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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2599 OF 2019**

Shri. Shriram Shikshan Prasarak MandalPetitioners
through its President and another

V/s.

Shri. Bhagwat Tukaram KhatmodeRespondents
and another

Mr. Rajaram Deshmukh for the Petitioner
Mr. Tejesh Dande a/w Mr. Vishal Navale i/b Mr. Tejesh Dande and
Associates for respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 24, 2019.

P.C.

Heard.

2 The case of the petitioner is, since 13/06/1994, respondent was working as In-charge Headmaster and regular Headmaster since 1999.

3 The petitioner issued charge-sheet to respondent on
04/02/2015 which was replied by the respondent on 14/02/2015.

4 The Inquiry Committee thereafter conducted certain meetings
and submitted its report which is formed to be basis for issuance of
order of termination dated 01/06/2016. Respondent, feeling
aggrieved, preferred Appeal under Section 9 before School Tribunal
against alleged termination. Order of termination is set aside vide
impugned order dated 12/12/2018 by the Presiding Officer, School
Tribunal, Solapur. As such, this petition.

5 The learned counsel for the petitioner made two fold
submissions; (a) that the services of the respondent were terminated
after a full fledged inquiry and (b) once it is found that inquiry
conducted was in a fair and proper manner, the termination was
very much justified.

6 So as to substantiate his claim, he would invite attention of
this Court to the report submitted by Block Development Officer to

Education Officer, Secondary Zilla Parishad, Solapur on 22/09/2017 wherein according to him, the Authority has noticed serious defaults while discharging duties as Headmaster on the part of respondent. He has also invited attention of this Court to the fact that an offence is registered against respondent being Crime No. 631 of 2017 for an offence punishable under Section 409, 381 of the Indian Penal Code. According to him, that being so, the order impugned passed by the Tribunal is not justifiable.

7 The learned counsel for respondent would support the order of the Tribunal and points out that the conduct of the petitioner-management before the Tribunal was not fair. While justifying his contention, he would draw attention of this Court to observations made in paragraph nos. 31 to 33 which reads thus:

“31. The Respondent Management has produced on record the report of the inquiry committee along with findings. As per the case of the Respondent Management on the receipt of the said report of the inquiry committee, chance was given to the appellant for improvement in his behaviour. However,

there was no any improvement on the part of the appellant. And therefore, the Respondent Management vide letter dtd. 01/06/2016 accepted the report of the inquiry committee and terminated the services of the appellant.

32. With reference to the said aspect of the Respondent Management there is nothing produced before inquiry committee as well as before this Tribunal that after receipt of report of inquiry committee, on the request of the appellant chance was given to him for improvement. In the absence of such evidence produced on record the case of the Respondent Management that they have given one chance to the appellant for improvement cannot be accepted. And therefore, it can be safely concluded that the management had not acted on the report of the inquiry committee, probably for the reason that they were aware that the inquiry against the appellant has not been fair. This non action on the part of Respondent Management on the report of inquiry committee can be termed as waiver on their part. Once they have waived their rights in proceedings against the appellant by virtue of the inquiry report, they are estopped to act on the same report and inflict the punishment vide letter dtd. 01/06/2016.

33. The original documents produced on record today by both the parties if seen the documents which were produced

by the Respondent Management vide list Exh. 27 pertaining to the proceeding in respect of meeting No. 7 of the inquiry committee, letter dtd 02/10/2015 bearing outward No. 82/2015, proceeding of 8th meeting of inquiry committee dtd. 10/10/2015 are contrary to the original record produced on record by the Respondent Management when ordered by the Tribunal to produce. There is no explanation coming forward from the Respondent Management as regards difference of dates appearing in the aforesaid letters. Moreover the copy of the letter dtd. 02/10/2015 produced by Respondent Management on 13/08/2018 apparently show overwriting in respect of date. Silence on the part of Respondent Management to clarify in respect of the same amounts to fraud. And therefore, the original record of the inquiry produced by the parties is required to be retained by this Tribunal which shall be kept in sealed condition. That has clearly established the case of the appellant that the meetings of the inquiry committee have not been held on the dates scheduled. Further there has been no any evidence before inquiry committee i.e. letter dtd. 10/10/2015 bearing outward No. 82/2015 was in fact served on the appellant and his representative. Same is the case with the letter dtd. 07/12/2015 issued by Respondent Management to the appellant. There has been no any evidence before the inquiry committee to show that the said letter was in fact was served on the appellant. Therefore, the procedure

adopted by the inquiry committee is not only contrary to Rule 37 of the Maharashtra Employees off Private Schools (Condition of Service) Rules but also contrary to the principles of natural justice. Therefore, the findings recorded by the committee as a result of said inquiry are illegal and not liable to be sustained”.

8 He would then urge that even if there was inquiry, once the inquiry report was not acted upon, Tribunal was justified in passing the order of setting aside order of termination. As such, dismissal is sought.

9 Considered rival submissions.

10 During the inquiry, what is noticed by the Tribunal is, present petitioner has failed to produce evidence justifying charge levelled against respondent, particularly about service of communication dated 10/10/2015. Apart from above, the mode and manner in which inquiry was conducted was also noticed to be not fair and proper, as dates of hearing were never intimated to the respondent

or his representative.

11 Certain documents, particularly document dated 07/12/2015 was sought to be relied upon so as to demonstrate compliance of Sub Rule 4 of Rule 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules for the first time before the Tribunal, however, there was no justifying explanation as to why same was not formed part of the evidence before Inquiry Committee.

12 Though after receipt of Inquiry Committee report, instead of accepting said report and taking straightway action against respondent-employee, finding is recorded by the Tribunal that respondent-employee was given chance by permitting him to continue in the employment. As such, inquiry report to that extent was kept in abeyance. However, while acting on the basis of Inquiry report in the matter of termination of services, no new material is relied upon to order and justify the termination.

13 The Tribunal then proceeded to appreciate the contention of

the petitioner-management justifying the order of termination by directing production of record of the Inquiry Committee. While verifying the record of the Inquiry Committee, the Tribunal has noticed certain tampering with the record of the Inquiry Committee for which no convincing explanation was coming forth before it from the petitioner-management.

14 In the aforesaid background, the claim of the petitioner-management that order of termination which is based on the report of the Inquiry Committee cannot be accepted and as such is rightly rejected by the Tribunal. No interference is called for. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]