



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10432 OF 2022

- | | | |
|---|---|-----------------|
| 1. Shri A. P. D. Jain Pathshala, Solapur. |] | |
| Ashok Chowk, Seth Walchand Hirachand |] | |
| Marg, Solapur – 413 006, through its |] | |
| Secretary Dr. Ranjeet Hiralal Gandhi. |] | |
| | | |
| 2. Walchand College of Arts & Science. |] | |
| Ashok Chowk, Seth Walchand Hirachand |] | |
| Marg, Solapur – 413 006, through its |] | |
| Principal Dr. Santosh Vijaykumar Koti. |] | ... Petitioners |

Versus

- | | | |
|----------------------------------|---|-----------------|
| 1. Pradip Hanmantrao Ulagadde |] | |
| Age – 38 years, Occu. - Service, |] | |
| R/o. 54/63, Near Utage Hospital, |] | |
| Bhavani Peth, Solapur. |] | |
| | | |
| 2. Deputy Director of Education, |] | |
| Pune Division, Pune – 1. |] | ... Respondents |

WITH

WRIT PETITION NO. 2365 OF 2023

- | | | |
|----------------------------------|---|----------------|
| Shri Pradip Hanmantrao Ulagadde |] | |
| Age – 38 years, Occu. - Service, |] | |
| R/o. 54/63, Near Utage Hospital, |] | |
| Bhavani Peth, Solapur. |] | ... Petitioner |

Versus

- | | | |
|--|---|--|
| 1. The President / Secretary |] | |
| Shri A. P. D. Jain Pathshala, Solapur. |] | |
| Ashok Chowk, Seth Walchand Hirachand |] | |
| Marg, Solapur – 413 006 |] | |
| | | |
| 2. Principal, |] | |
| Walchand College of Arts & Science, Solapur. |] | |

3. Deputy Director of Education,]
Pune Division, Pune – 1.]
4. State of Maharashtra] ... Respondents

Mr. K. S. Bapat, Senior Advocate i/b Mr. Sandeep Waghmare for Petitioners in WP 10432/2022 and for Respondent No.1 in WP 2365/2023.

Mr. Anant Vadgaonkar for Petitioner in WP 2365/2023 and for Respondent No.1 in WP 10432/2022.

Mr. P. P. Pujari, AGP for State in both Writ Petitions.

CORAM :- SANDEEP V. MARNE, J.

RESERVED ON :- 26 OCTOBER, 2023

PRONOUNCED ON :- 31 OCTOBER, 2023

JUDGMENT

1. ***Rule.*** Rule made returnable forthwith. With the consent of the learned counsel for parties, Petitions are taken up for hearing.

2. These Petitions are filed by the management as well as by the teacher challenging the Judgment and impugned order dated 23/02/2022 passed by the Presiding Officer, School Tribunal, Solapur. The Tribunal has proceeded to partly allow the Appeal filed by the teacher and has held enquiry as well as termination order dated 04/11/2019 to be illegal. However, direction is issued to the management to conduct a fresh enquiry against the teacher. The teacher is directed to be placed under suspension in the interregnum with further directions to pay him subsistence allowance as per rules. The management is aggrieved by the direction of the Tribunal to set aside enquiry and termination order and has accordingly filed Writ Petition No.10432/2022. The teacher is aggrieved by the decision of the School Tribunal to the extent of direction

to hold fresh enquiry and has filed Writ Petition No.2365/2023. Since both the Petitions challenge the order dated 23/02/2022 passed by the Tribunal, they are heard and decided together.

3. The facts of the case are that Shri Pradip Hanmantrao Ulagadde (**Shri. Ulagadde**) was initially appointed on the post of Shikshan Sevak in Walchand College of Arts and Science, Solapur, on 07/12/2011 against permanently granted post. The appointment was for a period from 01/01/2012 to 31/12/2014, which was approved by the Deputy Director of Education, Pune. On completion of 3 years of service as Shikshan Sevak, he came to be appointed as Assistant Teacher from 01/01/2015. Before his appointment in Walchand College of Arts and Science, he was serving in P. S. English Medium School, Solapur and it is the case of the management that while handling the responsibility to carry out recruitment process, he had appointed Smt. Chitra Shinde on the post of 'Peon' in that school. Shri Ulagadde thereafter left that school and joined the school of the management on 07/12/2011. It appears that after Shri Ulagadde left the said school, the service of Smt. Shinde came to be terminated.

4. It appears that after Shri Ulagadde joined the school of the management, Smt. Shinde kept on visiting the school during working hours in the premises of the school and college. It appears that every time Smt. Shinde used to visit Shri Ulagadde in the college, altercations used to take place between the duo. Smt. Shinde used to claim that Shri Ulagadde has married her and by suppressing their marriage, Shri Ulagadde has solemnized marriage with another woman. On 23/03/2014, the Principal of the college issued notice to Shri Ulagadde objecting about Smt. Shinde repeatedly visiting the college and remaining

on the campus for several hours. Shri Ulagadde submitted his reply on 02/04/2014 expressing apology and stating that Smt. Shinde was deliberately visiting him to create problems in his service. He undertook to ensure that Smt. Shinde would never visit him in the future. However, it appears that the visits did not end and on 07/03/2015, Smt. Shinde apparently created ruckus in the corridor in front of several students and abused Shri Ulagadde. Therefore, notice dated 09/03/2015 was issued to Shri Ulagadde. Another show cause notice dated 01/04/2015 was issued to him, which was replied by him on 04/04/2015 admitting that he alone was responsible for the incident which took place on 07/03/2015. The management issued charge-sheet dated 17/04/2015 to Shri Ulagadde levelling charges and appointed Enquiry Officer. During pendency of the enquiry, Smt. Shinde again created ruckus on 22/06/2015 and abused Shri Ulagadde in front of several students. She apparently poured kerosene on herself and attempted to commit suicide. Newspaper reports were published about the incident, which according to the management, caused loss of reputation to the institution. After the incident dated 22/06/2015, show cause notice was issued on the same day to Shri Ulagadde, who tried to settle his disputes with Smt. Shinde and executed Settlement Agreement dated 27/03/2015 offering to pay amount of Rs.3,00,000/- to her. A supplementary charge-sheet dated 11/07/2015 was issued to Shri Ulagadde. After conducting enquiry, the Enquiry Officer submitted report dated 08/01/2016 holding that charges against Shri Ulagadde were proved. After calling for his representation against the findings of the Enquiry Officer, the management proceeded to terminate the services of Shri Ulagadde by order dated 18/01/2016.

5. The termination order dated 18/01/2016 became subject matter of challenge in Appeal No.7/2016 filed before the School Tribunal,

Solapur. The Tribunal allowed the Appeal by its Judgment and Order dated 24/08/2018 holding that the enquiry conducted against Shri Ulagadde was improper. Accordingly, enquiry was set aside, and Shri Ulagadde was directed to be reinstated in service along with full backwages and continuity of service. Liberty was however granted to the management to conduct fresh enquiry.

6. The management challenged Tribunal's decision dated 24/08/2018 by filing Writ Petition No.2585/2019, which came to be disposed of by this Court by order dated 11/04/2019 directing the management to deposit the amount of backwages in a separate fixed deposit account in a nationalized bank with a further directions that such deposit would be subject to the order that may be passed in the departmental enquiry. To this extent, the order of the School Tribunal in awarding the backwages was set aside. In pursuance of the order passed by this Court, the management has deposited amount of Rs.18,53,421/- towards backwages for a period from 18/01/2016 to 30/04/2019 and Rs.31,755/- for the period from 01/05/2019 to 20/05/2019.

7. The management served statement of allegations to Shri Ulagadde by notice dated 22/05/2019. The allegations were denied by Shri Ulagadde. The School Committee, in its meeting dated 08/06/2019, considered the show cause notice dated 22/05/2019 and reply dated 28/05/2019 and nominated the trustee Mr. Parag A. Shah as convener of the proposed Enquiry Committee. Shri Ulagadde was informed about the decision of the school committee to initiate fresh enquiry and he nominated his defence nominee over the Enquiry Committee. Awardee teacher was also appointed in the Enquiry Committee. The Enquiry Committee conducted enquiry from 31/07/2019 and concluded the same

on 29/10/2019. The Enquiry Committee delivered report holding that the charges levelled against Shri Ulagadde were proved. Based on the findings of the Enquiry Committee, the management proceeded to issue termination order dated 04/11/2019.

8. Shri Ulagadde approached the School Tribunal by filing Appeal No.50/2019 challenging the termination order dated 04/11/2019. The Appeal was resisted by the management by filing Affidavit-in-reply. After hearing both the sides, the Tribunal has partly allowed the Appeal by setting aside termination order dated 04/11/2019 as well as the proceedings of enquiry. The management is directed to conduct fresh enquiry by placing Shri Ulagadde under suspension with further directions to pay him subsistence allowance.

9. Both the management as well as Shri Ulagadde are aggrieved by the Tribunal's decision. The management is aggrieved and has challenged the entire order of the School Tribunal by filing Writ Petition No.10432/2022. On the other hand, Shri Ulagadde is aggrieved by the Tribunal's decision to the limited extent of directing the management to conduct fresh enquiry and accordingly has filed Writ Petition No.2365/2023.

10. Mr. Bapat, the learned senior advocate appearing for the management in Writ Petition No.10432/2022, would submit that the Tribunal has erroneously set aside enquiry as well as termination order. That, the enquiry was conducted with due adherence to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules'). That, finding of the Tribunal that charge-sheet is not served by the management is *ex facie* illegal. That, under Schedule 'A' to the MEPS Rules, a School Committee, constituted under

Rule 2(1)(i), comprises 4 representatives of management consisting of President of governing body. That, therefore, School Committee is representative of the management. Without prejudice, he would submit that though the disciplinary proceedings are initiated by the School Committee, the final order of termination is issued by the governing body of the trust (management).

11. Mr. Bapat would further submit that the finding of the School Tribunal about constitution of Enquiry Committee being contrary to the provisions of Rules 33 and 36 of the MEPS Rules, are unsustainable. He would further submit that the finding of the School Tribunal about non-submission of joint report of the Enquiry Committee is factually incorrect as a joint report has indeed been submitted. That, the finding about the Enquiry Committee not suggesting specific penalty recorded by the Tribunal is hyper technical in view of the right of the management to impose the penalty. That, the finding about non-payment of subsistence allowance during conduct of enquiry recorded by the School Tribunal, is also illegal in view of the fact that Shri Ulagadde was working against a grant-in-aid post and the proposal of payment of subsistence allowance was pending. Mr. Bapat would submit that no prejudice is caused on account of any of the technical violations highlighted by the Tribunal. He would submit that Shri Ulagadde has been found guilty of serious misconduct and the Tribunal has erred in setting aside his termination order.

12. *Per Contra*, Mr. Vadgaonkar, the learned counsel appearing for Shri Ulagadde would not only oppose the Petition filed by the management but also seek setting aside the direction for conducting fresh enquiry passed by the School Tribunal. He would submit that the Petition

filed by the management is not maintainable as the management has acted upon School Tribunal's order dated 23/02/2022 by issuing statement of allegations to Shri Ulagadde on 06/05/2022. That, once the School Tribunal's order is acted upon by the management, it is estopped from challenging the same subsequently.

13. Mr. Vadgaonkar would further submit that the Tribunal has rightly set aside the enquiry as well as termination order. That, under provisions of Rule 33 only management can take a decision of initiation of disciplinary proceeding. That, under Schedule 'A' to the MEPS Rules, School Committee can only impose minor penalty whereas in the present case, the charge-sheet has led to imposition of major penalty of dismissal. That, the entire proceedings of enquiry are vitiated on account of the decision taken by the School Committee and not by the management. There is also violation of Rule 37(1) as rightly observed by the Tribunal. That, Shri Ulagadde was not paid subsistence allowance while conducting fresh enquiry which resulted in denial of reasonable opportunity of defence. That, the 3 members of Enquiry Committee prepared 3 separate reports. This is in violation of Rule 37(6). That, the Enquiry Committee failed to render its decision about the specific action to be taken against the employee under Rule 37(6). That, in such circumstances, the Tribunal has rightly set aside the penalty as well as the entire proceedings of enquiry.

14. So far as the direction issued by the Tribunal for conduct of fresh enquiry, Mr. Vadgaonkar would submit that the management cannot be granted repeated opportunities for repeatedly subjecting Shri Ulagadde in multiple disciplinary enquiries. He relied on the Judgment of the Apex Court in *The Inspector of Panchayats and District Collector, Salem Vs. S.*

Arichandran & Ors.¹ He would also place reliance on the Judgment of Single Bench of this Court in ***The Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap, Tq.Akole, Dist.Ahmednagar Vs. Alka Namdeo Khalekar***². Mr. Vadgaonkar would submit that because of mistakes committed by the management, Shri Ulagadde is continuously kept out of service since 18/01/2016 and 2 enquiries conducted by the management are already set aside by the Tribunal. That, conduct of third enquiry is impermissible. He would therefore pray for setting aside the direction for conduct of fresh enquiry and seek reinstatement of Shri Ulagadde with full backwages from the date of his first termination.

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

16. The subject-matter of challenge before the Tribunal in Appeal No.50/2019 was the second enquiry leading to termination order dated 04/11/2019. Shri Ulagadde was previously terminated on 18/01/2016 in pursuance of first enquiry which came to be set aside by the Tribunal by order dated 24/08/2018. The second enquiry is conducted in pursuance of the liberty granted by the Tribunal by its order dated 24/08/2018. The Tribunal, while setting aside the enquiry and termination, has directed that a fresh enquiry must be conducted against Shri Ulagadde.

17. The Tribunal has found multiple errors in the second enquiry proceeding. The first error noticed by the Tribunal is with regard to constitution of the Enquiry Committee. By relying upon the provisions of Rule 33 of the MEPS Rules, the Tribunal has held that only management can take a decision for holding an enquiry and that in the present case, the decision is taken by the School Committee. Rule 33 of the MEPS Rules reads thus :

¹ *Civil Appeal No.6776 of 2022, decided on 23/09/2022*

² *2017(1) Mh.LJ 105*

“R. 33. Procedure for inflicting major penalties :

(1) If an employee is alleged to be guilty of [any of the grounds specified in sub-rule (5) of rule 28] and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Education and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order.

(2) If the employee tenders resignation while under suspension and during the pendency of the inquiry such resignation shall not be accepted.

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not leave the headquarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.

(5) An employee against whom proceeding have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained by police for judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty after producing documentary proof of his release (otherwise than on bail) or acquittal, as the case may be. An adjustment of his pay and allowances for such periods shall be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified.

(6) After the result of the criminal prosecution, a copy of the judgment shall be obtained by the Management and if the

judgment is one of conviction for the charges and if any inquiry is also initiated by the Management against the employee on the basis of the same charges, it shall not be necessary to proceed with the inquiry on the same charges and the Management shall take action to terminate the services of the employee. The Management shall not however pass any order till the period upto which the employee is entitled to prefer an appeal or revision application to the higher Court against the conviction by the lower Court is over. If the appeal or revision application is preferred the Management shall not take any action till the conviction is finally confirmed by the higher Court. When the judgment in the criminal case appeal or revision application is one of acquittal, the Management shall consider in the light of the judgment whether it is necessary to institute or proceed with the inquiry. If the Management agrees that the acquittal is justified, it may drop the inquiry by certifying that it agrees with the findings of the Court. If the Management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment.”

18. Though Mr. Bapat has attempted to contend that the School Committee constituted under Rule 2(1)(i) and Schedule ‘A’ to the MEPS Rules, 1981 comprises management representations, in my view, it is not necessary to delve deeper in this aspect. It is Mr. Vadgaonkar’s contention that the School Committee is empowered to impose only a minor penalty on employees other than Head. In the present case, it is an admitted position that though the School Committee adopted a resolution in its meeting dated 08/06/2019 for initiation of disciplinary proceedings against Shri Ulagadde, ultimately the penalty of dismissal from service is imposed by the management by way of resolution adopted by the Governing Council of the Trust in its meeting held on 02/11/2019. Undeniably, therefore, the decision to dismiss Shri Ulagadde from service is taken by the competent authority. The issue before the School Tribunal was whether initiation of the proceeding by incompetent authority would invalidate penalty issued by the competent authority. The law in this regard is well settled in several judgments that initiation of disciplinary

inquiry can be by authority subordinate to the component authority, so long the final penalty is by the competent authority.

Reference in this regard can be made to the Judgment of Apex Court in *Inspector General of Police v. Thavasiappan*³ :

"9.----- Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance with law."

19. Thus, merely because the initiation of proceedings is by the School Committee, the same would not invalidate the punishment order imposed by the management, which is competent to impose the penalty under MEPS Rules, 1981. I, therefore, find that the School Tribunal has erred in holding the enquiry to be invalid merely on account of initiation thereof by the School Committee.

20. Another error traced by the Tribunal in constitution of the Enquiry Committee in not following the provisions of Rule 37(1) which reads thus :

"R. 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

³ (1996) 2 SCC 145 : 1996 SCC (L&S) 433

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 acknowledgement due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.”

21. According to the Tribunal, the management did not prepare the charge-sheet and sent the same along with the explanation to the convener after constitution of the Enquiry Committee within 7 days. In my view, this is a technical violation not causing any prejudice to Shri Ulagadde, who did not raise any objection about this technical violation.

22. The next reason for which the Tribunal has held the enquiry to be invalid is failure to submit joint report by the members of the Enquiry Committee. I have gone through the report of the Enquiry Committee. Though the members of the Enquiry Committee submitted separate reports, ultimately all the 3 members met on 29/10/2019 and submitted a joint report signed by all the 3 members holding that all the charges against Shri Ulagadde are proved. I, therefore, find that the findings recorded by the School Tribunal in this regard to be unsustainable.

23. The next ground for setting aside the enquiry and termination order is failure on the part of the Enquiry Committee to recommend a specific action to be taken against the employee under the provisions of Rule 37(6). Rule 37 read as under :

“R. 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 acknowledgement 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 Convenor of the Inquiry Committee in person or send it to him by the registered post acknowledgement 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 Convenor 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 acknowledgement 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 defence of 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 or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convenor.

(f) The inquiry shall ordinarily be completed within a period of 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 to be 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 dispute 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 acknowledgement 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 acknowledgement 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 acknowledgement 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 acknowledgement 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 acknowledgement due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.”

24. Sub-Rule (6) of Rule 37 mandates that the Enquiry Committee, in addition to rendering its findings on charges against the employee, must also record its ‘decision’ on the basis of the findings to the management for specific action to be taken against the employee. Thus, what the Enquiry Committee is required to give is not just ‘findings’ on charges but also its ‘decision’. The management is only required to implement the decision of the Enquiry Committee. In the present case, the Enquiry Committee did not take any decision but left it to the management to take appropriate action based on its findings. In this area, there appears to be some violation of Rule 37(6). In fact, as held by the Apex Court in ***The Inspector of Panchayats and District Collector, Salem Vs. S. Arichandran & Ors.*** (*supra*) and by this Court in ***The Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap, Tq.Akole, Dist.Ahmednagar Vs. Alka Namdeo Khalekar*** (*supra*), successive remand of enquiry is not advisable. It is yet another reason why the enquiry need not be remanded for third time and the curtains are closed on the entire episode.

25. The next ground for setting aside the enquiry of termination order is non-payment of subsistence allowance to Shri Ulagadde. There is

no dispute to the position that in pursuance of liberty granted by the School Tribunal by its order dated 24/08/2018, the management decided to conduct enquiry afresh. There is nothing on record to indicate as to whether Shri Ulagadde was reinstated in service consequent to order dated 24/08/2018. There is no specific order by which Shri Ulagadde was placed under suspension. The decision of the School Committee in its meeting dated 08/06/2019 also does not indicate that decision was taken to place Shri Ulagadde under suspension. However, it is common ground that Shri Ulagadde was not reinstated in service during pendency of second enquiry. He was neither paid salary nor subsistence allowance during conduct of second enquiry. Thus, during the period from 24/08/2018 when the School Tribunal passed order in Appeal No.7/2016 till his dismissal on 04/11/2019, Shri Ulagadde remained without any payment. This is yet another violation committed by the management. Mr.Bapat has strenuously contended that no prejudice is caused to Shri Ulagadde on account of non-payment of subsistence allowance, proposal for which was submitted to the State Government. However, mere submission of proposal for payment of subsistence allowance would not absolve the management of responsibility of paying at least some amount so that the employee can sustain himself during pendency of proceeding. It is also not known whether the State Government would have taken the responsibility for payment of subsistence allowance since second enquiry was being conducted on account of faults committed by the management during the first enquiry.

26. Considering overall conspectus of the matter, it appears that the enquiry has been conducted against Shri Ulagadde and evidence has been brought on record to prove misconduct alleged against him. Couple of errors have crept in the proceedings where the Enquiry Committee did

not render 'decision' and Shri Ulagadde was not paid either salary or subsistence allowance. In ordinary course, this Court would have been justified in remanding the enquiry to the Enquiry Committee for rendering its decision based on its findings. However, this would be the third time when the enquiry proceedings will have to be conducted afresh. Whether such a course of action could be adopted is an issue which needs to be considered in the peculiar facts and circumstances of the present case. However, at the same time, denial of liberty to correct mistake in the enquiry would let Shri Ulagadde going scot-free in respect of serious allegations levelled against him. It must be borne in mind that Shri Ulagadde has repeatedly succeeded before the Tribunal on technical breaches committed by the management in conduct of enquiry. Shri Ulagadde faced serious charges. He is undisputedly responsible for incidents where Smt. Shinde repeatedly entered the campus and attempted to commit suicide in front of several students. Such attempts were committed by pouring kerosene on herself near the laboratory. Fortunately, she was prevented by the other employees of the school from taking extreme steps, which in addition to putting her own life to risk, was otherwise dangerous to students and property of the college. Shri Ulagadde has not denied the relation with Smt. Shinde, though he disputes marriage with her. An agreement executed between the duo was brought on record under which Shri Ulagadde attempted to settle the disputes with Smt. Shinde. She has alleged in her complaints that Shri Ulagadde used to reside with her as her husband and that she remained pregnant and was required to go for abortion on two occasions. She repeatedly came to the college to meet Shri Ulagadde and created ruckus in front of students. It was the responsibility of Shri Ulagadde to keep his personal affairs out of college. He was clearly responsible for the two admitted incidents which occurred on 07/03/2015 and 22/06/2015 while

Smt.Shinde attempted to commit suicide. There is no dispute to the position that the incident came to be reported in the press. The question that arises whether Shri Ulagadde can be allowed to go scot-free in respect of such serious charges, who has not just brought disrepute to the institution, but also put its students and the property at risk.

27. Considering the overall conspectus of the matter, in my opinion, a time has come to give a full stop to the entire proceedings. Therefore, though flaws are noticed in the second enquiry conducted against Shri Ulagadde, it would not be appropriate to remand the enquiry for being conducted afresh. Instead, the ends of justice would meet if Shri Ulagadde is awarded a lumpsum compensation in lieu of reinstatement and backwages under provisions of Section 11(2) (f) of the Maharashtra Employees of Private Schools (Conditions of Service) Act 1977. Such a course of action would not only provide some solace to the employee but will also put an end to the repeated litigations between the parties.

28. As observed above, the management has already invested an amount of Rs.18,53,421/- towards backwages from 18/01/2016 to 30/04/2019 and Rs.31,755/- for the period from 01/05/2019 to 20/05/2019. A total amount invested in fixed deposit is to the tune of Rs.18,85,176/- The said deposit must have been made sometime in April 2019 and must have earned interest in last 4 years. Some addition can be made to the maturity amount, so as to make the figure round. In my view, therefore ends of justice would meet if the management is directed to pay a lumpsum compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) to Shri Ulagadde in lieu of reinstatement and backwages.

29. I accordingly proceed to pass the following order.

ORDER

- (i) The Judgment and Order dated 23/02/2022 passed by the School Tribunal is upheld to the extent of setting aside enquiry and termination order dated 04/11/2019.
- (ii) The Tribunal's direction for conducting fresh enquiry by placing Shri Ulagadde under suspension is however set aside.
- (iii) Consequent to the termination order dated 04/11/2019 being rendered illegal, Shri Ulagadde shall be entitled to be paid lumpsum compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) in lieu of reinstatement and backwages.
- (iv) The management shall pay compensation of Rs. 25,00,000/- to Shri Ulagadde within a period of 2 months from today failing which the management shall pay interest @ 6% p.a. on the amount of compensation.
- (v) Shri Ulagadde shall not be entitled to any further service benefits over and above the compensation so awarded.

30. With the above directions, both the Writ Petitions are disposed of. There shall be no orders as to costs. Rule is party made absolute in Writ Petition No. 10432 of 2022 and Rule is discharged in Writ Petition No. 2365 of 2023.

(SANDEEP V. MARNE, J.)