

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION NO. 1999 OF 2011****1. Shri Gurukul Shikshan Prasarak Mandal,)****(through its Secretary/Chairman))****having office at Shri Krishna Nagar,)****Gen. Arunkumar Vaidya Marg,)****Malad (East), Mumbai – 400 065)****2. Gurukul Vidyalaya,)****(through its Head Master), having)****office at Shri Krishna Nagar,)****Gen. Arunkumar Vaidya Marg,)****Malad (East), Mumbai – 400 065)****..... Petitioners****VERSUS****1. Sharda Ashok Suryagandh,)****404/B, Rachana Apartment,)****Eksar Road, Borivali (West),)****Mumbai – 400 091)****2. The Education Inspector,)****(West Zone), Ismail Yusuf College)****Compound, Jogeshwari (East),)****Mumbai – 400 060)****..... Respondents****ALONGWITH****WRIT PETITION NO. 2392 OF 2011****Sharada Ashok Suryagandh,)****404/B, Rachana Apartment,)****Eksar Road, Borivali (W),)****Mumbai – 400 091)****..... Petitioner****VERSUS****1. The Chairman/Secretary,)****Shri Gurukul Shikshan Prasarak Mandal,)****Shri Krishna Nagar,)****General Arunkumar Vaidya Marg,)****Malad (E), Mumbai – 400 065)**

2. The Head Master,)
Gurukul Vidyalaya,)
Shri Krishna Nagar,)
General Arunkumar Vaidya Marg,)
Malad (E), Mumbai – 400 065)

2. The Education Inspector,)
(West Zone), Jogeshwari (East),)
Mumbai – 400 060)

..... Respondents

Mr.A.L.Gore for the Petitioner in WP/1999/2011 and for the Respondent nos. 1 and 2 in WP/2392/2011.

Mr.Prashant Bhavake, i/b. Mr.Vedchetan Patil for the Petitioner in WP/2392/2011 and for the Respondent no.1 in WP/1999/2011.

Ms.Uma Palsuledesai, Assistant Government Pleader for the State for the Respondent no.2 in WP/1999/2011 and for the Respondent no.3 in WP/2392/2011.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 17th OCTOBER, 2019

PRONOUNCED ON : 19th DECEMBER, 2019

JUDGMENT :

By these two petitions filed under Article 226 of the Constitution of India, both the parties i.e. the management and the teacher have impugned the order dated 30th June, 2011 passed by the learned Presiding Officer, School Tribunal, Mumbai partly. By consent of parties, both the petitions were heard together and are being disposed off by a common order. Some of the relevant facts for the purpose of deciding these two petitions are as under :-

2. Shri Gurukul Shikshan Prasarak Mandal and another were the respondent nos. 1 and 2 before the School Tribunal whereas Smt.Sharada Ashok Suryagandh the petitioner in Writ Petition No.2393 of 2011 was the appellant before the School Tribunal. The said Smt.Sharada Ashok Suryagandh is described as the Assistant Teacher whereas the said Shri Gurukul Shikshan Prasarak Mandal is described as the Management herein in the later part of this judgment.

3. On 14th June, 1993, the said Assistant Teacher was appointed on probation for a period of two years by the Management. The said Assistant Teacher applied for leave for a period of three months commencing from 26th November,1993 since she had delivered a baby boy on 26th November,1993. It is the case of the Assistant Teacher that she reported for the work after three months from the date of delivery of the child. The Management told her that her services were not required. The Management also obtained a forced resignation from her. She protested against the said resignation by addressing a letter to the Management. On 14th June, 1994, the Management agreed to allow the said Assistant Teacher to report for work.

4. The said Assistant Teacher accordingly reported for work on 14th June, 1994. On 27th March,1995, the Management terminated the services of the said Assistant Teacher w.e.f. 30th April, 1994. The said Assistant Teacher thereafter preferred an appeal before the School Tribunal. During the pendency of the said appeal, the Management allowed the said Assistant Teacher to resume the duties w.e.f. 16th June, 1995.

5. It is the case of the said Assistant Teacher that on 5th May, 2000, the said Assistant Teacher was seriously ill and was advised to undergo medical surgery. After undergoing the said surgery, she reported for work on 5th May, 2000. The Management however refused to allow her to work without disclosing any reason and was asked to get the medical certificate from the Medical Board of J.J.Hospital, Mumbai. On 3rd August, 2000, the said Assistant Teacher furnished the medical certificate to the Management. It is the case of the said Assistant Teacher that the Management refused to allow her to report for duties. On 13th October, 2000, the Management allowed the said Assistant Teacher to report for duties on 18th September, 2000. The said Assistant Teacher was issued a charge-sheet which was received by the said Assistant Teacher on 22nd September, 2000.

6. The Management thereafter conducted an enquiry against the said Assistant Teacher and issued a letter of termination on 16th April, 2001. The said Assistant Teacher filed an appeal before the School Tribunal. By an order dated 31st March, 2008, the School Tribunal allowed the said appeal preferred by the Assistant Teacher. Sometime in the year 2008, the Management filed a writ petition bearing no. 4282 of 2008 in this court. By an order dated 20th June, 2008, this court restored the employee employer relationship between the said Assistant Teacher and the Management.

7. The Chief Executive Officer of the Management issued a fresh statement of allegation against the said Assistant Teacher. Since the charge-sheet was issued against the said Assistant Teacher by the Management was in English, the said Assistant Teacher by her letter dated 2nd May, 2008 requested the Management to issue a charge-sheet

in Marathi language as required under the rules. On 12th August, 2010, the Management terminated the services of the said Assistant Teacher. The said Assistant Teacher thereafter preferred an appeal before the School Tribunal. The School Tribunal directed the Management to reinstate the said Assistant Teacher with monetary benefits and was pleased to set aside the order of termination dated 12th August, 2010.

8. On 23rd August, 2010, the Management filed a writ petition bearing no.1309 of 2010 in this court. This court heard the said writ petition on 23rd August, 2010 and passed an order in the said writ petition directing the Management to conduct a fresh enquiry against the said Assistant Teacher. This court passed an order on 5th October, 2010 granting extension of time to complete the disciplinary proceedings against the said Assistant Teacher. The enquiry committee thereafter submitted a report on 23rd October, 2010.

9. The Management passed a resolution on 25th October, 2010 for dismissal of the said Assistant Teacher from her service. On 25th October, 2010, the Management passed an order terminating the services of the said Assistant Teacher. On 11th November, 2010, the said Assistant Teacher preferred an appeal bearing no. 31 of 2010 before the School Tribunal. On 30th June, 2011, the School Tribunal passed a judgment and order partly allowing the said appeal preferred by the said Assistant Teacher. The School Tribunal was pleased to set aside the order of termination dated 26th October, 2010 and directed the Management to reinstate the said Assistant Teacher on the post of Assistant Teacher with continuity of service without full back wages.

10. It is the case of the said Assistant Teacher that though there was an order of reinstatement of the Assistant Teacher passed by the School Tribunal, the Management did not reinstate the said Assistant Teacher till date. The Management challenged the said order passed by the School Tribunal by filing a writ petition bearing no. 1999 of 2011. The said Assistant Teacher filed a writ petition bearing no. 2392 of 2011 to the extent of refusal of full back wages and various observations and findings rendered by the School Tribunal set out in the body of the writ petition are concerned and seeking an order and direction against the Management to reinstate the Assistant Teacher with full back wages and all consequential benefits w.e.f. 26th October, 2010. The assistant teacher also prayed for further directions to pay the subsistence allowance from 12th August, 2008 to 26th October, 2010 as directed by an order dated 23rd August, 2010 by this court.

11. Mr. A.L.Gore, learned counsel for the Management invited my attention to some of the findings rendered by the School Tribunal and would submit that though the allegations made against the said Assistant Teacher by the Management were duly proved in the enquiry report, the School Tribunal has rendered a perverse finding that due procedure of removal of the said Assistant Teacher was not followed by the Management. He submits that the School Tribunal thus could not have ordered reinstatement of the said Assistant Teacher. He submits that the first enquiry was set aside on the technical ground and not on merit. He submits that there were serious allegations against the said Assistant Teacher that she had not examined the answer papers correctly and properly and had given excess marks to some of the students and less to some of the students. Some of the answers were not examined at all and were not given marks whereas some of the

wrong answers were given marks. There were mistakes in the calculation in the Maths subject marks.

12. It is submitted by the learned counsel for the Management that though in paragraphs 24 and 25 of the impugned order passed by the School Tribunal, various findings were rendered in favour of the Management by the School Tribunal, contrary to such findings, the School Tribunal passed an order of reinstatement in favour of the said Assistant Teacher. He submits that the the first two four charges were duly proved.

13. Learned counsel invited my attention to the findings rendered in paragraph (32) of the impugned judgment and would submit that though Mr. Ludabe had been the vice-chairman of the Management and was appointed as a convener of the enquiry committee, the enquiry report was not vitiated on that ground. He was one of the member of the enquiry committee along with others. He submits that proper opportunity was granted to the said Assistant Teacher to lead evidence. The School Tribunal had already rendered a finding that the said Assistant Teacher was allowed to lead her evidence before the enquiry committee. He submits that the only ground of setting aside the order of termination dated 26th October, 2010 by the School Tribunal was due to the participation of the member of the enquiry committee in the decision making process and thus was alleged to be improper. He submits that no prejudice was caused to the said Assistant Teacher even if one of the member of the enquiry committee was the vice-chairman of the Management at some point of time.

14. It is submitted by the learned counsel that the said Assistant Teacher did not file the writ petition impugning the refusal on the part of the School Tribunal for full back wages for quite sometime. It is submitted that even if Mr. Ludabe who was the vice-chairman of the Management was appointed as a convener of the enquiry committee, there were two other members of the enquiry committee and thus there would not have been any difference in the decision making power of the majority of the members of the enquiry committee. He submits that the said member of the enquiry committee was the Head Master and gave evidence on behalf of the Management. Subsequently he became part of the Management and accordingly participated in the enquiry committee.

15. It is submitted that even otherwise on 3rd April, 2017, the said Assistant Teacher has retired by superannuation. He submits that though the writ petition filed by the Management, was to be heard immediately, it could not be heard, the Management did not reinstate the said Assistant Teacher though no interim relief was granted by this court. The said Assistant Teacher had filed criminal proceedings against the Management. The Management had obtained stay of the criminal proceedings filed by the said Assistant Teacher and thus the Management was not required to reinstate the said Assistant Teacher also on that ground.

16. Mr. Prashant Bhavake, learned counsel for the Assistant Teacher pointed out the facts from the date of appointment of his client's, termination of the service from time to time by the Management, various orders passed by the School Tribunal and this court in number of writ petitions, medical certificate submitted by his client. He

submits that on 14th October,2000, the said Assistant Teacher was suspended during the pendency of the enquiry initiated by the Management and subsequently was terminated from her service. This court had directed the Management to conduct the full-fledged enquiry against the said Assistant Teacher and permitted the Management to suspend the said Assistant Teacher. This court had directed the Management to pay the subsistence allowance to the said Assistant Teacher during the pendency of the said enquiry.

17. Learned counsel invited my attention to the order dated 23rd August,2010 passed by this court in Writ Petition No.1309 of 2010 and would submit that though by the said order, this court had granted liberty to the Management to continue the disciplinary proceedings and complete the same within six weeks therefrom, the Management decided to issue a fresh statement of allegations and also a fresh charge-sheet. The Management accordingly issued statement of allegations, charge-sheet, list of documents relied upon by the Management along with covering letter dated 6th September,2010 to the said Assistant Teacher. He submits that the said action on the part of the Management is in violation of Rule 37(1) of the MEPS Rules, 1981.

18. It is submitted that though the said Assistant Teacher had brought on record that she had not given sufficient time to submit her explanation to the submission of the allegations and also the charge-sheet which was her statutory right as contemplated under Rules 36 and 37 of the MEPS Rules, 1981, the Management did not comply with the said requisition. Learned counsel also invited my attention to the letter dated 18th October,2010 addressed by the said Assistant

Teacher to the convener of the Enquiry Committee contending that the enquiry was being conducted in violation of Rule 37(4) and (5) of the MEPS Rules, 1981. He submits that the formation of the enquiry committee by the Management was itself contrary to and inconsistent with the provisions of rules 36 and 37 of the MEPS Rules.

19. It is submitted that though this court did not direct the Management to reconstitute the enquiry committee, the Management reconstituted the Enquiry Committee and appointed one Mr.Ludabe as the convener and Mr.Vasant Bagad as the awardee teacher. He submits that though the said Assistant Teacher repeatedly placed on record before the Enquiry Committee that the constitution of the enquiry committee itself was not in accordance with Rule 37 of the MEPS Rules and thus no such Enquiry Committee was constituted in the eyes of law, the Management did not bother to appoint the proper Enquiry Committee.

20. Learned counsel for the said Assistant Teacher relied upon Rule 36(2) (a) and 36(3) of the MEPS Rules and would submit that the Management had not conveyed the name of the committee members. On whom the State/National award had been conferred to the Assistant Teacher. He submits that after formation of the Enquiry Committee, the said Enquiry Committee was required to serve the charge-sheet upon the Assistant Teacher. However, in this case the charge-sheet was already served upon the Assistant Teacher even before constituting the said Enquiry Committee.

21. Learned counsel placed reliance on Rule 36(1) and (2) of the MEPS Rules and would submit that after serving a copy of the

statement of allegation and after seeking explanation from the Assistant Teacher and considering such explanation before any decision was to be taken by the Management whether to conduct any enquiry against the Assistant Teacher or not, the Management had already communicated the charge-sheet along with list of 39 witnesses to the said Assistant Teacher in violation of rules 36(1) and (2) of the MEPS Rules. The statement of none of the witnesses was furnished to the Assistant Teacher and was directly asked to cross those witnesses.

22. It is submitted by the learned counsel that on 15th October, 2010, the said Assistant Teacher was asked to lead evidence when the representative of the Assistant Teacher was not present. The said Assistant Teacher thus asked for sometime on that ground which request was rejected by the Enquiry Committee and the said enquiry proceedings were closed.

23. Learned counsel for the said Assistant Teacher relied upon Rule 37(2)(c) of the MEPS Rules and would submit that though under the said Rule, the enquiry committee is under the obligation to provide reasonable opportunity to the employee for defending his or her case, the enquiry committee in this case closed the enquiry within a day without rendering any reasonable opportunity contemplated under rule 37(2)(c) of the MEPS Rules. The Management also did not keep the witnesses of the Management present and thus the said Assistant Teacher could not cross examine any of the witnesses proposed to be examined by the Management.

24. Learned counsel for the Assistant Teacher placed reliance on Rule 37(4) of the MEPS Rules and would submit that the enquiry

committee had not forwarded the summary of the proceedings and copies of the statement of witnesses to the said Assistant Teacher and had violated Rule 37(4) of the MEPS Rules. The Management also did not provide any time to furnish explanation before Enquiry Committee under Rule 37(5) of the MEPS Rules. He submits that the Enquiry Committee thus could not have completed the enquiry without following the conditions prescribed under rules 37(1) to (5). He submits that since the strict compliance of rules 36 and 37 of MEPS Rules was mandatory which was not at all followed in this case by the Management, the entire enquiry proceedings were vitiated.

25. It is submitted that various findings rendered by the School Tribunal against the Assistant Teacher though the order of reinstatement of the Assistant Teacher came to be passed are impugned by the said Assistant Teacher in the writ petition filed by her. It is submitted that since the findings rendered by the School Tribunal causes stigma against the said Assistant Teacher, this court has ample power to look into the erroneous findings rendered without setting aside the order of reinstatement which was passed in favour of the Assistant Teacher.

26. It is submitted by the learned counsel for the Assistant Teacher that Mr. V.B.Ludabe was the vice-president of the Management and was appointed as the presiding officer on behalf of the Management in the second enquiry. Mr.Rasal was the Head Master and Secretary on the date of passing an order of punishment against the said Assistant Teacher and was a witness in the enquiry proceedings. Mr. Rajaram Rasal was the husband of the Chief Executive Officer who signed the said order of termination.

27. It is submitted that the School Tribunal rightly considered these issues in great detail in the impugned order while setting aside the order of termination of services of the said Assistant Teacher and after adverting to various judgments of this court and the provisions of the MEPS Act and Rules, has rightly passed an order of reinstatement of the said Assistant Teacher. He submits that though the impugned order directing the Management to reinstate the said Assistant Teacher was not stayed by this Court in the writ petition filed by the Management, the Management did not implement the said order and did not reinstate the said Assistant Teacher.

28. Learned counsel placed reliance on the change report submitted by the Management to the Charity Commissioner and would submit that the said change report would clearly indicate that Mr. Rasal was part of the Management Committee. He submits that there was a conflict of interest between the Management and the members of the enquiry committee. The members of the managing committee could not be the part of the Enquiry Committee. Learned counsel placed reliance on the judgment of this court in case of ***Kashiram s/o. Rajaram Kathane vs. Bhartiya R.B.Damle Gram Sudhar Tatha Shikshan Prasari Society through its Secretary and others, 1997 (4) Bom.C.R. 398*** and in particular paragraphs 8, 9, 10 and 12 in support of his submission that the members of the management committee could not be part of the Enquiry Committee and there being a clear case of conflict, the entire enquiry proceedings was vitiated.

29. Learned counsel for the Assistant Teacher placed reliance on the judgment of Supreme Court in case of ***Mohd. Yunus Khan vs. State of***

Uttar Pradesh and others, (2010) 10 SCC 539 and in particular paragraphs 22 to 33 and 37 in support of his submission that if the enquiry committee had acted with bias against the employee, the entire enquiry proceedings have to be quashed and set aside being vitiated.

30. Learned counsel for the Assistant Teacher placed reliance on the judgment of Supreme Court in case of ***A.U.Kureshi vs. High Court of Gujarat and another, (2009) 11 SCC 84*** and in particular paragraphs 9 and 10 in support of the submission that there being a clear case of conflict between the members of the managing committee and the enquiry committee, the entire departmental enquiry was vitiated on that ground alone.

31. Learned counsel for the Assistant Teacher placed reliance on the judgment of Supreme Court in case of ***Arjun Chaubey vs. Union of India and others, (1984) 2 SCC 578*** and in particular paragraphs 5 to 8 in support of the submission that the witness on behalf of the Management in the earlier enquiry proceedings could not be the part of the enquiry committee subsequently.

32. Learned counsel for the Assistant Teacher submits that though the School Tribunal had passed an order of reinstatement in favour of the Assistant Teacher, the School Tribunal erroneously did not pass an order for full back wages. The said Assistant Teacher was not employed anywhere and thus was entitled to get the full back wages with all consequential benefits. The Assistant Teacher wanted to resume the duties from the day one however deliberately was not allowed by the Management to resume duties.

33. Learned counsel for the said Assistant Teacher placed reliance on rule 37(2) (f) of the MEPS Rules and would submit that the enquiry proceedings were required to be completed within 120 days from the date of the first meeting of the enquiry committee or from the date of the suspension of the said Assistant Teacher whichever was earlier. In this case, since the enquiry committee failed to complete the enquiry within the time contemplated under rule 37(2) (f) of the MEPS Rules, the said Assistant Teacher ceased to be under suspension and was deemed to have rejoined duties, without prejudice to continuance of the enquiry. No extension was granted by the Enquiry Committee for completion of the enquiry with prior approval of the Deputy Director or otherwise.

34. Learned counsel for the Assistant Teacher placed reliance on the judgment of this court in case of ***Progressive Education Society & Ors. vs. Nitin Krishnarao Nimbalkar & Ors., 2006(6) Bom.C.R.165*** and in particular paragraphs 7 and 9 and would submit that since the Management did not allow the said Assistant Teacher to resume duties during the period when there was deemed reinstatement or otherwise after passing of the order of reinstatement by the School Tribunal and thereafter no stay of the said judgment and order till the said Assistant Teacher attained the age of superannuation, the said Assistant Teacher was entitled to be awarded full back wages with all consequential benefits. He submits that upto the date of the judgment and order passed by the School Tribunal, the said Assistant Teacher was entitled to the difference between the back wages and the subsistence allowance and thereafter on the date of the order of reinstatement till the age of superannuation full back wages with full consequential benefits. Learned counsel for the Assistant Teacher placed reliance on

the judgment of this court in case of ***Yogeshwar Vikas Sanstha & Ors. vs. Rajendra T. Shinde & Anr., 2008(1) Bom.C.R. 297*** and in particular paragraphs 5, 6, 7 and 9.

35. It is submitted by the learned counsel for the Assistant Teacher that the Management has not produced any evidence on record to show that the said Assistant Teacher was gainfully deployed with somebody else during the pendency of the appeal filed by the School Tribunal by the said Assistant Teacher and also during the pendency of this writ petition. He submits that the said Assistant Teacher would also be eligible to get the pension benefits if the writ petition filed by her is allowed by this court.

36. Mr. A.L.Gore, learned counsel for the Management in rejoinder submits that since the said Assistant Teacher has not worked during the pendency of the enquiry in view of her service having been suspended during the pendency of the said enquiry and thereafter, her services were terminated which termination was in force till the date of the order and judgment passed by the School Tribunal reinstating the Assistant Teacher, there is no question of any a full back wages as demanded or otherwise in favour of the Assistant Teacher. He submits that the principle 'No Work, No Pay' would apply. The said Assistant Teacher did not apply for reinstatement on the ground that the enquiry was not completed within the time contemplated under MEPS Rules or even after the judgment and order of School Tribunal till the date of the superannuation in view of the pendency of the criminal proceedings. No payment of back wages from the date of judgment and order of the School Tribunal can be thus awarded in favour of the Assistant Teacher.

REASONS AND CONCLUSION

37. I shall first decide the issue as to whether the finding rendered by the School Tribunal whether entire enquiry against the said Assistant Teacher was vitiated on the ground that Mr. Rasal who deposed in the capacity of Headmaster of the appellant school and subsequently acted as the member of the Managing Committee and having taken the decision of dismissal of the said Assistant Teacher is perverse. I shall also decide whether the enquiry was also vitiated on the ground that Mr. Ludabe who acted as a member of the enquiry committee and had taken the decision of dismissal of the Assistant Teacher on the basis of the enquiry report and had also acted as convener of the enquiry committee or not.

38. A perusal of the judgment rendered by the School Tribunal clearly indicates that a finding is rendered that the decision of the Managing Committee to terminate the services of the Assistant Teacher was on the basis of enquiry committee report was vitiated because of participation of the members of the enquiry committee in the decision making process and who were presumed to be interested in seeking that their recommendations were accepted. It is held by the School Tribunal that the decision of the Managing Committee dismissing the Assistant Teacher from service on the basis of departmental enquiry report was vitiated and not the whole enquiry. It is held that though the enquiry conducted was legal and proper but the decision of removing the Assistant Teacher from services was not sustainable under the eyes of law. Based on such finding, the School Tribunal allowed the appeal of the Assistant Teacher only partly.

39. It is held that the enquiry is not legal and fair and the punishment of dismissal from service is harsh and exorbitant as is influenced because of the participation of the Managing Committee members into the enquiry proceedings. Based on these findings, the School Tribunal rendered the issue “whether the departmental enquiry conducted against the Assistant Teacher by the Management on the basis of charge-sheet dated 6th September, 2010 was legal and proper ?” in the negative. The School Tribunal also answered the issue “whether the punishment of dismissal was legal and proper ?” also in the negative.

40. The School Tribunal while answering these two questions also in negative has considered several judgments of the Supreme Court in the impugned judgment dealing with similar issue. In paragraph 36 of the judgment, it is held by the School Tribunal that the enquiry committee is legal and proper but the decision of the removing the Assistant Teacher from service was not sustainable. In paragraph 37, it is held that enquiry is not legal and fair and punishment of dismissal is harsh and exorbitant. In my view, both these findings are inconsistent to each other.

41. Following principles of law can be culled out from the following judgments can be called out as under :-

- i. The judgment of Supreme Court in case of ***Cantonment Executive Officer and another v/s. Vijay D. Wani and Ors., (2008) 12 SCC 230.***
- ii. The judgment of Supreme Court in case of ***Tilakchand Magatram Obhan v/s. Kamala***

Prasad Shukla and others, 1995 Supp (1) SCC 21.

iii. The judgment of Supreme Court in case of ***Amar Nath Choudhury v/s. Braithwaite and Co. Ltd. and others, (2002) 2 SCC 290.***

iv. The judgment of Supreme Court in case of ***State of Uttaranchal and others v/s. Kharak Singh, (2008) 8 SCC 236.***

v. The judgment of Supreme Court in case of ***A.U. Kureshi vs. High Court of Gujrat and another, (2009) 11 SCC 84.***

vi. The judgment of Supreme Court in case of ***Arjun Chaubey v/s. Union of India and others, (1984) 2 SCC 578.***

vii. The judgment of Supreme Court in case of ***Mohd. Yunus Khan*** (supra).

viii. The judgment of this Court in case of ***Kashiram s/o. Rajaram Kathane*** (supra).

(a) Members of the enquiry committee who were members of the board which took the final decision has vitiated the decision making process and being presumed to be interested in seeing that their recommendations are

accepted vitiates the enquiry.

(b) Where one member of the enquiry committee has a strong hatred or bias against the employee of which the other members know or not, the said member is in a position to influence the decision making. The entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Justice must not only be done but must also appear to be done.

(c) A party who acts as a disciplinary authority as well as the appellate authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the employee, such a dual function unless permitted by an Act of legislation or statutory provision, would be contrary to rule against the bias and the process is vitiated. If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness, he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other person. If there is any breach of any basic principles of departmental enquiry, then such enquiry stands vitiated.

(d) The member of the disciplinary committee on the

administrative side who had recommended dismissal could not have heard the appeal on the judicial side. It is held that one should not be judge in his own cause.

(e) The members of the management committee who had participated in the enquiry proceedings cannot influence the decision making by participating in such decision making process which cannot be upheld in the eyes of law.

(f) Member of the managing committee acting as convener of enquiry and also part of the management in taking the decision vitiates the enquiry process and is in breach of Rule 36(2)(b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. For incurring disqualification, it is not necessary that bias must actually be proved. It would be enough, under law that there is reasonable likelihood of bias. The act of presiding officer who having his own testimony recorded in the case indubitably would evidence a state of mind which would disclose a considerable bias against the delinquent. The test is not whether in fact, bias has affected the judgment. The test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member might have operated against him in the final decision of the Tribunal.

(g) Authority initiating disciplinary proceedings becoming a witness therein, accepting enquiry report and

imposing punishment is impermissible and is in flagrant violation of natural justice and vitiates the entire enquiry process. The enquiry is to be conducted fairly and reasonably and enquiry report must contain reasons for reaching the conclusion that charge framed against the delinquent stood proved against him.

42. In my view, the aforesaid principles of law laid down by the Supreme Court and this Court clearly apply to the facts of this case. I am respectfully bound by the aforesaid principles. In this case, admittedly the members of the managing committee who decided to terminate the services of the Assistant Teacher were part of the enquiry process at one or the other point of time and thus could not play a dual role of being a witness and at the same time part of the decision making process being part of the management committee. The learned counsel for the management could not dispute this admitted position about the involvement of those two officers in the process of enquiry and their participation in the management while taking decision to terminate the services of the said Assistant Teacher based on such enquiry. In my view, the entire enquiry was thus vitiated on this ground alone.

43. There is no substance in the submission made by Mr. Gore, learned counsel for the management that even if one of the members of the enquiry committee was ineligible out of three members, who participated in the enquiry as well as in the decision making process, the enquiry cannot be vitiated on this ground. In my view, even if one member of the enquiry committee is disqualified or ineligible to be part of the enquiry committee, entire decision taken by the management

based on such vitiated enquiry, would be totally illegal and deserves to be set aside on that ground itself. The School Tribunal in my view has rightly considered this aspect and has held the termination of services of the Assistant Teacher illegal.

44. In so far as the submission of the learned counsel for the management that there was serious allegations against the said Assistant Teacher that she had not examined the answer papers correctly and properly and had given excess marks to some of the students and less marks to some of the students is concerned, in my view since the entire enquiry was vitiated, such allegations made by the management against the said Assistant Teacher even otherwise could not have been considered as proved by the School Tribunal.

45. A perusal of the record indicates that though by an order dated 23rd August, 2010 passed by this Court in Writ Petition No. 1309 of 2010, this Court had granted liberty to the management to continue the disciplinary proceedings and complete the same within six weeks there from, the management decided to issue a fresh statement of allegations and also a fresh charge-sheet. In my view, Mr. Bhavke, learned counsel for the Assistant Teacher is right in his submission that there was gross violation of Rule 37(1) of the MEPS Rules by the management.

46. A perusal of the record further indicates that though this Court while permitting the management to conduct an enquiry, had not permitted the management to reconstitute the enquiry committee, the management however reconstituted the enquiry committee contrary to the provisions of the MEPS Act and MEPS Rules and also contrary to the order passed by this Court.

47. A perusal of the record indicates that the Assistant Teacher was asked to cross-examine the witnesses examined by the management in absence of her representative. The Assistant Teacher has asked for sometime to study the alleged notes of evidence, which request was not accepted by the enquiry committee. The said Assistant Teacher was threatened that if she fails to cross-examine the witnesses of the management, she would not be given any opportunity in future.

48. Under Rule 37(4) of the MEPS Rules, enquiry committee is under an obligation to forward a summary of the proceedings and copies of the statements of witnesses by registered post within four days of completion of enquiry with opportunity to give explanation to the said summary of proceedings within seven days from the date of receipt of such summary of proceedings from the management. Though the Assistant Teacher had asked for summary of the proceedings under Rule 37(4) and offered to explain her say under Rule 37(5) by letter dated 18th October, 2011, no such summary of proceedings were served upon the Assistant Teacher in violation of Rule 37(4) of the MEPS Rules.

49. Under Rule 37(6) of the MEPS Rules, enquiry committee has to complete the enquiry and to communicate its finding to the management for action to be taken against the employee on receipt of explanation under Rule 37(4). The management did not follow the said mandatory procedure prescribed under Rule 37(6) of the MEPS Rules in any manner whatsoever. There was thus gross violation of Rule 37(6) of the MEPS Rules by the management.

50. It is not in dispute that the representative appointed by the Assistant Teacher as member of the enquiry committee had recorded his finding that the enquiry was not properly conducted and the charges against the said Assistant Teacher were not proved and directed the management to reinstate the Assistant Teacher with all consequences and benefits. However, two members including the one of disqualified member of the said enquiry committee, recorded separate finding against the Assistant Teacher and held that all charges except charge no.9 were proved and held the said Assistant Teacher to be punished under Rule 28(5) of the MEPS Rules. The said finding recorded by the majority of enquiry committee members was comprised of one of such disqualified member of the enquiry committee thus was not binding upon the Assistant Teacher since the entire enquiry proceedings were vitiated.

51. A perusal of the record further indicates that on various charges which were held to be proved by the majority of the members of the enquiry committee against the said Assistant Teacher were based on no evidence and were in gross violation of the various provisions of MEPS Act and MEPS Rules. The finding rendered by the School Tribunal on such charges having been proved in favour of the management is *ex-facie* perverse and based on no evidence. In my view, the School Tribunal thus could not have refused to grant prayer for back wages in favour of the Assistant Teacher.

52. A perusal of the record indicates that though under Rule 36(1) and (2) of the MEPS Rules, the management was bound to serve a copy of the statement of allegations and to seek explanation from the Assistant Teacher and only after considering such explanation, a

decision could be taken as to whether any enquiry against the Assistant Teacher was to be initiated or not, in this case the management had already communicated the charge-sheet along with list of 39 witnesses to the said Assistant Teacher in violation of Rule 36(1) and (2) of the MEPS Rules. The statement of none of the witnesses were furnished to the Assistant Teacher and was directly asked to cross-examine those witnesses. In my view, Mr. Bhavke, learned counsel for the Assistant Teacher is right in his submission that in this case there was no reasonable opportunity granted to the Assistant Teacher as contemplated under Rule 37(2)(c) of the MEPS Rules to defend her case before the enquiry committee. The enquiry committee in this case had closed the enquiry within a day.

53. The Supreme Court in case of **Arjun Chaubey** (supra) has held that the witness on behalf of the management in the earlier enquiry proceedings could not be the part of the enquiry committee subsequently in the same matter. In this case, the constitution of the enquiry committee itself was illegal and contrary to the principles of law laid down by the Supreme Court in case of **Arjun Chaubey** (supra), thus entire enquiry proceedings were vitiated on that ground.

54. In this case, since the enquiry committee had not completed enquiry within 120 days from the date of first meeting of the enquiry committee as contemplated under Rule 37(2)(f) of the MEPS Rules, the Assistant Teacher ceased to be under suspension and was deemed to have rejoined duties. Without prejudice to continuance of enquiry, the Assistant Teacher was kept under suspension for more than 120 days. The Deputy Director had not granted any extension to the enquiry committee for completion of enquiry beyond the period

contemplated under Rule 37(2)(f) of the MEPS Rules. The management was thus required to pay the back wages to the said Assistant Teacher who ceased to be under suspension.

55. There was no evidence led by the management to show that the said Assistant Teacher was employed somewhere else during the period of the said enquiry or even after the date of the impugned judgment passed by the School Tribunal. In this case, though there was no stay granted by this Court in the writ petition filed by the management impugning the judgment and order by the School Tribunal, the management did not allow the Assistant Teacher to resume her duties without any reasons till the date of her superannuation.

56. The management also did not pay any amount for such period from the date of order passed by the School Tribunal till the date of the superannuation of the Assistant Teacher. I am not inclined to accept the submission made by the learned counsel for the management that since the criminal proceedings filed by the Assistant Teacher against the management was stayed by this Court, that order staying the criminal proceedings, the management was not bound to reinstate the said Assistant Teacher though no stay of the said judgment and order was granted by this Court in the pendency of the writ petition filed by the management. In my view, the management in this case has acted highhandedly against the said Assistant Teacher and in gross violation of the judgment of the School Tribunal.

57. This Court in case of ***Progressive Education Society & Ors.*** (supra) has held that if the management had failed to justify the action taken by it under Section 5(3) of the MEPS Act to terminate the

services of the employee, it would disclose lack of *bonafide* in terminating the services. It is held that if an employee is not allowed to attend the duties not on account of any mistake on his part but on account of unreasonable and arbitrary action on the part of the management, the employee would be entitled for the entire back wages. The principle laid down by this Court on the said judgment after adverting to the judgment of Supreme Court in case of ***U.P. State Brassware Corporation Ltd. v/s. Udai Narain Pandey, A.I.R. 2006 S.C. 586*** would clearly apply to the facts of this case.

58. In my view, action on the part of the management not to implement the judgment delivered by the School Tribunal setting aside the order of termination and passing an order of reinstatement deliberately and not allowing the Assistant Teacher to resume the duties was *malafide* for which act the Assistant Teacher was not responsible in any manner whatsoever. The management was thus liable to pay back wages for the period when the order of reinstatement passed by the School Tribunal was not implemented by the management till the age of her superannuation though there being no stay granted by this Court in the writ petition filed by the management.

59. This Court in case of ***Yogeshwar Vikas Sanstha and Ors. v/s. Rajendra T. Shinde and Anr., 2008 (1) Bom. C.R.297*** as after adverting to the judgment of this Court in case of ***Progressive Education Society & Ors.*** (supra) has held that the employee having been kept out of service due to no fault of his, was entitled to salary for the period of his unemployment. The judgment of this Court in case of ***Yogeshwar Vikas Sanstha and Ors.*** (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

60. In so far as the submission of the learned counsel for the management that the said Assistant Teacher did not apply for reinstatement on the ground that enquiry was not completed within the time contemplated under MEPS Rules or reinstatement after judgment and order of School Tribunal was passed till the date of her superannuation is concerned, in my view this submission of the learned counsel for the management is based on incorrect factual premise and contrary to the record. Since, there was no stay granted by this Court admittedly in favour of the management, the said Assistant Teacher had requested the management to implement the order passed by the School Tribunal and to reinstate her in her service, the principles of “no work no pay” would not apply in this facts and circumstances of this case. In my view, writ petition filed by the management i.e. Writ Petition No. 1999 of 2011 is totally devoid of merit. The petitioner has made out a case for grant of relief in Writ Petition No. 2392 of 2011.

61. I therefore pass the following order:-

- (a) Writ Petition No. 1999 of 2011 is dismissed. Rule is discharged.
- (b) The management is also directed to pay the
 - (i) subsistence allowances from 12th August, 2008 to 26th October, 2010 as per order and directions dated 23rd August, 2010 passed by this Court after deducting the amount of subsistence amount, if already paid to the Assistant Teacher within four weeks from today.
 - (ii) full back wages from the date of the impugned

judgment dated 30th June, 2011 till the date of superannuation to the petitioner in Writ Petition No. 2392 of 2011 within four weeks from today.

(d) Rule in Writ Petition No. 2392 of 2011 is made absolute in aforesaid terms.

(e) No order as to costs.

(R.D.DHANUKA, J.)