

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

WRIT PETITION NO.10266 OF 2015

Shri Meher Jaysing Darandale
Age: 41 Yrs., occu. Unemployed,
R/o Flat No. 17, Meher Complex,
Station Road, Ahmednagar,
District Ahmednagar. = **PETITIONER**

VERSUS

- 1) Rashtriya Pathshala High School
Near Sahakar Sabhagruha,
Station Road, Ahmednagar,
Through its Principal.
 - 2) Rashtriya Shikshan Mandal,
station Road, Ahmednagar,
Through its President.
 - 3) Education officer,
Zilla Parishad, Ahmednagar,
District Ahmednagar. = **RESPONDENTS**
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Mr.AK Gawali, Advocate for Petitioner;

Mr.SW Mundhe, AGP for State;

Mr.RN Dhorde, Sr.Counsel, h/for Mr. VR Dhorde, Adv.
for Respondent Nos.1 and 2.

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 29th June, 2016

DATE OF PRONOUNCING JUDGMENT: 1st August, 2016

JUDGMENT:

- 1) Heard. Rule. Rule made returnable
forthwith and heard finally with consent of the

learned Counsel appearing for the parties.

2) The petitioner is aggrieved by the Judgment and Order dated 1st August, 2015 delivered by the School Tribunal, Aurangabad, (for short, the Tribunal) in Appeal No.40/2014 by which the appeal has been dismissed. The petitioner had challenged the order of termination dated 22nd May, 2013 in the aforesaid appeal.

3) It was the contention of the petitioner before the Tribunal that his services have been illegally terminated. It was his further contention that some false and frivolous charges were levelled against him and a farce of conducting an enquiry was created by the respondent/management. It was the further contention of the petitioner that the Enquiry Committee, which is said to have conducted the enquiry into the charges levelled against the petitioner, was not constituted as per the MEPS

Rules and more particularly Rule 36 thereof. It was his further contention that the procedure, as prescribed under Rule 37 of the MEPS Rules, was also not followed. It was the grievance of the petitioner that the principles of natural justice were not followed in conducting the aforesaid enquiry. One more objection was raised by the petitioner that the report of enquiry, on the basis of which services of the petitioner were terminated, was signed by only one member of the Enquiry committee and as such, it was, in fact, not an enquiry report in the eyes of law and it could not have been acted upon. The petitioner had alleged that since the petitioner had opposed for transfer of the school run by the Respondent management, at some different place, he has been victimized.

4) As against the allegations made by the petitioner, it was the contention of the Respondent management in the appeal before the Tribunal that there were serious complaints

against the petitioner and the Respondent management was, therefore, constrained to conduct the enquiry against the petitioner in regard to the said complaints. According to Respondent management, the enquiry against the petitioner was conducted strictly in accordance with law and adhering to Rules 36 and 37 of the MEPS Rules. It was the further contention of the Respondent management that the principles of natural justice were followed at every stage of enquiry. It was also the contention of the Respondent management that since the representative of the petitioner in the enquiry committee refused to sign the report of enquiry, the said report was submitted to the Competent Authority under the signatures of two members of the enquiry committee. It was also the contention of the Respondent management that since the petitioner was found guilty of the charges levelled against him in the said enquiry, the Respondent management resolved to dismiss the petitioner from services.

5) The learned School Tribunal, after having assessed the evidence brought before it, did not find any substance in the appeal filed by the petitioner and was, therefore, pleased to dismiss the appeal. Aggrieved thereby, the petitioner has filed the present petition.

6) Shri A.K.Gawali, learned Counsel appearing for the petitioner assailed the judgment of the Tribunal on several grounds. It was the contention of the learned Counsel that the Tribunal did not appreciate the provisions in the MEPS Rules in so far as conduct of enquiry against an employee is concerned. The learned Counsel submitted that the Tribunal seems to have implicitly relied upon the contentions raised by the management and has accordingly dismissed the appeal filed by the petitioner. The learned Counsel submitted that there were apparent lapses in the constitution of the enquiry committee as well as in following the procedure in conduction of the enquiry and all such infirmities were duly

brought to the notice of the Tribunal, however, the Tribunal did not appreciate the said objections and has on erroneous grounds dismissed the appeal filed by the present petitioner.

7) Relying upon the judgment of this court in the case of Shah Babu Education Society, Patur and Anr. Vs. Presiding Officer, School Tribunal Amravati and Aurangabad Division, Aurangabad, and Anr. - 2006 (6) Mh.L.J. 547, the learned Counsel submitted that the provisions of Rule 36(1) of MEPS Rules contemplate authorization by management in favour of the Chief Executive Officer. However, no such authorization was given in the instant matter, in absence of which, the entire enquiry proceedings are liable to be vitiated. The learned Counsel further submitted that there was no valid resolution for appointment of representative of the management on the enquiry committee constituted for conducting the enquiry against the petitioner. The learned Counsel further submitted that the

Convener of the enquiry committed was also not appointed. According to learned Counsel, these were the fatal defects in the constitution of the enquiry committee and the report of enquiry prepared and submitted by such enquiry committee could not have been acted upon and the Tribunal ought to have vitiated the enquiry on the said count.

8) The learned Counsel further submitted that the enquiry report is admittedly signed by only one member of the enquiry committee; whereas, the law provides that the report of enquiry must be signed by all the three members of the enquiry committee. In order to support his arguments, the learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of Vidya Vikas Mandal and Anr. Vs. Education Officer and Anr. - 2007 (3) Mh.L.J. 801.

9) The learned Counsel further submitted that though certain documents were demanded by

the petitioner, the same were not supplied to him till conclusion of the enquiry. The learned Counsel further argued that in view of the charges levelled against the petitioner, the Respondent management was bound to place on record the Annual Confidential Reports (ACRs) of the petitioner, but, such reports were not produced on record despite specific demand was made by the petitioner in that regard. The learned Counsel submitted that on all these counts, the enquiry was liable to be vitiated and consequently, the order of termination, based on such enquiry, was also liable to be vitiated. However, the Tribunal overlooked all these aspects and has thus grossly erred in dismissing the appeal filed by the petitioner. The learned Counsel, therefore, prayed for setting aside the order passed by the Tribunal. Consequently, he prayed for reinstatement of the petitioner by setting aside the order of termination passed by the Respondent management.

10) Shri R.N.Dhorde, learned Senior Counsel appearing for Respondent Nos.1 to 3, resisted the submissions advanced on behalf of the petitioner. The learned Counsel submitted that the enquiry committee constituted for conducting the enquiry into the misconduct of the petitioner was constituted strictly in accordance with the provisions of MEPS Rules and the entire enquiry proceedings were conducted adhering to the procedure as laid down in Rule 37 of the MEPS Rules.

. The learned Counsel invited my attention to the Resolution No.3, whereby Shri Trimbakrao Purnale, president of the School management was authorized for the purposes of issuance of charge-sheet to the petitioner; to accept the Say and explanation received in that regard from the petitioner; to place it before the School management; to act on behalf of the school management; to implement the decision of the school management and to do all necessary acts as regards to the enquiry to be conducted against

the petitioner. The learned Counsel submitted that in the meeting of the Managing Committee of the Respondent school held on 23rd May, 2013, vide Resolution No.2, passed in the said meeting, Shri Vidyadhar Kakde was appointed as the member from amongst the members of the management on the enquiry committee constituted for conducting the enquiry against the petitioner. The learned Counsel further submitted that in the said meeting, it was also resolved to appoint Shri Dattatraya Aarote, to be a member of the enquiry committee since he is a State Awardee Teacher. The learned Counsel submitted that the names of Shri Vidyadhar Kakde and Dattatraya Aarote were duly communicated to the petitioner. The learned Counsel further submitted that the petitioner had chosen one Shri Sunil M.Bande to be his representative on the enquiry committee and accordingly, the aforesaid three members, viz. Shri Vidyadhar Kakade; Shri Dattatraya Aarote and Shri Sunil M.Bande, conducted the enquiry against the petitioner by following the procedure

prescribed in Rule 37 of the MEPS Rules.

11) The learned Sr.Counsel further submitted that the enquiry report was signed by two members of the enquiry committee and was submitted within time to the Disciplinary authority. The learned counsel further submitted that the representative of the present petitioner has independently submitted a separate report, however, the same was not submitted within the stipulated period of limitation.

. Relying upon the judgment of this Court in the case of Chandreshwar Shikshan Sanstha and Anr. Vs. Ramesh Dagdurao Deshmukh and Ors. - 2010 (2) All MR 218, the learned Counsel submitted that the report and findings of two members, being a majority view, has to be accepted by the management. The learned Counsel submitted that in the aforesaid judgment this Court has considered the judgment of the Hon'ble Apex court in the case of Vidya Vikas Mandal (cited supra). The learned Counsel further submitted that the School

Tribunal has considered all these aspects and has passed a well-reasoned order. The learned counsel further submitted that no interference is warranted in the impugned judgment. He, therefore, prayed for dismissal of the petition.

12) After having heard the learned Counsel appearing for the respective parties, it is transpired that when the petitioner has raised serious objections as regards to the constitution of the enquiry committee and the manner in which the enquiry was conducted against him, the respondent management has taken a definite stand that the enquiry committee was constituted strictly in terms of Rule 36 of the MEPS rules and the enquiry was conducted adhering to the procedure laid down in Rule 37 of the said Rules.

13) As provided in Rule 36(2) of the MEPS rules, the enquiry shall be conducted by an enquiry committee 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.

14) It was sought to be canvassed by Shri Gawali, learned Counsel appearing for the petitioner that since there was no resolution of the school management nominating Shri J.B.Gawade as the representative of the management on the enquiry committee constituted for conducting the enquiry into the alleged misconduct of the petitioner, the constitution of the enquiry

committee itself was illegal and the enquiry conducted by such committee, whose constitution itself was illegal, is liable to be vitiated and cannot be acted upon.

15) The objection so raised by the learned Counsel appears to be without any substance. As has been pointed out by Shri Dhorde, the learned Senior counsel appearing for the respondent/management, Shri J.B.Gawade was not the member of the enquiry committee, which conducted the enquiry against the petitioner, but was appointed by the school management as the Presenting Officer for the purposes of the said enquiry. The letter dated 24th June, 2013, copy of which was also placed on record of the school tribunal, demonstrates that Shri J.B.Gawade was appointed by the school management for the purposes of filing the documents and to adduce the oral and documentary evidence before the enquiry committee on behalf of the respondent/institution and was not the member of

the enquiry committee.

16) The Resolution No.2 passed in the Managing Committee meeting of the respondent/institution held on 23rd May, 2013 reveals that one Shri Vidyadhar Jagannath Kakde was appointed as one of the members in the enquiry committee from amongst the members of the management. In the said resolution itself one Shri Dattatraya Balchandra Aarote was nominated on the enquiry committee from amongst the panel of teachers on whom State Award has been conferred. The material on record further reveals that the names of Shri Vidyadhar Kakade and Dattatralaya Aarote were duly communicated by the respondent/management to the Convener of the enquiry committee as well as to the petitioner/employee.

17) Similar objection was raised by Shri Gawali in making submission that the report of enquiry has been signed by only one member of the

enquiry committee. It was the contention of Shri Gawali that the report of enquiry was not bearing the signature of Shri Gawade, who was appointed as the management representative in the said enquiry committee, but was signed by only one member, viz. Dattatraya Balchandra Aarote. It was also contended by Shri Gawali that Shri Vidyadhar Kakade was not supposed to sign the said enquiry report since he was the Convener of the enquiry committee and not the member of the enquiry committee.

18) The contention so raised by Mr. Gawali is equally fallacious. As discussed herein above the school management had appointed Shri Vidyadhar Kakade as member on the enquiry committee from amongst the members of the school management and Shri Gawade was only asked to work as a Presenting Officer for the school management in the aforesaid enquiry. In the circumstances, signature of Gawade was not at all required on the report of enquiry, he not being the member of

the enquiry committee. As noted earlier, Shri Vidyadhar Kakade was duly appointed by the respondent/management as the member of the enquiry committee from amongst the member of the Managing Committee of the respondent/school. The enquiry was conducted by three-members committee consisting of Shri Vidyadhar Kakade; Shri Dattatraya Aarote and Shri Sunil Bande. The enquiry papers clearly reveal that the aforesaid were the three members of the enquiry committee and Shri Gawade was never the member of the said committee. The petitioner has unnecessarily attempted to create confusion when the material on record clearly shows that Shri Vidyadhar Kakade was member of the enquiry committee and not Shri Gawade.

19) It was also sought to be canvassed on behalf of the petitioner that no Chief Executive officer was duly appointed for the purposes of conducting the enquiry against the petitioner. It was the further contention of the learned counsel

for the petitioner that as provided in MEPS rules, there must have been specific resolution appointing Chief Executive Officer, in absence of which, no further proceedings could have been conducted against the petitioner. The objection so raised must also be rejected having regard to the fact that in the managing committee meeting of the respondent/institution held on 7th April, 2013, vide Resolution No.3, Shri Trimbak Kashinath Purnale, the president of the respondent/institution was authorized for the purposes of issuance of charge sheet to the petitioner to accept the reply, which may be received from the petitioner and to carry on the further proceedings as per the decision of the management committee. Shri Trimbak Purnale was thus appointed as Chief Executive officer.

20) Section 2(c) of the MEPS Rules defines "Chief Executive Officer", which means, the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered to execute

the decisions taken by the Management. By appointing Shri Trimbak Purnale, the president of the respondent/institution by taking a Resolution in that regard in the meeting of the management committee, the respondents have duly complied with the necessary requirement.

21) The further contention raised on behalf of the petitioner that somebody must have been appointed as Convener of the enquiry committee, which according to the petitioner, was not appointed while conducting the enquiry against the petitioner, is also baseless and deserves to be rejected. As provided in Rule 36 of the MEPS Rules the nominee of the president or as the case may be, a person appointed by the school management has to act as Convener of the enquiry committee. In the instant case, Shri Vidyadhar Kakade was appointed as a management member on the enquiry committee and he has thus rightly performed his duties as convener of the said enquiry committee.

. The another objection raised by the petitioner that the documents demanded by the petitioner, since were not supplied to him, the enquiry cannot be said to have been conducted adhering to the principles of natural justice, also does not carry any substance in view of the fact that the documents, production of which was sought by the petitioner, were not relevant for the purposes of conducting the enquiry into the misconduct alleged against the petitioner. The learned School Tribunal in the impugned judgment has elaborately dealt with this aspect.

22) It was also the contention of the learned Counsel appearing for the petitioner that considering the misconduct alleged against the petitioner, the Annual Confidential Reports pertaining to the petitioner must have been filed on record so as to ascertain whether anything is reflected in the said report as about the misconduct alleged against the petitioner. As was argued by the learned counsel, in absence of

such Annual Confidential Reports, the petitioner was liable to be exonerated from the charges levelled against him. This aspect has also been dealt with by the learned School Tribunal. I do not see any force in the argument so advanced. It is the matter of record that in the enquiry conducted against the petitioner, the witnesses examined by the respondent/management have elaborately deposed about the misconduct of the petitioner and nothing has been brought on record by the petitioner so as to discard or disbelieve the version of the said witnesses. In such circumstances, merely because the Annual Confidential Reports were not placed on record, no such inference can be drawn that the petitioner was innocent and no misconduct as alleged was ever committed by him.

23) One more objection was raised on behalf of the petitioner and which according to the petitioner was most material objection, that the enquiry report was signed by only one member of

the enquiry committee. In this regard I have already made some discussion in earlier paragraphs of this judgment. The objection so raised by the petitioner is without any merit. The document on record shows that the enquiry proceedings were concluded on 15th May, 2014. Copies of the record and proceedings of the enquiry conducted against the petitioner are placed on record. The proceedings recorded on 15th May, 2014 clearly reveal that the enquiry was duly completed into the charges levelled against the petitioner and the report writing was also undertaken by the Committee. The record and proceedings of the said date further demonstrate that though the conclusions were arrived at, since Shri Sunil M. Bande, the representative of the petitioner, was dissenting with the said conclusions he refused to put his signature on the said report and declared his intention to submit an independent report later on. In the circumstances, eventually the report was signed by remaining two members of the

enquiry committee, viz. Shri Vidyadhar Kakade and Dattatraya Aarote.

24) Placing reliance on the judgment of the Hon'ble Apex court in the case of Vidya Vikas Mandal (cited supra), it was vehemently argued on behalf of the petitioner that the report of enquiry, not signed by all the members of the enquiry committee, was not a report of enquiry in the eyes of law and no further action could have been taken on the basis of such report. In fact, the law laid down in the aforesaid judgment cannot be interpreted in the manner as was interpreted by the learned Counsel for the petitioner. Moreover, this Court in the case of Shri Chandreshwar Shikshan Sanstha (cited supra) has distinguished the aforesaid judgment and has in clear terms held that the report on findings of two members, being a majority view, should be accepted by the management.

25) In the instant case, the material on

record clearly evinces that the representative of the petitioner on the enquiry committee namely Shri Sunil Bande had refused to put his signature on the report of enquiry and has decided to submit a dissenting report. However, the report, which was ultimately submitted was bearing the signatures of other two members of the enquiry committee viz., Shri Vidyadhar Kakde and Shri Dattatraya Aarote, who have held the petitioner guilty for the misconduct alleged against him. In the circumstances, even though Shri Sunil Bande, the representative of the petitioner on the enquiry committee, might have submitted another report, thereby exonerating the petitioner from the charges levelled against him, in view of the judgment of this Court in the case of Shri Chandreshwar Shikshan Sanstha (supra) the majority decision would prevail. Thus, the objection so raised is also liable to be turned down.

26) The further argument that since the

charges levelled against the petitioner were of trifling nature, even if the said charges are held to have been proved against the petitioner, no major penalty could have been imposed on the petitioner of dismissing him from the services, has also not impressed me. Perusal of the charges levelled against the petitioner, reveals that there were serious complaints against the petitioner from the teachers as well as from the students. All such allegations were duly proved in the enquiry through the evidence of respective witnesses. Having regard to the said charges and the evidence, which has come on record substantiating the said charges, it does not appear to me that the punishment of dismissal awarded to the petitioner is disproportionate. The petitioner was working as Peon. The allegations levelled against him were that he had threatened the teachers, openly insulted them, interfered in the administration, threatened the students, snapped photographs of one 10th std. Student while he was urinating. All these charges

are serious.

27) After having considered the entire material on record, it does not appear to me that the learned School Tribunal has committed any error in dismissing the appeal filed by the petitioner. The petition is without any merit and deserves to be dismissed and it is accordingly dismissed. Rule discharged. Pending Civil Application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv
fldr 26.7.16