

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2731 OF 2022**

1. VIDYA VIKAS EDUCATION SOCIETY A Trust registered under the provisions of the Bombay Public Trusts Acct, 1950 (now known as the Maharashtra Public Trusts Act 1950 and Rules framed thereunder) through its President/Secretary, Having its address at C/o. Vikas High School, Vikhroli (East), Mumbai-400 083.

2. DR. BABASAHEB AMBEDKAR VIDYALAYA & JR. COLLEGE, Kannamwar Nagar No.2, Vikhroli (East), Mumbai-400 083 and Vikas Bhavan, Vikhroli Station Road, Behind BEST Vikhroli Bus Depot, Vikhroli East, Mumbai-400 083.

...PETITIONERS

: VERSUS :

1. SUNIL GULABRAO WADATKAR
Resident of H-402, Radhakrishna Park,
Hajimalang Road, Kalyan (East).

2. THE DEPUTY DIRECTOR. Mumbai
Region, Mumbai Jawahar Bal Bhavan,
Netaji Subhash Marg, Charni Road
(West), Mumbai-400 004.

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3. THE EDUCATION INSPECTOR,
Brihanmumbai Northern Zone,
Chember, Mumbai-400 071.

...RESPONDENTS

Mr. S.C. Naidu a/w. Mr. Manoj Gujar, Mr. T.R. Yadav, Mr. Abhishek Ingale, Mr. Sudeshkumar Naidu, Mr. Pradeep Kumar, Mr. Ava Kaka i/ by. C.R. Naidu & Co., for the Petitioners.

Ms. Jai Kanade i/by. Mr. Rahul Shirgavkar, for the Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 3 October 2023.

Pronounced on : 17 October 2023.

JUDGMENT:

1. This petition challenges the Judgment and Order dated 31 January 2022 passed by the School Tribunal in Appeal No. 23/2019, by which the Tribunal has partly allowed the Appeal setting aside the termination of Respondent No.1 with further direction to the Management to reinstate him in service with continuity in service, full backwages and all consequential benefits. Additionally, the Tribunal has directed payment of Rs. 50,000/- to Respondent No.1 towards compensation.

2. Petitioner No. 1 is a Public Trust established with the objective of imparting education. Petitioner No.2 is one of the

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Schools established by Petitioner No. 1, which is a recognized private permanently unaided English Medium School and Junior College imparting education at secondary and higher secondary levels. The Secondary School is located at Kannamwar Nagar No. 2, Vikhroli (East), Mumbai whereas the Junior College is located at Vikas Bhavan, Vikhroli Station Road, Vikhroli.

3. Respondent No.1 was appointed as Peon w.e.f. 7 December 1999 and was initially posted at the Secondary School of the Petitioners at Kannamwar Nagar-2. Petitioner avers that in the year 2010, he was posted at Junior College situated at Vikas Bhavan, Vikhroli Station Road. That since 2010, Respondent No.1 was working and discharging duties at the Junior College. During his service career, Respondent No.1 improved his educational qualifications. A vacancy of Junior Clerk occurred in the year 2013 and Respondent No. 1 staked his claim for promotion against the vacant post of Junior Clerk on the strength of acquisition of educational qualifications required for that post. Petitioners however took a stand that the said post could not be filled up by promotion and could only be filled by nomination. This is how the issue of promotion to the post of Junior Clerk created a rift between the Petitioners and Respondent No.1.

4. Petitioners served Statement of Allegations under Rule 36(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (**Rules of 1981**) on 1 December 2018 to Respondent No.1 and called for his explanation. He submitted his explanation vide letter dated 8 December 2018. Based on that statement of allegations, an Enquiry Committee was constituted to enquire into the charges against Respondent No. 1, by Petitioners nominating the convener and awardee teacher. Respondent No.1 suggested name of his nominee to the Enquiry Committee. It is alleged that on 31 December 2018, Respondent No.1 assaulted the Headmaster which led to lodging of a police complaint. Respondent No.1 was placed under suspension on 1 January 2019. On 17 January 2019, a chargesheet was issued to Respondent No.1 alleging the charge of unauthorised absence, refusal to perform duties assigned, non-wearing of uniform, non-use of biometric machine for attendance, use of unparliamentary language and deliberate dereliction of duties during past period etc. Respondent No.1 submitted his reply to the chargesheet on 27 February 2019. During the currency of proceedings of Enquiry, a supplementary chargesheet was issued on 1 March 2019 to include the charge of assault on Headmaster which allegedly occurred on 31 December 2018. Respondent No. 1 replied the supplementary chargesheet on 18 March 2019. The Enquiry Committee conducted 17 meetings during 1 February 2019 to 09 August 2019. The Enquiry Committee gave its final findings on 9 August 2019, which was communicated to Respondent No.1. Based on the findings of the Enquiry Committee,

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Respondent No.1 was held guilty of the charges and was terminated w.e.f. 13 August 2019 vide order passed on 13 August 2019.

5. Respondent No.1 approached the School Tribunal by filing Appeal No. 23/2019 challenging the termination order. The Appeal was resisted by Petitioners by filing its Written Statement. On 31 January 2022, the Tribunal was pleased to allow the Appeal by setting aside the termination order dated 13 August 2019. Respondent No. 1 has been directed to be reinstated in service with continuity in service, full backwages and all consequential benefits. Additionally, Petitioners are directed to pay compensation of Rs. 50,000/- to Respondent No.1 and in default in payment of that amount, interest at the rate of 12% p.a. is directed to be paid on the said amount of compensation under Section 11(2)(f) of the Maharashtra Employees of Private Schools Act, 1977 (**Act of 1977**). The Tribunal directed that the awardee teacher, Mr. Shridhar Gopal Gharat would be barred from representing on any Enquiry committees in future and directions were issued to the Government Authorities to issue a Circular to that effect. The Tribunal has also directed that the copy of its order be served on the concerned Police Station for information. Petitioners have filed the present petition challenging the Judgment and Order dated 31 January 2022 passed by the Tribunal.

6. Mr. Naidu, the learned counsel appearing for the Petitioners would contend that the impugned order of the Tribunal

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suffers from serious flaws in respect of many areas. He would submit that without there being any contest between the parties, the Tribunal has unnecessarily framed the issues with regard to recognition of the School and eligibility of Respondent No.1 to hold the post of Peon. He would submit that unnecessary frame and answer to these issues would indicate erroneous approach on the part of the Tribunal to deal with the issues that were actually raised before it. That Tribunal has recorded a finding that the Enquiry committee comprised of 4 members, by erroneously adding the Presenting Officer of the management into that committee.

7. Mr. Naidu would further submit that the Tribunal has erred in holding that the Enquiry conducted by Petitioners is not fair or proper. He would submit that the committee conducted as many as 17 meetings, intimation of each of them were given to Respondent No.1, who deliberately failed to attend the first six dates of Enquiry. That resignation by his nominee cannot be attributed to Petitioners. That despite offering the three witnesses for cross examination on several occasions, Respondent No.1 failed to cross-examine them. That he failed to lead his own defence evidence despite grant of opportunity. That minutes of each of these sittings were supplied to Respondent No.1. That after the Enquiry Committee prepared its report with findings, the same were served on Respondent No. 1 and his explanation was called for. Mr. Naidu would submit that in the manner aforestated, the principles of natural justice were followed to

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the hilt and that therefore Tribunal's finding of Enquiry being conducted in a unfair or improper manner cannot be sustained.

8. Mr. Naidu would further submit that the findings of the Enquiry Committee are supported by evidence on record. That it is not for the Tribunal to enter into the realm of re-appreciation of evidence nor it can go into the issue of adequacy or sufficiency of evidence. That the test of proof of charges in a departmental enquiry is preponderance of probabilities and that the charges need not be proved beyond doubt. He would submit that the said test was satisfied by adducing sufficient evidence before the Enquiry Committee. That by breaching the settled principles, the Tribunal erroneously undertook the exercise of re-appreciation of evidence.

9. Mr. Naidu would then submit that the Tribunal has committed a fundamental error in awarding both backwages as well as compensation under section 11(2)(f) of the Act of 1977. That Tribunal can award compensation under section 11(2)(f) only in the event of non-grant of relief of reinstatement or backwages. In the present case the Tribunal has awarded both, which would indicate complete non-application of mind on the part of the Tribunal.

10. Mr. Naidu would then submit that the Tribunal has unnecessarily made adverse observations against the awardee teacher, Mr. Sridhar Gopal Gharat and has gone to the extent of debarring him from representing on any Enquiry Committee in future. That

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such observations and directions are issued without the awardee teacher being impleaded as party respondent to the Appeal. He would submit that the Tribunal has also directed forwarding copy of its order to the police station for information. This direction, apart from being unwarranted, is indicative of the bitter approach of the Tribunal towards Petitioners. Lastly and alternatively, Mr. Naidu would contend that in the event this Court concludes that there is any error in the enquiry or the order of penalty, grant of compensation under Section 11(2)(f) would be the appropriate remedy in the facts and circumstances of the present case, where Respondent No.1 has indulged in the act of assaulting the Headmaster. That in such circumstances, mere technical breach in conduct of enquiry would not entitle Respondent No.1 for reinstatement or backwages and this Court may, at the highest, award him some compensation.

11. In support of his contentions, Mr. Naidu would rely upon the following judgments:

- i) ***Sadhana Janardhan Jadhav vs. Pratibha Patil Mahila Mahamandal***, 2013(2) Mh.L.J. 484.
- ii) ***Hamid Khan Nayyar s/o. Habib Khan Vs. Education Officer, Amaravati and Ors.*** 2004(4) Mh.L.J. 513.
- iii) ***Saindranath s/o. Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha and anr.*** 2007 SCC Online Bom 332.
- iv) ***Anant R. Kulkarni vs. Y.P. Education Society and Ors.*** (2013) 6 SCC 515.
- v) ***O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. And Ors.*** (1986) 4 SCC 337.

12. *Per-contra*, Ms. Kanade the learned counsel appearing for Respondent No.1 would oppose the petition and support the order passed by the Tribunal. She would submit that Respondent No.1 was unnecessarily subjected to domestic enquiry without there being any misconduct on his part. That the entire object behind initiating disciplinary proceedings against Respondent No.1 was to harass him as he raised legitimate demand for promotion to the post of Junior Clerk. That the entire disciplinary proceedings and penalty are outcome of deliberate design on the part of the Petitioner-Management in teaching a lesson to Respondent No.1 for showing the audacity to raise demand for promotion to the post of Junior Clerk. She would submit that the perusal of the charges in the original chargesheet would indicate that they are in respect of miniscule allegations, not worthy of terminating the services of Respondent No.1. That the charge of alleged assault on the Headmaster was deliberately and falsely added subsequently to ensure ouster of Respondent No.1 from service. That the said incident is shown to have occurred on 31st December 2018 i.e well before service of chargesheet dated 17 January 2019 and the fact that said incident was not included in the chargesheet, would demonstrate falsity in the allegations. That the said allegation was added subsequently on 1 March 2019 after the third enquiry meeting as an afterthought.

13. Ms. Kanade would further submit that Respondent No.1 was unnecessarily embroiled into the charges for taking a stand that he would discharge his duties at the place of his posting. That he was

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posted at Secondary School at Kannamwar Nagar and the Headmaster was illegally issuing oral directions to him to perform duties at a different location in the Junior College. All that the Respondent No.1 requested the Headmaster was to issue him a posting order in Junior College in accordance with the sanctioned staffing pattern so as to enable him to discharge his duties at Junior College. Such an act on the part of Respondent No.1 is treated as deliberate refusal of orders of Headmaster. That the orders of Headmaster were itself illegal and merely because Respondent No.1 resisted them, such act would not amount to misconduct.

14. Ms. Kanade would submit that the Petitioners were so biased against Respondent No.1 that they dug out old records pertaining to the years 2004-2005 for the purpose of increasing the gravity of charges. She would submit that the said incident which had allegedly occurred during the years 2004 onwards, had absolutely no connection with the events for which disciplinary proceedings were initiated against him. She would invite my attention to the Statement of Allegations issued under Rule 36(1) of the Rules of 1981 to demonstrate that the said statement was very vague without any material particulars. She would submit that all the allegations levelled in the said statement were of minor and minuscule nature such as refusal to wear uniform, opting of frequent leaves etc. So far as the allegation of absence from duties is concerned, she would submit that refusal of Respondent No.1 to discharge duties at Junior College (where he was not posted) was treated as unauthorised absence, when

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infact Respondent No.1 was performing his duties at the place of his posting in the Secondary School at Kannamwar Nagar.

15. Ms. Kanade, would then take me through the deposition of the three witnesses who could not be cross-examined by Respondent No.1. She would submit that the evidence adduced by the said three witnesses does not prove the charges levelled against Respondent No.1. That though false charge of assault on the Headmaster was subsequently added by way of supplementary chargesheet, the Headmaster was not examined as a witness and the Enquiry committee erroneously held that charge has been proved. She would submit that the findings of the Enquiry Committee are thus perverse and there is no error in the Tribunal's finding holding the same to be perverse.

16. So far as the direction of the Tribunal to pay compensation of Rs.50,000/- under Section 11(2)(f) of the Act of 1977 is concerned, Ms. Kanade would submit that Respondent No.1 had prayed for his reinstatement with full backwages and that he never insisted for payment of compensation over and above the relief of reinstatement and backwages. That the directions against the awardee teacher are issued on the basis of his conduct during the Enquiry noticed by the Tribunal and that Respondent No.1 does not have any personal grievance against the awardee teacher. She would submit that so long as direction for reinstatement with continuity of service and full backwages are upheld, Respondent No.1 is not really

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insistent about maintaining the other directives for payment of compensation, debarment of awardee teacher or directions to issue copy of the order to the Police Station. She would pray for dismissal of the Petition.

17. Rival contentions of the parties now fall for my consideration.

18. The Tribunal has proceeded to set aside the termination on twin grounds of Enquiry not being held in fair and proper manner and perversity in the findings of the Enquiry committee.

19. So far as Tribunal's finding of Enquiry not being held in accordance with the Rules of 1981 is concerned, it is essentially premised on non-grant of opportunity to Respondent to cross examine the management witnesses and to lead his own evidence. Petitioner-Management has examined three witnesses in the enquiry to prove the charges levelled against Respondent No.1. The three witnesses are Swapnil Mahadeo Gamre, Purshottam Balkrushna Lad and Devesh Ramchandra Kamat. It is an admitted position that, Respondent No.1 has not cross-examined those three witnesses, nor has he led his own evidence. The Tribunal has recorded following findings in support of its conclusion that the Enquiry was held in violation of Rule 37 of Rules of 1981:

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20. It is apt to note that the Enquiry committee has been entrusted with an obligation to see that every reasonable opportunity to defend his case is given to the employee under Rule 37 (2) (c) of the MEPS Rules. The Enquiry report before the tribunal shows that there were as many as 17 meetings of the Enquiry committee for conducting the Enquiry. The Enquiry committee is constituted to inquire into the charges. The parties are to lead evidence before the Enquiry committee. Even there is minute recorded in the Meeting No 12 and the convener recorded the observation that there were as many 11 meetings of the Enquiry committee but there could be hardly any work of Enquiry into the charges, examination of witnesses and the committee was kept busy in unwarranted correspondence. Further, the awardee teacher Mr Gharat, as appearing from the minutes of the Meeting No 12 that he recommended that the appellant need not be given further opportunity to cross examine the witnesses as he has been already given the same in the meeting nos. 6 to 12 but he did not avail with excuse that he can not cross examine the witness unless he has been supplied certain documents. These minutes further disclose that the appellant requested for the relevant documents to be supplied for enabling him to conduct his cross examination effectively. He expressed readiness to cross examine the witnesses reserving his right to cross examine on supply of the documents. The Enquiry committee by majority of convener and awardee teacher against the nominee of the employee resolved to proceed without the cross -examination for the appellant. Further, the Enquiry committee proceeded holding that the appellant is not inclined to cross examine witnesses nor produce his witnesses. In the Enquiry record at Exh No 45, there is a reply of the management declining to supply the appellant certain documents. It is contended in this reply that the appellant has been supplied the documents time to time. Further, he is not entitled to require the school committee meetings, agenda of meetings and minutes of the meetings, cctv footage for want of supporting provision. The appellant need not be given the documents or details separately as to washing allowance when he was using the uniform as the same has been credited to his bank account. The Enquiry record before the tribunal shows that there are three statements of witnesses at Exh Nos 18 to 20. These statements are placed on record in writing as witness statements. These witnesses are appearing to have present before Enquiry committee in Enquiry Meeting No 6. They were directed to be present on the next meeting for their cross examination forwarding their statements by post to the appellant for this purpose. The minutes of the Enquiry meeting Nos 7, 8, 9 showing that the witnesses were not present and in Enquiry meeting No 7, the convener was directed in meeting Nos 8 and 9 to keep them present. Further minutes of Enquiry meeting Nos.10 and 11 are not giving any

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particulars as to presence of the witnesses. It appears were present only on the occasion of meeting No.6 when their statements were taken on record of Enquiry.

20. To examine correctness of above findings, it would be necessary to refer to various minutes of Enquiry committee meetings. As observed above, the Enquiry committee met on 17 occasions and the gist of the proceedings held before it is as under:

- i) In Meeting No.1 held on 01 February 2019, Respondent No.1 was handed over the certified documents relied upon in enquiry and procedure to be adapted for enquiry was determined.
- ii) In Meeting No.2 held on 16 February 2019, the Awardee Teacher nominated earlier had resigned and nomination of Shridhar Gopal Gharat as Awardee Teacher was taken on record. The nominee of Respondent No.1, Smt. Archana Sonawane, raised objection to nomination of Awardee Teacher. She also raised objection about procedure fixed in Meeting No.1 about enquiry procedure.
- iii) In Meeting No.3 held on 22 February 2019, the management expressed intention to issue supplementary chargesheet.
- iv) In Meeting No.4 held on 02 March 2019, objection about nomination of Awardee Teacher was considered.
- v) In Meeting No.5 held on 12 March 2019, submissions of the Awardee Teacher and nominee of Respondent No.1 about appointment of Awardee Teacher were recorded.

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- vi) In Meeting No.6 held on 16 March 2019, again the issue of nomination of Awardee Teacher was discussed. The Petitioner-Management accused the nominee of Respondent No.1 of deliberately whiling away time and absence of Respondent No.1 was recorded. The Presenting Officer of Management had presented three witnesses viz, i) Swapnil Mahadev Gamre, ii) Purshottam Balkrushna Lad, iii) Devesh Ramchandra Kamat. Those 3 witnesses presented their statements in writing, which were taken on record and exhibited. Since Respondent No.1 was absent for meeting it was decided to dispatch the copies of the said statement of the witnesses to him by post. It must be noted here that Respondent No.1 was absent but his defence nominee was present for Meeting No.6.
- vii) Meeting No.7 was held on 26 March 2019 which was attended by Respondent No.1. However, his nominee Smt. Archana Sonawane remained absent. Respondent No.1 requested for adjournment on ground that Smt. Sonawane was assigned for training for election duty and was unwell. Respondent No.1 raised objection about less payment of subsistence allowance, which was held to be outside the scope of Enquiry. The Committee recorded displeasure about absence of defence nominee and her failure to give advance intimation to prevent travel of convenor from Nashik.
- viii) Meeting No.8 was held on 08 April 2019 which was attended by Smt. Sonawane, defence nominee but Respondent No.1 remained absent, on account of which further proceedings of

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enquiry could not be conducted. However, Respondent No.1 submitted his explanation in respect of supplementary charge, which, along with some other correspondence, was taken on record.

- ix) Meeting No.9 was held on 12 April 2019 which was attended by both Respondent No.1 and his defence nominee. Some debate took place on statement made by Awardee Teacher Shri. Shridhar Gopal Gharat about possible termination of Respondent No.1. Respondent No.1 was called upon to cross examine 3 management witnesses. He however demanded certain documents (Exhibit 1 to Exhibit 15). The Management took stand that documents were already supplied to Respondent No.1. Respondent No.1 apparently wanted some more documents and a debate took place about supply of those documents. Respondent No.1 again raised the issue of non-payment of due amount of subsistence allowance. Recording that Respondent No.1 and his nominee were whiling away time, Enquiry Committee granted one more opportunity of cross examination to Respondent No.1.
- x) Meeting No.10 was conducted on 23 April 2019, when the witnesses were present, but Respondent No.1 and his nominee expressed inability to cross examine them on account of non-supply of documents demanded by him. The Presenting Officer submitted that all documents relied upon by Management were already supplied to Respondent No.1. The Enquiry Committee

recorded a finding that Respondent No.1 was avoiding the conduct of cross examination.

- xi) Meeting No.11 was conducted on 25 April 2019 where the nominee of Respondent No.1 remained absent without issuing prior intimation and enquiry was adjourned.
- xii) Meeting No.12 was conducted on 02 May 2019 where the Respondent No.1 was accused of bringing pressure by involving external agency of Mumbai Teachers Democratic Front. Respondent No.1 once again expressed inability to cross examine the witnesses stating that if demanded documents are supplied to him, it would assist him in cross examination. The convenor of Enquiry Committee and Awardee Teacher however took a decision not to grant further time to Respondent No.1 to conduct the cross examination. Respondent No.1 did not agree with their decision. The decision was taken by majority of 2:1 to not to grant further opportunity of cross examination to Respondent No.1 and he was directed to submit his defence statement and witnesses on next date of hearing.
- xiii) Meeting No. 13 was conducted on 18 June 2019 when the nominee of Respondent No.1 remained absent. Respondent No.1 informed that she had tendered resignation as a member of Enquiry Committee. He however stated that if enquiry committee was insistent upon conduct of cross examination, Respondent No.1 was willing to conduct so in the absence of documents demanded by him. Respondent No.1 submitted letter dated 24 April 2019 accusing convenor, Awardee Teacher

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and Presenting Officer of pressurizing him for cross examination. The Enquiry was therefore required to be adjourned.

- xiv) Meeting No.14 was conducted on 10 July 2019 by which time Respondent No.1 had nominated Chandrakant Bhau Karpe as his nominee. However, said nominee remained absent. His absence was found to be unjustified by other members and proceedings of enquiry were continued and Respondent No.1 was once again called upon to submit his defence statement. Respondent No.1 sought adjournment on account of absence of his nominee. It was therefore presumed that Respondent No.1 did not wish to submit his defence statement. The enquiry was adjourned with liberty to Respondent No.1 to produce his witnesses on the next date.
- xv) Meeting No.15 was conducted on 16 July 2019 when nominee of Respondent No.1 was present but Respondent No.1 remained absent without giving any prior intimation. He did not produce his witnesses. The Enquiry Committee therefore concluded that Respondent No.1 did not propose to lead any evidence.
- xvi) Meeting No.16 was conducted on 05 August 2019 the defence statement submitted by Respondent No.1 was taken on record. The enquiry was adjourned for preparation of Enquiry Report.
- xvii) Meeting No.17 was conducted on 09 August 2019 when Report of Enquiry Committee was finalized and taken on record. The Enquiry Committee found that all charges levelled against

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Respondent No.1 were proved. The Report was finalized by majority of 2:1 as nominee of Respondent No.1 did not agree with the conclusions.

21. After perusal of the minutes of 17 Enquiry committee meetings, it is seen that Respondent No. 1 expressed inability to cross-examine the three management witnesses as his demand for supply of various documents was not met with. However in Meeting No. 13 held on 18 June 2019, Respondent No. 1 expressed willingness to cross-examine the witnesses even if the management was not providing him the documents demanded by him. Here the Enquiry Committee ought to have offered the three witnesses for cross examination, which was not done. Since Respondent No. 1 informed the Committee about resignation of his defence nominee during this meeting, it becomes debatable if he would have actually cross-examined the witnesses in absence of his defence nominee. Be that as it may, upon making a statement that he was willing to conduct the cross-examination, the committee ought to have asked him to proceed with cross-examination.

22. Even if it is assumed that Respondent No. 1 was responsible for non-conduct of cross-examination of three management witnesses, there is absolutely no answer to the fact that the additional charge of assault on the Headmaster added by way of supplementary chargesheet has been held to be proved without examining the Headmaster as a witness. It is well settled law that a

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pre-recorded statement or a complaint cannot be read in evidence without examining its author and without offering him/her for cross-examination by the delinquent employee. In ***Roop Singh Negi Versus. Punjab National Bank and Others***, (2009) 2 SCC 570 (supra), the Apex Court has held that contents of documentary evidence have to be proved by examining the witnesses. It has held that FIR in itself is not evidence without actual proof of facts stated therein. The Apex Court has held in para-14 as under:

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

23. In my view therefore, even if the contention of Mr. Naidu about grant of sufficient opportunity of cross-examining the three management witnesses is to be accepted, the error committed by the Enquiry Committee about proof of additional charge of assault on Headmaster only on the basis of his complaint cannot be ignored.

24. The Tribunal was thus faced with a situation where it felt that the Respondent No.1 was not given adequate opportunity of

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cross-examining the management witnesses and to produce his own evidence. Once this finding was recorded, the proper course of action to be adopted by the Tribunal was to remand the enquiry for being conducted afresh from the stage where the breach of principles of natural justice had occurred. The Tribunal however proceeded to determine whether there was perversity in the findings recorded by the Enquiry Committee. In my view, once it was held that the enquiry was conducted in violation of principles of natural justice, the Tribunal ought to have remanded the enquiry proceedings for affording due opportunity of defence to Respondent No.1 rather than proceeding to determine the correctness of findings and the penalty order.

25. It must be observed that Ms. Kanade has strenuously attempted to urge before me that barring the additional charge included in the supplementary chargesheet, the charges in the original chargesheet are of minuscule nature and that therefore Respondent No.1 needs to be reinstated in service. She may not be entirely wrong in contending that the charges in the original chargesheet do not appear to be serious. However, Ms. Kanade is fair in admitting that the additional charge included in the supplementary chargesheet of assaulting the Headmaster is of grave nature. If that charge is proved, imposition of a major penalty may be justified. However, in the present case, the Petitioner-Management has failed to examine the Headmaster who has allegedly been assaulted. It appears that in a zeal to complete the enquiry proceedings in an expeditious manner, the

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Petitioner-Management has omitted to examine the most vital witness in the case.

26. Having arrived at a conclusion that the finding of guilt of additional charge included in the form of supplementary chargesheet could not be recorded in absence of oral evidence of the Headmaster, the next issue that arises for consideration is what is the course of action that can be adopted in such a situation. I have before me two situations, where Respondent No.1 has been denied the opportunity of cross-examination of three management witnesses or to produce his own evidence. On the other hand, the management has missed the opportunity of examining the Headmaster as a witness in support of the additional charge. Whether Respondent No.1 can be permitted to go completely scot-free on account of Management's failure to examine Headmaster as a witness? To my mind, it appears that the charge of assaulting Headmaster by Respondent No.1 is of serious nature. The finding of guilt in respect of additional charge is required to be set aside on account of technical ground of non-examination of the Headmaster. In such circumstances, the proper course of action is to give an opportunity to the Petitioner-management to examine the Headmaster as a witness, rather than giving a clean chit to Respondent No.1 in respect of such a serious charge. In these circumstances, remand of Enquiry before the Enquiry Committee would be the appropriate course of action.

27. Remand of Enquiry proceedings after noticing violation of principles of natural justice is the normal rule to be followed by Courts and Tribunals. Reference to the recent judgment of the Apex Court can be made in *State of Uttar Pradesh Vs. Rajit Singh*, 2022 SCC Online SC 341 in which it is held as under:

15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of *Chairman, Life Insurance Corporation of India v. A. Masilamani*, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide *ECIL v. B. Karunakar* [(1993) 4 SCC 727], *Hiran Mayee Bhattacharyya v. S.M. School for Girls* [(2002) 10 SCC 293], *U.P. State Spg. Co. Ltd. v. R.S. Pandey* [(2005) 8 SCC 264] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30]).”

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16. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in the case of A. Masilamani (supra) to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the Disciplinary Authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated, i.e., after the issuance of the charge sheet, is unsustainable.

28. True it is that, in *Anant R. Kulkarni* (supra) relied upon by Mr. Naidu, the Apex Court has held that in every case where infraction of procedure is noticed, there is no bar for the Courts to enter into the merits of the case. The Apex Court has held in para-31 as under :

31. The conclusion reached by the Division Bench that the Tribunal and the learned Single Judge had found that there was a defect in the manner in which the enquiry was held, and therefore there was no question of it recording a finding on merit to the effect that the charges levelled against the appellant were not proved, is also not sustainable in law. It is 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. Such a course may be necessary to save the employee from harassment and humiliation.

29. However, the present case does not involve infraction of a minor nature. Respondent No.1 has not cross-examined any of the three Management witnesses. The Enquiry Committee has relied

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upon contents of the police complaint filed by the Headmaster to prove the additional charge of assault in absence of any evidence by the Headmaster himself. In these circumstances, it would not be prudent for this Court to ignore this infraction and proceed to determine merits of the allegations. Remand of enquiry in the present case would accordingly be necessary.

30. Mr. Naidu did attempt to canvass before me that instead of remanding the proceedings for being conducted afresh by the Enquiry Committee, the remand can be made to the School Tribunal, which has jurisdiction to permit parties to lead evidence. In support of his contention, he has placed reliance on the Full Bench judgment of this Court in *Saindranath s/o. Jagannath Jawanjai* (supra). The Full Bench has held in paras-74, 75, 76 and 77 as under :

74. In the above scenario; the question is: whether the School Tribunal dealing with the appeal under the Act challenging punitive action could cure the defect of enquiry exercising its powers by taking on record additional evidence either on the request of the management or the employee concerned or on its own to find out truth and to do complete Justice between the parties. To hold that the School Tribunal dealing with the appeal preferred by the employee, who has been terminated on the ground of major misconduct, has absolutely no power to permit the party to lead additional evidence before it, would result in depriving an opportunity to the party to the appeal in placing his side before the Tribunal, even though, he may be in a position to prove his contentions.

75. At the cost of repetition, we may mention that the powers of the Tribunal are circumscribed by the provision of Order 41, Rule 27 of Civil Procedure Code, which enumerates the circumstances in which the School Tribunal can admit additional evidence whether oral or documentary in appeal. They are: where the original authority has

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Improperly refused to admit evidence which ought to have been admitted; or where such additional evidence was not within the knowledge of the party or could not, after exercise of due diligence, be produced by him at the time when the original authority passed the order; or where the appellate Court itself requires such evidence either (a) to enable it to pronounce judgment or (b) for any other substantial cause.

76. Now the question comes: how and at which stage the School Management is expected to seek leave from the Tribunal to lead additional evidence in exercise of its right. In our considered view, such right should be exercised, as soon as there is challenge to the action of the management, in appeal before the Tribunal, contending that there was no sufficient evidence to prove the charges levelled against the appellant/employee. In the event of exercise of such right by the school management, the Tribunal is expected to consider the question of grant of leave to lead additional evidence subject to compliance of provision of Order 41, Rule 27 of Civil Procedure Code. In the event of grant of leave opposite party-employee would also get an opportunity of placing his side before the School Tribunal i.e. when the School Management is allowed to lead additional evidence on the question of misconduct before the Tribunal.

77. At the same time, if the employee comes before the Tribunal challenging the punitive order on merits in appeal contending that the evidence is not sufficient to prove alleged misconduct or that he has some additional evidence in his possession to establish his innocence, which he could not produce for want of knowledge in spite of due diligence at the time when the enquiry was conducted; In such circumstances, there is no fetter on the power of the School Tribunal to admit such evidence at the instance of the employee. It is, thus, always open for the School Tribunal to take such additional evidence on record for the reasons to be recorded, after giving rival parties fair opportunity following principles of natural justice. This power, however, has to be exercised by the Tribunal before expressing its opinion about validity or invalidity of the punitive action of the management challenged in appeal. In every case, the management cannot be allowed to lead de novo evidence before the Tribunal because that right is circumscribed with certain conditions laid down under Order 41, Rule 27 as indicated hereinabove.

31. There can be no dispute to the proposition that the School Tribunal is vested with powers of the Appellate Court under the Code of Civil Procedure and is entitled to take additional evidence or direct a party to lead evidence, if considered appropriate in a particular case. However, in the present case, failure to examine the Headmaster is not the only flaw in the enquiry. Respondent No.1 has also been denied opportunity to cross-examine the three management witnesses. The evidence of those three management witnesses is already on record. Grant of opportunity to Respondent No.1 to cross-examine them may not fit into the meaning of the term 'additional evidence'. Therefore, it would not be prudent in the present case to remand the proceedings to the School Tribunal for production of additional evidence. In my view, therefore the proceedings deserve to be remanded before the Enquiry Committee.

32. I am therefore of the view that an opportunity needs to be given to Respondent No.1 to cross-examine the three management witnesses and also to produce his own evidence, if he wishes to do so. An opportunity also deserves to be granted to Petitioners to examine the Headmaster. In that view of the matter, the enquiry proceedings deserve to be remanded for being conducted afresh for the limited purpose of offering the three management witnesses for cross-examination of Respondent No.1, for adducing of defence evidence and also for permitting the Petitioner-Management to examine the Headmaster as a witness. Needless to say that the Headmaster is also required to be offered for cross-examination by Respondent No.1.

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33. Since this Court has arrived at a conclusion that the enquiry proceedings deserve to be remanded for being conducted afresh as indicated above, it is not necessary to go into the next issue of perversity of findings recorded by the Enquiry Committee while holding Respondent No.1 guilty of the charges. Therefore, I am not going in the correctness of the findings recorded by the School Tribunal in this regard.

34. Much has been said by Mr. Naidu about the direction issued by the Tribunal for payment of compensation under Section 11(2)(f) of the Act. However, since the enquiry is being remanded, there cannot be any question of payment of backwages or compensation to Respondent No.1. Therefore, it is not necessary to enter into that controversy. Suffice it to state that, the Tribunal could not have awarded compensation once it had directed payment of backwages. However, since the proceedings are being remanded, at this juncture, there is no question of entitlement of Respondent No.1 either to backwages or to compensation. Therefore, it is not necessary to deal with the case laws cited by Mr. Naidu on the issue of methodology for computation of compensation, in lieu of reinstatement and backwages.

35. The Tribunal has also commented upon constitution of the Enquiry Committee by assuming that the Presenting Officer engaged by the Petitioner-Management is the fourth member of the

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Enquiry Committee. This finding recorded by the Tribunal is also unsustainable in law. The Enquiry Committee comprised Convenor appointed by the Petitioner-Management, Awardee Teacher and nominee of Respondent no.1. The officer nominated to present the case of the Petitioner-Management does not become member of Enquiry Committee. The Report of the Enquiry Committee is prepared and signed by convenor, awardee teacher and nominee of Respondent No.1. Presenting Officer has not participated in preparation of the Enquiry Committee report. Therefore, the findings recorded by the Tribunal with regard to constitution of the Enquiry Committee are also unsustainable and are set aside.

36. Before parting, it must be observed that the Tribunal has gone a little overboard in issuing some of the directions in operative portion of its judgment and order. Apart from deciding the issue of Respondent's entitlement to the relief of reinstatement and backwages, the Tribunal has issued following three directives:

- i) it has debarred the awardee teacher from participating in any inquiries in future, with a direction to the Government Authorities to issue a Circular to that effect;
- ii) it has awarded compensation of Rs. 50,000 to Respondent under Section 11 (2)(f) of the Act of 1977 despite grant of relief of reinstatement and backwages;
- iii) It has directed that the copy of its order be served on the concerned Police Station for information.

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37. The Awardee Teacher was not impleaded to the Appeal by name and he did not have the benefit of defending himself in respect of findings recorded and directions given for his debarment. The Tribunal was tasked upon to decide correctness of dismissal order of Respondent and not the conduct of awardee teacher while acting as member of the Enquiry committee. If Tribunal felt that the Enquiry Committee committed any error in conduct of Enquiry, it must confine itself to that issue and remedy the wrong by either setting aside the finding of Enquiry Committee or by remanding the proceedings for correction of error in procedure. It cannot comment upon personal conduct of any member or issue any directive which would cause loss of reputation to such member, particularly when he/she is not even impleaded as party in person to the proceedings. In my view therefore Tribunal's findings as well as directives against the Awardee Teacher are unwarranted and deserve to be to be set aside.

38. As regards the direction for payment of compensation even after directing reinstatement and backwages, that direction was again unwarranted as the Tribunal could not have awarded both. It did not award costs. Therefore, the direction for compensation appears to be over and above the relief of reinstatement and back wages. Usually, the power to award compensation under Section 11 (2)(f) should be used to compensate the employee, whose reinstatement in the facts and circumstances of the case is not warranted and/or who is to be denied backwages. However, since the

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Enquiry is being remanded, there is neither a question of backwages nor award of compensation. Respondent No. 1 would be entitled to subsistence allowance.

39. The direction for service of copy of judgment and order on Police Station is totally uncalled for and the purpose for which such direction is given is unknown. There was no need for the Tribunal to predict that the management would not obey its order or that therefore enforcement of order through Police machinery would be necessary. There was no need for issuing this direction by the Tribunal and the same also deserves to be set aside.

40. Though it is held that the observations made and directions issued about the Awardee Teacher Shri. Gharat are unwarranted and are being set aside, it would be appropriate that the management nominates another Awardee Teacher on the Enquiry Committee. Having been unnecessarily castigated by the Tribunal, he himself may not desire to participate in any further Enquiry proceedings against Respondent No. 1. The change of nomination of Awardee Teacher would ensure that there is no bitterness in conduct of Enquiry afresh on account of findings recorded by the Tribunal against him. It is however clarified that the direction for change of Awardee Teacher is not attributable to any actions of Shri. Gharat in previous Enquiry proceedings

41. Resultantly, I proceed to pass the following order:

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- (i) The Judgment and Order dated 31 January 2022 passed by the Tribunal in Appeal No. 23/2019 is set aside.
- (ii) The order of termination of Respondent No.1 dated 13 August 2019 is also set aside.
- (iii) The Enquiry proceedings are remitted before the Enquiry Committee for being conducted afresh by offering three management witnesses for cross-examination to Respondent No.1 and for production of defence evidence by Respondent No. 1. Petitioner-Management shall be at liberty to examine the Headmaster as a witness. If he is examined as a witness, he shall be offered for cross-examination by Respondent No.1.
- (iv) The Petitioner-Management shall nominate some other Awardee Teacher from the panel as a member of the Enquiry Committee within a period of four weeks from today. Respondent No.1 shall also nominate his nominee within a period of four weeks from today.
- (v) The conduct of remanded enquiry shall not be affected by the period specified under Clause (f) of Sub-Rule (2) of Rule 37 of the Rules of 1981.
- (vi) Respondent No. 1 shall not seek any unnecessary adjournments in the Enquiry and shall remain present on each date of Enquiry along with his defence nominee.
- (vii) Since the Enquiry proceedings are remanded, the Respondent No.1 shall be placed under deemed suspension

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w.e.f the date of his termination i.e. 13 August 2019 and shall be paid subsistence allowance as per Rules. The amount of subsistence allowance w.e.f. 13 August 2019 shall be paid within a period of four weeks and the management shall continue to pay subsistence allowance till completion of the enquiry proceedings and passing of final order, every month.

- (viii) The Enquiry Committee shall make its recommendations and the Petitioner-management shall take final decision in the disciplinary proceedings without being affected by the findings of the earlier Enquiry Committee, observations made by the Tribunal as well as observations made in the present judgment.
- (ix) All remarks made by the Tribunal against the Awardee Teacher Mr. Shridhar Gopal Gharat shall stand expunged.

42. With the above directions, the Writ Petition is **disposed of**. There shall be no order as to costs.

SANDEEP V. MARNE, J.