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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1087 OF 2009

WITH

WRIT PETITION NO.1058 OF 2009

Smt. Rekha Jagannath Bhalekar,

R/at: 3464, Pandharamad,

Kond Stop, Ratnagiri,

District-Ratnagiri.

.. Petitioner

V/s.

The President/Secretary,

Ratnagiri Education Society,

C/o Gogate Jogalekar College,

Ratnagiri and Others.

.. Respondents

.....

Ms. Kumud A. Bhatia for the petitioner.

Mr. Prashant Chavan a/w Ms. R. J. Nathani for respondent no.1.

Ms. Vaishali Nimbalkar, AGP, for the respondent-State.

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CORAM : A. K. MENON, J.

RESERVED ON : 27TH FEBRUARY, 2018.

PRONOUNCED ON : 3RD MAY, 2018.

JUDGMENT.-

1. This common order disposes the above two petitions filed by the same petitioner. Writ petition no.1058 of 2009 challenges an order dated 13th

August, 2008 passed by the School Tribunal, Kolhapur in Appeal no.45 of 2005 in the matter of supersession of the petitioner to the post of headmistress of the school run by the Ratnagiri Education Society.

2. Writ petition no.1087 of 2009 challenges an order dated 13th August, 2008 passed by the School Tribunal, Kolhapur, in Appeal no.116 of 1993 to the extent it reduces the rank of the petitioner from the post of Headmistress to Assistant Teacher. Given the reliefs sought in these petitions, I propose to deal with facts in petition no.1087 of 2009.

3. The petitioner was qualified for the post of headmistress having completed her B.A. in 1977, B.Ed. in 1978 and M.A. in 1986. She was appointed as an Assistant Teacher in the respondent no.2 school w.e.f. 15th June, 1984. She was promoted as headmistress with effect from 1st March, 1988. Prior to joining the R.B. Shirke High School she was employed as Assistant Teacher in Baliram Parkar High School in Ratnagiri since about 11th June, 1979. The respondent no.1 trust runs two institutions (i) Sou. Godutai Jambekar Mahila Vidyalaya, Ratnagiri and (ii) R. B. Shirke High School. In her capacity as headmistress from 1st March, 1988 to January 1992, her services were said to be satisfactory. On or about 2nd January, 1992 the first respondent issued her a show cause notice seeking explanation on 44 points which, inter

alia, included allegations that (i) the petitioner had not completed accounts and got audited for the last three years as a result of which the Government had declined to release a grant of Rs.60,000/- per year to the society; (ii) the petitioner caused loss by not registering dead stock on a year to year basis.

4. In response to the show cause notice, the petitioner filed her reply dated 20th January, 1992 and explained that she had taken charge as headmistress only on 1st March, 1988 but she was not given charge of accounts in respect of which she had already complained vide her letter dated 5th April, 1989. The accounts were looked after by one clerk and supervisor Shri Lele and as far as the dead stock registers were concerned, it was incomplete since the year 1981 and there were remarks passed by the auditors after auditing accounts for the year 1985-86, 1986-87. After the petitioner took charge, she had asked for the dead stock register but since the same were not given to her, she was not responsible for the old records. The respondent upon receiving the letter did not accept her explanation. The petitioner then received a letter dated 12th March, 1992 was signed by the Chief Executive Officer of the respondent no.1 recording that he was not satisfied with the explanation given by the petitioner and therefore one Vishwanath Pandurang Samant, Headmaster of Vidya Mandir, Pawas, District Ratnagiri and a state awardee headmaster were nominated on the Inquiry Committee by the management.

The petitioner was asked to identify her nominee within 15 days of the receipt of the letter.

5. On 1st April, 1992 she received a further communication with names of persons on the Inquiry Committee and list of documents enclosed. The members of the committee were :-

- (1) Shri S. V. Datey, Convener and representative of the management;
- (2) Shri V. P. Samant, State Awardee Headmaster and
- (3) Shri P. S. Joshi, nominee of the petitioner.

Photocopies of charge sheet, statement of allegations and documents related to charge sheet were also enclosed. The charge sheet was stated to be identical in content to the statement of allegations with the addition of one charge i.e. alleged failure to deposit part of the monies paid by students under Sanchayika Scheme in the post office. The petitioner responded on or about 9th April, 1992 denying all charges and enclosed a list of 53 witnesses. The first meeting of the Inquiry Committee was held on 27th April, 1992. It is contended that although initially the petitioner was required to attend daily at the respondents office, vide letter dated 28th April, 1992 issued by the Chief Executive Officer(CEO) she was informed that instead of attending the office daily, she should remain present as and when be present by the CEO of respondent no.1. Subsequently on 22nd May, 1992, a meeting of the Inquiry Committee was held. The meeting

was adjourned due to the absence of the State Awardee Headmaster. According to the petitioner the minutes of the meeting held on 22nd May, 1992 were incorrect and signatures on the proceedings were obtained on a subsequent date along with minutes of proceedings relating to other meetings. On 23rd May, 1992 one Shri Mahajani occupied the seat of the Convener. When the petitioner questioned this change, Shri Mahajani is believed to have left the meeting and one Shri S.V. Datey occupied the seat. According to the petitioner, the minutes of the meeting of that date do not reflect the proceedings correctly because she had read out the reply to the charge sheet at the said meeting but there was no mention of that in the minutes.

6. In a subsequent meeting held on 22nd July, 1992, a letter from the President of the respondent no.1 was placed on record from which the petitioner learnt that Advocate P.L. Mahajani who was Vice Chairman of the Governing Council was to act as Convener. Thereafter Shri Mahajani conducted the meetings as Convener on 6th, 7th, 8th August, 1992 and again on 25th 26th and 27th August, 1992. 25 further meetings are said to have been held and in the course of these meetings on 13th March, 1993 Mr. Datey the former Convener was examined by the Inquiry Committee. In the course of the examination, he deposed that he is the President of the first respondent society and that he had received a complaint from the petitioner about the incompetency of a clerk Mr. Sapre but he was of the opinion that the petitioner

was not competent enough to get the work done through the clerk Mr. Sapre. The petitioner then asked Mr. Datey as to why he had not responded to the petitioner's letter to which he replied that it was the duty of the Secretary to do so. The petitioner then complained about the working of the Inquiry Committee to the Convener vide a letter dated 25th August, 1992. The Convener reportedly informed the petitioner that the proceedings of the Committee will go on as instructed by him and the petitioner should answer question only with "yes" or "no".

7. According to the petitioner, copies of the number of proceedings were received by her from the Secretary for the period from 27th April, 1992 to 10th October, 1992. She had not received copies of proceedings held after 28th March, 1993 and hence she informed the respondents of the fact that she had not received the minutes of the meeting held after 28th March, 1993. I may note here that it is the case of the respondents that after 26th March, 1993 only arguments were heard and hence two separate minutes of proceedings were sent. The findings of the Inquiry Committee and its decision were received by her on or about 17th September, 1993 when it became evident that there were 13 meetings held after 28th March, 1993. The findings of the Inquiry Committee revealed that out of 45 charges, six charges at items 4, 17, 37, 41, 43 and 44 had been proved and charges at items 1, 8C, 12, 21, 35, 36 and 42 had been partially proved. According to the petitioner, none other charges had

been fully proved and the punishment of recommendations by the Committee to the management were vague and unspecific.

8. The recommendation of the Committee which is material for our purposes and as urged by the petitioner as vague are reproduced below:-

“She may be kept as headmistress by withdrawing her important powers in ordinary (Graduate Trained) teacher's scale for a period of one year (academic) and scope for better improvement be given to her. If she fails to improve, her services may be terminated with due notice; or (2) If management desires they may effect reduction her rank and post her as Asstt. Teacher in their recognised school or reserving her right of headmistress post after improvement only; (3) It is for the management and their government body to decide which punishment they desire to give by passing specific resolution in General Body to be fixed as a special one, within 10 days from the date of receipt of this findings. The copies of the findings shall be given by the management as per procedure to (1) Smt. Bhalekar, (2) Management (3) Education Officer (Secondary) Ratnagiri, (4) Dy. Director of Education, Kolhapur Region, for information and specific action for better improvement of school, special recommendation are given separately.”

9. The petitioner goes on to state that at the meeting of the Niyamak Mandal held on 11th September, 1993 and 12th September, 1993 they passed a Resolution deciding to award punishment finding the petitioner guilty under Rule 28(5)(c) and (d) and the petitioner was being reduced in a rank from the

post of headmistress to the post of assistant teacher in the same school. She was also directed to handover charge to one Smt. Sudha Sharad Mungale, who was then the senior most teacher in the school. Vide letter dated 14th September, 1993, the respondent no.1 informed the petitioner that based on the findings of the Inquiry Committee, the petitioner was guilty of willful and persistent negligence of duty and incompetence and she was reduced the rank as assistant teacher in Sou. Godutai Jambhekar Mahila Vidyalaya on the pay scale of an assistant teacher from 17th September, 1993.

10. Being aggrieved by the punishment, she filed an appeal before the School Tribunal, Mumbai, which later came to be transferred to Kolhapur. In the Appeal, the respondent management denied her contentions and submitted that Mr. Datey was Chairman of the Governing Body and CEO and that due to his illness he was not able to attend and hence Shri Mahajani was appointed by Resolution to convene the inquiry. The Tribunal framed the following points for determination:-

“(i) Is the appellant entitled for condonation of delay in filing the appeal?”

“(ii) Does the appellant prove that the inquiry conducted against her is unfair and illegal?”

“(iii) Does the appellant prove that the Inquiry Committee was biased against her and the report and findings of the

Inquiry Committee are perverse?

(iv) Whether the punishment of reduction in rank of the appellant is disproportionate considering the nature of misconduct proved against her?

(v) Is the appellant entitled for the reliefs as prayed for by her?"

11. The first issue was answered in the affirmative holding that the petitioner was entitled to condonation of delay in filing the Appeal. However, the other issues were answered in the negative against the petitioner. Aggrieved by the decision, the petitioner has filed the present writ petition. According to Ms. Bhatia, the learned counsel for the petitioner, the constitution of the Inquiry Committee was faulty. She submitted that the posts of President and Chairman was separate as evident from the bye laws no.8. There were no bye laws providing for the appointment of a separate Branch Managing Committee. She submitted that the Inquiry Committee is not constituted as per the Rule 36 (2) (b) of the MEPS Rules. That Mr. S. V. Datey the Convener deposed before the Inquiry Committee against the petitioner as a witness of the management. Thirdly, the charges were vague and as far as the charge no.4, 17, 37, 41, 43 and 44 and other charges are concerned, there was no evidence to support the plea. Moreover, proceedings of the meetings were not served upon the

petitioner and therefore Rule 37(2)(3)(4) and (6) were violated. She contended that the petitioner was not granted sufficient opportunity to defend herself. Lastly, she submitted that the punishment granted was excessive and apart from the fact that the charges were not specifically proved and that the Inquiry Committee had given a combined report rather than in two parts as is the norm.

12. Ms. Bhatia learned counsel for the petitioner submitted that the inquiry was vitiated so also the findings and the orders which she submitted were stigmatic. Ms. Bhatia further submitted the fact that Mr. Datey had participated as Convener of the Inquiry Committee and also as a witness for the management also vitiate the proceedings. She submitted that the constitution of the Inquiry Committee was provided in Rule 36 under which in the case of an employee who was the head of the organization (in the present case the petitioner was a headmistress). Thus one member of the Inquiry Committee was required to be President of the management, the second was to be nominated from the head from any private school and the third part chosen by the President from the panel of headmasters on whom a State/National Award(s) had been conferred. In the present case, it was submitted that the President had not acted and that posts of the President and Chairman are separate the inquiry was bad in law since the constitution of the committee

was improper.

13. Ms. Bhatia submitted that under Rule 36(1) the charge sheet/statement of allegations is to be prepared by the Chairman, however, in the instant case, the charge sheet was prepared by Mr. Gogate who is the President of institution. Ms. Bhatia therefore submitted that the appointed Convener was not competent since he did not qualify as the President of the management. She highlighted the fact that there were 2 different posts of Chairman and President in the first respondent society and there are also separate posts of President and Vice President which are elected posts from amongst of the members of the society by majority or members present in voting. She submitted that the Governing Body had no powers and hence the Chairman of the Governing Body Mr. Datey could not exercise powers of President of the society while issuing the statement of allegations. It is submitted that the Presiding Officer erred in merging the two different posts of Chairman and President while applying the mandatory provisions of Rules and Procedure. This according to Mr. Bhatia could not have been done and therefore it goes to the root of the matter. She assailed the show cause notice on the basis that it was not competent. She submitted that it is evident that Mr. Datey was the Chairman of the respondent management while Mr. Gogate was the President of the management of the society and that there was no provision in the Act and Rules to call upon the President to nominate a Convener of the

Inquiry Committee. In the present case, however, Mr. Gogate had nominated Shri Mahajani, Vice Chairman of the Niyamak Mandal in place of the first Convener Mr. Datey. This by itself will vitiate the whole process of inquiry. Therefore, the action by the management was arbitrary. Besides the procedure of the inquiry were not communicated to the petitioner though they were bound to do so under Rule 37(4). Furthermore, Ms. Bhatia submitted that the Inquiry Committee had recommended alternate penalties which cannot be implemented. She submitted that none of the charges had been proved with cogent evidence and that the petitioner could not be faulted without concrete evidence and in the instant case evidence was conspicuous by its absence. Ms. Bhatia then took me through the various charges and submitted that there is no direct evidence against the petitioner and no evidence oral or documentary besides the charges were all trumped up.

14. In respect of charge no.1 & 4 she submitted that the accounts were not maintained properly even prior to her joining from 1983. Likewise the records were incomplete. The Inquiry Committee itself finds no evidence in relation to charges 12, 17, 21, 35, 36, 37, 41, 43 and 44 and there is no question of petitioner being held responsible. Ms. Bhatia submitted that grave injustice has been caused to the petitioner as a result of the inquiry which was entirely one sided. My attention was invited to the impugned judgment dated 13th August, 2008 in particular the reasons in paragraph 25 of the impugned

judgment where the Tribunal observed that there was some substance in the contention of the petitioner that Mr. Datey was the President of the Niyamak Mandal i.e. Governing Body who issued the charge sheet and also acted as a Convener initially but since he was on leave due to illness the Governing Body appointed Shri Mahajani became Convener. Thus, the Vice Chairman of the society was a Convener in Inquiry Committee. The Tribunal, however, took the view that there was no illegality in Mr. Mahajani acting as Convener. This contention of the petitioner was, therefore, rejected. The Tribunal also rejected the argument that Shri Mahajani was the Vice President and therefore could have acted as President. Furthermore, the impugned judgment held that there was no evidence on record to show that the Chairman was the Chief Executive Officer as provided under Rule 2(c) of the MEPS Rules and therefore the President of the respondent management was not necessarily required to be the Convener of the Inquiry Committee. The Tribunal therefore rejected the argument of the petitioner. As regards the contention that copies of the inquiry proceedings were not given to her the Tribunal found that this contention was not acceptable since no prejudice was shown to have been caused by non-supply of proceedings even assuming the petitioner's version to be correct. I must observe here that on behalf of the respondent Mr. Chavan has submitted that the charge sheet has been issued on 28th March, 1992 thereafter till the publication of award and the findings only arguments have taken place and as

such the minutes could not indicate anything of material significance to her case. I find that no prejudice was caused to the petitioner by non-supply of the minutes of the subsequent meetings. The Tribunal rejected her contention and challenge on that ground.

15. On the aspect of bias, nothing was shown to the Tribunal to establish bias in the inquiry proceedings. As far as the punishment was concerned, it was considered to be proportionate constituting gravity of the misconduct and therefore it was the right of the management to impose punishment. Apropos the nature of the misconduct, the Tribunal found that the charges leveled against the petitioner were major yet the management has only imposed punishment of reduction in rank. The impugned order finds that the appellant had failed to show that the punishment was disproportionate. Ms. Bhatia invited my attention to the Memorandum And Rules of the respondent. She submitted that the President had directed Vice President to hold inquiry or inquiries on questions or disputes suo moto or those referred to by the Managing Bodies of the society or by the General Body. She submitted that this does not entitle the Chairman to act as such.

16. Ms. Bhatia relied upon the following authorities:-

1) 2007(3) ALL M.R. 553 (Full Bench), National Education Society v/s. Mahendra s/o Baburao Jamkar;

- 2) 2015 (5) Mh. L.J. 197 Ramdas v/s. Education Officer (Secondary) S.P.;
- 3) 2000 (2) Mh. L.J. 786 Gopal D. Shelatkar v/s. Gramin Uddhar Society, Kampete;
- 4) 2016 (3) Mh. L. J. 813 Vijaysingh v/s. SDAGJ S.P. Mandal;
- 5) 1997 (3) Mh. L.J. 235 Kashiram Kathane v/s. Bhartiya R. B. Bamke Gram Sudhar Tatha Shikshan Prasarak Society and others;
- 6) 2000 (1) Mh. L.J. 658 Ganapati Kondaji Sant v/s. Sant Gulab Baba Shikshan Sanstha; and
- 7) 2014 (3) Mh. L.J. (SC) 535 Anant Kulkarni v/s. Y.P. Education Society.

17. Ms. Bhatia further submitted that the bye-laws of the society cannot override the statutory provisions of the MEPS Act and its rules and therefore reliance placed on the bye-laws must be overlooked. She reiterated that the charges against the petitioner were not proved. She submitted that even in the written statement filed by the respondent it had not contended that Mr. Datey is the President of the Branch Managing Committee whereas under Rule 8(a) the post of the President is independent and separate from Chairman. She submitted that where there is a patent error apparent on the face of the record, this Court can interfere in its jurisdiction under Article 227 especially since the charges were vague and the findings more so. There is no discretion on the

aspect of the various charges sought to be placed against the petitioner and that Mr. Datey was clearly biased. She submitted that Mr. Datey had clearly no reason to act as Convener, claim ill health and yet depose against the petitioner. This clearly smelt of bias. Ms. Bhatia also contended that reliance placed on the judgments of Ganesh Thaware v/s. Central Hindu Military School cannot be made applicable to the facts of this case since there were only two schools in the Ratnagiri District and there was no bifurcation of the management of respondent defined in its bye-laws. She further submitted that the MEPS Act was a special welfare legislation and service conditions could not be waived by consent. There being no waiver permissible, it was incumbent upon the respondent to proceed in accordance with law and the procedure required to be followed. In conclusion, she submitted that there was no substance in the allegation that there is a loss of government grant.

18. Mr. Chavan, the learned counsel appearing for the respondent refuted the contentions of the petitioner. He submitted that the constitution of the Inquiry Committee was in order. According to him, Mr. Datey was not in a position to continue as the Convener due to his deteriorating health which is why he stepped down. He further submitted that the constitution of the committee was in accordance with the Act. He refuted the contention of the petitioner that the President alone could have been the Convener. Making reference to Rule 36, he submitted that Rule 36(1) provides that if the Chief

Executive Officer authorized by the management shall communicate to the employee or the head concerned the allegations by registered post acknowledgment due and demand from him/her a written explanation within seven days from the date of receipt of the statement of allegations and in case of an inquiry against the head who is also the CEO, the President of the management shall communicate such statement of allegations. In the course of his submissions, Mr. Chavan relied upon the following judgments:-

- 1) Ganesh Mahadeorao Thawre v/s. Central Hindu Military Education Society and anr. 2007 (5) Bom. C. R. 680;***
- 2) Commissioner of Customs, Mumbai v/s. Virgo Steels, Bombay and another (2202) 4 SCC 316;***
- 3) Munithimmaiah v/s. State of Karnataka and others (2202) 4 SCC 326;***
- 4) Rajkumar Bhatia v/s. Subhash Chander Bhatia (2018) 2 SCC 87.***

19. The rule provides that the CEO is required to communicate the statement of allegations if the inquiry is sought to be held against the head of the institution who is also the CEO and only then is the statement of allegations to be communicated by the President of the management. I do not find any reason to support the submission to the effect that the statement of allegations were not validly communicated and or were communicated in violation of Rule

36(1). In the instant case, the petitioner was not the Chief Executive Officer and in the circumstances, I find this argument is fundamentally flawed and misconceived. In the circumstances, I find no fault in the impugned judgment holding that the petitioner was never the CEO. In this respect, it is appropriate to refer to the definition of CEO under Rule 2(c). I have examined the definition of Chief Executive Officer which reads as follows:-

“Chief Executive Officer” means the Secretary, Trustee, Correspondent or a person by whatever name called or a person by whatever name called who is empowered to execute the decisions taken by the management.”

20. The petitioner does not fit in the description of CEO. She is neither the secretary, trustee, correspondent nor a person who is empowered to execute decisions taken by the management. The term “head” is not defined under the rules but Rule 3 does refer to the qualifications and appointment of the head which means the person to be appointed. Rule 4 talks of the responsibility of a head who will act as an academic head of the school. Thus, there is a clear definition of the nature of duties and responsibility of a head when compared to that of a CEO. It is pertinent to mention that in the case of National Education Society, it has been held that there has to be a positive act on the part of the management in conferring powers on a person to act as CEO and the

headmaster of the school does not become CEO and the head is the subordinate to the CEO.

21. As far as the judicial pronouncements referred to by Ms. Bhatia are concerned, a full bench of this Court in *National Education Society (supra)* had occasion to consider whether the President of the management should be a member of the Inquiry Committee under Rule 36(2)(b)(i). In that context whether the headmaster of a school by virtue of his position becomes the CEO or whether such headmaster would become CEO only he is empowered to execute the decision of the management as held in the case of *Kankubai Shrivakashram Trust and others v/s. Kamal w/o Dattatraya Khajurkar & Ors.* or as held in the case of *Govind Bal Mandir Shikshan Sanstha v/s. Suhas Kogekar & ors.* Secondly whether the President of the management has to be a member of the Inquiry Committee for holding disciplinary inquiry against the Head. In that context, the full bench held that the “Head” is defined under Section 2(g) of the Act which states that ‘head’ means the person, by whatever name called, in charge of the academic and administrative duties and functions of a school conducted by any management and recognised or deemed to be recognised under this Act, and includes a principal, vice-principal, headmaster, headmistress, assistant headmaster, assistant headmistress, or superintendent thereof.”

22. Furthermore, in the case of Ramdas Bhoyar (*supra*), it was held that the scheme of the MEPS Act and rules provides for conducting an inquiry under the head of the school which is different from those conducted against other employees and that against the head of the school the statement of allegations must be issued by the President of the management and by the CEO in case of other employees. A charge sheet issued to the petitioner-head by the CEO and not by the President is in violation of Rule 37(1) and hence the enquiry is vitiated. In the case of Gopal Damduji Shelwatkar (*supra*), this aspect was reiterated by a Single Judge of this Court namely that inquiry against the headmaster would require the President to issue the statement of allegations.

23. In Vijaysingh Patil (*supra*), a Single Judge of this Court held that the opportunity to defend is not merely an empty formality but has to be an effective opportunity to cross examine the witnesses and supply copies of the depositions of the witnesses on behalf of the management so as to enable the cross examination of witnesses and no one facing a departmental inquiry can effectively meet charges unless the copies of the relevant statements are supplied. This decision is of no assistance to the petitioner in the present case since it is not her case that vital depositions or documents had not been supplied. In the course of submissions, Mr. Chavan had stated that nothing material had been kept from the petitioner and after 28th March, 1992 only

arguments were heard but no evidence was recorded. In the circumstances, I do not consider this aspect non supply of minutes material enough to warrant interference with the impugned judgment.

24. In Kashiram Kathane (supra), a Division Bench of this Court held that the Inquiry Committee does not merely have a recommendatory role but it is really the decision making authority to take evidence and to adjudicate upon the matter and hence full opportunity must be given. Thus having participated in the inquiry he must be deemed to have waived whatever right that charge sheeted employee had on the ground of bias. Objections as to bias ought to have been taken promptly and not after participating in the inquiry. Ganpati Kondaji Sant (supra) also follows the same line as in the case of Gopal Shelwatkar.

25. Reliance is placed on the judgment of Anant Kulkarni (supra), which held that rules governing the service conditions of an employee are the determining factors as to whether and manner in which the domestic enquiry can be held in respect of an employee who retired after the date of superannuation. If the inquiry had been initiated while in service, it would continue after retirement but the punishment of dismissal or removal of service would not be imposed. In the case of Central Inland Water Transport Corporation Ltd. (supra), Ms. Bhatia relied upon the observation that the

termination of service of permanent employees without giving any reason and by giving notice, is void under Section 23 of the Contract Act as being opposed to public policy and it is also ultra vires Article 14 of the Constitution. I find that these decisions are of no assistance to the petitioner. In the present case, the petitioner was continued as assistant teacher till her retirement.

26. Coming to the decisions relied upon by Mr. Chavan on behalf of the respondent, in Ganesh Thawre (supra) a Division Bench of this Court has held that if one considers a management engaged in the running of many schools and interpretation the provisions of Section 12(2) of the MEPS Act and Rule 36(2)(b) of the MEPS Act, the President would have no time to do anything else if he were to participate in all the inquiries against the head of the school. This observation was without adverting to argument on behalf of the parties that Branch Managing Committee did not have powers to manage and therefore cannot become management. That Rule 36(2) (b) of the MEPS Rules undoubtedly requires that in case of an enquiry into misconduct of head, one of the members of the Committee shall be the President. The word “management” has been defined under clause 12(c) of Section 2 which does not necessarily require the management to be an incorporated society. It can be a body of persons administering such school within such incorporated entity. How the school is to be administered is prescribed by the bye-laws of the society and since the bye-laws empower the Branch Managing Committees to

control the affairs of the school, the Chairman of the Committee would be the President of the management. The Division Bench found that the reference in the case of the full bench in National Education Society pertained to the manner in which a situation should be dealt with when the headmaster would himself be the delinquent CEO to be charge-sheeted. This Court found that the full bench decision does not help the petitioners argument that no one except the President of the Society would answer the description of the management and therefore, the President of the Branch of the society cannot take part in disciplinary proceedings. Mr. Chavan invited my attention to the further observation that the entire emphasis in Rule 36 is on the point of the manner of service of charge sheet and the Rule is totally silent, and does not deal with a situation as to whether in the given facts of the case, compelled due to circumstances, whether it would be wholly impermissible even if the constitution or bye-laws of the trust do not prohibit delegation of the power of President in relation to the matter of employment.

27. In *Virgo Steels* (supra), the Supreme Court dealt with the aspect of deemed waiver. In paragraph 9 of the judgment, the Court considered the question whether the mandatory requirement of a statute can be waived by the party. The Court made a reference to various decisions including those of the Privy Council in holding that it is clear that though a provision of law is mandatory in its operation, if such provision is one which deals with the

individual rights of the person concerned and for his benefit, the said person can always waive such right. In the instant case I am of the view that the conduct of the petitioner was such that she must be deemed to have waived objections to the statement of allegations submitted by the Chairman.

28. In the case of Raj Kumar Bhatia (*supra*), it was held that in exercise of jurisdiction under Article 227 of the Constitution, the High Court entered upon the merits of the case which was sought to be set up by the appellant in the amendment which was impermissible. In *Sadhna Lodh v/s. National Insurance Company Ltd.* (*supra*) the Supreme Court had held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether a final Court or Tribunal had proceeded within the parameters of the jurisdiction and that the High Court does not act as an Appellate Court or Tribunal. It is not open to review or re-weigh the evidence upon which the inferior Court or Tribunal has passed an order and the Tribunal had allowed the amendment and there is no reason to interfere under Article 227.

29. The Memorandum And Rules of the Constitution of the Ratnagiri Education Society-respondent reveals that the society is governed by the said rules. The definition of "Trustees" under Rule 1(c) and the definition of "Manager" under Rule 1(e) are material. The said definitions are reproduced

below:-

*“1(c) **“Trustees”** shall mean the trustees elected by the society and the trustee or trustees nominated by any donor or his heirs, executors or administrators and accepted by the Society and the survivors or survivor of them or other, the trustee or trustees also of any of its institutions separately registered as a society or trust under the Societies Registration Act of 1860 and/or Bombay Public Trusts Act.”*

*“1(e) **“Manager”** – For the purposes of the Bombay Public Trusts Act “The Governing Body’ constituted under these rules shall be deemed to be the manager.”*

30. The Memorandum sets out that for the purpose of the Bombay Trust Act the Governing Body constituted under the rule shall be deemed to be the manager. Rule 8(a) provides that the President and three Vice-President of the society would be elected from amongst the members by majority of votes. The President and Vice President hold office for five years as provided under Rule 9. The Governing Body was to carry out the business and affairs of the society and exercise all powers and authorities of the society under Rules 27. Under Rule 34, the Governing Body was to elect the Chairman and Vice Chairman from amongst the members along with the cooperation of the society was to take necessary action and to do all acts which the Governing Body or Executive Council were entitled to take or to do in case of emergency when the

convening of the meeting of the Governing Body or the Executive Council was not possible. Under Rule 40, the Governing Body shall vest interest with all powers and authority to do all acts, matters, things and deeds which was necessary to the interest of society. Rule 41 provided to an Executive Council consisting of Chairman and the Governing Body, the Vice –Chairman of the Governing Body and five members of the Governing Body, one trustee, one life member and all the heads of the institution. Under Rule 47, the Executive Council under the control and direction of the Governing Body was empowered to consider proposals by the board regarding confirmation of employees, holding inquiries regarding misbehaviour, insubordination and other objectionable conduct on the part of the employees and inflict punishment by way of fine, reversion or dismissal. In doing so, the procedure prescribed by the government and other statutory bodies was to be followed.

31. Relying upon the aforesaid provisions, Mr. Chavan had submitted that there was no obligation on the part of the respondent society to ensure that the President was member of the Inquiry Committee and was involved in the issuance of the statement of allegations. With reference to the various decisions, relied upon by the parties, in the case of Ganesh Thawre (*supra*) the Division Bench had after considering the decision of the full bench in National Education Society observed that the decision of National Education Society pertained to the manner in which the situation should be dealt with when the

headmaster who himself to be the CEO, is a delinquent to be charge-sheeted. The facts in the two matters which resulted in the reference being made to the Division bench are as follows:-

1) In Kankubai Shravikashram Trust, the school management challenged the decision of the School Tribunal which set aside an order of the termination of the headmaster on the ground that the statements were not issued by the President of the management and the inquiry was vitiated. It was contended that the judgment in Kankubai Shravikashram was later in point of time than the judgment in Govind Balmandir Shikshan Sanstha (supra) and therefore binding. (1992 MLJ 216 and 1988 II CLR 1).

32. The ratio of National Education Society (supra) is to the effect that the President with the management should be the member of the Inquiry committee as contemplated in rule 36(2)(b)(i) irrespective of such headmaster is empowered to act as CEO or not. In the instant case, what emerges is that the Committee was not headed by the President of the management who is a Vice-Chairman. The decision in National Education Society was based on two divergent views in Kankubai Shravikashram Trust & Govind Bal Mandir Shikshan Sanstha. The grievance of the petitioner arises from the fact that the post of President and Chairman are separate and it is the statutory requirement of the MEPS Act is that the President should be the member of the Inquiry

Committee and that is not being done in the instant case.

In support of her submissions, Ms. Bhatia had relied upon various aspects of the evidence, however, in the writ jurisdiction under Article 226 it would not be appropriate for this Court to re-appreciate the evidence. In the circumstances, I do not propose to deal with the various depositions in respect of each of the charges to which my attention is sought to be drawn by Ms. Bhatia. Thus, taking an over all view, the challenge to the impugned order does not have any merit considering the facts of the case and the manner in which the proceedings have been conducted. Save and except for technical objections there is no substantive challenge, the petitioner has not demonstrated any perversity or illegality. Even on the various grounds raised by the petitioner and as canvassed by Ms.Bhatia, I am unable to find substance to assail the impugned order. The petition, therefore, cannot succeed. Having taken the above view I proceed to consider the challenge in Writ Petition no.1058 of 2009.

WRIT PETITION NO.1058 OF 2009

33. The petitioner has challenged the impugned order and judgment dated 13th August, 2008 in Appeal no.45 of 2005 by which the petitioner challenged the order dated 24th April, 1996 transferring the appellant as an assistant teacher by reducing her in rank and the order dated 1st May, 1998 appointing the 5th respondent therein namely one Shri Maruti Kamble as headmaster in R. B. Shirke High School, effectively challenging the petitioner's

supersession. The appeal was passed by the respondents therein by the separate Appeal no.45 of 2005 since the petitioner had already challenged her reduction in rank in Appeal no.203 of 1993.

34. It was contended by the respondents that the appellant had been promoted as headmistress one Sudha Mungale of Sou. Godutai Jambhekar Mahila Vidyalaya had challenged the promotion by filing a Civil Suit on the ground that the post was isolated post and should have been filled as per seniority since Mungale was the senior most person in the category and hence she should have been appointed as headmistress.

35. After hearing the parties, the Civil Court decreed the Suit in favour of Sudha Mungale and the appellant was reverted to her original post of assistant teacher. This decree was challenged by the petitioner in Civil Appeal no.1 of 1996 but she did not succeed in the appeal and hence she approached the High Court which had admitted the petitions and no interim orders were passed. The impugned judgment dated 13th August, 2008 recorded that the petitioner failed to prove that the respondent management had illegally promoted respondent no.5 by superseding the petitioner and her claim to the post of headmistress. The Tribunal also held against the petitioner whether the petitioner is entitled to appointment as headmistress in place of respondent no.5, this was answered in the negative. Both sides then being aggrieved with

the result of the Appeal no.45 of 2005 had to depend on the result of Appeal no.203 of 1993 which had been decided against the petitioner and after which the petitioner was reduced in rank pursuant to the domestic inquiry. The Tribunal held that the charges against the petitioner were duly proved in the inquiry and several other charges have been partly proved. The Tribunal held that the inquiry proceedings had been conducted fairly and properly after giving sufficient opportunity to the petitioner to defend her case and by observing the principles of natural justice.

36. Ms. Bhatia invited my attention to paragraph 18 of the impugned judgment to contend that the finding that the assistant teachers working at the school were senior to the petitioner since the petitioner had been reduced in rank, rendering her junior to an assistant teacher who was already in service on that date, was incorrect. The impugned judgment rejected the plea of the petitioner that the respondent no.5 in appeal no.45 of 2005 was appointed by superseding the petitioner. In an affidavit in reply filed by one Chandrakant Bablya Nachankar, Superintendent (Gazetted) Secondary Education, Zilla Parishad, Ratnagiri, has stated that the post of headmaster of R.B.Shirke High School became vacant from 30th April, 1998 upon retirement of Shri Khalid Kazi and Mr. Maruti Kamble who is appointed from the Scheduled Caste reserved category as the headmaster of R. B. Shirke High School with effect from 1st May, 1998 and that as per the roster and G.R. dated 18th October,

1997, the appointment of respondent no.5 as headmaster have been approved by the Education Officer(Secondary) and that the petitioner was not entitled for the appointment in the post of headmaster.

37. Ms. Bhatia submitted that on account of the challenge in Writ Petition no.1058 of 2009, the impugned order passed in Writ Petition no.1087 of 2009 was bad in law and the petitioner is entitled to the relief in this second petition as well. In the course of submissions, she relied upon the decision of the ***Andhra Pradesh High Court in the case of R.C.C. (Sales) Private Limited and another v/s. E.S.I Corporation and others AIR 2015 Hyd. 134 (FB)***. In paragraphs 24 and 26, the full bench observed that it was not possible to contract out of the statutory obligation and rights under the Employees State Insurance Corporation (ESIC). The Court was considering a question whether there was an express prohibition against contracting out of the beneficial provisions of the ESI Act in a situation where there was no provision which intended to permit such contracting out of the beneficial provisions of this Act. Reliance was placed on the “*maxim A pactis privatorum publico juri non derogatur*” meaning that private agreements cannot alter the general law. Where a contract is expressly or by implication forbidden by statute, no Court can lend its assistance to give effect to such agreement. She submitted that the petitioner was not capable of waiving any of the rights to her under the MEPS Act and rules and merely because she participated in the

inquiry, her objections that the constitution of the Tribunal was improper and that the statement of allegations were also not issued to her by the appropriate person cannot be said to have waived. This submission however overlooks the fact that in the instant case there is no question of any rights under any agreement being waived. The waiver is one of procedural formalities. In my view having raised an objection and having continued to participate without reservation of rights would in my opinion constitute waiver of those relevant objections.

38. In the circumstances, the challenge in this second petition too cannot succeed. Therefore, I pass the following order:-

- (i) Writ petitions are dismissed.
- (ii) No orders as to costs.
- (iii) In view of the disposal of the writ petitions, civil application does not survive and the same is also disposed of.

(A. K. MENON, J.)