

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.6128 OF 2022

Sidhharth Namdeorao Khaire, **Petitioner**
aged 57 years, occup.Service,
R/o At Post Khairi, Tq.Ralegaon,
Dist. Yavatmal -445308.

-Vs.-

1. Deputy Director of Education,
Amravati Division, Balbharati,
Tope Nagar, Amravati 444601.
2. The Education Officer
(Secondary), Zilla Parishad,
Yavatmal, Dist. Yavatmal-
445001.
3. The Block Development Officer,
Panchayat Samiti, Ralegaon,
office at Panchayat Samiti,
Ralegaon, Dist.Yavatmal-445303.
4. The Superintendent, Mid Day
Meal Scheme, Panchayat Samiti,
Ralegaon, Office at Panchayat
Samiti, Ralegaon, Dist.Yavatmal
445303.
5. Khairi Shikshan Sanstha Khairi,
through its President, Shri.
Abhijit Krishnaraoji Khairkar,
aged 52 years c/o Lok Vidyalaya,
Khairi, Tal. Ralegaon, dist.
Yavatmal 445308.
6. Shri.Dilip Ramaji Barhate, aged
64 yrs, the Secretary Khairi

Education Society, At Post Khairi,
Tal.Ralegaon, Dist. Yavatmal
445308.

7. Shri. Jasulal Bansilalji Dave,
aged 91 yrs, the Secretary Khairi
Education Society, At Post Khairi,
Tal. Ralegaon, Dist.Yavatmal
445308
8. Shri.Chenkaran Fulchandji
Kochar, aged 70 years, the
alleged President, Khairi
Education, Society, R/o Jain
Mandir Ward, Hinganghat,
Dist.Wardha-442001,
9. Shri. Vasantrao Shankarrao
Jawade, aged 80 years, the
alleged Secretary, Khairi
Education Society, At post
Khairi, Tal. Ralegaon, Dist.
Yavatmal 445308.
10. Gangadhar Vithobaji
Pandharpure, aged 75 yrs, the
alleged Secretary, Khairi
Education Society, At Post Khairi,
Tal.Ralegaon, Dist.Yavatmal
445308.

Respondents

Mr. B.G.Kulkarni, counsel for the petitioner.

Ms.Kalyani Deshpande, AGP for respondents 1 and 2.

Mr. A.J.Gilda, counsel for respondents 5 to 7.

Mr.A.J.Kadu, counsel for respondents 8 to 10.

**CORAM: ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 2nd MAY, 2023

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner is assailing the order dated 29.07.2022 issued by respondent 2-Education Officer (Secondary) Zilla Parishad, Yavatmal and the consequential direction dated 17.08.2022 (annexure P 22) issued by Respondent 9 Mr.Vasantrao Javade, who claims to be the Secretary of the Khairi Shikshan Sanstha.

4. We may straight away note the order dated 29.07.2022, which is issued by the Education Officer.

5. The order begins by referring to the complaint dated 13.06.2022 addressed by Mr.Vasantrao Javade accusing the petitioner-Headmaster of having committed certain irregularities. The order then refers to the report dated 04.05.2022 of the preliminary enquiry which was conducted

by the Block Education Officer, Panchayat Samiti, Ralegaon, and to certain directions issued by the Deputy Director, Education, Amravati division. Certain findings are recorded in the order impugned, which we may briefly note. The first finding is that the petitioner Headmaster was negligent in discharge of duties. The next finding which is recorded is that the petitioner Headmaster obtained the signatures of teachers who are not approved by the Education Officer, in the attendance register, which is a violation of orders issued by superiors. A reference is made to Mr.Dhanare and Mr.Dave signing the attendance register. The other finding recorded is that the petitioner did not take steps to file affidavit-in-response in a matter pending in the school tribunal and finally it is found that the petitioner is administering the school without taking the trustees in schedule-1 in confidence. After recording such findings, the Education Officer purports to grant permission to the Management to suspend the petitioner.

6. In order to appreciate the submission canvassed by the learned counsel appearing for the petitioner, that the

order of the Education Officer is without jurisdiction, the complaints which, Mr.Vasantrao Shankarao Javade addressed to the Education Officer will have to be considered.

7. Mr.Vasantrao Shankarao Javade addressed complaint dated 23.01.2022 to the Education Officer, levelling several allegations against the petitioner. It is candidly admitted in the complaint dated 23.01.2022 that no resolution is passed in the managing committee meeting of the society. It is stated that in the absence of the resolution, the complaint is addressed on behalf of the entire Managing Committee by the President and Secretary. The concluding paragraphs refer to the allegations as 'chargesheet' and then calls upon the Education Officer to conduct a departmental enquiry against the petitioner. Copies of the complaint dated 23.01.2022 are addressed by Mr.Vasantrao Shankarao Javade and one Mr. Kochar to the officers of the education department and to certain politicians.

8. It appears that Mr. Vasantrao Shankarao Javade and Mr.Kochar then addressed communication dated

11.02.2022 to the Education Officer which refers to the subject as “initiation of administrative action against Mr. Sidharth Khaire after conducting departmental enquiry”. Reference is made to the communication dated 23.01.2022. The subsequent communication dated 11.02.2022 seeks to incorporate certain additional accusations/allegations against the petitioner and then calls upon the Education Officer to conduct the departmental enquiry. The request is referred to as supplementary demand.

9. We may at this stage note the provisions of Section 4 A of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rules, 1981 (MEPS Act) which reads thus:-.....

4A. Director's power to hold or order holding of inquiries. - (1) Notwithstanding anything contained in sub-section (6) of section 4 or any other provisions of this Act or the rules made thereunder, where in any case of alleged misconduct or misbehaviour of a serious nature or moral turpitude of an employee-
(a) an inquiry is held by an Inquiry Committee in to such allegations and the Director is of the opinion that the Inquiry Committee has unreasonably exonerated the employee, he may call for and examine the record and proceeding of such inquiry for the purpose of satisfying himself as to the correctness of the decision on the basis of its findings, and may either annul, revise, modify or confirm the

said decision or may direct the Inquiry Committee to make further inquiry for taking such additional evidence as they may think necessary or he may himself take or authorise any other officer not below the rank of the Education Officer to take such additional evidence; and while making an order under this clause, if the Director is satisfied that the charges of serious misconduct, misbehaviour, or as the case may be, moral turpitude have been substantially proved, he shall direct the Management to impose on such employee any of the penalties as specified in sub-section (4):

Provided that the Director shall not record any order under this sub-section without giving the party affected thereby and the Management an opportunity of being heard;

(b) the Management has either neglected or refused to hold an inquiry against such employee in accordance with the provisions of this Act and the rules made in that behalf, the Director shall direct the Management to initiate action within thirty days from the receipt of such direction for holding inquiry into the allegation against such employee and to complete the same in accordance with such provisions and rules.

(2) Where there is a failure on the part of the Management to initiate action as directed under clause (b) of sub-section (1) to hold an inquiry and to complete the same within the period prescribed under the rules the Director may himself hold, or direct any officer not below the rank of Education Officer to hold, such inquiry.

(3) While holding an inquiry the Director or the officer authorised by him shall follow the same procedure as is followed by the Inquiry Committee under the rules made under this Act as if the Director or the officer so authorised were an Inquiry Committee for the purpose of holding such inquiry.

(4) On holding such inquiry by the Director himself or on receipt of the report of the inquiry officer if the Director is satisfied that the charges of serious misconduct, misbehaviour or as the case may be, moral turpitude have been substantially proved, he shall, by an order in writing, direct the Management that a penalty of dismissal, removal from service, termination of service, or as the case may be, reduction in rank as he may, in the circumstances

of the case deem fit, be imposed on the employee concerned:

Provided that, no such order shall be passed by the Director unless the employee and the Management concerned are given a reasonable opportunity of showing cause against the proposed order.

(5) The order of the Director under clause (a) of subsection (1) or subsection (4) shall be binding on both the Management and the employee and the same shall be complied with by the Management within such period as may be specified by the Director.)]

10. A plain reading of Section 4 A of the MEPS Act shows that it is only the director or his delegatee, who can hold or order an enquiry and that, too, strictly in accordance with the provisions of Section 4A of the MEPS Act. Sub Section 1(a) comes into play if the Management has held an enquiry and the Director is of the opinion that the enquiry committee has unreasonably exonerated the employee. The director is empowered to conduct the enquiry himself or authorise any other officer not below the rank of the Education Officer to take such additional evidence and after considering the same, the Management may be directed to impose penalty.

11. Sub Section (b) is applicable to cases where, the Management has neglected or refused to hold an inquiry in

which situation, the director is empowered to direct the Management to hold the enquiry, and sub section (2) provides that if despite directions issued by the Director, the Management fails to hold an enquiry, the director or an authorized officer may conduct such enquiry.

12. It is irrefutable, that none of the conditions spelt out in Section 4A of the MEPS Act is satisfied. Apart from the fact that the power is not conferred on the Education Officer, none of the other conditions in which Section 4 A is triggered, exist.

13. In view of the legislative Mandate, we have no hesitation in holding that the Education Officer was not clothed with the jurisdiction to direct an enquire into the alleged misconduct committed by the petitioner. The enquiry reports dated 14.03.2022 and 04.05.2022 of respondents 4 and 3 respectively are contrary to the statutory scheme, and nonest.

14. At this stage, the learned counsel for the respondents 8 to 10, Mr.Kadu would invite our attention to the circular

dated 25.11.1983 purportedly issued by the directorate of Education, Government of Maharashtra which is addressed to the Chief Executive Officers of the Zilla Parishads and other Officers of the Department of the Education.

15. Learned Counsel Mr.Kadu, would invite our attention to the duties, which the Education Officer is expected to discharge. Learned Counsel Mr.Kadu would submit that the Education Officer is expected to entertain and decide complaints as regards the administration/admissions/results and issue appropriate direction to the concerned Educational Institution.

16. The circular to which our attention is drawn is nothing less and nothing more than certain administrative instructions. The circular is not even issued in exercise of executive power under Article 162 of the Constitution of India and/or in the manner provided under Article 166 of the Constitution of India. In any view of the matter, we need not dilate any further on the submission of learned counsel Mr.Kadu, that the enquiry which was conducted by the

Educational Officer can be justified on the touchstone of the circular. We have noted the statutory scheme. Any administrative instructions which may have been issued prior to the statutory regime coming into force, will obviously have to give way to the legislation. Even otherwise, the circular which is pointed out is only a communication issued in the interest of administrative clarity and convenience. The expectation that the Education Officer will have to enquire into the administration or admissions or results cannot be equated with power to direct an enquiry in the alleged misconduct of an employee. We note that while Section 4A is introduced on the statute only in the year 1987, the statutory scheme, which was already in existence deals with the initiation of enquiry and its conduct extensively. In this view of the matter, the Director of Education surely could not have intended to suggest to the Education Officer that notwithstanding the already existing statutory scheme, he is empowered to conduct enquiries into misconducts. We cannot and will not attribute to the Officer issuing the

circular lack of basic understanding of the statutory provisions and the law.

17. The next question which arises for determination is whether the order of suspension which is impugned is bad in law.

18. We note from the order of suspension that there is no independent application of mind to the satisfaction of the conditions subject to which an employee can be suspended in exercise of power under Rule 33(1) of the Rules. The application seeking permission to suspend merely refers to the enquiry reports supra and so does the decision. While, we are not suggesting even for a moment, that the Management could not have suspended the petitioner, we have no difficulty in observing that the suspension is contrary to the statutory mandate. In the absence of any independent application of mind, the reliance on the two enquiry reports, which we have already held have no sanctity in law, renders the order of suspension bad in law.

19. We, therefore, quash the orders impugned.

20. We declare that the petitioner shall be considered on duty and shall receive the consequential benefits.

21. We further clarify that the suspension is set aside only for the reasons spelt-out supra. The Management shall have the liberty to suspend the petitioner and/or to continue with the departmental enquiry which is already initiated, in accordance with law.

22. At this stage, we must record the submission of Mr. Anup Gilda, learned counsel appears on behalf of respondents 5 to 7, which is that it is respondents 5 to 7, who represent the Management which is entitled to administer the affairs of the institution and that respondents 8 to 10 are usurpers of the Office. We leave this question open.

23. Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)