prove misconduct before the court if the domestic enquiry is violated. This objection was considered by the learned Judge, while overruling the preliminary objection. This court considering the judgment of the Apex Court in Management of Ritz Theatre (Pvt. Ltd.) v. Its Workmen, AIR 1963 SC 295, where the Apex Court even prior to introduction of Section 11A of the Act of 1947 held that if it appeared to the court that the departmental inquiry held by the employer was not fair, in the sense that a proper charge was not framed and served on the employee, or a proper or full opportunity to defend was not offered, the court would be entitled to deal with the merits of the dispute as to dismissal of the employee itself. It was contended by the employees before the court that the position of law so far as the trial of disputes under the Act of 1947, was concerned similar position could not obtain in case under Act of 1971. It was argued that the Act of 1947 was an Act making provision for investigation of settlement of industrial dispute, while Act of 1971, was Act for recognition of trade unions for facilitating the collective bargaining for certain undertaking and for defining and providing for the prevention of certain unfair labour practices. It was contended that if the court finds that the employer is guilty of unfair labour practice, the reinstatement should follow. This court has considered these contentions and did not agree with the contention of the employees and held, "That the other alternative of permitting an inquiry afresh by the same unscrupulous employer who has been found guilty of an unfair labour practices is certainly not

desirable in the interests of the workmen concerned and would not have been contemplated by the legislature. It could certainly not be said with any reasonableness that an employee charged with a serious misconduct that is defalcation, should be allowed to go scot-free after his punishment is set aside by court on the ground of commission of an unfair labour practices and such a result also could not have been in contemplation of the legislature." This court after considering the provisions of Act of 1971, Schedule IV which enumerate 10 general unfair labour practices on the part of the employer held, "Dismissing employee for patently false reasons and taking a hypothetical case in which the only allegation in the complaint was that an employee was dismissed for patently false reasons, without a further allegation that the dismissal was in utter disregard of principles of natural justice in conducting domestic inquiry, as provided, the Labour Court deciding such a case necessarily will have to enter into merit of the charges for examining as to whether the reasons were false or true and if that be so, the court sitting under the Act of 1971 will have to point out the merits of the charges while the same court dealing with the cases in which the charge of unfair labour practices made is to the effect that the domestic inquiry was held in an utter disregard of the principles of nature justice, the court will have to pen down the moment it finds that the domestic inquiry was vitiated on account of non observation of the principles of natural justice." This court did not agree with the contentions of the employees but accepted that the employer can be permitted to prove misconduct before the court, on failure of the domestic enquiry.

7. The question which is to be considered by us in this reference is "whether an opportunity is to be given to the employer to prove misconduct in the court or Tribunal where the action is challenged and in case the enquiry conducted is vitiated on account of some difficulty either legal or factual in conducting the said enquiry."

In the present case, the Industrial Court has allowed the revision application filed by the respondents and remanded the matter to the Labour Court to allow the respondents i.e. employer to lead evidence to prove the alleged misconduct. In Amravati Bank case, this court while dealing with this aspect has accepted that the employer/management in a given case when the court holds that the domestic enquiry is vitiated for some reason or other, can justify its action and prove misconduct against the employee/workman before the court or tribunal. While arriving at this conclusion, the learned single judge has followed the judgment of the Apex Court in Ritz Theatre. We see no difficulty in accepting the view taken by this court in Amravati Bank case.

8. We have to consider some more judgments of the Apex Court to find out the principle whether the employer can in case of failure in the domestic enquiry establish the acts of misconduct or charges in the court. For this purpose, we will refer to the judgment of the Apex Court reported in AIR 1965 SC 1803 [Workmen of the Motipur Sugar Factory Pvt. Ltd. v. The Motipur Sugar factory Pvt. Ltd.](#) The Apex Court has considered this aspect and on a point of policy to curtail the delay in disposing of the industrial disputes and to avoid multiple proceedings,

observed thus :

"11. It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held see *Indian Iron and Steel Co. v. Their workmen* (1) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to [Sasa Musa Sugar Works \(P\) Limited v. Shobrati Khan](#) (2), [Phulbari Tea Estate v. Its Workmen](#) (3) and the [Punjab National Bank Limited v. Its Workman](#) (4). There three cases were further considered by this court in [Bharat Sugar Mills Limited v. Shri Jai Singh](#) (5), and reference was also made to the decision of the Labour Appellate Tribunal in *Shri Ram Swarath Sinha v. Belaund Sugar Co.* (6) It was pointed out that "the import effect of commission to hold an enquiry was merely this; that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except Phulbari Tea Estate's case (3), were on applications under [Section 33](#) of the Industrial Disputes

Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under [Section 33](#) or on a reference under [Section 10](#) of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate's (9) was on a reference under [Section 10](#), and the same principle was applied there also, the only difference being, that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

12. If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if

in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the domestic enquiry is invalid and those where no enquiry has in fact been held. We must therefore reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal."

9. We may refer to the latest judgment of the Apex Court in this context wherein the law declared by the Apex Court in *Motipur Sugar Factory* is reaffirmed and restated in 2001(V) SC 433 *Karnataka State Road Transport Corporation v. Lakshmiddevamma (Smt.) and Anr.*. Though the Constitution Bench of the Apex Court was dealing with a different point which was referred but the nonetheless point was involved that, at what point of time the employer/ management can ask for opportunity at the trial, to prove misconduct/charges in case the

domestic enquiry held to be invalid. The Apex Court reiterated the law declared in Motipur Sugar Factory's case thus found :

"The right of management to lead evidence before the Labour Court or the industrial tribunal in justification of its decision under consideration by such tribunal or the court is not statutory right. This is actually a procedure laid down by the Apex Court to avoid the delay and multiplicity of the proceedings in the disposal of dispute between management and the workmen."

10. In view of the law declared by the Apex Court i.e. Ritz Theatre, Motisagar and Laxmideomma (supra) it is not possible to accept the contentions Nos. 1 and 2 (supra) that by allowing the employer to establish or prove the charges/misconduct before the court/tribunal by itself will lead to allow the unfair labour practice to continue. On the principle as laid down by the Apex Court, permitting the employer to prove misconduct/charges, before the court/tribunal, will minimize the time and avoid multiplicity of the proceedings and that would enable to adjudicate the dispute finally without further delay.

15. In view of the abovesaid observation of the learned Single Judge and the Apex Court, we hold that in deciding complaint under the Act of 1971, the procedure that is formulated by the Apex Court will equally applicable. The trial of industrial dispute either under Act of 1971, or the Act of 1947 by the court/tribunal cannot make any difference as by now the procedure as approved by the Apex Court in respect of industrial dispute will have to follow.

16. *In the light of the law declared by the Apex Court and in the light of Satish's case (supra) we are of the view that the view taken by this court in Amravati Bank's case lays down correct principle. The Amravati Bank's case is followed by the another learned Single Judge in Satish's case and considering the long standing precedence and applying principles of stare decisis, we find that the view taken by the learned single judge in Amravati Bank's case following the law declared by Apex Court in Ritz Theatre, which still is a good law, we feel that the long standing view of Amravati Bank's case, for nearly 20 years, that, there are no sound and strong grounds to differ from it. According to us, the view needs to be confirmed. Accordingly, we approve the view taken by the learned Single Judge in Amravati Bank's case and Satish's case supra. The employer/management can lead evidence in the court to prove misconduct against the workman/employee, on failure in domestic enquiry but the request for such opportunity must be made by the employer/management at a proper stage as stated in Laxmideomma (supra) case. Accordingly, we answer the reference."*

37. I do not find that the submission of the Management could therefore be accepted. In my view, a *denovo* enquiry or a fresh opportunity to conduct an enquiry or from the stage at which the earlier enquiry has been vitiated, would be the only chance / opportunity available to an employer to follow the rules and the

principles of natural justice and conduct the enquiry in accordance with law. There cannot be repeated chances.

38. Mr.Godbole has strenuously submitted that 50% back wages after the dismissal of the appellant on 16/04/2014 should not have been granted. Had the appellant participated in the enquiry, the enquiry would not have been set aside.

39. Mr.Kakade submits that this Management has been persecuting the appellant by levelling vague, ambiguous and stale charges. The charge of misappropriation was not levelled in the charge sheet dated 06/01/2014 since they had lodged an FIR against the appellant through the President's brother invoking Section 420 and 406 r/w. section 34 of the IPC. The Management desired to get the charge of misappropriation proved against the appellant through the criminal proceedings. He points out that by judgment dated 07/05/2015 in Reg.Criminal Case No.30/2010, the learned Court has acquitted the appellant of the offence punishable u/s 420, 406 r/w. 34 of the IPC. The appellant has not received any notice about any further proceedings in the matter.

40. Mr.Kakade, therefore, submits in the light of the above that the

appellant was unduly harassed by the President of the Institution only with the intention of getting rid of the appellant so as to accommodate the brother of the President who has himself filed the first petition. The FIR was also filed by the brother of the President. He, therefore, submits that the appellant has suffered an irreparable harm, manifest inconvenience and grave hardships in these last 6 years because of this litigation.

41. In the light of the above and considering the view expressed by the Hon'ble Apex Court in the matter of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468, I find that 50% back wages in the peculiar facts of this case, have rightly been granted by the School Tribunal.

42. As such, both these petitions are devoid of merit and are therefore dismissed. Rule is discharged.

43. At this stage, Mr. Godbole, learned Advocate for the President submits that time may be granted to enable the Management to prepare a proper charge sheet by setting forth details and particulars of the offences alleged to have been committed. Taking into account the chequered history in this matter and the fact that two botched

enquiries have been conducted against the appellant, I do not find it appropriate to grant this leave to the Management. Said request is, therefore, rejected.

(RAVINDRA V. GHUGE, J.)