IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7871 OF 2017
(JAYPRAKASH SAHEBRAO SURYAWANSHI VS.THE STATE OF MAHARASHTRA AND OTHERS)

WITH WP/7866/2017 WITH WP/7867/2017 WITH WP/7868/2017
WITH WP/7869/2017 WITH WP/7870/2017 WITH WP/7872/2017
WITH WP/7873/2017 WITH WP/7874/2017 WITH WP/7875/2017
WITH WP/7876/2017 WITH WP/7877/2017 WITH WP/7878/2017
WITH WP/7879/2017 WITH WP/7880/2017 WITH WP/7881/2017
WITH WP/7882/2017 WITH WP/7883/2017 WITH WP/7884/2017
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WITH WP/7897/2017 WITH WP/7898/2017 WITH WP/7899/2017
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WITH WP/7904/2017 WITH WP/7905/2017 WITH WP/7906/2017
WITH WP/7907/2017 WITH WP/7908/2017 WITH WP/7909/2017
WITH WP/7910/2017 WITH WP/7911/2017 WITH WP/7912/2017
WITH WP/7913/2017 WITH WP/7914/2017 WITH WP/7915/2017
WITH WP/7916/2017 WITH WP/7917/2017 WITH WP/7918/2017
WITH WP/7919/2017 WITH WP/7920/2017 WITH WP/7921/2017
WITH WP/7922/2017

Mr.S.P.Brahme and Mr.A.R.Syed, Advocates for the petitioners.
Mr.B.A.Shinde, AGP for respondent Nos. 1 and 3.
Mr.N.S.Choudhary, Advocate for respondent No.2.

WITH WRIT PETITION NO.8976 OF 2017

(BHAIYYASAHEB BHIMRAO WAGH VS. THE STATE OF MAHARSHTRA AND OTHERS)

WITH WP/9106/2017 WITH WP/9107/2017 WITH WP/9108/2017 WITH WP/9109/2017 WITH WP/9110/2017 WITH WP/9111/2017 WITH WP/9112/2017 WITH WP/9113/2017 WITH WP/9114/2017 WITH WP/9115/2017 WITH WP/9116/2017 WITH WP/9117/2017 WITH WP/9118/2017 WITH WP/9119/2017 WITH WP/9120/2017 WITH WP/9121/2017 WITH WP/9122/2017 WITH WP/9123/2017 WITH WP/9124/2017 WITH WP/9125/2017 WITH WP/9126/2017 WITH WP/9127/2017 WITH WP/9128/2017 WITH WP/9129/2017 WITH WP/9130/2017 WITH WP/9131/2017 WITH WP/9132/2017 WITH WP/9133/2017 WITH WP/9134/2017 WITH WP/9135/2017 WITH WP/9136/2017 WITH WP/9137/2017 WITH WP/9138/2017 WITH WP/9139/2017 WITH WP/9140/2017 WITH WP/9141/2017 WITH WP/9142/2017 WITH WP/9143/2017 WITH WP/9144/2017 WITH WP/9145/2017 WITH WP/9146/2017 WITH WP/9147/2017 WITH WP/9148/2017 WITH WP/9149/2017 WITH WP/9150/2017 WITH WP/9151/2017 WITH WP/9152/2017 WITH WP/9153/2017 WITH WP/9154/2017 WITH WP/9179/2017 WITH WP/9180/2017 WITH WP/9181/2017 WITH WP/9182/2017 WITH WP/9183/2017 WITH WP/9184/2017 WITH WP/9454/2017 WITH WP/9455/2017 WITH WP/9456/2017 WITH WP/9457/2017 WITH WP/9458/2017 WITH WP/9459/2017 WITH WP/9460/2017 WITH WP/9461/2017 WITH WP/9462/2017 WITH WP/9463/2017 WITH WP/9464/2017 WITH WP/9465/2017 WITH WP/9466/2017 WITH WP/9467/2017 WITH WP/9468/2017 WITH WP/9469/2017 WITH WP/9470/2017 WITH WP/9471/2017 WITH WP/9473/2017 WITH WP/9474/2017 WITH WP/9475/2017 WITH WP/9476/2017 WITH WP/9477/2017

WITH WP/9478/2017 WITH WP/9479/2017 WITH WP/9480/2017
WITH WP/9481/2017 WITH WP/9483/2017 WITH WP/9484/2017
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WITH WP/9498/2017 WITH WP/9501/2017 WITH WP/9502/2017
WITH WP/9503/2017 WITH WP/9679/2017 WITH WP/9680/2017
WITH WP/9681/2017 WITH WP/9682/2017 WITH WP/9683/2017
WITH WP/9684/2017 WITH WP/9685/2017 WITH WP/9686/2017
WITH WP/9687/2017 WITH WP/9688/2017 WITH WP/12932/2017
WITH WP/12933/2017 WITH WP/12934/2017

Ms.P.S.Talekar, Advocate for the petitioners.
Mr.B.A.Shinde, AGP for respondent Nos. 1 and 2.
Mr.M.S.Sonawane, Advocate for respondent No.3.

WITH WRIT PETITION NO.12166 OF 2017
(JITENDRA ATMARAM PAWAR VS.THE STATE OF MAHARASHTRA AND OTHERS)
WITH WP/12630/2017 WITH WP/12678/2017 WITH WP/12680/2017 WITH WP/12681/2017 WITH WP/12683/2017 WITH WP/12684/2017 WITH WP/12685/2017 WITH WP/12686/2017 WITH WP/12687/2017 WITH WP/12688/2017 WITH WP/12689/2017 WITH WP/12690/2017 WITH WP/12691/2017 WITH WP/12692/2017

Mr.S.B.Sontakke, Advocate for the petitioners.
Mr.B.A.Shinde, AGP for respondent Nos. 1 and 3.
Mr.H.P.Kshirsagar, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 26/07/2018

PER COURT :

1. In all these 185 writ petitions, these petitioners are aggrieved

by the identical orders passed by the Chief Executive Officer, Zilla Parishad, Jalgaon by which the punishment of stoppage of one increment for one year with cumulative effect has been inflicted on these petitioners. All the orders are practically identical in nature. However, in 114 cases represented by Ms.Talekar, learned Advocate for the petitioners, the punishment, though is the same, is based on a conclusion by the C.E.O. that these petitioners have submitted false / bogus bills. All these petitioners were working as Head Masters in their respective schools. They are also aggrieved by the identical orders passed by the Appellate Authority rejecting their appeals.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides for almost the entire day on 21/07/2018.

3. The submissions of Mr.Brahme, learned Advocate appearing on behalf of 56 petitioners, has been adopted by the learned Advocates for all other petitioners to the extent of the factual matrix in these matters. Their submissions are, therefore, summarized as under :-

[a] A scheme was introduced by the Central

Government for providing uniforms to the poor and needy students, free of costs.

[b] The grants were released by the Central Government and were transmitted to the State Government, which has utilized the said grants through the Zilla Parishad at the district level.

[c] The said scheme was applicable to the schools under the Zilla Parishad.

[d] The free school uniforms were to be distributed to all the girl students studying from the first standard till the 8^{th} standard, all those students belonging to SC/ST categories and all students falling in the below poverty line (BPL) category.

[e] Two sets of uniform were to be allotted to each student.

[f] A total expenditure from purchasing the cloth till the stitching stage for each uniform was restricted to Rs.200/- per uniform.

[g] A GR dated 04/02/2011 was introduced by the State for prescribing the manner of operating the scheme.

[h] For the sake of clarity, the said GR dated 04/02/2011 is reproduced as under :-

सर्व शिक्षा अभियान कार्यक्रमांतर्गत
शालेय विद्यार्थ्यांना मोफत गणवेष
पुरविणेबाबत.....

महाराष्ट्र शासन
शालेय शिक्षण व क्रीडा विभाग
शासन निर्णय क्र. एसएसए २०१५/प्रक्र ३८/प्राशि ४
मंत्रालय, मुंबई-४०० ०३२
दिनांक ४ फेब्रुवारी, २०१५

प्रस्तावना- बालकांना मोफत व सक्तीच्या शिक्षणाचा अधिकार अधिनियम २००९ नुसार सर्व शिक्षा अभियान या केंद्र पुरस्कृत योजनेंतर्गत सन २०१५-१६ या आर्थिक वर्षाकरीता इयत्ता १ ली ते ८ वीच्या विद्यार्थ्यांना शालेय गणवेष पुरविण्यास केंद्र शासनाने मान्यता दिलेली आहे. शालेय विद्यार्थ्यांना मोफत गणवेष पुरविण्याची सदर योजना, शासकीय आणि स्थानिक स्वराज्य संस्थांच्या शाळांमधील इयत्ता १ ली ते ८ वी च्या विद्यार्थ्यांना लागु करण्यात आली असून, या योजनेमध्ये सर्व मुलींना आणि अनुसूचित जाती, अनुसूचित जमातीच्या सर्व मुलांना तसेच दारिद्र्य रेषेखालील मुलांना प्रत्येकी दोन गणवेष पुरवावयाचे आहेत. त्याकरीता प्रति विद्यार्थी रु. ४००/- प्रमाणे तरतूद केंद्र शासनाने सर्व शिक्षा अभियान कार्यक्रमांतर्गत मंजूर केलेली आहे. केंद्र शासनाने ही योजना शाळा व्यवस्थापन समितीमार्फत राबवावी अशा मार्गदर्शक सूचना दिलेल्या आहेत. प्राथमिक शाळांमध्ये विद्यार्थ्यांचा गणवेष शासनाने यापूर्वीच निश्चित केलेला आहे. मुलांना सफेद रंगाचा शर्ट आणि खाकी रंगाची पँट तसेच मुलींना नेव्ही ब्लु रंगाचा स्कर्ट आणि सफेद रंगाचा ब्लाऊज निश्चित केलेला आहे. त्यानुसार शाळा व्यवस्थापन समितीमार्फत सर्व शिक्षा अभियान कार्यक्रमांतर्गत शालेय विद्यार्थ्यांना मोफत गणवेष योजना राबविण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय - सर्व शिक्षा अभियान कार्यक्रमांतर्गत शालेय विद्यार्थ्यांना मोफत गणवेष योजना शासकीय शाळा आणि स्थानिक स्वराज्य संस्थांच्या शाळांमधील इयत्ता १ ली ते ८ वी च्या वर्गातील खालील विद्यार्थ्यांसाठी लागु राहील.

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२. <u>इयत्ता १ ली ते ८ वी च्या वर्गातील योजनेचे लाभार्थी -</u>

<u>अ) मुली -</u> सर्व मुली या योजनेसाठी पात्र राहतील.

<u>ब) मुले -</u> (१) अनुसूचित जाती व अनुसूचित जमातींची सर्व मुले आणि,

(२) दारिद्र्य रेषेखालील पालकांची मुले या योजनेसाठी पात्र राहतील

३. सदर योजनेमध्ये पात्र लाभार्थ्यांना प्रत्येकी दोन गणवेश पुरविण्यात यावेत. त्यासाठी प्रति विद्यार्थी रु. ४००/- प्रमाणे खर्च करण्यास मान्यता देण्यात येत आहे.

४. गणवेश पुरविण्याची योजना केंद्र शासनाच्या आदेशानुसार सर्व शिक्षा अभियान कार्यक्रमांतर्गत नियुक्त केलेल्या शालेय व्यवस्थापन समितीमार्फत (School Management Committee) विकेंद्रीत पद्धतीने राबविण्यात यावी. या योजने अंतर्गत विद्यार्थ्यांना गणवेशासाठी लागणारे कापडाची खरेदी व त्या कापडापासून गणवेशाची शिलाई करुन घेण्याची कार्यवाही शाळा व्यवस्थापन समितीमार्फत करण्यात यावी.

५. या योजने अंतर्गत विद्यार्थ्यांच्या गणवेशाची शिलाई, स्थानिक महिला आर्थिक विकास महामंडळ मार्फत करण्यात यावी. जर एखाद्या ठिकाणी महिला आर्थिक विकास महामंडळ उपलब्ध नसेल तर महिलांच्या बचत गटांमार्फत शिलाई करुन घ्यावी आणि जर महिलांच्या ठिकाणीही बचत गट नसेल तर स्थानिक शिंप्याकडून शिलाई करुन घेण्यात यावी.

६. या योजनेमध्ये प्रत्येक विद्यार्थ्यास दोन गणवेश संच देण्यात यावेत. गणवेशामध्ये मुलांना खाकी पॅन्ट व सफेद रंगाचा शर्ट व मुलींना नेव्ही ब्लु रंगाचा स्कर्ट व सफेद रंगाचा ब्लाऊज अशा प्रकारचा गणवेश देण्यात यावा. गणवेशासाठी लागणारे कापड शासनाने आरक्षित केलेल्या महाराष्ट्र राज्य यंत्रमाग महामंडळाकडून शासनाने निश्चित केलेल्या दरकराराप्रमाणे घेण्यात यावे.

७. सर्व शिक्षा अभियान कार्यक्रमांतर्गत शालेय विद्यार्थ्यांना मोफत प्रत्येकी २ गणवेशासाठी रु. ४००/- अशी दर मर्यादा निश्चित करण्यात आलेली असून गणवेशाच्या एका संचासाठी येणाऱ्या रु.

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२००/- खर्चापैकी काही निधी कापडासाठी आणि उर्वरित निधी शिलाईसाठी असा विभागण्यात यावा. सदर निधीची विभागणी शासन स्तरावर समिती नियुक्त करुन स्वतंत्रपणे करण्यात यावी.

८. **कापडाचे स्पेसिफिकेशन-** या योजनेंतर्गत शालेय विद्यार्थ्यांना चांगल्या प्रतीचे व एकसमान दर्जाचे गणवेश पुरविण्यासाठी कापडाचा दर्जा चांगला असणे आवश्यक आहे. त्यासाठी शासन स्तरावर समिती नियुक्त करुन कापडाची निवड करुन त्यानुसार कापडाचे स्पेसिफिकेशन निश्चित करण्यात यावे. सदर निश्चित केलेल्या स्पेसिफिकेशन प्रमाणे कापडाचा पुरवठा करुन घेण्याची कार्यवाही शाळा व्यवस्थापन समित्यांनी करावी.

९. **कापड खरेदी करण्याची कार्यपध्दती** - प्रत्येक शाळा व्यवस्थापन समितीने, त्यांच्या शाळेतील नव लाभार्थ्यांच्या संख्येनुसार आणि विद्यार्थ्यांच्या मापानुसार (साईज प्रमाणे) मुलांसाठी आणि मुलींसाठी लागणाऱ्या कापडाची यादी तयार करुन महाराष्ट्र राज्य यंत्रमाग महामंडळाकडे कापडाची मागणी नोंदवावी. शाळा व्यवस्थापन समित्यांनी त्यांच्या कापड पुरवठ्याच्या मागणीची एक प्रत गटशिक्षणाधिकारी, पंचायत समिती यांच्याकडे द्यावी. प्रत्येक गट शिक्षणाधिकारी यांनी त्यांच्या अखत्यारीतील सर्व शाळांसाठी लागणाऱ्या कापडाची मागणी एकत्रित करुन, त्याचा तक्ता बनवून तो शिक्षणाधिकारी (प्राथमिक), जिल्हा परिषद यांच्याकडे द्यावा. शिक्षणाधिकारी (प्राथमिक), जिल्हा परिषद यांनी सर्व तालुक्यातील (गटातील) कापडाची मागणी एकत्रित करुन जिल्ह्याचा एकत्रित पुरवठा आदेश यंत्रमाग महामंडळास कळवावा. महाराष्ट्र राज्य यंत्रमाग महामंडळाने शाळा व्यवस्थापन समित्यांकडून आलेल्या मागणीच्या मागणीप्रमाणे कापडाचा पुरवठा संबंधित शाळा व्यवस्थापन समित्यांकडे करावा. कापडाचा पुरवठा शाळा व्यवस्थापन समित्यांना प्राप्त झाल्यानंतर त्याची देयके नियमाप्रमाणे शाळा व्यवस्थापन समित्यांनी अदा करावीत. या योजनेंतर्गत महाराष्ट्र राज्य यंत्रमाग महामंडळाकडून कापडाचा पुरवठा करण्यासाठी कोणताही आगाऊ निधी (Advance Money) देण्यात येऊ नये.

३.

१२. <u>महामंडळाशी करावयाचा करारनामा</u> - कापडाचा दर्जा, स्पेसिफिकेशन, कापडाच्या रंगाचे मानकीकरण व दंडात्मक अटी व शर्तीबाबत यंत्रमाग महामंडळाने राज्य प्रकल्प संचालक, महाराष्ट्र प्राथमिक शिक्षण परिषद यांच्याशी करारनामा करणे आवश्यक राहील.

१३. <u>गणवेशाची शिलाई करणे</u> - शाळा व्यवस्थापन समित्यांना यंत्रमाग महामंडळाकडून त्यांच्या पुरवठा आदेशाप्रमाणे प्राप्त झालेले कापडामधून शाळा व्यवस्थापन समित्यांनी त्यांच्या स्तरावर विद्यार्थ्यांचे मोजमाप घेऊन गणवेशाची शिलाई करावी. गणवेशाची शिलाई शाळा व्यवस्थापन समित्यांनी स्थानिक महिला अल्प बचत गट नेमून करून घ्यावी. जर एखाद्या ठिकाणी महिला अल्प बचत गट नसेल तर नजिकच्या बचत गटाकडून शिलाई करून घ्यावी आणि जर नजिकच्या ठिकाणीही बचत गट नसेल तर स्थानिक शिंप्याकडून शिलाई करून घेण्याची कार्यवाही शाळा व्यवस्थापन समित्यांनी करावी. गणवेशाची शिलाई करताना विद्यार्थ्यांना गणवेश आखूड व घट्ट होणार नाही याची दक्षता शाळा व्यवस्थापन समित्यांनी घ्यावी.

१४. <u>गणवेश प्रमाणित करणे</u> - शाळा व्यवस्थापन समित्यांनी स्थानिक स्तरावर गणवेशाची शिलाई करून घेतल्यानंतर गटशिक्षणाधिकाऱ्यांनी त्यांच्या तालुक्यातील शाळांची तपासणी करून शिवलेले गणवेश योग्य मापाने आहे याचे प्रमाणीकरण करून त्याप्रमाणे शिक्षणाधिकारी (प्राथमिक), जिल्हा परिषद यांच्याकडे त्यांच्या गटाचा (तालुका) अहवाल सादर करावा. त्याप्रमाणे शिक्षणाधिकारी (प्राथमिक), जिल्हा परिषद यांनी त्यांच्या जिल्ह्यातील सर्व गटांचे अहवाल घेऊन त्यानुसार त्यांच्या जिल्ह्याचा एकत्रित प्रमाणपत्र राज्य प्रकल्प संचालक, महाराष्ट्र प्राथमिक शिक्षण परिषद यांना सादर करण्यात यावा.

१५. <u>सर्व साधारण सूचना</u> - केंद्र शासनाने सर्व शिक्षा अभियान कार्यक्रमांतर्गत सन २०१०-११ या चालू आर्थिक वर्षासाठी विद्यार्थ्यांना मोफत गणवेशाची योजना सुरु केलेली आहे. सदर योजना राबविण्यासाठी आता आर्थिक वर्षातील दोन महिने शिल्लक राहिलेले आहेत

५.

त्यामुळे या कालावधीत गणवेशाचे कापड प्राप्त करुन घेणे व त्या कापडापासून शिलाई करण्याची कार्यवाही शाळा व्यवस्थापन समित्यांनी करणे आवश्यक राहील. प्रत्येक जिल्हयाच्या शिक्षणाधिकाऱ्यांनी सर्व गट शिक्षणाधिकाऱ्यांची बैठक घेऊन सदर योजनेची अंमलबजावणी करण्यासंदर्भात सुचना दयाव्यात. तसेच गट शिक्षणाधिकारी यांनी त्यांच्या तालुक्यातील शाळा व्यवस्थापन समित्यांची / शाळा मुख्याध्यापकांची बैठक घेऊन सर्व शिक्षा अभियान कार्यक्रमांतर्गत मोफत गणवेष योजनेची अंमलबजावणी करण्यासंदर्भात मार्गदर्शन करण्यात यावे.

१६. सदर योजनेची अंमलबजावणी करण्यासंदर्भात कापडाचा दर्जा (स्पेसिफिकेशन) तसेच गणवेषासाठी निश्चित केलेल्या रु. २००/- प्रति गणवेष या निधीपैकी प्रत्यक्षात कापडासाठी लागणारा निधी आणि शिलाईसाठी लागणारा निधी शासन स्तरावरील समितीमार्फत निश्चित करुन त्याबाबतचे आदेश स्वंतत्रपणे निर्गमित करण्यात येतील.

१७. सर्व शिक्षा अभियान कार्यक्रमांतर्गत शालेय विद्यार्थ्यांना मोफत गणवेश योजना राबविण्यासाठी लागणारा निधी शाळा व्यवस्थापन समित्यांना महाराष्ट्र प्राथमिक शिक्षण परिषदेकडून स्वतंत्रपणे वितरित करण्यात येईल.

हे आदेश महाराष्ट्र शासनाच्या संकेत स्थळावर (www.maharashtra.gov.in) २०११०२०४१८२२५८००१ या क्रमांकाने प्रसिद्ध करण्यात आले आहे.

महाराष्ट्राचे राज्यपाल यांचे आदेशानुसार व नांवाने.

(ना.ऊ.रौराळे)
उपसचिव, महाराष्ट्र शासन

[i] After the Central Government transferred the funds under the scheme to the Zilla Parishad, a School Management Committee (For short, SMC) was established, school wise.

[j] The Head Master, a parents' representative and a teachers' representative was the formation of the SMC.

[k] It was the obligation of the SMC to identify the students and place orders with the Block Education Officer (For short, BEO).

[l] The BEO was to transmit the orders to the Education Officer (Primary) at the district level, who was entrusted with the task of placing an order with the Maharashtra Powerloom

Corporation for the purchasing of the cloth.

[m] The Corporation then was to supply the cloth to the SMC through the BEO or the Education Officer or the Deputy Education Officer for inspection.

[n] The SMC was to get the uniforms stitched from the local Mahila Bachat Gat (For short, MBG) which is a women's self help group.

[o] If the MBG was not available at the local level, a MBG from the adjoining area was to be selected by the SMC.

[p] If no such MBG was available, the SMC was obliged to select a private tailor from the concerned local place for stitching the uniforms.

[q] The stitching charges were to be disbursed by the SMC by cheque @ Rs.45/- per uniform.

[r] Rs.155/- per uniform cloth was to be paid by the SMC to the State Powerloom Corporation by cheque.

[s] After the uniforms were stitched and delivered, an inspection by the District Level Officer from the Education Department was to be carried out.

[t] A cluster head was appointed by the CEO for a group of 10 schools. Above the cluster head/Chief, was the BEO.

[u] The CEO was the District Project Co-ordinator.

[v] In some cases, the Head Masters conveyed to the SMC that nobody is willing to stitch the uniforms @ Rs.45/-.

[w] Each of these Head Masters were alleged to have received a high quality cloth on behalf of the SMC from the Powerloom Corporation.

[x] The superior quality cloth was replaced with an inferior

quality cloth.

[y] About Rs.4 crores 40 lakhs were granted for such uniforms for Jalgaon District.

[z] Since a news was published in the newspapers that there have been irregularities committed in the quality of the cloth and amounts have been misappropriated, the CEO ordered the BEO to conduct a preliminary inquiry.

[aa] The report of such preliminary inquiry was submitted to the CEO.

[ab] The CEO ordered initiation of disciplinary proceedings against 500 Head Masters in the Jalgaon District.

[ac] The BDO Shantaram Chindhu Pawar is the real culprit, he took possession of the superior quality cloth from the Powerloom Corporation, replaced it with inferior quality cloth and got the uniforms stitched from Shraddha Group, which is a MBG from Aurangabad.

[ad] The CEO ordered registering of a criminal offence against Shantaram Pawar and an FIR was registered on 26/01/2013 bearing CR No.12/13 with the Parola Police Station.

[ae] A charge sheet has been filed and the prosecution is going on.

[af] Though the BDO was initially suspended alongwith the Education Officer, Primary and Deputy Education Officer, the suspension has been subsequently revoked.

[ag] The charge sheet with the statement of allegations, list of witnesses and documents were said to be served upon these petitioners.

[ah] Out of the 9 documents at Annexure 4 which these

petitioners claim to have never received, 7 were internal correspondence documents and the documents at clause 8 and 9 were reports of the preliminary inquiry.

[ai] No application was filed by these petitioners seeking supply of all these documents, though in some cases it is stated that there was some request put forth by some petitioners.

[aj] The CEO has relied upon the report of the BDO or as the case may be and without conducting a departmental inquiry, without recording evidence and without any personal hearing, the impugned punishment orders were issued.

[ak] The Maharashtra Zilla Parishad (Discipline and Appeal) Rules, 1964, provide for a disciplinary authority, a procedure for conducting the enquiry, minor and major penalties and nature of the penalties.

[al] Clauses 1 to 3 under Rule 4 are the minor punishments.

[am] Clause 4 to 7 are major penalties and clause 8 is with regard to imposition of fines.

[an] No major penalty can be imposed without conducting a departmental inquiry.

[ao] Though the stoppage of increment appears to be a minor penalty, such stoppage for 1 year with cumulative effect will amount to a major penalty.

[ap] No departmental inquiry was conducted.

[aq] A summary procedure under Rule 7 was resorted to.

[ar] All appeals preferred by the petitioners before the Appellate Authority, which is the Divisional Commissioner, have been dismissed with identical orders which are also

impugned in this petition.

4. The submissions of Ms.Talekar, learned Advocate, besides those set out above which have been adopted, can be summarized as under :-

[a] In some cases, after the HM informed the SMC that no Bachat Gat was willing to stitch the uniforms @ Rs.45/- (one instance is cited which is dated 06/01/2012), the BEO suddenly produced stitched uniforms on 22/01/2012 and handed them over to the head masters.

[b] In some cases, the BEO directed the Head Masters to pay the stitching charges in cash and in some cases, such payment has been done.

[c] In some cases, some Head Masters, after paying in cash, have lodged a written protest with the CEO (though the learned Advocate for the Zilla Parishad solemnly states that no such communication or protest has ever been delivered to the CEO by any Head Master).

[d] A specific stand is taken in the charge sheet that such a protest was lodged.

[e] Most of these petitioners have alleged that they have not received the documents, as stated above.

[f] In the absence of the copies of the preliminary report, which has been relied upon by the CEO, the principles of natural justice stand violated.

[g] In some cases, the SMC has made cash payments under extreme pressure from the BEO.

[h] The CEO has concluded by forming an opinion that the Head Masters have acted under pressure from the BEO.

[i] In 114 cases represented by Ms.Talekar from Taluka Chalisgaon, no charge of tendering of fake bills was levelled upon any of the 114 Head Masters and yet, without any such report or finding in the preliminary enquiry, the CEO has concluded in the order of punishment that fake bills were submitted by these head masters and huge amounts have been misappropriated. But no departmental enquiry was conducted.

5. The submissions of Mr.Chaudhary and Mr.Sonawane appearing on behalf of the Zilla Parishad, can be summarized as under :-

[a] An inspection committee of about 5 members was formed to visit the schools and locate irregularities, if any.

[b] The Inspection Committee has submitted its reports indicating that irregularities were noticed.

[c] A show cause notice was issued to each of these Head Masters and after the CEO considered their individual replies, has passed an order imposing minor punishment for the misconduct proved against these headmasters in a summary inquiry.

[d] Since the punishment of stoppage of one increment for one year was to be inflicted, it was decided by the CEO and his Office that no departmental inquiry is necessary.

[e] None of these petitioners have voiced any complaint

about the non-supply of documents.

[f] There is no contention of 'prejudice caused' by such non supply and merely because some document is not supplied, would not vitiate the summary inquiry.

[g] In those cases represented by Ms.Talekar, Mr.Sonawane submits that the CEO has drawn his conclusions in the order of punishment, pursuant to the summary inquiry report that fake bills were submitted.

[h] Reliance is also placed upon the affidavit in reply tendered in these cases on behalf of the Zilla Parishad.

6. The learned Advocates for these petitioners have relied upon the following judgments :-

[a] Kulwantsinghgill Vs. State of Punjab [1991 (Suppl.1) SCC 504]

[b] Judgment in WP No.1/1998, dated 19/06/2006 in the matter of Narendra s/o Motiram Bodkhe Vs. The Additional Commissioner ad others

[c] Harish Gajanan Agrawal Vs. Bank of Maharashtra and others [2006(2) Mh.L.J.110 = 2006(1) All M.R. 382]

[d] Prabhakar and others Vs. State of Maharashtra and others [2018(3) Mh.L.J.503]

[e] Anant R.Kulkarni Vs. Y.P.Education Society and others [2013(6) SCC 515]

[f] Dhairyasheel A.Jadhav Vs. Maharashtra Agro Industrial Development Corporation Ltd.,[2010(2) Mh.L.J.618]

[g] Nirmala J.Jhala Vs. State of Gujarat and another [(2013)

4 SCC 301]

[h] State of Bihar Vs. Lal Krishna Advani and others [(2003) 8 SCC 361]

[i] WP No.4762/2005 dated 04/08/2005 in the matter of Laxmikant Tukaram Chaudhary Vs. The State of Maharashtra and others.

7. I do not find any dispute as regards the procedure that was made applicable for implementing the scheme. There is also no dispute that practically in all these cases, the SMC neither got a chance to inspect the quality of the cloth, nor did they select a tailor for the stitching of the uniforms. The material available indicates that the BEO received the cloth. The stitched uniforms were directly presented before the SMC by the BEO. The Shraddha Bachat Gat at Aurangabad appears to have resorted to marketing and clinched the assignment for stitching of the uniforms. The statement of Smt.Kamal Rambhau More, President of Shraddha Bachat Gat has been recorded, which is a part of the petition paper book.

8. In the 114 cases represented by Ms.Talekar, the BEO orally instructed the Head Masters to pay the stitching charges in cash. In most of the cases, the stitching charges were paid in cash. Some of the headmasters have taken a tough stand and they had lodged a

written protest with the CEO in this regard.

9. The record reveals as per the noting dated 13/12/2011 that the note for seeking a guidance as regards the stitching of the uniforms, was put up by the Deputy CEO indicating that the Shraddha Group was willing to stitch the uniforms @ Rs.45/-. Though the Deputy Education Officer Mr.Arun Patil and the Education Officer Mr. Mogal put up a note, the CEO did not appear to have granted any sanction to the said proposal that the Shraddha Bachat Gat should be given this contract.

10. The BDO submitted a report to the CEO which is a report of his preliminary enquiry. After considering his report, the CEO as well as the Additional CEO agreed that an enquiry needs to be caused in all the Zilla Parishad schools under the said district.

11. There is a distinction between the 56 cases represented by Mr.Brahme for Parola Taluka and 24 cases represented by Mr.Sontakke for the same Parola Taluka and 114 cases represented by Ms.Talekar for the Chalisgaon Taluka. In the said 56 and 24 cases, it is quite apparent that the Head Masters were silent

spectators, if it is to be believed that the BEO was instrumental for the irregularities. If the cloth was not brought before the SMC, the parents' representative or the teachers' representative would also have raised an objection alongwith the Head Masters. However, being the Head of the Institution, the responsibility lay on their shoulders (of the Head Master). They did not protest when the cloth was not placed before the SMC and even when the ready made uniforms were produced by the BEO before the Committee. They kept silent and did not object to the conduct of the BEO, thereby practically giving him a free hand to commit such irregularities, if at all, it could be said that the BEO was responsible for these irregularities.

12. The Head Masters could not have abdicated their authority and could not have kept silent which actually perpetuated the irregularities. Such irregularities assume serious proportions in view of the fact that 500 schools were involved, crores of rupees were in grants and the poor and the needy students received inferior quality uniforms. Going by the per-ponderance on the principles of probabilities, such irregularities could have been nipped in the bud if these head masters would have avoided acting in a supine manner.

They should have held their responsibilities high above their shoulders and should have prevented the BEO from having his way in such irregularities.

13. In these 80 cases (56 + 24), considering the conclusions of the CEO and the punishment inflicted in the backdrop of there being no protest about the preliminary enquiry reports not having been supplied, I do not find that any prejudice was caused to these Head Masters. It is a settled position of law in view of the judgment delivered by the Hon'ble Apex Court in the matter of State Bank of Patiala and others Vs. S.K.Sharma [AIR 1996 SC 1669], that any violation of procedural law would not vitiate the disciplinary action. Unless substantive rights are affected by any lapse in the disciplinary proceedings, non supplying of a document cannot be held to be a ground for vitiating the enquiry unless, on the touchstone of prejudice, it appears to have seriously affected the cases of such Head Masters.

14. The Hon'ble Apex Court has concluded in Kulwantsinghgill (supra) (3 Judges Bench) that withholding of increments of pay simplicitor would be a minor penalty. The stoppage of two increments

with cumulative effect, would fall within the meaning of a major penalty.

15. In the instant cases, these 80 petitioners have been awarded the punishment of stoppage of one increment for one year with cumulative effects. Apparently, considering the conclusions of the CEO in the impugned orders of punishment after taking into account the individual replies of the Head Masters to the show cause notices, the conclusions indicate that these headmasters have acted casually and negligently while performing their duties as members of the SMC. The Zilla Parishad has initiated criminal action against the BDO, BEO, Education Officer (Primary) and Deputy Education Officer in these cases. I am of the view, that the Zilla Parishad, therefore, believes that these 80 Head Masters have not been a party to the misappropriation and therefore have not been charged with misappropriation.

16. In the above backdrop and keeping in view the law laid down by the Hon'ble Apex Court in <u>Kulwantsinghgill</u> (supra), these 80 petitions filed by Mr.Brahme and Mr.Sontakke, are partly allowed only to the extent of reducing the punishment from stoppage of one

increment for one year with cumulative effect, to a 'stoppage of one increment for one year, simplicitor'.

17. In the 114 cases in hand represented by Ms.Talekar, a solemn statement is made that in each of these cases, though there was no charge of 'submission of fake bills', yet the CEO has concluded in the order of punishment that these petitioners, besides being party to an irregular distribution of school uniforms, have been responsible for passing false resolutions, defrauding the State and submitting bogus bills for disbursing Rs. 44,08,835/-. Learned Advocate for the Zilla Parishad, after perusing each of these 114 cases, submits that there was no charge leveled on these 114 Head Masters that they have tendered bogus tailoring bills and in the impugned orders of punishment, the CEO has concluded that these petitioners are guilty of tendering bogus bills and misappropriating huge amounts.

18. Reliance is placed on the judgment delivered by the Hon'ble Apex Court in <u>Nirmala J. Jhala Vs. State of Gujarat and others [(2013) 4 SCC 301]</u> (supra) wherein the Hon'ble apex Court, while dealing with the issue of utilizing evidence recorded in a preliminary enquiry, has concluded in paragraph Nos. 41 to 52 which read as

under :-

“41. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the Enquiry Officer, the High Court on Administrative side as well on Judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr. G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross- examine either of them.

42. A Constitution Bench of this Court in Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar, AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Chiman Lal Shah v. Union of India, AIR 1964 SC 1854, a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex-parte, for it is merely for the satisfaction of the government *though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the government as to whether a regular inquiry must be held. The Court further held as under:*

> *"12. .....There must, therefore, be no confusion between the two inquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishment indicated in Article 311 that the government servant is entitled to the protection of that Article, nor prior to that." (Emphasis added)*
>
> *(See also: Government of India, Ministry of Home Affairs & Ors. v. Tarak Nath Ghosh, AIR 1971 SC 823).*

44. In Naryan Dattatraya Ramteerathakhar v. State of Maharashtra & Ors., AIR 1997 SC 2148, this Court dealt with the issue and held as under :

> *".....a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of nor, remains of no*

consequence.” (Emphasis added)

45. In view of above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

46. In Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., AIR 2013 SC 58, this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross- examine such persons, the same cannot be relied upon.

47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

48. “A prima facie case, does not mean a case proved to the hilt, but a case which can be said to be established, if the evidence which is led in support of the case were to be believed. While determining whether a prima facie case had been made out or not, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence”. (Vide: Martin Burn Ltd. v. R.N. Banerjee, AIR 1958 SC 79) (See also: The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa, M.T. represented by the Binny Mills Labour Association, AIR 1960 SC 1352; State (Delhi Admn.) v. V.C. Shukla & Anr., AIR

1980 SC 1382; Dalpat Kumar & Anr. v. Prahlad Singh & Ors., AIR 1993 SC 276; and Cholan Roadways Ltd. v. G. Thirugnanasambandam, AIR 2005 SC 570).

49. The issue, as to whether in the instant case the material collected in preliminary enquiry could be used against the appellant, has to be considered by taking into account the facts and circumstances of the case. In the preliminary enquiry, the department placed reliance upon the statements made by the accused/complainant and Shri C.B. Gajjar, advocate. Shri C.B. Gajjar in his statement has given the same version as he has deposed in regular enquiry. Shri Gajjar did not utter a single word about the meeting with the appellant on 17.8.1993, as he had stated that he had asked the accused/complainant to pay Rs. 20,000/- as was agreed with by Shri P.K. Pancholi, advocate. Of course, Shri C.B. Gajjar , complainant, has definitely reiterated the stand he had taken in his complaint. The chargesheet served upon the appellant contained 12 charges. Only first charge related to the incident dated 17.8.1993 was in respect of the case of the complainant. The other charges related to various other civil and criminal cases. The same were for not deciding the application for interim reliefs etc.

50. The charge-sheet was accompanied by the statement of imputation, list of witnesses and the list of documents. However, it did not say that so far as Charge No. 1 was concerned, the preliminary enquiry report or the evidence collected therein, would be used/relied upon against the appellant.

51. There is nothing on record to show that either the preliminary *enquiry report or the statements recorded therein, particularly, by the complainant/accused or Shri C.B. Gajjar, advocate, had been exhibited in regular inquiry. In absence of information in the charge-sheet that such report/statements would be relied upon against the appellant, it was not permissible for the Enquiry Officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non- observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide: S.L. Kapoor v. Jagmohan, AIR 1981 SC 136; D.K. Yadav v. JMA Industries Ltd., (1983) 3 SCC 259; and Mohd. Yunus Khan v. State of U.P. & Ors., (2010) 10 SCC 539)*

52. In view of the above, we reach the following inescapable conclusions:-

52.1] The High Court failed to appreciate that the appellant had not granted long adjournments to the accused-complainant as the appellant wanted to conclude the trial at the earliest. The case of accused- complainant which was taking its time, had suddenly gathered pace, thus, he would have naturally felt aggrieved by failing to notice it. The High Court erred in recording a finding that the complainant had no ill-will or motive to make any allegation against the appellant.

52.2] The Enquiry Officer, the High Court on administrative side as well as on judicial side, committed a grave error in placing reliance on *the statement of the complainant as well as of Shri C.B. Gajjar, Advocate, recorded in a preliminary enquiry. The preliminary enquiry and its report loses significance/importance, once the regular enquiry is initiated by issuing charge-sheet to the delinquent. Thus, it was all in violation of the principles of natural justice.*

52.3] The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was delinquent in the enquiry.

52.4] The onus lies on the department to prove the charge and it failed to examine any of the employee of the court, i.e., Stenographer, Bench Secretary or Peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17.8.1993.

52.5] The complainant has been disbelieved by the Enquiry Officer as well as the High Court on various issues, particularly on the point of his personal hearing, the conversation between the appellant and Shri C.B. Gajjar, Advocate on 17.8.1993, when they met in the chamber.

52.6] Similarly, the allegation of the complainant, that the appellant had threatened him through his wife, forcing him to withdraw the complaint against her, has been disbelieved.

52.7] The complainant as well as Shri C.B. Gajjar, Advocate had been talking about the appellant's husband having collecting the amount on behalf of the appellant, for deciding the cases, though at that point of time, she was unmarried.

52.8] There is nothing on record to show that the appellant whose defence has been disbelieved in toto, had ever been given any adverse entry in her ACRs, or punished earlier in any enquiry. While she has *been punished solely on uncorroborated statement of an accused facing trial for misappropriation."*

19. It is obvious that in these 114 cases, these petitioners had not faced the charge of misappropriation and submission of bogus bills. These conclusions seem to have been drawn by the CEO based on two reports of 2 different preliminary enquiries, that were placed before him. Copies of these reports were not supplied to these 114 petitioners. Though it is obvious that these Head Masters have been negligent in performing their obligations while being a part of the SMC, the conclusion that they have misappropriated money by submitting bogus bills, is a very serious conclusion which would only warrant the punishment of dismissal from service in view of the law laid down by the Hon'ble Apex Court in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517 = 2000 AIR SCW 3439 = AIR 2000 SC 3129] and by the learned Division Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33]. However, no punishment of dismissal can be awarded unless a specific charge of a grave and serious nature is leveled upon an employee and unless a full fledged

departmental enquiry is conducted for imposing a major punishment.

20. The situation is thus peculiar wherein, on the one hand, the Zilla Parishad has concluded that these 114 Head Masters have committed a grave offence of misappropriating lacs of rupees by submitting bogus bills and on the other hand, has awarded a punishment of a supposedly minor nature. These petitioners have been awarded a minor punishment when a grave and serious conclusion drawn in the impugned orders has attached a serious stigma to their characters without the said charge being proved in the enquiry. I do not deem it appropriate to exercise my jurisdiction of modifying the punishment when these Head Masters contend that they cannot carry this blot and the serious stigma, to their graves.

21. It is in these circumstances, that these 114 petitions are therefore allowed. The impugned orders of punishment and the impugned orders by the Appellate Authority are, therefore, quashed and set aside with the following further directions :-

[a] The Zilla Parishad in these 114 cases shall supply copies of the reports of the preliminary enquiry to each of these 114 petitioners alongwith a fresh show cause notice intimating them of the material that is available against them.

[b] In the event, the Zilla Parishad believes that these petitioners have misappropriated huge amounts on the basis of bogus bills, they would be at liberty to initiate disciplinary proceedings by conducting full fledged departmental enquiries against these Head Masters by following the due procedure laid down in law.

[c] If the Zilla Parishad opts for option Clause (a), it is obvious that they would be precluded from imposing a major penalty on these 114 petitioners as they are following a summary procedure which permits the Zilla Parishad to award only a minor punishment.

22. Before parting with these matters, it would be appropriate to record my appreciation for all the learned Advocates for the respective sides having shown their willingness to work out these cases on a Saturday.

(Ravindra V.Ghuge, J.)

Kranti Hansraj Shekatkar

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