

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5339 OF 2018

1. Bhagwan Pratisthan,
through it's Executive Trustee,
R/o "Sandeep" in front of Labhakshetra
Karyalaya, Garkheda, Vishal Nagar,
Aurangabad, Tq. & Dist Aurangabad.

2. Shri Babanrao Dhakne Vidyalaya,
Chikalthana, Aurangabad,
Tq. & District Aurangabad
(Through Its Head Master)

...petitioners....

(orig respondents 1 & 2)

VERSUS

1. Bandu s/o Dhrupatrao Dhakne,
age 44 years, Occ. Nil,
R/o Sector No.Q-02-04,
Vithal Nagar,N-2, Cidco,
Aurangabad, Tq. & Dist Aurangabad.

2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
Tq. & Dist. Aurangabad.

...Respondents...

(resp 1 is orig appellant &
resp no.2 is orig resp no.3)

...

Mr. Vivek Dhage advocate for the petitioners
Mr. B L Sagar Killarikar Patil h/f R I Wakade advocate
for respondent no.1.

Mr S K Tambe A.G.P. for Respondent no.2-State.

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**WITH
WRIT PETITION NO. 7374 OF 2018**

Bandu s/o Dhrupatrao Dhakne,
age 46 yrs, Occ. Nil,
r/o Sector No.Q-02-04, Vithal Nagar,
N-2, Cidco, Aurangabad. ...Petitioner...

VERSUS

1. Bhagwan Pratishthan,
Through its' executive Trustee,
R/o "Sandeep" in front of Labha Kshetra
Karyalaya (KADA), Garkheda, Vishal Nagar,
Aurangabad, Tq. & Dist Aurangabad.
2. Shri Babanrao Dhakne Vidyalaya,
Chikalthana, Aurangabad,
Through its Head Master.
3. The Education Officer,
Zilla Parishad, Aurangabad ..Respondents...

...

Mr. B L Sagar Killarikar Patil h/f R I Wakade advocate
for the petitioner.

Mr. Vivek Dhage advocate for respondent 1 and 2
Mr S K Tambe AGP for Respondent no.3-State.

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CORAM : V. K. JADHAV, J.

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Reserved on : December 04, 2019

Pronounced on : May 13, 2020

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ORDER :-

1. These two writ petitions have been preferred
against the judgment and order dated 27.12.2017 passed

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by learned Presiding Officer of the School Tribunal, Aurangabad Division, Aurangabad in Appeal No.7 of 2017. Being aggrieved by the judgment and order dated 27.12.2017 the petitioner No.1 Bhagwan Pratishtan-Educational Institution (hereinafter referred to as the petitioner-management) has preferred writ petition no.5339 of 2018, whereas respondent no.1/employee has preferred writ petition No.7374 of 2018 to the extent of back wages of 30% from the date of termination till the date of reinstatement as awarded by the School Tribunal.

2. Brief facts, giving rise to these writ petitions, are as follows :-

a] Petitioner No.1 is an Educational Institution. It runs the school namely 'Babanrao Dhakane Vidyalaya' Chikalthana, Aurangabad. Petitioner no.2 is the Head Master. Respondent No.1(employee)-Bandu Dhakne was initially appointed on the post of Sevak (Peon) in the year 1990 by the petitioner-management and thereafter he was promoted as Laboratory

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Attendant. There is no dispute about his appointment, approval and promotion. Respondent no.1 is the permanent employee of the petitioner no.2 School. Said school receives 100% grant-in-aid from the Government of Maharashtra. According to respondent no.1-employee that employees of petitioner no.2-School including respondent no.1 had made a complaint to the higher authorities against the Management with regard to the illegal activities and mismanagement. It has also been alleged that employees were harassed and denied the benefit, though they are entitled as per law. According to respondent no.1-employee, on perusal of the complaint, Education Department has conducted a detailed enquiry of the petitioner no.2 School, the visiting squad of the education department has inspected the school on various dates and enquiry committee had also scrutinized and verified the school record and submitted detailed enquiry report to the higher authorities. Thus, the respondent-Education officer based upon detailed inspection report has submitted his report to the Deputy Director on

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25.1.2010 and requested to appoint an Administrator over the school of petitioner no.2 in the year 2010. Accordingly, on 21.9.2010 Administrator came to be appointed. Further the school employees including respondent no.1 had also filed various writ petitions against the petitioner-management. According to respondent no.1-employee, in consequence thereof, the Educational institution has issued a show cause notice dated 17.6.2014 against respondent no.1-employee. Though respondent no.1-employee had given explanation to the said notice, however, the petitioner-management had decided to conduct an enquiry and further suspended respondent no.1-employee on 30.6.2014. Even, the petitioner-management has conducted enquiry by constituting three members enquiry committee and terminated the services of respondent no.1 w.e.f. 8.11.2014. Respondent no.1-employee had challenged the said order of termination by filing an appeal of 31 of 2014. By order dated 30.11.2015 the Presiding Officer of the School Tribunal has partly allowed the appeal, quashed and set aside

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the termination order dated 8.11.2014 and directed the respondent-management to constitute new enquiry committee and complete the enquiry work within a period of four months from the date of constitution of new enquiry committee. Being aggrieved by the same, the respondent-management had preferred writ petition no.1512 of 2016, however, it was withdrawn on 29.4.2016. Thereafter, enquiry was conducted by three members committee. After conclusion of the enquiry proceedings, two members of the enquiry committee had prepared report dated 22.2.2017 and held that charges are proved against respondent no.1-employee, however, nominee of the respondent no.1 employee had not signed the said report. Thus, as per the recommendations made by the committee, the respondent-management has again terminated the services by order dated 28.2.2017. Being aggrieved by the same, respondent no.1-employee has preferred appeal no.7 of 2017. Petitioners herein has strongly resisted the said appeal by filing their written statement. By impugned order dated 27.12.2017 the Presiding

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Officer of the School Tribunal, Aurangabad Division, Aurangabad partly allowed the appeal, quashed and set aside the termination order dated 28.2.2017 and further directed the petitioners to reinstate respondent no.1-employee on his original post of Laboratory Attendant and further held that respondent no.1-employee was entitled for 30% back wages from the date of termination till the date of reinstatement. Being aggrieved by the same, these two writ petitions have been preferred, as mentioned above.

3. Learned counsel appearing for the petitioner-management in writ petition no.5339 of 2018 submits that findings of the learned Presiding Officer of the School Tribunal, Aurangabad are contrary to the record. Learned counsel submits that enquiry has been conducted as per the provisions of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 and M.E.P.S. Rules thereunder (for short hereinafter referred to as the 'MEPS Rules, 1981'). Learned counsel submits that respondent no.1-employee

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used to remain absent consistently and in consequence thereof, salary was not paid to him. Thus, respondent no.1-employee has made a complaint to the Secretary, Education Department to appoint an Administrator. The documents on record indicates that respondent no.1-employee himself had accepted that he was absent and requested the Management not to take action against him. Respondent no.1-employee remained absent from duty without permission from July 1998 to January 2009. Learned counsel submits respondent No.1-employee made a complaint to Secretary, Education Department dated 17.01.2012 to appoint Administrator. It is mentioned in the complaint dated 17.1.2012 that, if the Administrator is not appointed, the respondent no.1 (original appellant) and his family will commit a suicide. The copy of complaint dated 17.1.2012 is annexed herewith as Exhibit P-22. Respondent no.1-employee has admitted about deduction of his salary due to his absenteeism. Learned counsel submits that out of 3000 working days approximately in 12 years respondent no.1-employee remained absent for near about 350 days

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without permission. Learned counsel submits that during this period, respondent no.1-employee had availed all the leaves including the medical leaves and even thereafter remained absent for the said period of 350 days. Furthermore, respondent no.1-employee had filed false complaint in the year 2012-2013 against the President of the Institution namely Vinayak Wagh and his three sons. Learned counsel submits that respondent no.1-employee has not only remained absent on duties unauthorizedly but behaved arrogantly and made various false complaints to the Education Department against the Management for appointment of the Administrator. Learned counsel submits that the charges levelled as against respondent no.1-employee proved on the basis of uncontroverted documents produced by the petitioner-management. Respondent no.1-employee has also admitted about his absenteeism and thus it is the best evidence against him. Learned counsel submits that service career of respondent no.1-employee was not satisfactory and he had almost created terror in the school by his indisciplined

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behaviour, willful and persistent negligence of duty and remaining absent from the duty. Respondent no.1-employee has attempted to malign image of the school and school management and persistently acted against the school and its management. The petitioner-management took lenient view and extended sufficient opportunities to the respondent-employee to improve himself, but his misconduct was reached at intolerable level. There are various instances unmistakably point out the conduct and behaviour of the respondent-employee. Learned counsel submits that respondent no.1-employee took loans from the local co-operative banks by using forged signatures of the Head Master and got prepared duplicate stamps of the head master. Even respondent-employee had confessed about same.

4. Learned counsel for the petitioners-management submits that so far as appointment of the nominee of the Management, who is also convener of the enquiry committee as objected by respondent no.1-employee, the very nature of the constitution of the

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enquiry committee, the convener and role ascribed to each member by the statutory provisions and rules therein, the learned Presiding Officer of the School Tribunal has erroneously considered the principle of “the Judge in one's own cause.” In writ petition 1512 of 2016 this Court has directed to include the management representative in the enquiry committee excluding the President Mr. Vinayak Wagh and his wife Mrs. Padma Wagh. In view of the same, the Management was at liberty to nominate any other person from amongst their trustees to be included in the enquiry committee when the same would be reconstituted. Learned counsel submits that second enquiry started from the point of constitution of new enquiry committee as per the order of School Tribunal dated 30.11.2015. Respondent no.1-employee has adopted the strategy of raising objection on every stage of the enquiry. Even, respondent no.1 employee has not allowed his representative member to sign the enquiry report which was prepared on 22.2.2017. Learned counsel submits that enquiry committee had verified all the charges levelled against

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respondent no.1-employee.

5. Learned counsel for the petitioners-management submits that magnitude of the misbehavior and misconduct on the part of respondent-employee was so severe and serious that no employer would tolerate such a behaviour of terrorizing of employee in the school, conspiring and concocting to defame the school and management, managing print media to publish defaming news of school and management, putting undue pressure on education department to take decision of his ill dubious motives for appointing an administrator on the school. Even, respondent no.1-employee has threatened the highest authority of the department by self immolation in front of the office for appointment of the administrator over the school. Learned counsel submits that all charges and allegations have been inquired and analyzed by the enquiry committee after examination of 13 witnesses in support of the charges and two witnesses in defence.

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6. Learned counsel for the petitioners-management submits that there is no violation of principles of natural justice. Furthermore, there is no violation of the provisions of MEPS Act and rules thereunder in conducting the enquiry. Learned counsel in the alternate submits that if at all the principles of natural justice are violated, at the most enquiry can be redirected to avoid the multiplicity of proceedings. Learned counsel submits that the Presiding Officer of the School Tribunal has recorded the perverse findings of facts and the same itself becomes a question of law.

7. Learned counsel appearing for the petitioner-management, in order to substantiate his submissions, placed reliance on the following cases :-

- (i) Adarsh Vidya Mandir Trust and another Vs. Awadesh Narayan Komal Singh and others reported in 2004 (4) Mh.L.J. 173.
- ii] Bal Shikshan Mandal and another Vs. Poonam Rameshwar Joshi and another reported in 2001 (4) ALL MR 789.
- iii] M/s Dale and Carrington Invt. (P) Ltd., and another Vs. P.K.Prathapan and others reported in 2004 AIR SCW 5143.
- iv] Andheri Education Society and another Vs. Sherly Paul and others reported in 2017 (1) ALL MR 841.
- v] Central Bank of India Bombay Vs. Sion Bakers and

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confectioners Ltd. Bombay reported in 2008 (5) MhLJ 772.

- vi] Nilesh R Mandra Vs. Union of India and ors reported in 2008 (3) Mh.L.J. 808.
- vii] State Bank of India and ors.Vs. Narendra Kumar Pandey reported in 2013 SCW 581.

8. Learned counsel appearing for respondent no.1/employee submits that respondent-employee has challenged the initial order of termination dated 8.11.2014 by filing an appeal no.31 of 2014 before the School Tribunal. By order dated 30.11.2015 the School Tribunal had partly allowed the appeal, quashed and set aside the termination order dated 8.11.2014 with the directions to the petitioner-management to constitute new enquiry committee and to complete the enquiry work within a period of four months from the date of constitution of new enquiry committee. Though, the petitioner-management has preferred writ petition no.1512 of 2016, withdrew the said writ petition on 29.4.2016. Learned counsel submits that even after re-constitution of three members enquiry committee, respondent-employee was not served with the copy of the charge sheet as required under rule 37 (1) of the

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MEPS Rules, 1981. Learned counsel submits that charges contained in the show cause notice dated 17.6.2014 and alleged charge-sheet dated 7.6.2016 are vague and also different in material particulars. Learned counsel submits that charges referred in the charge sheet are vague. Learned counsel submits that the convener namely Sandeep Wagh was also nominated as member of the enquiry committee. Learned counsel submits that said convener Sandip Wagh is son of the President of the Educational Institution Mr. Vinayak Wagh. Though, writ petition no.1512 of 2016 came to be withdrawn by the petitioner-management with the assurance of the reconstitution of the enquiry committee by excluding names of Vinayak Wagh, Padma Wagh (wife of Vinayak Wagh), further nominated said Sandip Wagh, who happened to be the real son of Vinayak Wagh as a convener and also the Member of the enquiry committee. Learned counsel submits that the learned Presiding Officer of the School Tribunal has, therefore, rightly concluded that a person cannot be a judge in his own case. Learned counsel submits that,

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on conclusion of the enquiry, summary of the proceedings as well as statement of the witnesses were not given to the respondent no.1-employee in terms of the provisions of Rule 37 (4) of the MEPS Rules, 1981. Learned counsel submits that enquiry committee has given summary of the proceedings dated 4.2.2017 to the respondent-employee without copies of the statement of the witnesses and documents produced by the petitioner-management. Even, the representative of the respondent-employee addressed a letter dated 13.2.2017 to the convener of the enquiry committee for supply of the copies, but the same was not supplied to him. Learned counsel submits that representative of the respondent-employee by his letter dated 22.2.2017 to the convener of the enquiry committee conveyed that enquiry report dated 22.2.2017 was already prepared behind his back and it was submitted directly. Learned counsel submits that on the said enquiry report only two members of the enquiry committee have put their signatures, however, nominee of the respondent-employee had taken strong objection. Even, nominee of

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the respondent-employee prepared a separate enquiry report and opined that charges made against respondent-employee are not proved and accordingly recommended for exonerating the respondent-employee from the charges, however, the two members of the enquiry committee prepared report dated 22.2.2017 and held that charges are proved against respondent-employee. Learned counsel submits that mandatory requirement relating the procedure of the enquiry was not followed. In consequence thereof, enquiry proceedings as well as enquiry committee's report stands vitiated. Learned counsel submits that in terms of sub-rule (5) of rule 36 of the MEPS Rules, 1981 the convener of the respective enquiry committee shall be the nominee of the President. It is thus clear that convener is not a member of the enquiry committee. It is his duty to initiate action pertaining to the conduct of the enquiry committee and to maintain all relevant record of the enquiry.

9. Learned counsel submits that further the

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learned Presiding Officer of the School Tribunal has considered all these material aspects and, accordingly, decided the appeal. Learned counsel submits that, however, without assigning any reasons the learned Presiding Officer of the School Tribunal has awarded 30% of the back wages. Learned counsel submits that the School Tribunal has ignored the affidavit of the respondent-employee in respect of his unemployment. In case of wrongful termination reinstatement with continuity of service and back wages is normal rule. Learned counsel submits that it is well settled position that if employer wants to avoid payment of full back wages then, necessary pleadings to that effect followed by evidence to prove the same is essential. Learned counsel submits that writ petition no.7374 of 2018 is preferred to the extent of back wages and the order passed by the School Tribunal may be corrected to the extent of back wages. Respondent-employee is entitled for the full back wages from the date of his termination till his reinstatement.

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10. Learned counsel appearing for Petitioner-management without prejudice to the contentions raised in the writ petition no.5339 of 2018 submits that in absence of any evidence lead by the parties in respect of gainful employment by the respondent of his unemployment during the period of his termination/reinstatement, the order passed by the School Tribunal pertaining to back wages requires no interference.

11. Learned counsel appearing for the respondent no.1- employee, in order to substantiate his submissions, placed reliance on following judgments :-

- i] Nandkumar Mahadeo Dengale Vs. Bhavika Vidya Prasarak Mandal and others reported in 2008 (5) Mh.L.J. 598.
- ii] Saidranth s/o Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha and another reported in 2007 (4) ALL MR 281.
- iii] Yavatmal Islamia Anglo Urdu Education Society and another Vs. Mujib Ahmed Abbas ali and another reported in 2010 (4) Bom.C.R. 416.
- iv] Kranti Junior Adhyapak Mahavidyalaya and another Vs. The State of Maharashtra and others reported in 2011 (6) MR 625.
- v] Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors reported in 2013 (6) ALL MR 903 (S.C.)

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- vi] Shiv Nandan Matho Vs. State of Bihar and others reported in (2013) 11 Supreme Court Cases 626.
- vii] Head Master Vivek Vardhini Madhyamik Vidyalaya, Malizap Vs. Alka Namdeo Khalekar and ors reported in 2017 (1) Mh.L.J. 105.
- viii] Kashiram s/o Rajaram Kathane Vs. Bhartiya R P Damle Gram Sudhar Tatha Shikshan Prasar Society and others reported in 1997 (3) ALL MR 388.
- ix] Manmad St. Xavier's Society, Manmad and another Vs.State of Maharashtra and others reported in 2006 (3) Mh.L.J. 852.

12. I have also heard the learned A.G.P. for respondent State authority.

13. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in both the writ petitions, annexures thereto and the reply filed by the respondents.

14. According to the petitioner-institution after following the provisions of M.E.P.S. Act and the rules thereunder, enquiry was conducted in a fair manner adhering to the principles of natural justice and

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considering the misconduct of respondent-employee the enquiry committee has recommended termination. The learned counsel for the petitioner-management has vehemently submitted that there is no conflicting role as a convener and the member of the enquiry committee nominated by the management and, as such, the observations made by the School Tribunal about violation of principles of natural justice is contrary to rule 36 and 37 of the MEPS Rules, 1981. According to the respondent-employee, there is a blatant violation of the principles of natural justice by not following the provisions of rule 36 and 37 of the MEPS Rules, 1981. Learned counsel for respondent-employee has vehemently submitted that in terms of sub-rule (5) of Rule 36 of the MEPS Rules 1981, the convener of the enquiry committee shall be the nominee of the President and in view of the same, if the convener is a Member of the enquiry committee, then there is blatant violation of principles of natural justice as a person cannot be a judge in his own cause. According to the respondent-employee charges as levelled against respondent-aaa/-

employee were vague in nature and enquiry was held in respect of frivolous issues to get rid of respondent-employee or victimize him.

15. In view of the above submissions, it is necessary to look into the provisions of Rules 36 and 37 of the MEPS Rules, 1981. Rule 36 and 37 of the MEPS Rules, 1981 reads as under :-

36. enquiry Committee :-

(1) If an employee is allegedly found to be guilty on [any of the grounds specified in sub-rule (5) of rule 28] and the Management decides to hold an enquiry, it shall do so through a properly constituted enquiry Committee. Such a committee shall conduct an enquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorized by the Management in this behalf (and in the case of an enquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

[(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an enquiry be conducted against the employee and if it decides to conduct the enquiry, the enquiry shall be conducted by an enquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorized by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management ;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

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(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1) -

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.]

(3) The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgment due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed enquiry Committee and to forward the name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the enquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the enquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule (2).

(5) The Convener of the respective enquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the enquiry Committee and shall maintain all the relevant record of the enquiry.

6] The meetings of the enquiry committee shall be held in the school premises during normal school hours or immediately thereafter if the employee agrees and even during vacation.

37. Procedure of enquiry :-

(1) The Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convener of the enquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgment due, within 7 days from the date on which the enquiry Committee is deemed to have been constituted.

(2) (a) Within 10 days of the receipt of the copies of charge-sheet and the statement of allegations by the employee or the Head, as the case may be,-

(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convener of the enquiry Committee in person or send it to him by the registered post acknowledgment due.

(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convener of the enquiry Committee the names of witnesses whom they propose to so examine, and

(iii) If the Management desires to tender any documents by way of evidence before the enquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the document relied upon by the Management is a register or record of the school it shall permit the employee or the Head as the case may be, to take out relevant extracts from such register or record. The employee or the Head as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence.

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the enquiry Committee shall meet to proceed with the enquiry and give 10 days notice by registered post acknowledgment due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

(c) The enquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case.

(d) (i) The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee.

(ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross-examine the witnesses examined on behalf of the Management.

(iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e) All the proceedings of the enquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.

(f) The enquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the enquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the enquiry Committee has, in the special circumstances of the case under enquiry, extended the period of completion of the enquiry with the prior approval of the Deputy Director. In case the enquiry is to be completed within the period of 120 days

or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the enquiry.

(3) The Management and the employee or the Head, as the case may be shall be responsible to see that their nominees and the witnesses, if any, are present during the enquiry. However, if the enquiry Committee is convinced about the absence of either of the parties to the dispute or any of the members of the enquiry Committee on any valid ground, the enquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.

(4) The Convener of the enquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgment due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.

(5) The employee or the Head as the case may be shall submit his further explanation to the Convener of the enquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgment due.

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the enquiry Committee shall complete the enquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgment due. Thereafter, the decision of the enquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the enquiry Committee, by registered post acknowledgment due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.

16. In a case of Nandkumar Dengane Vs. Bhavika Vidya Prasarak Mandal and others (supra) relied upon by learned counsel for respondent-employee,

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in paragraph no.9 of the judgment this Court has made following observations :-

9. There is another facet which also vitiates the enquiry proceedings including the findings of the enquiry committee. Rule 36 of the MEPS Rules provides for the details of the enquiry committee to be constituted and as per Sub-rule (2)(a) the enquiry committee must consist of the following three members :
 - (i) a representative of the management to be nominated by the management or the President of the management, if so authorized by the management;
 - (ii) a member to be nominated by the employee from amongst the employees of any private school ; and
 - (iii) a member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred.

Sub-rule (5) of Rule 36 states that the convener of the respective enquiry committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the enquiry committee and shall maintain all the relevant record of the enquiry. It is thus clear that the convenor is not a member of the enquiry committee but is associated with the enquiry committee with a limited role and it is his duty to initiate action pertaining to the conduct of the enquiry and to maintain all the relevant record of the enquiry. If the enquiry is adjourned from time to time it is the duty of the convenor to intimate the next date of the enquiry sittings but he does not participate in the enquiry proceedings as a member of the enquiry committee. He assists the enquiry committee in the secretarial role.

Rule 37 of the MEPS Rules lays down the procedure of enquiry. Sub-rules (4), (5) and (6) of Rule 37 read as under:

If the employee or the Head, as the case may be, communicates the name of the person nominated by him the enquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the enquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in Sub-rule (2).

- (5) The Convenor of the respective enquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the

conduct of the enquiry Committee and shall maintain all the relevant record of the enquiry.

- (6) The meetings of the enquiry Committee shall be held in the school premises during normal school hours or immediately thereafter, if the employee agrees and even during vacation.

It is clear from the enquiry proceedings in the instant case that the mandatory requirements set out in Sub-rules (4) to (6) of Rule 37 have not been followed. On conclusion of the enquiry, a summary of the proceedings was not forwarded to the delinquent-teachers within four days so as to allow him/her a time of seven days to offer his/her further explanation, if any. The teacher was not given an opportunity to submit his/her further explanation to the convenor of the enquiry committee. In addition, the enquiry committee's report has been signed by Shri Vasant Bagad and Shri Prabhakar Jadhav. Shri Prabhakar Jadhav was the convenor of the enquiry committee but from the proceedings it is clear that he presided over the enquiry and actively participated in the same as a member. The enquiry committee report holding that the charges were proved was required to be signed by Shri Vasant Bagad and Smt. Devangana Keni, who was the management representative. Instead Shri Vasant Bagad and Shri Prabhakar Jadhav signed the report and submitted it to Smt. Devangana Keni. This is contrary to the mandatory requirements of Rule 37 (6). Hence the enquiry proceedings as well as the enquiry committee's majority report are vitiated for non-compliance of the mandatory requirements of Rule 37(3) to (6) of the MEPS Rules. In this regard, I am supported by the decision in the case of Vidya Vikas Mandal (Supra). This is one more ground to set aside the impugned judgment of the School Tribunal. In the said case the Supreme Court held that when the committee of three members is appointed to enquire into a particular matter, all the three should submit their combined report, whether consenting or otherwise. In the instant case the majority report could be treated to have been validly signed only by one member of the committee and the minority report has been signed by the teachers' representative and Smt. Devangana Keni has not signed any of these reports and, therefore, the mandatory requirements of Sub-rule (6) of Rule 37 have not been complied with. The School Tribunal has also held to the same effect, but for different reasons and this finding of the Tribunal has not been challenged by the management.

17. In a case of Kashiram s/o Rajaram Kathane

Vs. Bhartiya R P Damle Gram Sudhar Tatha Shikshan

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Prasar Society and others reported in 1997 (3) ALL MR 388 (supra), wherein the Division Bench of this Court in paragraph no.6 of the judgment has made following observations :-

6. In this case, a reading of Rule 37(6) would show that the Committee constituted was the enquiring authority as well as the final decision making authority in the sense that the management's role was only to implement the decision of the enquiry Committee. Therefore, the role of the Committee cannot be treated as only recommendatory. Thus, the Committee really is the decision making authority who was to take evidence and adjudicate the matter. When the nature and character of the Committee is so understood, the whole proceeding must be consistent with the principles of natural justice.

18. In a case Manmad St. Xavier's Society, Manmad and another Vs. State of Maharashtra and others. reported in 2006 (3) Mh.L.J. 852 this Court in paragraph no.9 has made following observations :-

9. Having considered the rival submissions, the position which emerges from the record is that action against the Respondent No.4 was taken even in the past which attempt was, however, unsuccessful. The Respondent No.4 happened to be office bearer of the employees, union., Obviously, there were differences between the Respondent No.4 and his superiors, who were in commanding position. The Respondent No.4 was acquitted by the Criminal Court of the accusations made against him by his superiors. As a consequence of acquittal by the Criminal Court, on 20th January 1981, in Criminal Case No.1902 of 1980, decided by the High Court of Bombay, Respondent No. 4 was reinstated in service by the Management. Soon after reinstatement, Respondent

No. 4 has been embroiled in a controversy pertaining to episode of 31st July 1982. That episode, however, has been considered by the management and treated as deserving minor punishment, which decision is already pending challenge in appeal ; but, on the basis of communication exchanged between the management and the Respondent No.4, pursuant to show cause notice received by the Respondent No. 4, that has been made basis for proceeding against Respondent No. 4. The four charges which are drawn and for which Respondent No.4 was tried, mostly pertain to matters which were already considered. However, to justify the action for initiating disciplinary enquiry against the Respondent No.4 on the basis of his letter dated 13th August 1982, even those charges came to be framed along with charge No.4. Going by the sequence of events and the manner in which the disciplinary action commenced against the Respondent No.4 gives an impression that the Respondent No. 4 was being persecuted.

The person who issued show cause notice was the member of the enquiry committee as nominee of the management of the school. Besides, another member of the committee, at some stage, but later on resigned, stepped into the witness box to depose against the Respondent No. 4. The fact that he had first resigned and then deposed against the Respondent No.4 will make no difference if the totality of the circumstances is taken into account. It is common ground that the enquiry was proceeded in absence of the representative of the Respondent No. 4. Indeed, justification has been offered that the date on which the proceedings were continued, was the adjourned date and absence of the representative of the Respondent No.4 could have been a ground for declining to defer the enquiry. Even so, when examined on the touchstone of principles of fairness and the totality of circumstances, emerging from the record, even, this grievance is a serious one, because it is not the case of the Petitioners that deferring the enquiry by three days as was requested would have been impermissible in law. One cannot be oblivious of the fact that the institutions (schools) such as that of the Petitioners are managed by close knit group of persons under strong leadership of some one like a fortress, unlike impersonal approach in a Governmental organization or institution. In such institutions, like the ones of Petitioners, personal

bias of the leader or the person having say with the close-knit group of persons in the management is bound to influence the decision making process or to facilitate removal of an inconvenient employee.

In the present case, there are strong circumstances to suggest that Respondent No. 4 has been persecuted. The allegations of biased action against the Respondent No. 4 will have to be viewed in the totality of the circumstances. In my opinion, therefore, no fault can be found with the opinion recorded by the Tribunal that the action against the Respondent No. 4 suffered from the vice of bias and replete with mala fide. With this finding, the entire proceedings are vitiated in the eye of law.

19. In the instant case, the earlier termination order of the respondent-employee came to be set aside by the School Tribunal in Appeal No.31 of 2014 and relegated back to the Management for fresh enquiry from the stage of constitution of the enquiry committee by removing the illegality mainly on the ground that Vinayak Saluba Wagh (the father of the present convener and Member of the enquiry committee Mr. Sandip Wagh) was appointed as convener of the enquiry committee and respondent-employee had made several allegations against him and vice versa. The School Tribunal held that the appointment of Vinayak Wagh would amount to acting as the judge in one's own cause and the persons, who is prosecutor automatically incurs

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disqualification to be a Judge in the same cause. By filing writ petition no.1512 of 2016 the petitioner-management has challenged the judgment and order passed by the School Tribunal in said appeal No.31 of 2014. By order dated 29.4.2016 this Court has disposed off the writ petition by recording the statement of the counsel appearing for the Management that Management may opt for any other person from amongst their trustees to be included in the enquiry committee when the same would be reconstituted. Furthermore, the statement of the learned counsel appearing for the respondent-employee also came to be recorded that respondent-employee had objection with regard to the inclusion of the Management representative in the enquiry committee which is restricted as against Mrs Padma Wagh and Mr Vinayak Wagh. It appears that by taking advantage of the said statement about restrictions for appointing the Management representatives in the enquiry committee, Sandip Vinayak Wagh came to be appointed as a convener so also the Member of the enquiry committee.

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It is a part of the record that respondent-employee right from the beginning has raised objection against appointment of Sandip Wagh as Member of the enquiry committee so also his appointment as a convener not merely on the ground that he is a son of Chief President Mr. Vinayak Wagh, but also on the ground that he had filed complaint against Sandip Wagh on 5.3.2012 at MIDC Police Station, Chikalthana, Aurangabad. In terms of the provisions of Sub-rule (5) of Rule 36 of the MEPS Rules, 1981, the convener of the respective enquiry committee shall be the nominee of the President and if the same person is nominated as a Member of the enquiry committee by the Management which fact is fatal. The person who is prosecuted automatically incurs disqualification to be a judge in the same cause.

The second aspect of violation of principles of natural justice is that the Committee of the three members as appointed into the particular matter, all the three members have not submitted combined report whether consenting or otherwise. In view of the same,

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as held in the case of Nandkumar Dengane Vs. Bhavika Vidya Prasarak Mandal and ors. (supra) the mandatory requirement set out in sub-rule 4 to 6 in Rule 37 have not been followed. Though, it has been contended that third member, who happened to be a nominee of the respondent-employee has refused to sign the enquiry committee, however, it is a matter of record that said third member has submitted report independently exonerating the respondent-employee from the charges levelled against him. So also the mandatory provisions of Rule 37 (4) of the MEPS Rules, 1981 are not followed. Summary proceedings and copies of the statement of the witnesses have not been given to the respondent-employee. Furthermore, summary of the proceedings though given to the respondent-employee, later, it was without copies of the statement of the witnesses and documents produced by the petitioner-management.

20. I have carefully gone through the record and proceedings including the examination of each and every witnesses. It appears that the petitioner-

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management has examined 13 witnesses and respondent-employee has examined two defence witnesses. It is pertinent that most of the witnesses examined on behalf of the Management have submitted their evidence in writing before the Convener Sandip Wagh and, thereafter, again they have given their oral evidence before the enquiry Committee. In addition to this, convener Mr. Sandip Wagh, who happened to be a Member of the enquiry Committee has again examined those witnesses by putting leading questions and brought on record the answers as expected by him. In order to demonstrate the same, I would discuss the evidence of one Bhausahab Sonaji Wagh, who happened to be the Head master of Bhagwan Vidyalaya, Adgaon. He is on the point that one Santosh Patil, employee of the School had attempted to commit suicide, however, the respondent-employee had taken undue advantage of the same, defamed the management alongwith Head Master by making a public statement that said employee Santosh Patil had attempted to commit suicide on account of harassment and ill-treatment extended to

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him. This witness has accepted before the enquiry committee that he has already submitted his evidence in writing before the convener Sandip Wagh. It has been specifically mentioned in his evidence that he has submitted said evidence in writing prior to the meeting of the enquiry committee before the Convener Mr. Sandip Wagh. His oral evidence came to be recorded on 12.11.2016. It further appears that on 23.11.2016 convener Mr. Sandip Wagh has again examined him. It has specifically mentioned in the said examination that questions are asked by convener Sandip Wagh. I would reproduce one question and answer given by the witness Bhausahab Wagh to indicate that as to the manner in which the said enquiry was conducted.

प्रश्न : श्री संतोष पाटील यांच्या मृत्यू प्रकरणी केलेल्या पोलीस कारवाही मध्ये श्री मेहेत्रे व श्री बंडू ढाकणे यांनी आपणास व आपले सहकारी शिक्षक यांना निलंबित करावे व त्यांचेवर कार्यवाही करावी असा दबाव पोलीस यंत्रणेवर, शिक्षणाधिकारी कार्यालयावर आणला होता का?

उत्तर : श्री भाऊसाहेब वाघ यांनी होय असे उत्तर दिले.

21. It appears that the convener Mr. Sandip Wagh has played important role in the adjudication of
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the charges against respondent-employee. I do not find any substance in the submission made on behalf of the petitioner-management that there is no conflicting role if the same person appointed as a convener and Member of the enquiry committee. Mr. Sandip Wagh, the convener has almost done each and everything except to enter the witness box and give evidence in support of the charge. It is to be stated here that said Vinayak Wagh is the Chief Trustee, his wife and two sons are also the trustees and they are managing the affairs of the educational society one handed. In a case of Manmad St. Xaviers Society, Manmad and another Vs. State of Maharashtra and ors. (supra) wherein this Court (Coram : A. M. Khanwilkar, J. the then Judge of the Bombay High Court) has aptly described the same as "One cannot be oblivious of the fact that the institutions (schools) such as that of the Petitioners are managed by close-knit group of persons under strong leadership of some one like a fortress, unlike impersonal approach in a Governmental organization or institution. In such institutions, like the ones of Petitioners, aaa/-

personal bias of the leader or the person having say with the close-knit group of persons in the management is bound to influence the decision making process or to facilitate removal of an inconvenient employee.”

22. Furthermore, on careful perusal of the entire record of the enquiry proceeding, including the charges and statement of the facts, it appears that charges are vague. The same is evident from the very first charge which speaks about absenteeism in attending the duties on the part of the respondent-employee for the period of 1998 to 2014 (for almost sixteen years). In the statement of object, no details are given as to the said charge of absenteeism. It is well settled that charges should be specific, definite and give details of the incident which form the basis of the charges and no enquiry can be sustained on vague charges. It is to be mentioned here that in view of the allegations made by the management against the respondent-employee including the respondent-employee, the education department has conducted enquiry and submitted

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report to its superior. Said enquiry committee has expressed opinion that President of Management Mr. Vinayak Wagh has played role in day to day business of the School and the then Head Master had no control over the affairs of the school. There are strained relations between the Management and employees of the school. The learned Presiding Officer of the School Tribunal on perusal of the record observed that though respondent-employee was present since the year 2010, he was shown as absent and his leave was treated without pay and leave salary was not given to him for that period. There is also a charge against the respondent-employee that he had published some news and defamed the management with an intention to prepare the grounds for appointment of the Administrator in the School, however, there is no evidence to indicate that it is a paid news. Even though name of the correspondent of the said newspaper has been mentioned in the news, there is no evidence about source of the information. There are charges against the respondent-employee that he had made correspondence

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to the petitioner-management and filed writ petition and initiated various proceedings against the Management and Education Department. The same has been charged as misbehaviour. I agree with the opinion expressed by the learned Presiding Officer of the School Tribunal that filing of the complaint and writ petition could not be said to be a misbehaviour or arrogance of the respondent-employee. So far the charge about obtaining loan from the Banks for purchasing the motor vehicles, respondent-employee has prepared false and fabricated documents, however, the learned Presiding Officer of the School Tribunal on going through the record has observed specifically that there is no documentary or oral evidence adduced to prove this fact. Learned counsel for the petitioner-management has vehemently submitted that respondent-employee has admitted said fact, however, despite said admission before the Management, no action was taken about fabricated documents nor concerned Bank has filed any complaint against the respondent-employee. According to the respondent-employee, his statement was recorded by the
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Management to that effect, forcibly. So also there is no evidence as observed by the School Tribunal that respondent-employee has instigated the family members of deceased Santosh Patil for lodging criminal complaints against Head Master and the trustees of the Management. The learned Presiding Officer of the School Tribunal has rightly given reference to the evidence of the wife of the deceased Santosh Patil, wherein she nowhere admitted that respondent-employee has instigated them to lodge the complaint against Management and President of the Management. Learned Presiding officer of the School Tribunal has also observed that though witnesses have deposed about warning and oral directions given to the respondent-employee about his absenteeism, misconduct, misbehaviour, however, the petitioner-management has not filed on record any documentary evidence, such as yearly confidential report of the respondent-employee to show adverse remarks, if any, passed against him and communicated to him. It is rather an admitted fact that adverse remarks, if any, were not communicated to the

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respondent-employee at any point of time.

23. The learned Presiding Officer of the School Tribunal has thus rightly held that action of termination against respondent-employee suffers from vice of bias and malafide. The learned counsel for the petitioner-management in the alternate prayed for the liberty to the Management to conduct denovo enquiry, however, this is second occasion and no purpose would be served by granting such a liberty to the petitioner-management to make an enquiry into the charges which are vague, suffers from bias and malafide.

24. So far as the grant of back wages to the extent of 30% which is the subject matter of another writ petition No.7374 of 2018, in absence of any specific pleading by the respondent-employee that he was not gainfully employed from the date of suspension till the date of reinstatement and further any counter evidence in respect of the same from the petitioner-management, I am not inclined to interfere in the order passed by the

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School Tribunal about grant of 30% back wages. In the result, I proceed to pass the following order.

ORDER

- I. Writ Petition No.5539 of 2018 (Bhagwan Pratishthan through its executive Trustees and another Vs. Bandu Dhrupatrao Dhakne and another) and Writ Petition No.7374 of 2018 (Bandu Dhrupatrao Dhakne Vs. Bhagwan Pratishthan through its executive trustees and others) are hereby dismissed. No order as to costs.

- ii. Writ Petitions are accordingly disposed off.

25. At this stage, the learned counsel appearing for the petitioners in writ petition no.5339 of 2018 submits that in terms of the order passed by the School Tribunal, the respondent-employee is yet to be reinstated and in view of the same, this order may be stayed for a reasonable period so as to enable the petitioners to approach the Supreme Court. Learned counsel appearing for respondent-employee submits that there is a blatant violation of principles of natural justice and termination order suffers from various
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infirmities including vague charges and victimization of the respondent-employee. Thus, considering the aforesaid submissions, I am not inclined to stay the effect of this order. Request is refused.

(V. K. JADHAV, J.)
