

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

WRIT PETITION NO. 7916 OF 2015

Fr. Peter Thamaji Amolik,
Age 48 years, Occ. Nil.
R/o. SFS High School Compound,
Jalna Road, Aurangabad.

... **Petitioner.**

VERSUS

- 1) The President,
Saint Francis De-Sales Education
Society (SFS School),
C/o : Bishop's House,
Cantonment, Aurangabad.
- 2) St. Francis De-Sales Education
Society (SFS School), Jalna Road,
Aurangabad.
Through : Its Head Master.
- 3) The Education Officer (Secondary),
Zilla Parishad, Aurangabad.

... **Respondents.**

...

Advocate for the Petitioner : Mr. S. P. Pandav.
Advocate for the Respondent Nos. 1 & 2 : Mr. V.S. Kadam.
A.G.P. for the Resondent No. 3 : Mr. K. B. Jadhavar.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 22.10.2021.

PRONOUNCED ON : 04.01.2022.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Kadam waives service for the respondent Nos. 1 and 2. Learned A.G.P. waives service for the respondent No. 3. At the joint request of the parties the matter is heard finally at the stage of admission.

2. By invoking the jurisdiction of this Court under Article 227 read with

Article 226 of the Constitution of India the petitioner is challenging the judgment and order passed by the School Tribunal, Aurangabad dismissing his Appeal No. 10/2013 preferred under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter 'the MEPS Act') dated 14.08.2014 against the order of his termination issued by the respondent Nos. 1 and 2.

3. The petitioner was appointed by the respondent No. 1 in a school run by the Society on 18.10.2000 as a headmaster by name St. Xavier's High School Aurangabad. With effect from 01.08.2006 he was transferred to another school being run by the Society by name St. Francis De Sales High School.

4. Having found the petitioner to have engaged in various misconducts, negligence and even moral turpitude, he was put under suspension with effect from 15.12.2008. He was then served with a charge-sheet containing following charges :

- (1) *Being under influence of alcohol while being on the duty.*
- (2) *Unable to avoid drinking in public.*
- (3) *Using slang language against teachers, staff and students.*
- (4) *Behaving rudely and irresponsibly towards them.*
- (5) *Creating false record and issuing fake certificates to persons unconcerned with the school.*
- (6) *Failure to give proper accounts and not allowing the staff to maintain the accounts.*
- (7) *Embezzlement of the rents received from use of Society's properties.*
- (8) *Not issuing receipts of tuition fees to the students and their parents.*

- (9) *Choosing foul language against the members of the Managing Committee and disrespecting the authority of Bishop.*
- (10) *The behaviour being not in the interest and welfare of the students.*
- (11) *The conduct of unbecoming of a teacher.*
- (12) *Filing of criminal complaints with police.*
- (13) *Not conducting classes.*
- (14) *Writing letters to the authorities and political parties even after suspension.*
- (15) *Immodest behaviour and attitude towards lady teachers.*
- (16) *Neglecting administrative, educational and financial matters.*

5. While serving the charge-sheet (Exh. 'J') dated 18.05.2009 he was also informed that a committee consisting of two members was constituted and would hold its first meeting on 02.06.2009.

6. The petitioner by his communication dated 06.06.2009 (Exh. 'K') sought time of 10 days for giving a reply. He then submitted his detailed explanation dated 29.06.2009. Initially it is only the President that is the respondent No. 1 and one Mr. H.S. Sakhare, State Awardee Teacher were the members of the committee. However, subsequently in view of the provisions of the MEPS Act, the petitioner nominated his representative on Three Member Committee by suggesting name of one Mr. Subhash Ratansing Maher.

7. The enquiry then proceeded as usual. The witnesses were called and the petitioner was found guilty under different charges resulting in terminating his services.

8. The petitioner challenged the order of termination dated 20.10.2009 by filing an appeal under Section 9 of the MEPS Act bearing Appeal No. 30/2009 before the School Tribunal.

9. The Appeal was partly allowed on 22.03.2012 with following directions :

1. *The Appeal is partly allowed.*
2. *The impugned dismissal order dated 22/10/2009 issued by respondent No. 1 is hereby quashed and set aside.*
3. *The impugned report dated 21/10/2009 is quashed and set aside.*
4. *The respondent management is directed to constitute inquiry committee to conduct inquiry against the appellant from the stage dated 20/10/2009 of earlier inquiry proceeding and the new inquiry committee to observe rule 37(4) to 37(6) of MEPS Rules while conducting the inquiry proceeding against the appellant.*
5. *Pending inquiry the appellant is deemed to be under suspension with effect from 20/10/2009 and he is entitled to get subsistence allowance from the management as per rule.*
6. *No order as to costs.*

10. Accordingly a new enquiry committee was constituted and in due course the enquiry was conducted once again from the stage it had reached up to 20.10.2009. Once again the respondent No. 1 issued an order of termination which was again a subject matter of challenge before the School

Tribunal in an appeal under Section 9 of the MEPS Act which was dismissed by the judgment under challenge.

11. The learned advocate Mr. Pandav for the petitioner would vehemently raise following grounds :

(a) The enquiry stands vitiated for not observing the principles of natural justice. The petitioner was never extended an opportunity to cross-examine the witnesses. It was denied on an untenable ground that the questions put to the witnesses by the third member of the committee, who was his representative, was sufficient.

(b) In spite of specific direction to the respondent Nos. 1 and 2 to comply with the provisions of Rule 37(4) to 37(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter 'the MEPS Rules'), there was no compliance. The enquiry report was served to him on 20.03.2013 and without waiting for a mandatory period of seven days to enable him to submit his explanation the order of termination was passed illegally on 25.03.2013.

(c) The respondent No. 1 was not even the President of the Society on the date the petitioner was put under suspension. By the time the enquiry was conducted after the decision in Appeal No. 30/2009. The respondent No. 1 who was heading the committee had already resigned and therefore, the enquiry stood vitiated.

(d) The member of the committee who is supposed to be a State Awardee Teacher was not procured from any nearby school or district.

(e) The enquiry was not completed within the statutory period of 120 days. No prior permission of the Deputy Director of Education was obtained as is required by Rule 33 of the MEPS Rules.

(f) The petitioner was not paid subsistence allowance in violation of such

Rules.

(g) Three different reports were submitted by the three members of the inquiry committee, which was against the principles of law.

(h) The charges were not duly proved.

(i) Every endeavor was made to some how get rid of the petitioner.

(j) The entire enquiry was faulty since inception, based on which the petitioner has been illegally terminated.

12. The learned advocate Mr. Kadam for the respondent Nos. 1 and 2 vehemently submitted that there is no fault in initiating and conducting the enquiry. Principles of natural justice were duly observed. Rule 37 was duly complied with. The charges were duly proved. The petitioner being the Father was holding a post of headmaster and still could invite serious charges from female teachers and several other staff members. The enquiry committee was duly constituted and comprised of his representative who had also taken active part during the proceeding. Though there was a delay in concluding the enquiry, even the petitioner was at fault as, at several times he and his representative had requested for adjournment. Though separate reports were filed by the three members of the inquiry Committee, the decision holding him guilty was taken by 2:1 majority which was sufficient for the respondent Nos. 1 and 2 to act upon. All these aspects were duly considered by the School Tribunal in the appeal and after due appreciation of all the facts and circumstances as also the law, it has dismissed the appeal. There is no perversity or arbitrariness and this Court should not intervene while exercising limited jurisdiction.

13. I have carefully considered the rival submissions and perused the papers. One needs to bear in mind the trite legal position as to the limitations on the powers of this Court while causing interference in the

orders passed in appeal under Section 9 of the MEPS Act.

14. At the outset it is necessary to bear in mind that unlike the usual scenario, already the enquiry was conducted and the petitioner was terminated. Aggrieved thereby he had preferred Appeal No. 30/2009 under Section 9. He had raised all the grounds which are being agitated on his behalf even now before the School Tribunal and also before this Court touching various aspects like non-compliance with the other rules and regulations while holding the enquiry, non observance of principles of natural justice etc. As is mentioned earlier, the appeal was allowed merely partly. The enquiry was directed to be conducted from the stage it had reached on 20.10.2009 and it was further directed to follow Rules 37(4) to 37(6). Conspicuously, the reasoning from the judgment in that Appeal No. 30/2009 would clearly show that various other grounds being agitated like failure to observe principles of natural justice by refusing an opportunity to the petitioner to cross-examine the witnesses, failure to follow the other rules while holding the enquiry etc. were clearly turned down and answered in the negative. It is only to the extent that there was no compliance with the statutory requirements of Rule 37(4) to 37(6) that the enquiry was directed to be conducted afresh from the stage it had reached on 20.10.2009. The following observations are relevant :

“7. As to point No. 3 and 4 : I have minutely scrutinize the entire case record, written argument placed on record on behalf of rival parties. So also I have also gone through the various case laws file on behalf of the rival parties. Furthermore the respondent management has placed on record the original enquiry record before Tribunal. It contains the Minute Book of the enquiry committee proceeding held by the enquiry committee. After careful perusal of the entire case record it appears that the appellant failed to give reply to the show cause notice dated: 12/03/2009 to the respondent

management, on the other hand he had asked for the documents which were duly supplied to him but still the appellant failed to place on record the reply of show cause notice dated: 12/03/2009. Therefore the respondent management has substantially complied with the provisions of rule 36(1) of MEPS Rules. The contentions raised by the appellant that the charges contained in the show cause notice dated 12/03/2009 are vague holds no water. Further more the enquiry committee appears to be duly and properly constituted since vide letter dated: 11/05/2009 the appellant suggested the name of one Subhash Ratansingh Maher as his representative. So also the charge sheet appears to have been duly issued. Further more in view of the rule 36 (2b) the president of the management is required to be one of the member of the enquiry committee. So also the president of the management alone is competent to issue statement of allegations against the appellant in view of the case law Gopal Vs. Gramin 2000 (2) Mh.L.J. 786 and Ganpati Vs. Sant 2000(1) Mh.L.J. 658.

8. The enquiry proceeding initially appears to have been done as per the provisions of the MEPS Rules. The respondent management had examined number of witnesses. The appellant was given full opportunity to cross examine such witnesses. Therefore the enquiry committee substantially followed the rules 36 of MEPS Rules. However the enquiry committee started adopting illegal procedure on 20/10/2009. On 20/10/2009 the enquiry committee had completed the examination of the witnesses and rejected application of the appellant for examining his witnesses. Since the enquiry committee has found the appellant adopting dilatory tactics

to prolong the departmental enquiry, the enquiry committee in its own discretion had rejected the application made by the appellant for examine his witnesses. Such discretion of the enquiry committee could not be faulted with. However thereafter the enquiry committee was expected to have observed rule 37(4) of MEPS Rules. Under Rule 37(4) it was obligatory on the enquiry committee to have sent the summery of proceeding and copies of the statements of the witnesses to the appellant by RPAD within 4 days of completion of enquiry proceeding and should have allowed him to offer further explanation within 7 days thereafter. But after perusal of proceeding book it clearly appears that the enquiry committee closed the proceeding on 20/10/2009 and straight away to fixed next meeting on 21/10/2009 for the purpose of preparation of enquiry report. As per the settled legal position observance rule 37(4) to (6) of MEPS rule are mandatory in nature. It was binding on the enquiry committee to have observed rule 37(4) to rule 37(6) after completion enquiry proceeding. But in the instance case after perusal of the proceeding book as well as entire case record it appears that the enquiry committee has not followed the mandatory rule 37(4) to 37(6). It is pertinent to note that representative of the appellant had specifically mentioned in the proceeding book regarding the mandatory provisions of Rule 37(4) to 37(6) to be necessarily observed. But his contention was rejected by respondent No. 1 President who was convener of enquiry committee. Therefore the enquiry proceeding is faulty from the point of closer of the enquiry proceeding on 20/10/2009 and henceforth.

15. It is thus quite clear that various grounds which are now being

agitated in the present petition and which were addressed even to the School Tribunal in the latest appeal, were considered and turned down except non compliance with Rule 37(4) to 37(6).

16. Admittedly, all the witnesses were examined even before this earlier Appeal No. 30/2009 was preferred. No witness was examined during the enquiry after it was remanded back. If that be so, the submission of the petitioner's learned advocate to once again resort to the self-same arguments and grounds is not tenable. The petitioner never made any attempt to challenge the judgment and order passed by the School Tribunal in Appeal No. 30/2009. The decision having reached finality, no exception can be taken to the approach of the learned Member of the Tribunal who has decided the latest appeal by refusing to consider the same arguments again.

17. Consequently, the scope of the present enquiry is limited to ascertain as to if there has been a proper compliance with the Rules 37(4) to 37(6). Rest of the arguments and grounds cannot be enquired into.

18. Though the arguments regarding constitution of the committee need not be gone into and enquired once again, still, there is enough material on the record which has been referred to in the impugned judgment to demonstrate as to how attempt was made to reconstitute the committee by appointing a State Awardee Teacher from the vicinity. But having failed to obtain consent of few such teachers that a State Awardee from Mumbai was appointed. Besides, the provision does not require any such proximity of location of the State Awardee Teacher. At no point of time the petitioner has raised any objection regarding the appointment of third member as a State Awardee Teacher from Mumbai. Therefore, he is not entitled to rake up this issue now.

19. Again, though some attempt has been made to demonstrate as to how the respondent No. 1 Bishop was not President of the Society on the date on which the petitioner was put under suspension and about he having

subsequently been superannuated by the time the enquiry was concluded second time round, the Tribunal has pointed out by referring to the provisions of Canon Law which governs the respondent Nos. 1 and 2 and the provisions of the Maharashtra Public Trusts Act, 1950 that the change report under Section 22 of that Act for replacing the respondent No. 1 was already filed and was subsequently accepted too. It has also pointed out from the provisions of Canon Law that Bishop is an *ex officio* President of the Society and stands superannuated after reaching 75 years of age. The enquiry committee was constituted before he reached the age of superannuation. There was no replacement and he was allowed to continue/function and was discharging the duties of the post of Bishop as well as the President. The observations and the conclusions in the impugned judgment, therefore, are clearly legal.

20. So far as the ground of delay in concluding the enquiry is concerned though admittedly it was not concluded within the statutory time of 120 days and even no permission of the Deputy Direction was ever sought, it has been observed by the School Tribunal by referring to the record as to how even the petitioner's conduct as also the conduct of his representative on the inquiry committee had contributed to such delay. Therefore, it cannot be said that the enquiry would stand vitiated merely because it was not completed within the statutory period.

21. Turning to the compliance with Rule 37 of the MEPS Rules, it would be appropriate to reproduce the Rule for the sake of ready reference, which reads thus :

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 Convener 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 Convener of the Inquiry 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 Inquiry 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 Inquiry Committee shall meet to proceed with the inquiry 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 Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defending 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 Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token of authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.
 - (f) The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee, or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is not 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 inquiry.
- (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 disputes 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.

- (4) The Convener of the Inquiry 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 Inquiry 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 Inquiry Committee shall complete the inquiry 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 Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry 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.

22. It is now being agitated on behalf of the petitioner that he received the report along with the statement of witnesses on 20.03.2013 but was served with an order of termination barely within five days that is on 25.03.2013 and that a mandatory period of seven days to offer explanation was not given to him. However, as is pointed out by the Tribunal first part of the summary of the proceeding was served to him on 05.10.2012 that is on the first meeting of the enquiry committee. The second part of the summary was served to him on 17.01.2013. He sought time to furnish explanation which he subsequently furnished on 31.01.2013. It is thereafter that individual members of the enquiry committee submitted their respective report on 12.03.2013. Such copies of the reports were served to the petitioner on 16.03.2013 and on 23.03.2013 resolution was passed to terminate him. It is thereafter within seven days of receipt of such decision of the enquiry committee the Society issued order pursuant thereto as is required by Rule 37(6). If this is so, it cannot be said that there was failure to comply with the provisions of Rule 37(4) to 37(6) of the MEPS Rules.

23. Now turning the further argument regarding failure to give opportunity to the petitioner to examine witnesses, again, the stage of examination of witnesses by the delinquent would precede the stage for compliance with Rule 37(4) to 37(6). If that be so, even this ground is not available to the petitioner in view of finality of the judgment in the first Appeal No. 30/2009.

24. Besides, the School Tribunal in the judgment under challenge has also demonstrated from the record as to how opportunity was extended to the petitioner to examine his witnesses. Couple of them had not tuned up. Therefore, even otherwise it cannot be said that no opportunity was extended to him to examine his witnesses. Though chances were given to

him he failed to bring any witness during the course of the enquiry.

25. Turning to the actual proof regarding charges, the School Tribunal has reproduced all the 16 charges and has also mentioned the names of the witnesses examined to prove the charges. But apparently it has failed to undertake minute scrutiny in respect of the testimonies of these witnesses and to demonstrate as to how and which witness has proved the ingredients of which of these charges. It has primarily scrutinized and examined only the charge No. 15 (supra) touching the alleged objectionable behaviour and utterances of the petitioner towards female teacher named Sunita Gaikwad. Obviously, I am deprived of any scrutiny at the hands of the appellate forum in respect of the testimony of witnesses and the proof regarding other charges. It has merely referred the entire evidence in respect of the other charges and the witnesses in paragraph No. 38 in following words :

“So far as concerned to the not giving proper accounts to the management, misappropriation of money, making unauthorized recovery of amount from the students, drinking liquor, using slam language the S.F. Society has examined witness Salve, Shaikh Nawab Shaikh Osman, Smt. Rita Payali, Mohd. Abdul Gafur, Manwar Ahmed Naim Ahmed and many other. Nothing has found in their examination discard and disbelieve their statement made against the appellant. More so ever, pending pending criminal complaint in police station is in not in dispute. All these circumstances shows grave misconduct. So, I hold that whatever findings the inquiry committee arrived at that is based on the statement of in all 16 witnesses whose testimony has not been damaged in cross-examination and couple of complaints, police complaints etc. So, their conclusion in respect of misconduct, misbehavior, immoral turpitude, negligence towards duties that appears to be legal and proper one and so no interference is needed.

Hence, I hold that the charges leveled against the appellant are duly proved by the S.F. Society before the inquiry committee.

Hence, I answer to the point No. 5 in the affirmative.

It is, therefore, quite clear that the aforementioned observations are bereft of the judicial scrutiny as was expected.

26. However, restricting the present scrutiny only in respect of the testimony of Sunita Gaikwad and to ascertain if charge No. 15 (supra) stands proved through her testimony, I have carefully perused her testimony. She has specifically stated about having filed a complaint in respect of an episode about the petitioner having once addressed her by using words '*all seasons woman*'. She also stated about he having said to her that he was having a feeling as if they have not met for '*decades*'. She specifically stated about he having once objected by saying that '*whenever he turned up she would look other way*'. Pertinently, even the representative of the petitioner who was a member of the committee Mr. Subhash Ratansingh Maher examined her by putting several questions. She lastly stated about having felt awkward due to such utterances. Therefore, the only question is as to if such address to a female teacher by the headmaster of a school would constitute a misconduct or turpitude. To my mind taking into account the relationship which ought to be there in the persons holding these posts, such utterances would certainly be not befitting the post of headmaster. The School Tribunal in the judgment under challenge has carefully scrutinized these utterances while rightly concluding that those are indeed indecent, uncultured and unbecoming of a person holding a post of headmaster. It has also referred to the decision in the case of **Vishaka (Vishaka & Ors. Vs. State of Rajasthan & Ors (1997) 6 SCC 241)**. In my considered view, the observations and conclusions of the learned Member of the School Tribunal in this respect, by no stretch of imagination, can be said to be either perverse, arbitrary or capricious so that this Court can reconsider it and arrive at some independent conclusion.

27. In view of the above state of affairs, irrespective of the fact whether individual charges are sufficient and justify the order of termination, the charge No. 15 which stands duly proved as discussed herein above is sufficient even to justify the drastic punishment imposed on the petitioner.

28. The Writ Petition is dismissed.

29. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-