

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

WRIT PETITION NO. 5224 OF 2017

Madhav s/o Rajendra Narhare,
Age : 34 years, Occu. Dismissed Teacher,
R/o. Bhadi, Post. Bhatangali,
Tq. & Dist. Latur.

...Petitioner

Versus

1] The Secretary,
Banjara Jan-Jagruti Mandal,
C/o Saint Goroba-Kaka Primary School,
Mahadeo Nagar, Latur.

2] The Head Master,
Shri Sant Goroba-Kaka Pri. School,
Mahadeo-Nagar, Latur.

3] Education Officer,
Primary, Zilla Parishad, Latur.

...Respondents

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Shri. Suresh M. Kulkarni, Advocate for the petitioner
Shri. B. L. Sagar-Killarikar, Advocate for respondent nos. 1 and 2

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AND

WRIT PETITION NO. 4037 OF 2017

Bramhadev s/o Ramchandra Jadhav,
Age : 31 years, Occu. Teacher,
R/o. Bhandarwadi, Post : Patharwadi,
Tq. Renapur, Dist. Latur.

...Petitioner

Versus

1] The Secretary,
Banjara Jan-Jagruti Mandal,

C/o Shri Saint Goroba-Kaka Primary School,
Mahadev Nagar, Latur.

- 2] The Head Master,
Shri Saint Goroba Kaka Primary School,
Mahadev Nagar, Latur.

- 3] The Education Officer (Primary),
Zilla Parishad, Latur, Dist. Latur.

...Respondents

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Shri. V. D. Salunke, Advocate for the petitioner

Shri. B. L. Sagar-Killarikar, Advocate for respondent nos. 1 and 2

.....

AND

WRIT PETITION NO. 5075 OF 2017

Ram s/o Somnath Khadke,
Age : 32 years, Occu. Teacher,
R/o. Moti Nagar, Latur, Dist. Latur.

...Petitioner

Versus

- 1] The Secretary,
Banjara Jan-Jagruti Mandal,
C/o Shri. Saint Goroba Kaka Primary School,
Mahadev Nagar, Latur.

- 2] The Head Master,
Shri. Saint Goroba Kaka Primary School,
Mahadev Nagar, Latur.

- 3] The Education Officer (Primary),
Zilla Parishad, Latur, Dist. Latur.

- 4] The State of Maharashtra

...Respondents

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Shri. R. J. Godbole, Advocate for the petitioner

Shri. B. L. Sagar-Killarikar, Advocate for respondent nos. 1 and 2

Shri. V. C. Patil h/f Shri. U. B. Bondar, Advocate for respondent no. 3

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CORAM : BHARATI H. DANGRE, J.
DATE : FEBRUARY 17TH, 2022

ORAL JUDGMENT : -

1. The three writ petitions are filed by three distinct employees, being aggrieved by the Judgment and Order passed by the School Tribunal, permitting the management to conduct a fresh inquiry, though it set aside their termination and directed reinstatement as well as back wages.

2. Since the facts involved in these three writ petitions fall in same conspectus, the three petitions are argued together and disposed off by this common Judgment.

. Heard the learned Counsel Shri. Suresh M. Kulkarni for the petitioner in WP No. 5224/2017, learned Counsel Shri. V. D. Salunke for the petitioner in WP No. 4037/2017, learned Advocate Shri. R. J. Godbole for the petitioner in WP No. 5075/2017, learned Counsel Shri. B. L. Sagar-Killarikar for the School Management in all the petitions and the learned Counsel Shri. V. C. Patil holding for Shri. U. B. Bondar for the Education Officer (Primary), Zilla Parishad, Latur, in Writ Petition No. 5075 of 2017. Since the parties expressed consensus to argue the petitions finally, I deem it appropriate to

grant Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

3. The brief background would reveal that the petitioners on possessing the requisite qualifications, were appointed by the respondent no. 1 – management in the respondent no. 2 – school by following due process of selection and subsequently the appointment of Shikshan Sevak, was converted into a regular appointment as Assistant Teacher.

. Since certain discord occurred between the management and it's employees, on the issue of transfer, non-payment of salaries etc., and since the employees of the management including the petitioner protested against the alleged acts of the management, it is their allegation that a criminal complaint came to be lodged against them by the Secretary of the management alleging that a fight had ensued on 16.01.2013 and the petitioners were responsible for the same. Though the defence of the petitioners is, they were beaten by the persons in the management and they had also filed a criminal complaint against the Secretary and other persons in the management, which was registered as an N.C., this incident, however, had it's own repercussions. The management ultimately terminated their services but this was done without conducting a

departmental enquiry and the petitioners approached the School Tribunal by filing an Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981 (hereinafter referred to as “MEPS”) challenging their termination without adhering to the procedure prescribed.

. The Tribunal set aside the termination order on the ground that the procedure as prescribed under the MEPS Rules was not followed and the respondent/management was directed to reinstate the petitioners and the management was permitted to conduct an enquiry as per provisions of Rule 28 (5) r/w Rule 36 and 37 of the MEPS Rules within a period of 120 days, after affording necessary opportunity to the petitioners to participate therein and they were also held entitled for the back wages.

. As a consequence of the said order, the management conducted an inquiry but the contention of the petitioners is that it was not in consonance with the Rules under the MEPS and specifically Rule 36 and 37 and the inquiry was conducted without adhering to the principles of fair opportunity and as expected, it again resulted into termination orders being issued against the petitioners.

4. Once again the petitioners approached the School Tribunal by filing an appeal and urged that the inquiry is vitiated on account of non-adherence of the procedure contemplated under the MEPS Rules and this time, the Tribunal was convinced that the inquiry was not as per the rules and, therefore, allowed the appeals partly, by setting aside the impugned termination orders and a direction was issued to the management to reinstate the appellants (petitioners) on the original post but the Tribunal also directed that this reinstatement is only for the purpose of conduct of a fresh inquiry with continuity in service into the allegations and the inquiry shall continue from the stage of constitution of the Enquiry Committee as the inquiry was not conducted as per the procedure prescribed. The Education Officer (Primary) was directed to withhold the non salary grants of the management in case they fail to reinstate the appellants and make future payment of the salary after reinstatement till the completion of the inquiry.

. The Tribunal, thus, granted a relief to the petitioners but kept the sword of further inquiry hanging on them, and when the judgment of the Tribunal is perused, it can be seen that the Tribunal has recorded a flaw in the conduct of the inquiry against the appellants (petitioners) and from paragraph nos. 114 to 123, the

Tribunal has pointed out to various deficiencies in the conduct of the inquiry and it is particularly recorded that there was clear violation of Rule 37(2)(c) of the MEPS Rules, as the Enquiry Committee has failed to record the statement of the witnesses and it even did not allow the appellants (petitioners) to cross-examine and certain unknown documents have been vaguely referred to, without the same being supplied to the appellants. The Tribunal arrived at a conclusion that the Enquiry Committee without affording an opportunity to the petitioners to lead evidence concluded the inquiry and sought explanation from the appellants whereas, Rule 37(2)(d) of the MEPS Rules contemplate recording of the evidence of the employee after evidence of the management. There is no adherence to the said Rule, is the observation of the Tribunal.

. The Tribunal also recorded the flagrant violation of Rule 37(2)(e) of the MEPS Rules. Apart from this, the glaring lacunae which is noticed by the Tribunal is to the effect, that the respondent no. 1 – Secretary has acted in a triple capacity i.e. Secretary of respondent-Management, the Chief Executive Officer and member Convener/nominee of the President. The constitution of Enquiry Committee was thus found to be defective since it was not in accordance with Rule 36(2) of the MEPS Rules.

. On noticing the aforesaid deficiencies in the enquiry conducted against the appellants, the Tribunal was not at all satisfied with the manner in which the inquiry proceedings were conducted and concluded and it recorded that the inquiry is not conducted as per the requirement, when in the earlier round of litigation, the termination order was set aside by the Tribunal on the ground that there was no inquiry conducted at all.

. So far so good, but now the Tribunal granted an opportunity to the management to conduct an inquiry from the stage of constitution of Enquiry Committee i.e. after excluding the stage of issuance of charge-sheet and the submission of the response by the appellants i.e. right from the stage of constitution of the Enquiry Committee, the inquiry is directed to be conducted afresh.

5. When the impugned order of the Tribunal is carefully read, it clearly record the glaring deficiency in the inquiry proceedings conducted against the appellants and rightly the Tribunal has arrived at a finding that this is not an inquiry in the eyes of law, since it is in utter violation of the procedure that is prescribed in the MEPS Rules and any finding rendered in such inquiry resulting into a penalty and in this case the termination, cannot be sustained and therefore the

Tribunal was pleased to quash and set aside the order of termination in case of all the appellants/petitioners.

. However, recording that there is a flaw, the Tribunal adopted a novel course of action and though it was the management, which was at fault in not conducting a proper inquiry against its employees before imposing a penalty, the benefit has been given to the management by permitting it to conduct a fresh inquiry by constituting the Enquiry Committee afresh, in terms of the MEPS Rules.

6. If on the first occasion, the management committed a lapse of terminating the services of the employees without conducting a departmental enquiry, it is expected that when the matter is remanded back, the management shall adhere to the procedure prescribed in law and by taking advantage of their own wrongs in not properly constituting the Enquiry Committee as provided under Rule 36 of the MEPS Rules and by not adhering to the procedure prescribed in Rule 37 of the MEPS and its various clauses, it cannot then turn back and say that they be permitted to conduct a fresh inquiry. If the inquiry is not found in accordance with law, it stands vitiated and the benefit must go to the employee. However, the Tribunal has failed to consider the aforesaid principle and on the

second opportunity, also deemed it fit to grant one chance to the management to prove the charges it had alleged against its employees by constituting a proper Enquiry Committee and by adhering to the procedure that is prescribed in the MEPS Rules, 1981.

7. The Counsel for the petitioners have perfectly justified in relying upon the decision of a Single Bench of this Court in the case of Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap vs. Alka Namdeo Khalekar and others reported in 2017(1) Mh.L.J. 105, wherein it is held that the principles of natural justice can not be stretched till they snap or result in causing injustice than intended justice. In the backdrop of the facts, the learned Single Judge of this Court (Ravindra V. Ghuge, J.) has made the following observations which are very pertinent and support the case of the petitioners before me and I stand fortified by the said observations :

“32. The School Tribunal has once again set aside the enquiry for violation of Rule 36 and 37. Notwithstanding the same, I have gone through the entire statement of allegations and the charge sheet and the manner in which the President has involved himself in the enquiry. I have concluded earlier in this judgment that the charges are totally vague and ambiguous and the allegation of misappropriation was not levelled upon the appellant in the charge sheet dated 06/01/2014. Even if the enquiry was to be sustained, the order of dismissal deserves to be set aside since all the charges levelled upon the appellant were vague and ambiguous and no details or particulars of the dates and events and nature of offences, were set out.

33. Be that as it may, in catena of judgments, the Hon'ble Supreme Court has held that once the enquiry was set aside for being vitiated, in industrial jurisprudence, the whole enquiry stands watered down and a de novo enquiry needs to be conducted before the Labour Court or the Tribunal, as the case may be. In service law relating to the MEPS Act, 1977 r/w the Rules of 1981, if the enquiry is vitiated at a particular stage in the employment, a fresh enquiry needs to be commenced from the stage at which it was vitiated. In the event, the enquiry is vitiated from the stage of issuance of statement of allegations or constitution of the Enquiry Committee or the issuance of the charge sheet, a fresh enquiry could be ordered.
37. I do not find that the submission of the Management could therefore be accepted. In my view, a denovo enquiry or a fresh opportunity to conduct an enquiry or from the stage at which the earlier enquiry has been vitiated, would be the only chance / opportunity available to an employer to follow the rules and the principles of natural justice and conduct the enquiry in accordance with law. There cannot be repeated chances.”

8. In the wake of the above decision, the impugned Judgment passed by the Tribunal deserves to be partly set aside insofar as it permitted the management to conduct a fresh inquiry against the petitioners from the stage of constitution of the Enquiry Committee. As far as the remaining direction of the Tribunal, is concerned, the management is duty bound to implement the said order and give effect to the same within the stipulated period.

. The direction of the Tribunal which make the entitlement of the back wages due to the petitioner from 10.12.2014 to be dependent on the final outcome of the fresh inquiry, is also quashed and set aside and from the date of their reinstatement in pursuance

of the Judgment & Order passed by the Tribunal, in case of respective petitioners on 04.02.2017, the petitioners are held entitled for back wages from the date of termination i.e. from 09.12.2014 till the date of their actual reinstatement.

9. As far as the petitioner in Writ Petition No. 5224 of 2017 is concerned, it is submitted by the learned Counsel for the management that despite a direction by the Tribunal, he chose not to report for duties. Necessarily, upon this order being passed, the management is at liberty to take a decision about the salary being granted to him from the date of Judgment of the Tribunal till his actual resumption of duties. He is, however, held entitled for back wages from the date of his termination till the order of the Tribunal.

. In wake of aforesaid, Rule is made absolute in the aforesaid terms and Writ Petitions are partly allowed.

[BHARATI H. DANGRE]
JUDGE