

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2425/2017

PETITIONER : National Integration and Education Welfare Society, Akola through its President Near Anwari Masjid, Hamza Plot Old City, Akola, Tah. & Dist – Akola.

...VERSUS...

RESPONDENTS :

1. The Presiding Officer,
School Tribunal, Amravati Division,
Amravati.
2. The Education Officer,
Zilla Parishad, Akola, District Akola.
3. Rafia bi Abdul Nabi,
Aged about 44 years, Occ : Service,
R/o Kazipura, Subhash Road, Tah.
& Dist. - Akola.
4. Sy. Muzahid Hussain Sy. Khalid
Hussain, C/o Ekra Urdu Primary
School, Tah. & Dist – Akola.

Shri S.P. Bhandarkar, Advocate for petitioner
Shri K.L. Dharmadhikari, AGP for respondent nos.1 and 2
Shri P.S. Patil, Advocate for respondent no.3
Shri Akshay Sudame, Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 01/10/2021
Date of pronouncing the judgment : 15/11/2021

J U D G M E N T

1. Rule. Rule made returnable forthwith. Heard learned Counsels for the parties.

2. It is not in dispute that the respondent no.3 being a duly qualified person was appointed in the school run by the petitioner in the year 2003, which appointment was approved by the Education Department. The respondent no.3 acquired the status of a deemed confirmed employee and she has continuously served from 1/7/2003 onwards. In 2012, the respondent no.3 was promoted as the Headmistress of the primary school and continued as such.

3. Show-cause-notices were issued to the respondent no.3 on 19/5/2015, 25/5/2015 and 29/5/2015. These show-cause-notices were duly replied by the respondent no.3. The respondent no.3 was suspended on 3/6/2015, which was challenged before the High Court in Writ Petition No.3297/2015, in which the Education Officer was directed to enquire into the matter and file a report, in consequence of which an enquiry was conducted on 14/7/2015 and an affidavit was filed in Writ Petition No.3297/2015 on 19/8/2015.

4. The Management/petitioner completed the enquiry against the respondent no.3 and issued termination order on 30/8/2015.

5. The termination order was challenged by the respondent no.3 before the learned School Tribunal, Amravati, by way of Appeal No.66/2015, who by the judgment dated 4/2/2017 allowed the same, whereby the termination order dated 30/8/2015 of the respondent no.3 was quashed and set aside and the petitioner – National Integration and Education Welfare Society (respondent no.1 therein) and the Education Officer (Primary) [respondent no.2 therein] were directed to reinstate the respondent no.3 in service along with the entire back wages from the date of her termination till the date of reinstatement, which is the subject matter of challenge in the present petition.

6. Shri S.P. Bhandarkar, learned Counsel for the petitioner contends that : -

- (i) the enquiry was fair and proper; the respondent no.3 was present during the course of the enquiry, and therefore she had full opportunity to represent her case.
- (ii) the charges had been proved against the respondent no.3 and there was no lacuna in the enquiry.
- (iii) the entire procedure was followed.
- (iv) there was compliance with the requirement of Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, “the MEPS Rules”, hereinafter) and even if there were certain discrepancies, they did not cause any prejudice to the respondent no.3.
- (v) the impugned judgment does not record any findings regarding any prejudice being caused to the respondent no.3 on account of any deviation from the procedure and therefore it cannot be said that the enquiry was vitiated.
- (vi) the impugned judgment, according to him, is based upon conjectures and surmises and contained findings extraneous to the record.
- (vii) He therefore submits that the impugned judgment cannot be sustained and is liable to be quashed and set aside.

(viii) Learned Counsel for the petitioner relied upon the following decisions in *Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others*, (1993) 4 SCC 727; *Hiran Mayee Bhattacharyya Vs. Secretary, S.M. School for Girls and others*, (2002) 10 SCC 293; *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and another*, (2005) 8 SCC 264; *Vidya Vikas Mandal and another Vs. Education Officer and another*, 2007 AIR SCW 1141; *Union of India Vs. Y.S. Sadhu, Ex-Inspector*, (2008) 12 SCC 30; *Anant R. Kulkarni Vs. Y.P. Education Society and others*, (2013) 6 SCC 515 and *Bhartiya Seva Acharya Education Society, Nagpur and another Vs. School Tribunal, Nagpur and others*, 2014 (2) Mh.L.J. 879.

7. Shri Akshay Sudame, learned Counsel for the respondent no.4 supports the argument as advanced by Shri Bhandarkar, learned Counsel for the petitioner.

8. Shri P.S. Patil, learned Counsel for the respondent no.3 submits that :

(i) the entire procedure as laid down in Rules 33 to 37 of the MEPS Rules was not followed during the course of the enquiry which vitiates the same.

(ii) the respondent no.4 was appointed as a Chief Executive Officer (CEO), who had prepared and given the statement of allegations, which as per Rule 36(1) of the MEPS Rules, was to be prepared and given by the President of the Society, due to which it stood vitiated.

(iii) no time was granted to submit a proper and effective reply as the statement of allegations which was dated 19/6/2015 was received on 10/6/2015 and though time was sought on 18/6/2015 the same was not granted.

(iv) though the President stated that the explanation submitted by the respondent no.3 was not satisfactory and a meeting should be called, instead of doing the same, a Committee was formed and the charges were served, which though replied was not considered.

(v) there was violation of Rule 33 (1) of the MEPS Rules, as sufficient time for filing effective reply was not granted, and the application for grant of time was treated as a reply and the matter was proceeded on its basis; Rule 33 (2) of the MEPS Rules as the non-satisfaction of the explanation has to be to the satisfaction of the Management who thereupon could only decide whether to go ahead in the matter by appointing an Enquiry Committee; and Rule 36(1)

of the MEPS Rules as the respondent no.3 was the Headmistress and therefore the allegations were required to be communicated by the President of the Management.

(vi) para 21 of the enquiry report indicated the bias of the Enquiry Committee.

(vii) applications by employees to give evidence in favour of the respondent no.3 were itself treated as evidence which was impermissible and therefore opportunity to examine them was denied.

(viii) Rule 37(6) of the MEPS Rules requires a joint report of the Enquiry Committee, which was not there on account of which also the enquiry stood vitiated.

(ix) the secretary was playing a dominant role of CEO.

(x) Learned Counsel for the respondent no.3 therefore submits that for the above reasons the entire enquiry stood vitiated and the impugned judgment which finds this position to be correct cannot be faulted with.

(xi) Learned Counsel for the respondent no.3 relied on the decisions in *S.C. Girotra Vs. United Commercial Bank (UCO Bank) and others, 1995 Supp (3) SCC 212 ; Mahalaxmi Shikshan Sanstha Vs. State*

of Maharashtra and others, 1998 (1) Mh.L.J. 826 ; Mathura Prasad Vs. Union of India and others, (2007) 1 SCC 437 ; Dnyaneshwar Samaj Prabodhan Sanstha Vs. Presiding Officer School Tribunal and others, 2007 (5) ALL MR 893 ; Bhagwanrao s/o Vishwanath Vyawahare and another Vs. Sau. Sunita w/o Gopinath Palve and another, 2008 (1) Mh.L.J. 417 ; Lok Shikshan Sanstha, Nagpur Vs. Gajanan Devidas Dalal and another, 2009 (2) Mh.L.J. 823 ; State of Uttar Pradesh and others Vs. Saroj Kumar Sinha, (2010) 2 SCC 772; Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and another Vs. State of Maharashtra and others, 2012 (1) Mh.L.J. 370 ; Shri Anant R. Kulkarni Vs. Y.P Education Society and others, 2013 (3) ALL MR 952 (S.C.) ; Vijaysingh s/o Bhaidas Patil Vs. Shri Dhanorkar Adhunik Gram Jeevan Shikshan Prasarak Mandal and others, 2016 (4) ALL MR 131 ; Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap Vs. Alka Namdeo Khalekar and others, 2017 (1) Mh.L.J. 105; Vinod Pralhadrao Farkade Vs. Ceekay Daikin Ltd. Aurangabad, 2017 (4) Mh.L.J. 178 ; Rajashri Shahu Chhatrapati Shikshan Sanstha, Nagpur and another Vs. Mangala w/o Rajesh Mankar and others, 2019 (5) Mh.L.J. 418 ; Kai. Venkatrao Deshmukh Shilwanikar and another Vs. Sharad Shridharrao Deshmukh and others, MEC 757 Bombay High Court (Aurangabad Bench); Order dated 1/10/2010 passed by the Division Bench of this Court (Coram : S.A. Bobde and Mrs. Mridula Bhatkar, JJ.) in Letters Patent Appeal No.66/2010 in Writ Petition

No.4347/2002 [Yavatmal Islamiya Anglo Urdu Edu. So. Yavatmal and anr. Vs. Mujib Ahmed Abbas Ali and anr.].

9. Shri K.L. Dharmadhikari, learned Assistant Government Pleader for the respondent nos.1 and 2 supports the impugned judgment.

10. The procedure for conducting an enquiry, against an employee, and for imposing a major punishment, is provided for in Rules 33 to 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Since the matter, relates to the requirement of the Rules, as contemplated by the language used therein, it would be useful to reproduce the relevant portions of these rules, which are as under :-

“33. Procedure for Inflicting major penalties. - (1) If an employee is alleged to be guilty of [any of the grounds specified in sub-rule (5) of rule 28] and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive

Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Education and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order.

36. Inquiry 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 inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry 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 acknowledgement 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 inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee -

(i) -----;

(ii) -----;

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

(i) -----;

(ii) -----;

(iii) -----.

(3) -----.

(4)-----.

(5) The Convener of the respective Inquiry 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 Inquiry Committee and shall maintain all the relevant record of the inquiry.]

37. Procedure of inquiry. - (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 Inquiry 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 Inquiry 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 Convenor of the Inquiry 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 Convenor of the Inquiry Committee the names of witnesses whom they propose to so examine, and

(iii) -----.

(b) -----.

(c) The Inquiry 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) -----.

(f) -----.

(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 inquiry. However, if the Inquiry Committee is convinced about the absence of either of the parties to the dispute or any of the members of the Inquiry Committee on any valid ground, the Inquiry 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.”

11. Since we are concerned here with the imposition of major penalties, the other rules in this regard, are not being considered.

12. Rule 33 (1) of the MEPS Rules, requires that if an employee is alleged to be guilty of any of the grounds specified in sub-rule (5) of Rule 28 of the MEPS Rules and in case there is reason to believe that if the guilt is proved then, if such employee is likely to be reduced in rank or removed from service, the Management has

first to decide whether to hold an enquiry and also whether to suspend the said employee. In case the Management decides to suspend the employee, it has to authorize the Chief Executive Officer to do so after obtaining the permission of the Education Officer. Rule 33 (1) of the MEPS Rules further requires reasons to be recorded by the Management indicating its belief that there is *prima facie* case for removal of the employee or the continuance of such employee in active service is likely to cause embarrassment or to hamper the investigation of the case.

13. Rule 34 of the MEPS Rules requires the payment of subsistence allowance in case the Management with the leave of the Education Officer, as required under Rule 33 (1) of the MEPS Rules, decides to suspend the employee, subject to the satisfaction of the requirements, as contained in Rule 35 of the MEPS Rules.

14. Rule 36 of the MEPS Rules relates to the constitution of the Enquiry Committee, which provides that :

(a) in case the Management decides to hold an enquiry for the imposition of major penalties as contemplated by Rule 28 (5) of the

MEPS Rules, it shall do so through a properly constituted Enquiry Committee.

(b) (i) The CEO, as defined in Rule 2 (c) of the MEPS Rules authorized by the Management shall communicate to the employee by Registered Post with Acknowledgment Due (RPAD), the allegations made against such employee and demand for written explanation within seven days from the date of receipt of the statement of allegations.

(ii) In case the enquiry is against the Head, the allegations shall be communicated by the President of the Management.

(iii) The CEO/President, in case, he finds that the explanation of the employee is not satisfactory, shall place it before the Management within fifteen days from receipt of the explanation.

(iv) The Management, upon the explanation being placed before it, shall decide within fifteen days thereof, whether an enquiry is to be conducted against the employee.

(v) If the Management decides to conduct the enquiry, an Enquiry Committee, as indicated in Rule 36 (2) (a) or (b) of the MEPS Rules, whichever applies has to be constituted.

(vi) The CEO/President is to communicate the names of Members nominated under Rule 11 (2) (a) or (b) of the MEPS Rules, whichever applies by RPAD to the employee/Head, asking the employee/Head to nominate a person on his/her behalf on the proposed Enquiry Committee along with the written consent of such person being to be communicated to the CEO/President within fifteen days of the receipt of the communication.

(vii) On such communication being received by the CEO/President, the Enquiry Committee of three members is deemed to have been constituted. In case no such communication is received from the employee/Head within the period of fifteen days from the receipt of the communication in this regard by the CEO/President, the Enquiry Committee is deemed to have been constituted of two members only.

(viii) The convener of the Enquiry Committee is to be the nominee of the President or the President (in case the enquiry is against the Head), who has to initiate action regarding the conduct of the enquiry and to maintain all the records.

15. Rule 37 of the MEPS Rules, which deals with the procedure of enquiry, contemplates the following :-

(a) Charge-sheet containing specific charges to be prepared by the Management.

(b) Charge-sheet along with statement of allegations and explanation of employee/Head to be handed over to the convener of the Enquiry Committee.

(c) Forward copies of the charge-sheet to the employee/Head within seven days from the date of constitution of the Enquiry Committee.

(d) Employee/Head within ten days of receipt of the copies of charge-sheet plus statement of allegations, is required to submit a written explanation, if so desired to the convener of the Enquiry Committee in person or by RPAD.

(e) Names of witnesses, if required to be examined, by either the Management or the employee/Head to be communicated to the convener of the Enquiry Committee.

(f) All documents desired to be tendered by way of evidence by the Management or the employee/Head are to be made available to each other.

(g) The Enquiry Committee is then required to meet within three days upon the receipt of the explanation by the employee/Head as provided in Rule 37 (2) (a) of the MEPS Rules and proceeds with the enquiry after giving ten days notice by RPAD to the Management and the employee/Head for appearing and production of evidence, examination of witnesses etc.

(h) Rule 37 (2) (c) and (d) and 37 (3) of the MEPS Rules enjoin upon the Enquiry Committee to extend all reasonable opportunity to the employee/Head for defending his case, by affording sufficient opportunities to examine all witnesses and in case so required, even to adjourn the enquiry so as to enable the parties to ensure the presence of either parties during the enquiry.

16. It is thus apparent that Rules 33 to 37 of the MEPS Rules imbibe in themselves the principles of fair play, reasonability and natural justice [see *Dyaneshwar Samaj Prabodhan Sanstha ; S.C. Girotra ; Vijaysingh Bhaidas Patil* (supra)]. Rule 33 (1) of the MEPS Rules necessarily requires, the satisfaction of the Management to hold an enquiry, which satisfaction has to be reflected from the record. Similar is the position, where the Management decides to

place an employee/Head under suspension. Rule 36 (2) of the MEPS Rules requires two stages of satisfaction (a) by the CEO or the President as the case may be, upon receipt of the reply of the employee/Head, to the statement of allegations communicated to such employee/Head as it is only if the CEO/President finds that the explanation submitted by the employee/Head, is not satisfactory, then only the Rule obligates the CEO/President to place it before the Management. It is axiomatic that in case the CEO/President, finds the explanation to be satisfactory, the further requirement as contemplated by Rule 36 (2) of the MEPS Rules would not come into picture and the matter would then stand dropped, without going any further and (b) the satisfaction of the Management, who has upon receipt of the report of the CEO/President along with the statement of allegations and reply of the employee/Head to decide whether to conduct the enquiry or not. The procedure prescribed for the conduct of an enquiry has therefore to be strictly followed [see ***Mathura Prasad*** (supra)] and the employee has to be treated fairly [see ***Saroj Kumar Sinha*** (supra)] and an interested party must not be allowed to participate in the enquiry [see ***Kai. Venkatrao Deshmukh Shilwanikar and another*** (supra)].

17. The propositions as laid down in ***B. Karunakar; Hiran Mayee Bhattacharyya; R.S. Pandey*** and ***Y.S. Sadhu*** (supra) relied upon by Shri Bhandarkar, learned Counsel for the petitioner, have been considered by the hon'ble Apex Court in ***Anant R. Kulkarni*** (supra). ***Vidya Vikas Mandal*** (supra) holds that Rule 37(6) of the MEPS Rules is mandatory and on account of its non-compliance, the enquiry stood vitiated, resulting in a fresh enquiry to be conducted. In ***Anant R. Kulkarni*** (supra) it has been held that where the Court finds that there is a defect in the manner in which the enquiry was held, it was always open for the Court in such a case, to examine the case on merits as well, and in case the Court comes to the conclusion that there was in fact, no substance in the allegations, it may not permit the employer to hold a fresh enquiry as such a course may be necessary to save the employee from harassment and humiliation. After examining the merits of the matter it was held that considering the nature of the charges, the question of holding any fresh enquiry of such vague charges was unwarranted. The finding of the High Court that even in case a fresh enquiry was ordered, before taking any steps towards holding an enquiry, the Management would have to make payment of the full salary owed to the appellant for the

period between the date of termination of the appellant from service till the date of his retirement, was not disturbed. The position therefore would be governed by ***Anant R. Kulkarni*** (supra). The view that in case the Tribunal/Court finds that the enquiry is vitiated, no remand should be directed and it would be permissible for the Tribunal/Court to consider the merits, has been taken by this Court in ***Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) ; Mujib Ahmed Abbas Ali and anr.; Bhagwanrao Vishwanath Vyawhare; Mangala Rajesh Mankar and Alka Namdeo Khalekar*** (supra). ***Bhartiya Seva Acharya Education Society*** (supra), relied upon by Shri Bhandarkar, learned Counsel for the petitioner, in as much as it holds that it was not permissible for the School Tribunal to go into the merits of the charges levelled against the employee, is rendered *per incuriam* to what has been held by the Hon'ble Apex Court in ***Anant R. Kulkarni*** (supra) and therefore to that extent cannot be held to be a good law.

18. It is in the light of the above provisions and legal position that the rival submissions are to be considered. Since the respondent no.3 was the Head of the Primary School, as defined in

Rule 2 (9) of the MEPS Rules, the actions under Rules 33 to 37 of the MEPS Rules, to be performed by the CEO, shall have to be taken by the President. In my considered opinion, after having heard the learned Counsel for the parties and having gone through the record, the petition needs to be dismissed on two basic grounds itself.

19. The statement of allegations as required under Rule 36 (1) of the MEPS Rules, was issued to the respondent no.3 on 9/6/2015, which as per the report of the Postal Department was delivered to the respondent no.3 on 10/6/2015. The respondent no.3 by her communication dated 18/6/2015 requested for one month's time to submit her explanation, which communication was received by the petitioner on 19/6/2015. The President of the petitioner, by his communication dated 19/6/2015 addressed to the Secretary/Managing Committee of the petitioner, stated that the explanation tendered by the respondent no.3, was not satisfactory and therefore, an appropriate decision was to be taken in the meeting of the Managing Committee slated to be held on 22/6/2015. This action on part of the President of the petitioner, was clearly unwarranted for the reason, that by the communication

dated 18/6/2015 the respondent no.3, had merely sought time to submit her explanation and therefore, there was no explanation whatsoever on record, in view of which, the question of the President of the petitioner finding the same to be unsatisfactory did not arise at all. It would have been permissible for the President to simplicitor state that since the communication dated 18/6/2015, seeking time, which was received on 19/6/2015, was beyond the period of seven days, as contemplated by Rule 36 (1) of the MEPS Rules, he was not considering the same, however, this is not the case, as the report dated 19/6/2015 addressed by him to the Secretary/Managing Committee of the petitioner, specifically taking into considering the above position, goes a step ahead to state that the explanation was not satisfactory, which clearly indicates not only the violation of the requirement of Rule 36 (1) of the MEPS Rules, but also, the mindset of the President of the petitioner in the matter.

20. The subsequent satisfaction, under Rule 36 (2) of the MEPS Rules was to be that of the Managing Committee. The Resolution dated 22/6/2015 passed by the Managing Committee of the petitioner, clearly indicates the reliance upon the report dated

19/6/2015 submitted by the President of the petitioner and the consideration of the explanation of the respondent no.3 (which considering that only a request for a time was made, was absent) to arrive at a decision to hold an enquiry, which decision also stands vitiated as it relies upon a non-existent explanation. Thus, the obligation as cast upon the Management by Rule 36 (2) of the MEPS Rules, is also not complied with [see *Vinod Pralhadrao Farkade* (supra)]. The above position would clearly indicate that the entire requirement of Rule 36 (2) of the MEPS Rules, has been given a go-bye, as a result of which, the initial stage, of satisfaction, for conducting an enquiry, both by the President as well as by the Management, is absent due to which the subsequent actions, would clearly stand vitiated.

21. The proceedings of the enquiry speak a totally different story altogether. To cite an example the order-sheet of the meeting of the Enquiry Committee dated 8/8/2015, records that the meeting came to a close at 1:15 p.m. and the same is accordingly signed by the members of the Enquiry Committee to this effect, however, the order-sheet indicates that thereafter the affidavit-evidence of the

CEO of the Management along with documents and so also the affidavit-evidence of three more witnesses was received by the Enquiry Committee and their examination-in-chief was also recorded. Though it has been recorded that the respondent no.3, had refused to cross-examine these witnesses, the order-sheet does not spell out the time when the affidavit-evidence were received or that the meeting reconvened later in time on the same date, of which due notice was given to the respondent no.3. This clearly indicates that the examination-in-chief of these witnesses was recorded by the Enquiry Committee behind the back of the respondent no.3.

22. Rule 37 (2) (b) of the MEPS Rules, as indicated above, requires the Enquiry Committee to see that every reasonable opportunity is extended to the employee for defending his/her case and Rule 37 (2) (d) (ii) and (iii) of the MEPS Rules mandate that the employee shall have a right to be heard in person and lead evidence and to have sufficient opportunity to examine all witnesses notified. Thus, an obligation was cast upon the Enquiry Committee to afford all reasonable opportunities to the respondent no.3 to

examine witnesses in support of her defence. It is however material to note as indicated from the order-sheets of the enquiry, that when on 15/8/2015 as many as six employees of the petitioner, namely (i) Shabana Parveen Alam Khan-Assistant Teacher (ii) Sajida Anjum Noor Khan – Assistant Teacher, (iii) Shahin Talat Mehamood Khan – Assistant Teacher (iv) Reshma Ajaj Ulla Khan – Assistant Teacher, (v) Saleha Khatun Yusuf Khan – Assistant Teacher and (vi) Nikhat Jabin Mohd. Yusuf – Assistant Teacher, submitted individual applications to the Enquiry Committee, expressing their intention to give evidence in support of the respondent no.3, as is indicated by their letters at Document No.R-41, their applications expressing their willingness to give evidence in support of the respondent no.3, were itself treated as their evidence, as is indicated from the order-sheet dated 15/8/2015, which is a position alien to the procedure as contemplated by Rule 37 (2) (d) of the MEPS Rules, for these witnesses having expressed their willingness to tender evidence, in favour of the respondent no.3, ought to have been called, examined and cross-examined, in the fairness of the enquiry which was being conducted. That apart, 15/8/2015 was a national holiday on account of independence day and it was not correct on part of the

Enquiry Committee to have kept the proceedings on that day and in case it was so done, the consent of the employee would be necessary [see *Gajanan Devidas Dalal* (supra)], which is not reflected in the proceedings before the Enquiry Committee.

23. The order-sheets placed on record indicate that thereafter the nominee of the respondent no.3, on the Enquiry Committee, considering the manner in which the enquiry was being conducted refrained from further participating in the enquiry proceedings.

24. The above discussion would clearly indicate that the requirements of Rule 37 (2) (c) and (d) of the MEPS Rules, have also been violated by the Enquiry Committee, while conducting the enquiry, as a result of which, the entire proceedings, as well as the report submitted by the Committee would stand vitiated.

25. It is thus apparent, that the enquiry, was neither fair nor proper, as the respondent no.3, was denied sufficient opportunity, to place her reply on record, apart from which there was no satisfaction

as required under Rule 36 (2) of the MEPS Rules either of the President or the Management and so also the requirement laid down in Rule 37 (2) (c) and (d) of the MEPS Rules has not been followed by affording the respondent no.3, a proper opportunity, to examine witnesses who had expressed their willingness to depose in support of the respondent no.3, in view of which the finding that the enquiry as conducted against the respondent no.3 clearly stands vitiated, as recorded by the learned School Tribunal, cannot be faulted with.

26. The question of no prejudice being caused to the employee/respondent no.3, due to non-compliance of the provisions of Rule 33 to 37 of the MEPS Rules, does not arise at all, since the observations of these Rules during the conduct of the enquiry and so also by the Management for suspending the employee is mandatory and non-observance of the said provisions, would clearly vitiate the enquiry and so also the actions on part of the Management.

27. The learned School Tribunal in para 29, has gone into the merits of the matter also. It has after considering the charges levelled against the respondent no.3, found that most of the charges

in respect of keeping the account, making audit, implementing the mid-day meal scheme during summer vacation, etc. were the duties of clerical nature which were normally required to be done by staff, but the Management had not issued any show-cause-notice nor held responsible anyone from the staff along with the respondent no.3. In so far as the charges as regards misappropriation, it has found that the charges were vague in nature and though the respondent no.3, had asked for the record to defend and to bring out the factual position in respect of this charge, no record was provided by the petitioner, which would vitiate the enquiry [see ***Mahalaxmi Shikshan Sanstha*** (supra)]. It also found that the explanation of the Management for not providing the record to the respondent no.3, that the respondent no.3, being the Head was possessing the record, was not found to be acceptable as the respondent no.3, being the Headmistress of the primary school was not having any independent office and was sharing the cabin of the Headmaster of the secondary school, who also was the Secretary, on account of which also the finding regarding the said charge stood vitiated. Even otherwise after her suspension on 3/6/2011 the records would have become inaccessible to the respondent no.3. The report of the Enquiry

Committee in regard to this charge no.5, which relates to non-submission of accounts regarding funds withdrawn for the implementation of the mid-day meal, merely records that the amounts as stated therein were withdrawn by way of self cheques by the respondent no.3, and no accounts as to its expenditure was submitted. It is not the case of the Management that the mid-day meal scheme was not implemented at all and that no student received the mid-day meal under this scheme. If that be so, then the entire record regarding the implementation of the mid-day meal scheme, which would include the record as to how many students were provided with the meal each day, what were the meals, what cereals, grains, pulses, spices were procured, what were expended, etc. all were with the Management, however, the report of the Enquiry Committee while answering this charge, does not discuss any document/record or for that matter any evidence in this regard to record the finding as to defalcation, whatsoever and is merely based upon conjectures and surmises and merely on default of the respondent no.3, to place documents on record, when the record was with the Management. Surely this was a charge, in respect of which records were available with the Management, however

nothing has been considered, as is apparent from the finding in regard to this charge, which is apparent from a bare perusal of the finding in this regard, though it was the duty of the Management to prove the charge by placing on record documents substantiating the same and also leading evidence in that regard, if it so desired. Thus the finding is clearly not sustainable. That apart nothing has been pointed out for me to digress from what has been held by the learned School Tribunal in this regard as to the merits of the matter.

28. Though Rule 33(1) of the MEPS Rules, provides that where the Management decides to suspend an employee, the same could be done only after obtaining the permission of the Education Officer [see *Kranti Junior Adhyapak Mahavidyalaya (D. Ed.)*], in the instant case, the Education Officer refused to grant such permission, but even before receiving the communication refusing permission, the Management had already placed the respondent no.3, under suspension vide order dated 3/6/2011, as is recorded by the learned School Tribunal in the impugned judgment, which position is not disputed.

29. The suspension without permission coupled by what I, have discussed above about the manner in which the enquiry proceedings were conducted, clearly indicates a totally biased approach of the Management, who appears to have been bent upon to terminate the petitioner by all means whatsoever, which cannot be countenanced in law. There are yet other circumstances which would indicate the bias of the Management and also of the Enquiry Committee, which have been discussed by the learned School Tribunal, in the impugned judgment, and I, am in complete agreement with them.

30. In view of what has been stated above, and my finding, that the entire enquiry stood vitiated, I do not feel it necessary to go into the other contentions raised by the learned Counsel for the respondent no.3.

31. Thus, in light of what has been discussed above, I do not see any merit in the petition. This is not a case where considering the conduct of the petitioner and so also the Enquiry Committee any direction for conducting a fresh enquiry is

warranted. I, find that the learned School Tribunal has correctly considered the entire matter both on the violation of the MEPS Rules in the matter of conduct of enquiry and the merits of the matter correctly and no circumstances have been pointed out for me to take a contrary view.

32. The writ petition is thus devoid of merits and the same is therefore, dismissed. Rule stands discharged. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)