

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7169 OF 2002

Smt.Anupama Kishor Khanolkar,)
residing at 76, Nari Kamal Abhinav)
Nagar, Borivli (East), Mumbai 400 066.) ...Petitioner

....Versus....

1. Abhinav Education Society,)
A Society, registered under the)
Societies Registration Act and a)
Trust registered under the Bombay)
Public Trusts Act.)
2. Abhinav Vidya Mandir (English)
Medium) Nos.1 and 2 having their)
address at 123/124, Abhinav Nagar)
Borivli (East), Mumbai – 400 066.)
3. The Deputy Director of Education)
Bombay Region, Bal Bhavan)
Charni Road, Mumbai – 400 004.) ...Respondents

Ms.Anupama B. Shah for the Petitioner.

Mr.S.J. Panicker with Ms.Poonam Panicker for the Respondent
Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 1ST AUGUST, 2016
PRONOUNCED ON : 20TH AUGUST, 2016

JUDGMENT :-

1. By this petition filed under Article 227 of the Constitution of

India, the petitioner has prayed for a writ of certiorari and writ of mandamus for quashing and setting aside the judgment and order dated 30th March, 2002, passed by the School Tribunal, Mumbai dismissing the appeal filed by the petitioner (110 of 1999) and seeks an order and direction against the respondent nos.1 and 2 to reinstate the petitioner as Headmistress of the respondent no.2 school with benefit of seniority, full back wages and all other benefits. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The petitioner has passed B.A. and B.Ed. On 12th June, 1989 the petitioner was appointed as an Assistant Teacher in the respondent no.2 school. In the month of July, 1994, there was a vacancy in the post of Headmistress. It is the case of the petitioner that the petitioner being senior most, as per rules though she ought to have been promoted as the Headmistress in the respondent no.2 school, the management however, appointed Smt.Anuya Mahesh Gaitonde as the Headmistress and superseded the petitioner. The petitioner filed an appeal (141 of 1995) before the School Tribunal, Mumbai challenging her supersession. By a judgment and order dated 13th May, 1997, the School Tribunal allowed the said appeal filed by the petitioner and was pleased to set aside the appointment of said Smt.Anuya Mahesh Gaitonde holding the said appointment as illegal appointment.

3. The School Tribunal directed the management to hand over the charge of the Head to the petitioner and further ordered that for the purpose of seniority and pensionary benefits, she will be deemed to be the Headmistress from 7th July, 1994. The School

Tribunal directed that the petitioner would be entitled to get the salary and allowances of the post of Headmistress as per the scale applicable to the post with effect from the date of the said judgment and order.

4. The petitioner took charge of the post of Headmistress on 9th June, 1997. It is the case of the petitioner that the management however, paid the salary to the petitioner of only Rs.2718/- per month though according to the pay scale, she was entitled to get the total emoluments of Rs.7125/- per month and as per 5th Pay Commission Report not less than Rs.13,240/- per month.

5. It is the case of the petitioner that the management had appointed Shri Y.G. Bhide, Honorary Secretary, who started harassing the petitioner and was not allowing her to function as the Headmistress and was causing unnecessary interference in the working of the petitioner. He started issuing adverse remarks against the petitioner. It is the case of the petitioner that though the said Smt.Anuya Mahesh Gaitonde was liable to be removed in view of the order passed by the School Tribunal, instead of removing her from the service, the said Shri Y.G. Bhide appointed her as a Superintendent and was paid the salary more than the salary paid to the petitioner. It is the case of the petitioner that the petitioner was treated as subordinate to the said Smt.Anuya Mahesh Gaitonde, who also started harassing the petitioner.

6. The petitioner through her advocate's letter dated 12th January, 1998 addressed to the Honorary Secretary alleged that the petitioner was not paid the salary as the Headmistress inspite of the

order passed by the School Tribunal in view of the petitioner approaching the School Tribunal challenging the appointment of Smt.Anuya Mahesh Gaitonde. The petitioner also recorded that she was being harassed and adverse remarks were being made against her in the confidential report.

7. The petitioner thereafter filed a contempt petition in this Court (33 of 1998). By an order dated 5th May, 1998, this Court dismissed the said contempt petition and observed that the said issue could not be decided in the contempt petition.

8. Some time in the year 1998, the petitioner filed a writ petition (1886 of 1998) in this Court in view of the lower amount of salary being paid to her and for payment of higher salary. By an order dated 16th November, 1998, the Division Bench of this Court remanded the matter to the Director of Education in view of the management raising an issue before the Division Bench that unless and until the management was allowed to increase the tuition fees from the students, they would not be able to pay the salary of the petitioner as per the scale prescribed. Before the Director of Education, the management demanded increased to Rs.150/- which was allowed by the Director of Education. By an order dated 28th December, 1998, the Director of Education allowed the said increase in the fees and directed that teaching and non-teaching staffs should be paid the salary and allowances according to the prescribed scales of pay.

9. It is the case of the petitioner that the parents of the students studying in the respondent no.2 school brought Morcha to

her house on two occasions due to increased in the fees payable by the students. It is the case of the petitioner that the management had misguided the parents and informed that the fees were increased on account of the petitioner.

10. On 8th April, 1999, the respondent no.1 issued a statement of allegations against the petitioner. The petitioner vide her reply dated 19th April, 1999 submitted her explanation and denied that she was guilty of any misconduct. The petitioner addressed a letter on 28th April, 1999 to the President of the society and made a representation pointing out that during her ten years of service in respondent no.2 school, she had not received even a single memo but had received the memo only after 13th May, 1997 i.e. when she became the Headmistress pursuant to the judgment and order passed by the School Tribunal.

11. On 8th July, 1999, the management suspended the petitioner from the post of Headmistress, pending enquiry with effect from 9th July, 1999 as per rule 35(4) of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short the said "MEPS Rules").

12. Some time in the year 1991, the petitioner filed a suit in the Bombay City Civil Court, challenging the said enquiry initiated by the management as bad, illegal and *mala-fide*. The petitioner also filed a notice of motion (3335 of 1999) in the said suit for interim reliefs. The petitioner however, withdrew the said suit and the notice of motion. During the pendency of the enquiry, the petitioner was paid salary at the rate of Rs.6028/- per month.

13. The Chief Executive Officer vide his letter dated 9th July, 1999 informed the petitioner that she should nominate her nominee in the enquiry to defend the charges levelled against her and to enclose the consent letter of the nominee.

14. The petitioner by her reply dated 20th July, 1999 informed the Chief Executive Officer that she was unable to find any nominee and requested for one month time to enable her to find a suitable nominee.

15. The petitioner received a letter dated 16th August, 1999 on 18th August, 1999 and was informed that the meeting shall be held by the enquiry committee on 20th August, 1999. In the said letter, it was stated that in case the petitioner wanted to appoint a member of the enquiry committee, she could do so before 20th August, 1999 with the consent letter from the said nominee. The petitioner however neither appointed any nominee in the enquiry committee nor participated in the enquiry. Since the petitioner did not nominate any nominee in the enquiry committee, the enquiry proceedings continued with two members in the enquiry committee i.e. Mr.S.M. Masurekar, Convenor and Mr.W.S. Sahastrabudhe as a member of the enquiry. The said Mr.W.S. Sahastrabudhe was a State Awarded Teacher. The said Mr.S.M. Masurekar was the President of the respondent no.1 society. These two names were conveyed to the petitioner by the Chief Executive Officer vide his letter dated 9th July, 1999. Several meetings were held by the enquiry committee and several witnesses were examined by the management. The petitioner neither remained present personally for cross-examining the witnesses examined by

the management or to lead evidence before the enquiry committee.

16. The enquiry committee submitted a report on 3rd November, 1999 holding that most of the charges levelled against the petitioner were proved by the management. In the said report, the enquiry committee recommended termination of the services of the petitioner.

17. The respondent no.1 vide their letter dated 5th November, 1999 to the petitioner informed the petitioner about the recommendation made by the enquiry committee and that the findings with the recommendation of the enquiry committee were placed before the Managing Committee in its meeting dated 4th November, 1999. The petitioner was informed that the Managing Committee had decided to implement the recommendation of the enquiry committee and accordingly informed the petitioner that her services were terminated from the respondent no.2 school with effect from 6th November, 1999.

18. Being aggrieved by the said letter of termination dated 6th November, 1999, the petitioner herein filed an appeal (110 of 1999) under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (for short "The MEPS Act") before the School Tribunal, Mumbai Region, Mumbai. The said appeal was resisted by the management by filing a written statement on various grounds raised in the said written statement. The said appeal was thereafter heard by the learned Presiding Officer of the School Tribunal, Mumbai and by a judgment and order dated 30th March, 2002 came to be dismissed. Being aggrieved by the said

judgment and order dated 30th March, 2002, the petitioner herein has impugned the said judgment and order in this writ petition filed under Article 227 of the Constitution of India on various grounds.

19. Ms.Shah, learned counsel appearing for the petitioner invited my attention to the statement of allegations, reply sent by the petitioner to the statement of allegations, various parts of oral evidence led by the management before the enquiry committee, some of the correspondence annexed to the compilation of documents and also the findings and the observations made by the School Tribunal in the impugned order.

20. It is submitted by the learned counsel for the petitioner that the entire action on the part of the management to initiate an enquiry against the petitioner was totally vindictive and was with a view to harass the petitioner in view of the petitioner filing various proceedings against the management in this Court including a writ petition, contempt petition and an appeal before the School Tribunal challenging the appointment of Smt.Anuya Mahesh Gaitonde. She submits that since the petitioner had succeeded in most of the proceedings filed by her against the management, the management started issuing memos after her appointment as the Headmistress and initiated false and frivolous enquiry against the petitioner.

21. Learned counsel for the petitioner invited my attention to the statement of allegations which was sent by the Chief Executive Officer. Reliance is placed on rule 36 of the MPES Rules and it is submitted that since the petitioner was Headmistress admittedly, the statement of allegations ought to have been signed by the President

of the respondent no.1 society and not by the Chief Executive Officer. She submits that the entire enquiry proceedings are thus totally vitiated on that ground alone being in violation of rule 36 of the MEPS Rules. It is submitted that this issue was though argued by the petitioner before the School Tribunal, the argument is rejected by the School Tribunal on the ground that no such ground was raised in the appeal memo.

22. Learned counsel for the petitioner invited my attention to some of the allegations made in the statement of allegations and would submit that the allegations were totally vague and were made with *mala-fide* intention. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of **Ranjan Kumar Mitra vs. Andrew Yule & Co. Ltd. & Ors. (1997) 10 SCC 386** and the judgment of this Court in case of **Ganpati son of Kondbaji Sant vs. Shri Sant Gulab Baba Shikshan Sanstha & Ors. (2000) 4 BCR 196**.

23. The petitioner invited my attention to some of the findings recorded by the enquiry committee and the recommendations made by it for termination of the services of the petitioner. She submits that the witnesses examined by the respondent no.1 had not proved any of such charges before the enquiry committee. She submits that the findings recorded by the enquiry committee are totally perverse and without evidence.

24. Mr.Panicker, learned counsel appearing for the respondent nos.1 and 2 submits that the petitioner has not raised any ground in the writ petition that there was any procedural violation committed by

the respondent no.1 or by the enquiry committee in conducting the enquiry against the petitioner. He submits that it is also not the case of the petitioner in the petition that no opportunity was given to the petitioner to appear before the enquiry committee or that the proceedings were in violation of principles of natural justice.

25. Insofar as the submission of the learned counsel for the petitioner that the statement of allegations ought to have been issued by the President of the respondent no.1 and not by the Chief Executive Officer under rule 36 of the MEPS Rules is concerned, it is submitted by the learned counsel that no such ground was raised in the appeal memo filed before the School Tribunal. It is submitted that even in the reply to the statement of allegations filed by the petitioner, there was no defence raised by the petitioner that the said statement of allegations was required to be issued only by the President of the respondent no.1 society and not by the Chief Executive Officer. My attention is invited in this regard to the reply dated 28th April, 1999 given by the petitioner to the statement of allegations.

26. In his alternate submission, learned counsel for the respondent nos.1 and 2 invited my attention to rule 36(1) of the the MEPS Rules and submits that the statement of allegations are required to be communicated by the President of the management only if an enquiry is sought to be conducted against the head who is also the Chief Executive Officer and not otherwise. He submits that insofar as the petitioner is concerned though the petitioner was head of the respondent no.2 school and the enquiry was proposed to be conducted against her by the management, since the petitioner was not the Chief Executive Officer also, the statement of allegations in

that event were required to be communicated only by the Chief Executive Officer authorized by the management. He submits that it is not the case of the petitioner that she was also appointed as a Chief Executive Officer by the management in addition to she being the head of the respondent no.2 school.

27. Learned counsel for the management placed reliance on the judgment delivered by the Full Bench of this Court in case of **National Education Society & Anr. vs. Mahendra Baburao Jamkar & Anr. 2007 (3) All M.R. 553** and in particular paragraph 16 and would submit that the Full Bench of this Court in the said judgment after perusal of rule 36(1)(b) of the MEPS Rules has held that the Chief Executive Officer shall communicate the statement of allegations to an employee, if the statement of allegations are required to be issued to the head and if the head is also empowered to act as the Chief Executive Officer, the same will have to be issued by the President of the management. He submits that if the statement of allegations are required to be issued to the head, who is not empowered to act as the Chief Executive Officer by the management, then such statement of allegations can be issued by the Chief Executive Officer and it is not necessary that the President of the management shall communicate the said statement of allegations. He submits that the said judgment of the Full Bench of this Court in the case of **National Education Society & Anr.** (supra) squarely applies to the facts of this case.

28. Learned counsel for the management invited my attention to rule 37 of the MEPS Rules which provides for the procedure for conducting an enquiry. He submits that in accordance with the said

procedure, the management had prepared the statement of allegations containing specific allegations and had handed over the same for an explanation to the petitioner thereto. He submits that the President of the management had communicated the names of the members nominated to the petitioner with a request to forward the name of the nominee to be appointed by the petitioner along with his written consent to the Chief Executive Officer or to the President within 15 days from the date of receipt of the communication to that effect. The petitioner however, did not appoint any nominee and requested for time thrice and took 43 days to appoint a nominee. The petitioner did not nominate any nominee within the time prescribed under rule 36(3) of the MEPS Rules and thus two members of the enquiry committee including the State Awardee Teacher constituted the enquiry committee and continued with the enquiry.

29. it is submitted that each and every procedure required to be followed under rules 36 and 37 of the MEPS Rules had been followed by the management and the enquiry committee. The management had examined 22 witnesses to prove the charges levelled against the petitioner. The petitioner was issued notices from time to time and was served with the copies of the proceedings and the evidence of those 22 witnesses. The petitioner was also served with summary of the proceedings and was also forwarded the copies of the report submitted by the enquiry committee. He submits that since the petitioner had deliberately chosen not to participate in the enquiry proceedings, the enquiry committee after considering the evidence led by the management had rightly come to the conclusion that most of the charges levelled against the petitioner were proved by the management and had recommended termination of the

services of the petitioner. It is submitted that since the petitioner had not participated in the enquiry though sufficient opportunities were rendered to the petitioner by the management as well as by the enquiry committee, the petitioner cannot be allowed to challenge the enquiry proceedings on merits. In support of this submission, the learned counsel for the management placed reliance on the judgment of the Supreme Court in case of **Ranjan Kumar Mitra vs. Andrew Yule & Co. Ltd. & Ors. (1997) 10 SCC 386.**

30. Learned counsel for the management placed reliance on an unreported judgment of this Court delivered on 17th June, 2016 in case of **Prithviraj S. Singh vs. The Secretary, School Education Department & Ors.** in Writ Petition No.2506 of 2006 and other companion matter and more particularly paragraphs 116, 121, 124 and 125 and would submit that this Court in the said judgment has followed the judgment of the Supreme Court in case of **Ranjan Kumar Mitra** (supra) and has held that if an employee has not participated in the enquiry though was served with notices and proceedings, he cannot be allowed to assail his termination on merits.

31. It is submitted by the management that the petitioner could not have refused to participate in the enquiry on the ground of alleged harassment that would have been suffered by the petitioner if she would have participated in the enquiry proceedings. He submits that on the contrary, the petitioner took time thrice to appoint her nominee which consumed 43 days.

32. Learned counsel for the management invited my attention to the grounds (h) and (i) raised in the petition and would submit that

both these grounds were not raised in the appeal memo filed before the School Tribunal and thus cannot be allowed to be raised for the first time in the writ petition.

33. Learned counsel for the management placed reliance on the judgment of the Supreme Court in case of **Bank of India & Anr. vs. Degala Suryanarayana, AIR 1999 SC 2407** and in particular paragraph 11 thereof and would submit that strict rules of evidence are not applicable to the departmental enquiry proceedings. It is submitted that this Court while exercising jurisdiction of judicial review cannot interfere with the findings of fact arrived at on the departmental enquiry proceedings excepting in a case of *mala-fides* or perversity i.e. where there is no evidence to support a finding or whether the finding is such that no man acting reasonably and with objectivity could have arrived at that finding. He submits that this Court cannot re-appreciate the evidence like appellate authority.

34. Learned counsel for the management placed reliance on the judgment of this Court in case of **Principal, B.M. Ruia Mahila Vidyalaya, Bombay & Anr. vs. Nini Gulla & Ors. 2001(4) Mh.L.J. 379** and in particular paragraph 9 and would submit that even if one charge out of several charges levelled against the petitioner is proved, it was enough for the management to sustain the order of punishment. Reliance is placed on the said judgment also in support of the submission that when the misconduct is proved, there is no question of considering the past record. It is submitted that even if the case of the petitioner is accepted that no memos were issued to the petitioner prior to her appointment as the Headmistress i.e. for a period of 10 years, as alleged, the petitioner cannot be allowed to

urge that no misconduct could have been committed by the petitioner after she was appointed as head of the respondent no.2 school. He submits that except few charges, all charges levelled against the petitioner which were serious in nature had been proved.

35. Learned counsel for the management invited my attention to the various findings recorded by the School Tribunal and would submit that the School Tribunal has independently considered the entire evidence of 22 witnesses and also examined the enquiry report submitted by the enquiry committee and after considering the provisions of law and pleadings, has rightly rendered various findings of fact. He submits that the findings of fact being not perverse cannot be interfered with by this Court under Article 227 of the Constitution of India. He submits that the School Tribunal has also rendered a finding that some of the co-teachers had left the school because of the harassment meted out by the petitioner to them.

36. Ms.Shah learned counsel for the petition in rejoinder submits that the petitioner was the Chief Executive Officer of the school committee and was also head of the respondent no.2 school and on that ground the statement of allegations could have been communicated only by the President of the respondent no.1 society and not by the Chief Executive Officer. Mr.Panicker, learned counsel for the management invited my attention to Schedule-A of the MEPS Rules and would submit that the head of the school is Ex-officio Secretary of the school committee. He submits that the post of Ex-officio Secretary of the school committee and the Chief Executive Officer nominated by the management for the purpose of conducting the disciplinary enquiry are two different posts for two different

purposes.

37. It is submitted that merely because the petitioner being head of the school at that point of time was to be considered as Ex-officio Secretary of the school committee under Schedule-A, she could not be considered as the Chief Executive Officer for the purpose of conducting an enquiry under rule 36 of the MEPS Rules. Learned counsel for the petitioner once again reiterated her contention that the statement of allegations not having been communicated by the President of the respondent no.1 society, the entire proceedings were vitiated in view of the same being contrary to and in non-compliance with the mandatory procedure under rule 36 of the MEPS Rules.

REASONS AND CONCLUSIONS :

38. The questions that arise for consideration of this Court are :-

a). Whether the statement of allegations were required to be communicated by the President of the respondent no.1 society to the petitioner, she being head of the respondent no.2 school, though she was not the Chief Executive Officer or could be communicated by the Chief Executive Officer authorized by the management against the petitioner she being head of the respondent no.2 school ?

b). Whether the petitioner who did not participate in the enquiry proceedings though procedure under rules 36 and 37 of the MEPS Rules including the principles of natural justice had been

followed by the management and the enquiry committee, can be allowed to assail the termination on merits ?

39. I shall first deal with the submission of the learned counsel for the petitioner that the entire enquiry proceedings were vitiated on the ground that the statement of allegations were not communicated to her by the President of the respondent no.1 management under rule 36(1) of the MEPS Rules.

40. It is not in dispute that the management of the respondent no.1 society had proposed to conduct an enquiry against the petitioner in respect of various charges levelled against her in the statement of allegations and the charge sheet. The management had authorized the Chief Executive Officer in that behalf. The respondent no.1 society vide their letter dated 9th July, 1999 addressed to the petitioner informed the petitioner two names of the members of the enquiry committee i.e. Mr.S.M. Masurekar, who was the President of the respondent no.1 committee and Mr.W.S. Sahastrabudhe, the State Awardee Teacher. The said letter was signed by the Chief Executive Officer. By the said letter, the petitioner was requested to nominate her nominee in the enquiry committee within 15 days from the date of receipt of the said letter. It was made clear in the said letter that if the petitioner fails to nominate her nominee within the period of 15 days from the date of receipt of the said letter, the said two persons named in the letter as members of the enquiry committee shall be deemed to have constituted as enquiry committee and that further process shall be proceeded with as per law.

41. The petitioner had admittedly given her reply to the said statement of allegations issued by the management. A perusal of the said reply to the statement of allegations submitted by the petitioner clearly indicates that the said communication of statement of allegations by the Chief Executive Officer was not objected by the petitioner on the ground that the same was not communicated by the President of the respondent no.1 society under rule 36(1) of the MEPS Rules. The petitioner in her appeal memo before the School Tribunal also did not raise this ground about the alleged non-compliance with rule 36(1) of the MEPS Rules by the management thereby vitiating the enquiry proceedings. The petitioner also did not raise any such issue at any other point of time during the pendency of the disciplinary enquiry before the enquiry committee or even after conclusion of the enquiry proceedings. In my view, the petitioner thus cannot be allowed to raise this issue for the first time in this proceeding.

42. Be that as it may, it is not in dispute that though the petitioner was the head of the respondent no.2 school when the enquiry was contemplated by the management against the petitioner, the petitioner was not the Chief Executive Officer appointed by the management. The Chief Executive Officer is defined under rule 2(c) of the MEPS Rules which means the Secretary, Trustee Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the management. The petitioner has not been able to produce any proof to show that the management had confined any powers on the petitioner to act as the Chief Executive Officer before the enquiry committee or before the School Tribunal or before this Court.

43. In this case the President of the respondent no.1 society was nominated as the member of the enquiry committee as contemplated by rule 36(2)(b)(i) of the MEPS Rules. In my view, merely because the petitioner was the head of the respondent no.2 school, the petitioner could not consider herself to be the Chief Executive Officer without the management conferring any such powers on the petitioner to act as the Chief Executive Officer. The head of the school is sub-ordinate to the Chief Executive Officer and if his appointment is specifically made by the management as the Chief Executive Officer, he shall become sub-ordinate to the President of the management. There is no automatic appointment of the head of the school as the Chief Executive Officer.

44. The Full Bench of this Court has dealt with this issue specifically in case of **National Education Society & Anr.** (supra) and has held that the head of the school is sub-ordinate to the Chief Executive Officer and as a correspondent if the Headmaster were to become the Chief Executive Officer automatically, the intention of the rule making authority to allow the management to have the Chief Executive Officer of its choice other than Head, Secretary or Trustee would be clearly defeated. The Full Bench of this Court in the said judgment has held that under rule 36(1)(2)(b) of the MEPS Rules, the Chief Executive Officer shall communicate the statement of allegations to an employee. It is held that if the statement of allegations are required to be issued to the head, who is also empowered to act as the Chief Executive Officer, the same will have to be issued by the President of the management. After looking to the hierarchy, it is held that the statement of allegations are required to

be issued to the head (who is not empowered to act as the Chief Executive Officer, by the management), then such statement of allegations can be issued by the Chief Executive Officer and it is not necessary that the President should issue the same.

45. The Full Bench of this Court has also held that in case the head whether or not is empowered to act as the Chief Executive Officer, the President of the management shall be a member of the enquiry committee as contemplated by rule 36(1) of the MEPS Rules. The said judgment of the Full Bench in case of **National Education Society & Anr.** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

46. In my view, since the petitioner would not have automatically become the Chief Executive Officer merely because she was the head of the respondent no.2 school and could not produce any record before the School Tribunal or even before this Court, that in addition to she being the head of the respondent no.2 school was also conferred powers to act as the Chief Executive Officer by the management, in my view, the President of the management was not required to communicate the statement of allegations to the petitioner under rule 36(1) of the MEPS Rules but the same could be communicated by the Chief Executive Officer nominated by the management under rule 36(1) of the MEPS Rules. There is thus no merits in the submission of the learned counsel for the petitioner that the enquiry proceedings were vitiated on this ground.

47. Insofar as the submission of the learned counsel for the

petitioner that she being the head of the school is Ex-officio Secretary of the school committee under Schedule-A of the MEPS Rules and thus the statement of allegations could have been communicated only by the President of the management is concerned, in my view, this submission of the learned counsel is stated to be rejected. In my view merely because the petitioner being the head of the respondent no.2 school and thus became the Ex-officio Secretary of the school committee and was responsible to keep the record of the proceedings and the meeting of the committee, she could not claim to have become the Chief Executive Officer within the meaning of rule 36(1) of the MEPS Rules and therefore, the statement of allegations was not required to be communicated by the President of the management. The position of the Ex-officio Secretary held by the petitioner as the head of the respondent no.2 school and the post of the Chief Executive Officer who has to be specifically conferred powers as the Chief Executive Officer by the management are two different posts and for two different purposes under the provisions of MEPS Act and Rules and cannot be compared with each other. The Headmistress is the head simplicitor and is sub-ordinate to the Chief Executive Officer. If the head of the school is specifically conferred powers by the management to act as the Chief Executive Officer, such Chief Executive Officer becomes sub-ordinate to the President. In my view, there is thus no merits in this submission of the learned counsel for the petitioner.

48. Insofar as the judgment of this Court in case of **Ganpati son of Kondbaji Sant vs. Shri Sant Gulab Baba Shikshan Sanstha & Ors. 2000 (4) Bom.C.R. 196**, relied upon by the learned counsel for the petitioner is concerned, the learned single Judge of

this Court in the said judgment has held that the management had failed to produce any document to demonstrate that the respondent teacher therein was not the Headmaster of the school. It is held by the learned single Judge of this Court in that in case of the head, it was the President alone, who was legally competent to issue statement of allegations for the purpose of seeking explanation. The Full Bench of this Court in the later judgment referred to aforesaid has interpreted rule 36(1) of the MEPS Rules and has held that if the head of the school is not empowered to act as the Chief Executive Officer by the management, the statement of allegations can be issued by the Chief Executive Officer and it is not necessary that the President should issue the same.

49. There was no issue before the learned single Judge of this Court whether the head of the school though was not the Chief Executive Officer, the statement of allegations ought to have been issued only by the President of the management and not by the Chief Executive Officer. Be that as it may, in view of the later judgment of the Full Bench of this Court taking a different view, I am respectfully bound by the judgment of the Full Bench of this Court. In view of the judgment of the Full Bench of this Court taking a different view in the matter, reliance placed by the learned counsel for the petitioner on the judgment delivered by the learned single Judge in case of **Ganpati son of Kondbaji Sant** (supra) is totally misplaced.

50. Insofar as submission of the learned counsel for the petitioner that though the petitioner had urged orally before the School Tribunal that the enquiry proceedings were vitiated on the ground that the statement of allegations were communicated by the

Chief Executive Officer and not by the President of the management, the School Tribunal has rejected the said submission on the ground that no such plea was raised in the appeal memo filed by the petitioner is concerned, it is not in dispute that the petitioner had not raised such plea either in the reply to the statement of allegations or by addressing any letter to the enquiry committee and not had pleaded in the appeal memo filed before the School Tribunal. The School Tribunal in my view thus rightly rejected the said contention raised across the bar for the first time. Be that as it may, since the petitioner was not conferred with the power of the Chief Executive Officer by the management, the statement of the allegations was not required to be communicated by the President of the management but only by the Chief Executive Officer. There is thus no substance in this submission of the learned counsel for the petitioner.

51. A perusal of the order passed by the School Tribunal indicates that the School Tribunal has considered all the arguments advanced by the petitioner, has considered the evidence laid by the 22 witnesses examined by the management and has also considered the provisions of law in the impugned judgment and order. The School Tribunal has rendered a finding of fact that the petitioner was given sufficient opportunity by the management as well as by the enquiry committee to defend the enquiry proceedings but the petitioner did not attend the enquiry proceedings since the beginning and was merely sending some letters to the enquiry committee.

52. It is held by the School Tribunal that all the requisite procedure under Rules 36 and 37 of the M.E.P.S. Rules were followed by the enquiry committee. The petitioner was granted ample

opportunities by the enquiry committee and by the management for participating in the enquiry proceedings. It is held by the School Tribunal that the Chief Executive Officer had asked the petitioner to nominate her nominee in the enquiry committee within 15 days by letter dated 8th July, 1999 which was received by the petitioner on 9th July, 1999. The petitioner however did not take any steps to nominate her nominee in the enquiry committee on the ground that she was unable to find any nominee to be appointed in the enquiry committee and vide her letter dated 20th July, 1999, asked for one month's time to enable her to file a suitable nominee to represent her.

53. The petitioner admitted before the School Tribunal that she was informed that the meeting was on 20th August, 1999 but the petitioner remained absent. The enquiry committee had vide their letter dated 19th August, 1999 had given further 10 days time to nominate her nominee and kept the next meeting on 28th August, 1999. The petitioner had received the said letter but did not appoint any nominee inspite of the additional time granted by the enquiry committee. The petitioner chose to remain absent in all the meetings of the enquiry committee though notices were received by the petitioner from time to time in respect of each of such meetings held by the enquiry committee.

54. A perusal of the record further indicates that the petitioner had filed a suit in the City Civil Court bearing Suit No.4330 of 1999 challenging the validity of the enquiry proceedings and had also filed a notice of motion in the said suit. The petitioner however subsequently withdrawn the said suit as well as the notice of motion during the pendency of the enquiry conducted by the enquiry

committee. In my view the School Tribunal has rendered a detailed judgment and order after considering all the provisions of law, submissions made by the parties, the documentary evidence and also the oral evidence led by the large number of the witnesses examined by the management before the enquiry committee and has rightly rejected the appeal filed by the petitioner. In my view the findings of fact rendered by the School Tribunal are not perverse and thus cannot be interfered with by this Court in this petition filed under Article 227 of the Constitution of India.

55. Supreme Court in case of **Ranjan Kumar Mitra** (supra) has held that if the services of an employee is terminated after enquiry in which such employee has chosen not to participate, he cannot be allowed to assail his termination on merits. This Court in an unreported judgment delivered on 17th June, 2016 in case of **Prithviraj S. Singh** (supra) has after adverting to the judgment of Supreme Court in case of **Ranjan Kumar Mitra** (supra) has held that the employee who did not participate in the enquiry proceedings inspite of the opportunity rendered by the management and the enquiry committee cannot be allowed to challenge the enquiry or the termination on merits.

56. I am not inclined to accept the submission of the learned counsel for the petitioner that the petitioner did not attend the enquiry proceedings to avoid any further harassment which would have been meted out to her by the management during the course of the enquiry proceedings. In my view, an employee cannot refuse to participate in the enquiry proceedings on the ground that he or she was apprehending any harassment by the management or by the enquiry

committee. If the petitioner has chosen to remain absent due to any alleged apprehension of harassment in her mind during the course of the proceedings, in my view, such a reason cannot be accepted as a valid reason for not participating in the enquiry proceedings. No indulgence on such ground can be shown to the petitioner by this Court. In my view on this ground the enquiry proceedings cannot be considered as in violation of principles of natural justice or vitiated on that ground.

57. This Court in the said judgment in case of **Prithviraj S. Singh** (supra) has considered a similar argument at great length and had rejected the submission of the teacher who had failed to nominate any member in the enquiry committee and had not participated in the enquiry proceedings though opportunities were rendered by the management as well as by the enquiry proceedings. In my view the judgment of Supreme Court in case of **Ranjan Kumar Mitra** (supra) **Prithviraj S. Singh** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgments.

58. Insofar as submission of the learned counsel for the petitioner that since no memos were issued to the petitioner about her alleged misconduct in last 10 years prior to her appointment as the Headmistress which would show that the allegations made by the management against the petitioner of misconduct after her appointment as Headmistress was vindictive, *mala-fide* or were made to harass the petitioner is concerned, the fact remains that the petitioner did not participate in the enquiry and did not cross examine any of the 22 witnesses examined by the management to prove such charges levelled against the petitioner. In my view merely because

the management had not issued any memos in last 10 years prior to her appointment as Headmistress that cannot be a ground for drawing an interference that even after her appointment as a Headmistress, the petitioner would not have committed any misconduct.

59. This Court in case of **Principal, B. M. Ruia Mahila Vidyalaya, Bombay & Anr.** (supra) after adverting to the Supreme Court judgment in case of **U.P. State Road Transport Corporation vs. A.K. Parui, J.T. 1998(7) SC 203** has held that if any punishment is imposed by the management on a employee on the basis of the proved misconduct and is upheld by the tribunal, it is not possible for the Court to hold that the punishment deserves to be interfered with. It is held that when the misconduct is proved, there is no question of considering the past record. In my view even if one out of several charges of misconduct is proved, the appropriate punishment against such an employee can be inflicted by the management. In my view the judgment of this Court in case of **Principal, B. M. Ruia Mahila Vidyalaya, Bombay & Anr.** (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

60. Supreme Court in case of **Bank of India & Another vs. Degala Suryanarayana** (supra) has held that strict rules of evidence cannot be applicable to the departmental enquiry proceedings. It is held that the Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of *mala-fide* or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have

arrived at that findings. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. In my view the petitioner could not demonstrate before the School Tribunal or even before this Court that the action of the management in initiating the disciplinary enquiry against the petitioner and thereafter termination of the service of the petitioner were *mala-fide* or was vindictive action. The judgment of Supreme Court in case of **Bank of India** (supra) would assist the case of the respondent.

61. In my view the petition is totally devoid of merits. I, therefore, pass the following order :-

a). Writ Petition No.7169 of 2002 filed by the petitioner is dismissed. Rule is discharged. No order as to costs.

(R.D. DHANUKA, J.)