

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

WRIT PETITION NO.9379 OF 2011

Uttam Janardan Thorbole ... Petitioner
Versus
The Chairman, Shri Sant Chokhoba
Shikshan Prasarak Mandal & Ors. ... Respondents

...

Mr. Shikur G. Kudle, for Petitioner.

Mr. N. V. Bandiwadekar, Sr. Advocate a/w. Mr. Vinayak Kumbhar, Mr. Aniket Phapale & Mr. Sagar Mane for Respondent Nos.1 & 2.

Mr. C. D. Mali, AGP for Respondent Nos.4 & 5.

...

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 05 DECEMBER 2023.
PRONOUNCED ON : 13 DECEMBER 2023.

P. C.:

. By this petition, Petitioner challenges Judgment and Order dated 20 July 2018 passed by the Presiding Officer, School Tribunal, Solapur rejecting Appeal No.54 of 2010 filed by the Petitioner challenging the finding of Inquiry committee as well as penalty of reduction from the post of Headmaster to the post of Assistant Teacher vide Order dated 20 October 2010.

2. Briefly stated, facts of the case are that Petitioner was working at the relevant time as Headmaster in the Secondary Ashram School run and managed by respondent Nos. 1 and 2. It is Petitioner's case that there were 08 teachers in B.Ed category and 06 teachers in D.Ed category in

the Ashram School. That despite nonexistence of vacancy in D.Ed category during the year 2003-04, the management appointed Chairman's son Shri. Prashant Sale. That there being technical problems in drawl of salary bills of Shri. Prashant Sale, Chairman was insisting that the Petitioner must send the salary bill of his son to the education department. Resistance shown by the Petitioner to accept the request of the Chairman resulted in development of bias in the mind of Chairman, who started giving threat to the Petitioner of removal from the post of Headmaster. Said Shri. Prashant Sale filed Writ Petition before this Court in which an Order was passed for payment of salary to Shri. Prashant Sale. According to Petitioner, the said Order was result of misleading on the part of management. Petitioner alleges that the Chairman started harassing him with the objective of removing him from the post of Headmaster. That he was served with a letter dated 11 July 2010 with regard to alleged complaint filed by villagers of Hunnur against Petitioner. Petitioner alleges that Chairman had ensured that none of the correspondence addressed to him was delivered him by concerned postman. That an enquiry was initiated and held behind back of the Petitioner and that he received report of the enquiry committee vide letter dated 20 October 2010 as well as Order passed by the management reverting him from the post of Headmaster to the post of Assistant Teacher.

3. Petitioner filed Appeal No. 54 of 2010 before School Tribunal, Solapur challenging the reversion Order dated 20 October

2010. In the Appeal, he filed an Application for stay to the reversion Order which came to be rejected by the School Tribunal. He filed Writ Petition No. 9288 of 2010 before this Court, which came to be disposed off observing that there was nothing to interfere with the Order passed by the Tribunal. The School Tribunal was however directed to decide the Appeal uninfluenced by the observations in the interim Order. The management opposed the Appeal by filing reply. After hearing both the sides, the School Tribunal passed Judgment and Order dated 20 July 2011 dismissing the Appeal filed by the Petitioner. Aggrieved by the Tribunal's Order dated 20 July 2011, Petitioner has filed the present petition.

4. I have heard Mr. Kudale, the learned counsel appearing for Petitioner. He would submit that the School Tribunal has not appreciated conspiracy committed by the Chairman and management to somehow revert Petitioner from the post of Headmaster on account of audacity shown by him questioning appointment of Chairman's son. That the entire enquiry has been conducted in accordance with violation of principles of natural justice by keeping Petitioner in dark about the same. That he never received any notice of enquiry. That deliberately blank envelopes were sent to the Petitioner for the purpose of creating evidence of service of some of the communications, which the Petitioner actually never received. That despite the fact that names of the members of enquiry committee were never communicated to Petitioner, School Tribunal erroneously failed to set aside the penalty of reduction from the

post of Headmaster. That none of the charges levelled against Petitioner held to be proved on the basis of evidence produced in the alleged enquiry. That the entire enquiry was a farcical exercise since the Chairman and the management were pre-determined to remove Petitioner from the post of Headmaster. He would take me through various findings recorded by the School Tribunal to demonstrate that there is complete miscarriage of justice, which has been glossed over by the Tribunal. That the procedure under Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (**MEPS Rules**) was not followed. He would place reliance on the Affidavit of Ms. Anjali Patwardhan, awardee teacher stating that her signature on the report of the enquiry committee is forged and that she has never acted as a member of the enquiry committee. He submits that Petitioner has attained age of superannuation on 30 May 2014 and is not receiving any pension on account of illegal Order passed by the management.

5. *Per Contra* Mr. Bandiwadekar the learned senior advocate appearing for Respondent-Management would oppose the petition and support the Order passed by the School Tribunal. He would submit that entire enquiry has been conducted with due adherence to the procedure prescribed under the Rules 36 and 37 of the MEPS Rules. That despite grant of several opportunities, the Petitioner did not participate in the enquiry. He did not intimate name of his representative to the enquiry committee. That the findings of guilt recorded by the enquiry committee

are supported by evidence on record. No grounds are raised in petition to demonstrate that findings of the enquiry committee are perverse. That the Affidavit of Mrs. Patwardhan cannot be relied upon and the contents of the affidavit are blatantly false. That she had filed her reply before the Tribunal justifying the penalty imposed on Petitioner. That the Tribunal has recorded finding that she appeared before the Tribunal and contented that sufficient opportunities were given to the Petitioner in the enquiry which has been conducted in a fair manner.

6. Mr. Bandiwadekar would rely upon Judgment of the Apex Court in ***Bank of India Vs. Apurba Kumar Saha***, (1994) 2 SCC 615 in support of his contention that if any employee refuses to participate in enquiry without any valid reason he cannot complain about violation of principles of natural justice. He would deny the theory of sending empty envelopes and would rely upon findings of the School Tribunal rejecting said contentions.

7. Mr. Bandiwadekar would further submit that after his reversion on the post of Assistant Teacher, Petitioner failed to attend duties. Management sent him letters dated 29 November 2010 and 23 December 2010 advising him to resume duties, but by reply dated 01 January 2011, Petitioner took a stand that since the Appeal was directed to be decided within 3 months, he was not in a position to join the post of Assistant teacher. That he remained absent for three and half years and attained age of superannuation on 31 May 2014. That the management was willing to send his pension proposal on the post of Assistant Teacher,

but Petitioner refused to cooperate by signing the necessary pension forms and insisted that pension proposal must be send on the post of Headmaster. He would pray for dismissal of the petition.

8. I have heard Mr. Mali, the learned Assistant Government Pleader appearing for Respondent Nos. 4 and 5. He would submit that since Respondent Nos.4 and 5 are not concerned with the penalty imposed on Petitioner, the State Government cannot be saddled with any liability for payment of any back wages in the event of the impugned Order being found to be illegal.

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

10. Petitioner was working on the post of Headmaster and was subjected to disciplinary proceedings. It is Management's case that Statement of Allegations were served on Petitioner vide notice dated 03 June 2010 levelling 13 charges. Petitioner received the notice of 03 June 2010 and submitted his reply on 07 June 2010 denying the charges. The Management decided to conduct enquiry and constituted enquiry committee and called upon Petitioner to communicate the name of his defence nominee vide letter dated 22 July 2010. Petitioner failed to nominate his nominee and therefore by letter dated 26 August 2010, Petitioner was communicated decision to proceed with the enquiry committee with two members of convener and state awardee teacher. A remainder was issued on 13 August 2010. Petitioner still failed to

nominate his defence nominee. One more letter dated 31 August 2010 was issued to Petitioner. First date of enquiry was fixed on 24 August 2010 which was not attended by Petitioner. It is management's case that despite receipt of several communications as above, Petitioner failed to attend the enquiry proceedings. The Management has relied upon various acknowledgments on the part of Petitioner. The enquiry was thus conducted *ex parte*. At the end of the enquiry the committee comprising of two members i.e. Convener and awardee teacher submitted report dated 16 October 2010 holding Petitioner guilty of misconduct and recommending penalty of reversion to the post of Assistant Teacher. After receipt of report of the enquiry committee, Petitioner was served with Order dated 20 October 2010 imposing the penalty of reversion. He was supplied report of the inquiry committee along with the penalty order.

11. Perusal of the proceedings of the enquiry would indicate that Petitioner faced following broad charges :-

- (i) Failure to present files relating to grant for the year 2003-04 and 2004-05 resulting in non-receipt of 40% bills within time.
- (ii) Erroneous recording of caste of Assistant Teacher Shri. Gurudev Kashinath Swami in school records
- (iii) Erroneous reflection of pay scale of Shri. Prashant Pundalik Sale for misleading the state government resulting in cancellation of sanctioned strength of the school for the

year 2007-08 by education department.

(iv) Non disbursal of timely wages of three teachers namely Shri. Prashant Pundlik Sale, Shri. Jayant Tanaji Sale and Shri. Sandeep Krishna Pawar.

(v) Erroneous submission of backlog roster on 13 March 2004.

(vi) Filing of complaints by teachers for taking vindictive actions against them.

(vii) Demanding amounts from Ms. Jayashree Gavali and abusing her with reference to her caste, leading to filling of complaint dated 11 August 2005 by her.

(viii) Refusal to follow directions of Management and giving misleading information to the government authorities

(ix) Failure to produce important documents such as roster, self-service book, etc to the management

(x) Defamation of management on account of providing wrong information to Social Welfare Officer.

(xi) Financial misappropriation on account of erroneous pay fixation of the Petitioner.

(xii) Unauthorized absence from duty from 02 May 2010 to 04 May 2010.

12. As observed above, after submitting initial reply dated 27 July 2010 denying the charges, Petitioner has refused to participate in the enquiry proceedings. The management has relied upon postal acknowledgments to demonstrate receipt of various communications by Petitioner. Petitioner alleges that envelopes received by him were empty. The School Tribunal has refused to accept the said defence. It is Petitioner's case that no enquiry is actually conducted and the Management has created farcical show of conduct of enquiry. He has placed reliance on Affidavit of Smt. Patvardhan, State Awardee Teacher executed on 18 September 2017. In that affidavit Smt. Patvardhan has stated that she has not signed the report of the enquiry committee and her signature thereon is forged. She has further stated that she has never participated in enquiry against Petitioner. On the other hand, School Tribunal has referred to Written Statement filed by the Smt. Patvardhan contending that sufficient opportunities were given to the Petitioner in the enquiry. I do not have the benefit of the said Written Statement of Smt. Patwardhan filed before the School Tribunal as none of the parties have filed the same on record. It is therefore difficult to hold that the enquiry has not been conducted in a fair or proper manner or that there is any violation of principles of natural justice.

13. Coming to the aspect of perversity in the findings of the enquiry committee, perusal of the enquiry committee report dated 16 October 2010 would indicate that the enquiry committee did not examine any witness for proving charges against Petitioner. The report of

the enquiry committee records a finding that Petitioner deliberately did not participate in the enquiry. The report thereafter proceeds to deal with each article of charge. It appears that since no witnesses were examined, the enquiry committee did not have any evidence for discussion. In absence of any evidence on record, the enquiry committee has proceeded to hold the charges as proved. The relevant findings of the enquiry committee with regard to the proof of 11 charges are as under :-

१) दोषारोप क्र. १ च्या बाबतीत श्री. यु. जे. थोरबोले हे माध्यमिक आश्रमशाळा हुन्नुर ता. मंगळवेढा जि. सोलापूर येथे मुख्याध्यापक होते त्यांनी या शाळेचे सन २००३-०४ चे अंतिम व २००४-०५ ची निर्धारित अनुदान नस्ती वेळेत सादर न केल्याने दि. १५/३/२००५ चे मा. वि. जी. स. क. अ. सोलापूर यांचे पत्रसन २००६-०७ चे अंतिम व ००७-०८ अंदाज मुल्यानिर्माण अहवाल आपण संबंधीत खात्याकडे पाठवीलेला नसल्यामुळे व वरिष्ठाच्या आदेशाचे पालन करीत नसल्यामुळे व आपल्या मनमानी कारभारामुळे संस्थेस मिळणारे ४०% परिपोषण आहार वेळेत मिळाला नाही या बाबत मा. वि. जिल्हा समाज कल्याण अधिकारी सोलापूर यांनी १२/१/२००८, २१/१/२००८, ३०/१/२००८ व विभागीय समजाकल्याण अधिकारी पुणे तसेच संस्थेच्या अध्यक्षांनी दि. ३१/१२/२००७ रोजी कळवूनही आपण वरिष्ठाच्या आदेशाचे पालन केलेले नाही. या मनमानी कारभारामुळे शाळेतील विद्यार्थ्यांचे व संस्थेचे न भरून येणारे नुकसान झालेले असून यातून श्री. यु. जे. थोरबोले यांची कर्तव्यात बुद्धीपरस्पर हयगय व अक्षमता दिसून येत आहे. श्री. यु. जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क व २८ (५) ड चा भंग केल्याचे सिध्द होते. त्यामुळे श्री. यु. जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

२) दोषारोप क्रं. २ च्या बाबतीत श्री. गुरुदेव काशिनाथ स्वामी यांचे जातीत बदल दाखवून संबंधीत खात्याकडे चुकीची माहिती सादर केलेली आहे. सदरचे कृत्य बेकायदेशीर असून श्री. यु. जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क व २८ (५) ड चा भंग केल्याचे सिध्द होते. त्यामुळे श्री. यु. जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

३) दोषारोप क्रं. ३ च्या बाबतीत माध्यामिक आश्रमशाळा हुन्नुर ता. मंगळवेढा येथे सह शिक्षक श्री. प्रशांत पुंडलीक साळे यांना मा. वि. जी. स. क. अ. यांनी जा. क्र. २९२० दि. ६/४/२००५ अन्वये वेतन श्रेणी ५५००-९००० मध्ये मान्यता दिलेली असतांना आपण शैक्षणिक वर्ष ०७-०८ मध्ये श्री. साळे यांची सेवक संचात सहशिक्षक म्हणून वेतन श्रेणी ४५००-७०००/- अशी हेतुपुरस्सर नोंद दाखवून खात्याची दिशाभूल करून सेवक संच घेतला होता. सदरची बाब संबंधीत खात्याच्या निदर्शनास आल्यामुळे शासनाची दिशाभूल केल्यामुळे खात्याने संस्थेच्या वेतनेतोर अनुदानातून रक्कम रु. १०,०००/- चा दंडप्रस्तापित केलेला आहे व मुख्याध्यापकावर प्रशासकीय कार्यवाही करण्याचे आदेश दिलेले होते. केवळ श्री. साळे प्रशांत पुंडलीक यांना जाणीवपूर्वक त्रास देण्याच्या वृत्तीने व

आर्थिक नुकसान करण्याच्या एकमेव उद्देशाने खात्याकडे स्वतःच्या अधिकाराचा गैरवापर केल्याचे दिसून येत आहे. तरी आपण महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क चा भंग केल्याचे सिध्द होते. त्यामुळे श्री.यु.जे.थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

४) दोषारोप क्रं. ४ बाबतीत माध्यामिक आश्रमशाळा हुन्नुर येथील कर्मचारी श्री. प्रशांत पुडलीक साळे, श्री. जयंत तानाजी साळे, श्री. संदिप कृष्णा पवार यांना वैयक्तिक मान्यता शासनाची असतांनाही आपण आर्थिक कोंडी करण्याच्या एकमेव उद्देशाने त्यांचे पगारबिले काढले नाहीत हे दिसून येत आहे. संबंधीत कर्मचार्याने पगारा बाबत व मुख्याध्यापकाच्या एकाधिकारा बाबत व पैशाची मागणी करीत असल्या बाबत संस्थेकडे लेखी तक्रार केली. सदर तक्रारीची दखल घेवून संस्थेने संबंधीत कर्मचार्याचे वेतन काढणे बाबत दि.५/६/२००५, १२/६/२००५, २०/६/२००५ व ११/७/२००५ रोजी लेखी कळवूनही आपण संस्थेचा आदेश मानलेला नाही हे दिसून येते. आपल्या या कृतीमुळे सदर कर्मचारी सोलापूर जिल्हा मागासवर्गीय शिक्षक शिक्षकेतर संघटनेकडे गेले संघटनेने दि.२६/७/२००५ रोजी कळवूनही आपण त्यांना दाद दिली नाही. आपण दमदाटी केल्याचे त्यांच्या माहिती वरून दिसून त्यामुळे शाळेची बदनामी होवून संस्थेची मानहानी झाल्याचे स्पष्ट होते. शेवटी कोणत्याही आदेशाला आपण मान्य करीत नाही म्हणून मा.मुंबई उच्च न्यायालयात श्री. प्रशांत साळे यांनी धाव घेतली. त्यानुसार मा.मुंबई उच्च न्यायालयाने दि.२/२/२०१० रोजी वेतन देण्याचे आदेश दिले. या सर्व बाबीस मुख्याध्यापक या नात्याने आपण वैयक्तिकरित्या जबाबदार आहात असे यावरून सिध्द झाले आहे. श्री.यु.जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) अ व २८ (५)क चा भंग केल्याचे सिध्द होते. त्यामुळे श्री.यु.जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

५) दोषारोप क्रं. ५ च्या बाबतीत आपण विशेष जिल्हा समाजकल्याण अधिकारी सोलापूर यांचेकडे दि. १३/३/२००४ रोजी शाळेतील शिक्षकाची अनुषंगीची माहिती दर्शवीणारा तक्ता हा चुकीचा व दिशाभूल करणारा सादर केलेला आहे. प्रशालेमध्ये एक शिक्षक एस.सी. असताना आपण दोन शिक्षक एस.सी. आहेत अशी चुकीची माहिती देवून शाळेचे रोस्टर भरून घेतलेले आहे. सदर दोषारोपा बाबत श्री.यु.जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) अ व २८ (५)क चा भंग केल्याचे सिध्द होते. त्यामुळे श्री.यु.जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

६) दोषारोप क्रं. ६ चे बाबतीत माध्यामिक आश्रमशाळा हुन्नुर येथील कर्मचार्यावर आपण सुडबुद्धीने वागत असल्यामुळे कर्मचार्यांनी दि.२०/१०/१९९७, २४/१०/२०००, ११/८/२००५, २०/३/२००८ रोजी संस्थेकडे व संबंधीत खात्याकडे तक्रारी दाखल केल्या परंतु आपण कोणतीही दखल अथवा तक्रारीस उत्तर दिले नाही. तसेच हुन्नुर ता. मंगळवेढा येथील ग्रामस्थानी दि. २०/३/२०१० रोजी आपल्या विरोधात संस्थेकडे व संबंधीत खात्याकडे लेखी निवेदन देवून आपणावर कडक कारवाई करावी असा अर्ज दिला या बाबत संस्थेने आपणास लेखीपत्र दिले पण त्याचाही खुलासा केला नाही. या वरून आपण कोणत्याही आदेशाचे पालन करीत नाही. सदर दोषारोपा बाबत श्री.यु.जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) अ चा भंग केल्याचे सिध्द होते. त्यामुळे श्री.यु.जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

७) दोषारोप क्रं. ७ चे बाबतीत कु.जयश्री गवळी या जुन १९९६ ते जुन १९९८ पर्यंत आपल्या माध्यामिक आश्रमशाळेत सहशिक्षक म्हणून सेवेत होत्या. सध्या त्या श्री. संत

रोहीदास प्राथमिक आश्रमशाळा टेभुर्णी ता. माढा जि.सोलापूर येथील मुखध्यापीका आहेत. त्यांनी काम केलेल्या काळातील सेवक पुस्तकाची माळी आपणाकडे केली होती त्याच्या बदल्यात आपण पैशाची मागणी केली . पैसे देण्यास नकार दिल्यामुळे अर्वाच्या भाषेत जातीवाचक शिवीगाळ केल्याची तक्रार संस्थेत दाखल केलेली आहे. तरी आपण सेवेच्या अटी व शर्तीचा भंग करून आपण गैरवर्तणूक केल्याने महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क व २८ (५)ड चा भंग केल्याचे सिद्ध होते. त्यामुळे श्री.यु.जे.थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

८) दोषारोप क्रं. ८ च्या बाबतीत आश्रम शाळा हुन्नूर ता. मंगळवेढा या शाळेचे लेखा परिक्षण अहवाल वेळेत सादर न करणे, संस्थेच्या आदेशाचे पालन न करणे, शालेय पोषण आहाराचीमाहिती वेळोवेळी खात्याकडे सादर न करणे, माहिती विचारणाकेल्यास अरेरावीची भाषा करणे यामुळे शाळेचे जे नुकसान झाल्यास त्यास आपण वैयक्तिक रित्या जबाबदार असल्याचे सिद्ध झाले आहे. महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क व २८ (५)ड चा भंग केल्याचे सिद्ध होते. त्यामुळे श्री.यु.जे.थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

९) दोषारोप क्र. ९ च्या बाबतीत माध्यामिक आश्रमशाळा हुन्नूर या शाळेतील कर्मचाऱ्याचे रोस्टर व आपले वैयक्तिक सेवा पुस्तक हे संस्थेच्या अधिकारातील असतांना व इतर महत्वाची कागदपत्रे आपण संस्थेने दि. २०/७/२००५ रोजी मागणी करून ही संस्थेकडे सादर केले नाहीत. संस्थेचे रेकॉर्ड स्वतःच्या ताब्यात ठेवलेले आहेत. सदर दोषारोपा बाबत श्री.यु.जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क, २८ (५) अ, ब व २८ (५) ड चा भंग केल्याचे सिद्ध होते. त्यामुळे श्री.यु.जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

१०) दोषारोप क्र.१० च्या बाबतीत मा. वि.जी.स.क.अ. यांना संस्थेच्या कामकाजा बाबत चुकीची माहिती पुरविल्यामुळे संस्थेची नाहक बदनामी झाली सदर पत्राचा . खुलासा वस्तीगृहातील कर्मचाऱ्यांनी दि. ७/२/२००८ रोजी संबंधीत खात्याकडे केलेला आहे. केवळ संस्थेची बदनामी व्हावी हा आपला एकमेव उद्देश दिसून येत आहे. सदर दोषारोपा बाबत श्री.यु.जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) क व २८ (५)ड चा भंग केल्याचे सिद्ध होते. त्यामुळे श्री.यु.जे. थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

११) दोषारोप क्र.११ च्या बाबतीत मा. विभागीय समाज कल्याण अधिकारी, पुणे यांनी आपल्या गैरवर्तणूकी मुळे सन २००८ ची आपली वेतनवाढ थांबवली होती. परंतु आपण संस्थेच्या परस्पर वेतनवाढ घेवून वेतन निश्चीती न करता ६ व्या वेतन आयोगा प्रमाणे बिले पाठवून खात्याची दिशाभूल करून आर्थिक फसवणूक केल्याचे संस्थेच्या निदर्शनास आल्यानंतर संस्थेने दि. १५/३/२०१०, १३/४/२०१० रोजी कळवूनही आपण त्याबाबत कोणताही खुलासा केलेला नाही. सदर दोषारोपा बाबत श्री.यु.जे. थोरबोले यांनी महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम २८ (५) ड चा भंग केल्याचे सिद्ध होते. त्यामुळे श्री.यु.जे.थोरबोले हे दोषी असल्याचे आम्ही दोघे निष्कर्ष काढीत आहोत.

14. Some of the allegations levelled against the Petitioner were of serious nature. To illustrate, in charge No.7 Petitioner was accused of demanding illegal gratification from Ms. Jayashree Gavali and abusing with reference to her caste in a filthy language. However, it appears that Ms. Jayashree Gavali is not examined as witness to prove that charge. In absence of deposition of Ms. Jayashree Gavali, serious charge of demand of illegal gratification and abusing her with reference to caste is held to be proved.

15. Similar is the position with regard to charge No. 4 which levelled allegation of demand of moneys for disbursement of salaries of Mr. Prashant Pundalik Sale, Shri. Jayant Tanaji Sale and Shri. Sandeep Krishna Pawar. None of the three teachers are examined as witness in the enquiry. Without their depositions, serious charge of demand of gratification in charge No. 4 has been held to be proved by the enquiry committee. This is how all the 11 charges are held to be proved by the enquiry committee without any iota of evidence on record. Even if Petitioner had refused to participate in the enquiry, the Management ought to have examined the relevant witnesses and recorded their depositions for proving charges levelled against Petitioner. However, the Management failed to lead any evidence in the entire enquiry. There is thus complete absence of evidence on record. The findings of guilt recorded by the enquiry committee in respect of all the 11 charges are thus based on 'no evidence' and are therefore perverse. The School Tribunal has completely ignored the position that there is total absence of

evidence on record in support of proof of any of the charges. Findings recorded by the School Tribunal on point Nos. 4 and 5 in the impugned Order are totally unsustainable.

16. I therefore find that the findings of guilt recorded by the enquiry committee against Petitioner are based on no evidence and hence perverse. The penalty of reduction from the post of Headmaster to the post of Assistant Teacher imposed vide letter dated 20 October 2010 based on perverse findings of enquiry committee is also unsustainable. The Tribunal appears to have ignored this glaring fault in the report of the inquiry committee.

17. The next issue is the nature of relief that can be granted to Petitioner. This Court has held that the penalty of reversion imposed on Petitioner is illegal. In ordinary course, for failure to examine witnesses, the inquiry needs to be remanded for being conducted afresh. However, much water has flown under the bridge in the interregnum. Petitioner has already retired from service 9 years ago and would be at an advanced age now. It is doubtful as to whether the witnesses would be available now for being examined since period of 13 long years have elapsed since conduct of inquiry. At the same time, Petitioner cannot be rewarded with all consequential benefits for the mistake of the inquiry committee in not examining the witnesses. Since he did not attend inquiry, he would not have otherwise cross-examined the witnesses. I therefore deem it appropriate to draw curtains on the entire issue by making an arrangement that ensures that Petitioner is restored on the post of

Headmaster without saddling the management or the State Government with any liability to pay backwages.

18. Petitioner has failed to attend duties after imposition of penalty on 20 October 2010 until he attended the age of superannuation on 31 May 2014. The issue of Petitioner's absence during period from 20 October 2010 to 31 May 2014 was neither involved before the Tribunal nor is the subject matter of the present petition. Therefore, as a result of setting aside the penalty imposed on him, Petitioner will have to be treated as having retired on the post of Headmaster on 31 May 2014. With a view to prevent any further litigation between the parties, it would be appropriate to direct that the period from 20 October 2010 to 31 May 2014 shall be treated as duty only for the purpose of qualifying service for pension and for no other purposes. Petitioner shall not be entitled to any salary or allowances for the period from 20 October 2010 to 31 May 2014. Since Petitioner is being denied salary and allowances during the period 20 October 2010 to 31 May 2014, even if any other person officiated or was appointed or drew salary on the post of Headmaster, the same would not put any additional burden on the State Government in the form of paying wages of Headmaster to two persons for same period. Denial of backwages and not counting the period from 20 October 2010 to 31 May 2014 for any purposes (except as qualifying service for pension) would also act as some measure of penalty on him.

19. I accordingly proceed to pass the following Order :-

- i) Judgment and Order dated 20 July 2011 passed by School Tribunal, Solapur in Appeal No. 54 of 2010 is set aside;
- ii) The penalty of reversion from the post of Headmaster to the post of Assistant Teacher imposed on Petitioner vide Order dated 20 October 2010 is also set aside;
- iii) Petitioner shall be treated as having retired on the post of Headmaster on 31 May 2014 and the Management shall send a pension proposal of the Petitioner on the post of Headmaster within a period of 4 weeks from today. On receipt of such proposal, the competent authority shall take a decision thereon and sanction the same within a period of 04 weeks from the date of receipt of proposal and pay to the Petitioner pension and other pensionary benefits with effect from 01 June 2014. The proposal shall not be rejected on the ground that another person was appointed or officiated or drew salary as Headmaster during the period from 20 October 2010 to 31 May 2014;
- iv) The period from 20 October 2010 to 31 May 2014 shall not be treated as duty for any purposes except as qualifying service for pension.

20. With the above directions Writ Petition is partly allowed.

21. Rule is made partly absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J.

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