

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

WRIT PETITION NO.1296 OF 2006

**Shree Laxmi Shikshan Prasarak Mandal
Laxmitech, Radhanagari Road,
Kolhapur, Through its Chairman**

...Petitioner

Versus

State of Maharashtra and others

... Respondents

Mr. M. S. Topkar for the Petitioner.

Mr. S. B. Kalel, AGP for the Respondent Nos.1 & 2.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 27th JULY, 2017

P. C. :

1. We had called out the matter on 20.07.2017. The Learned Counsel for the Petitioner and the AGP were present. However, none appeared for Respondent No.3. In the interest of justice, we adjourned the matter to 27.07.2017 as none had appeared for Respondent No.3.

2 We have heard the Learned Counsel for the Petitioner.

3 Today also, when the matter is called out, none

appears for Respondent No.3.

4 It is submitted by the Learned Counsel for the Petitioner that the Respondent No.3 was terminated after conducting departmental enquiry and following due procedure.

5 The Respondent No.3 was suspended, departmental enquiry was initiated, charge-sheet was served upon the Respondent No.3 on 17.05.2002 for various mis-conduct. The immoral acts of the Respondent No.3 were very serious and disturbed the school and the society. The Respondent No.3 committed theft of school books and removed the record from the school without authority which was subsequently seized from him. The Learned Counsel submits that the termination was after following the provisions as laid down under the MEPS rules. The Respondent No.3 was terminated on 08.01.2003. The Respondent No.3 did not challenge his termination. The said termination order became final. However, the Education Officer/Respondent No.2 under its letter dated 26.05/01.06.2005 directed the Petitioner to reinstate Mr. Patil - Respondent No.3 as Headmaster. According to the Learned Counsel the departmental enquiry was independent of the criminal case filed against Respondent No.3.

The acquittal in the criminal case is distinct than the charges framed in the departmental enquiry. The Respondent No.3 is terminated after holding departmental enquiry on the charges as mentioned in the charge-sheet being proved. The Education Officer did not have the authority to direct the Petitioner to reinstate the Respondent No.3.

6 It appears from the record that the departmental enquiry was initiated against the Respondent No.3 for various charges detailed in the charge-sheet. The said departmental enquiry was independent of a criminal case filed against the Respondent No.3. In the departmental enquiry 9 charges were framed against the Respondent No.3 and charge No.8 was only in respect of the offence for which the criminal case was filed. In view of the fact that the charges against Respondent No.3 were proved in an independent departmental enquiry and upon the charges being proved the Respondent No.3 was terminated. It was not open for the Education Officer to direct the Petitioner to reinstate the Respondent No.3. The forum available to the Respondent No.3 was School Tribunal under provisions of Section 9 of the MEPS Act. The Education Officer did not have any

authority/jurisdiction under the statute to direct the reinstatement of Respondent No.3, more particularly when Respondent No.3 was terminated after holding departmental enquiry and all charges against him being proved.

7 This Court on 2nd March 2006 had admitted the Writ Petition and interim stay as prayed was granted. The said order is still in force.

8 Considering the aforesaid conspectus, the impugned order is quashed and set aside. The Writ Petition as such is allowed. Rule is accordingly made absolute. No costs.

(A. M. BADAR, J.)

(S. V. GANGAPURWALA, J.)