

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4857 OF 2022

The President,
Navbharat Shikshan Mandal,
Sangli and ors.

.... Petitioners

v/s.

Shri. Shivaji Kashinath Mane and
anr.

.... Respondents

Mr. S.A. Rajeshirke for the Petitioners.
Mr. P.V. Nelson Rajan, AGP for the State.
Mr. N.V. Bandiwadekar i/b. A.N. Bandiwadekar
for Respondent No.1.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th DECEMBER, 2022.

P. C. :-

1. The Petitioner herein has challenged the judgment and order dated 16/12/2019 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No.13 of 2014. By the impugned judgment, the School Tribunal partly allowed the Appeal and quashed the termination order dated 13/01/2014 and further directed the Petitioner – Management to reinstate Respondent No.1 to the original post within 50 days from the date of the order.

2. The brief facts necessary to decide this Petition are as under :-

The Respondent No.1 was appointed as an Assistant Teacher with the Petitioner-Society since 1997. He was promoted as Head Master since 01/12/2011. An inquiry was initiated against the Respondent alleging misconduct and his services were terminated on 13/01/2014. Respondent No.1 challenged the termination by filing an Appeal under section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and rules.

3. The School Tribunal partly allowed the Appeal mainly on the ground that the Inquiry Committee was not constituted as per the rules. Relying upon the full bench decision of this Court in ***National Education Society v/s. Mahendra Jamkar, MANU/MH/0271/2007***, the Tribunal held that the inquiry initiated by the Co-ordination Committee was not in keeping with Rule 36 of MEPS Rules. While dismissing the Petition, the Tribunal has given liberty to the Management to initiate departmental inquiry or to constitute Inquiry Committee.

4. Mr. Rajeshirke, learned counsel for the Petitioner states that the President was not a member of the Committee. The decision of the Full Bench in National Education Society (supra), does not lay down the correct law and urges this Court to make a reference. These

submissions deserve outright rejection.

5. Rule 36 of M.E.P.S. Rules provides that :-

“ 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. The Chief Executive Officer authorized by the Management in this behalf (and in the case of any 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 the registered post acknowledgment due to the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(b) 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. ”

6. Rule 36 of M.E.P.S. Rules authorizes the Management to constitute the Inquiry Committee. In the instant case, the Inquiry

Committee was not constituted by the Management as defined under section 2(12) but the Executive Committee of the Respondent – Society, despite there being no express provision for delegation of power, had authorized School Co-ordination Committee to initiate disciplinary action. Furthermore, the President of the Management was not one of the members of the Inquiry Committee as contemplated by Rule 36(2) (b)(i) of the Rules of 1981.

7. It was under these circumstances, the Tribunal has held that the Inquiry Committee was not validly constituted. I do not find any illegality or infirmity in the impugned order. Petition has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)