

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7446 OF 2009

1. The Secretary,
Ahilyabai Holkar, Shikshan Prasarak
Mandal, Karyapur, Tq. Renapur,
Dist. Latur.

2. The Head Master,
Late Janardhanrao Rajmane
Secondary Ashram School, Janwal,
Tq. Chakur, Dist. Latur

..Petitioners

Versus

1. Venkatrao Dnyanoba Mane
Age. 31 years, Occu. Nil,
R/o. Subhadra Niwas, Nanded Naka,
Nath Nagar, Latur,
Tq. & Dist. Latur.

2. The Special District Social Welfare
Officer, Block-1, Zilla Parishad,
Latur, Dist. Latur

..Respondents

WITH
WRIT PETITION NO.8180 OF 2009

Venkatrao s/o Dnyanoba Mane
Age. 31 years, Occu. Service,
R/o. At : Subhadra Niwas, Nanded Naka,
Tq. & Dist. Latur.

..Petitioners

Versus

1. The Secretary,
Ahilyabai Shikshan Prasarak Mandal,
At : Karepur, Tq. Renapur,
Dist. Latur.
2. The Head Master,
Late Janardhanrao Rajmane Primary and
Secondary Ashram School at Janwal,
Tq. Chakur, Dist. Latur

3. The Special District Welfare Officer,
Block-1, Zilla Parishad,
Latur, Dist. Latur

..Respondents

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Mr. V.D. Sapkal, Senior Counsel i/b Mr. Mahesh S. Taur, Advocate for
Petitioners in WP/7446/2009 and Respondent Nos.1 & 2 in
WP/8180/2009.

Mr. V.D. Salunke h/f Mr. H.P. Jadhav, Advocate for Respondent No.1 in
WP/7446/2009 and Petitioner in WP/8180/2009.

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CORAM : S.G. MEHARE, J.

RESERVED ON : FEBRUARY 27, 2024

PRONOUNCED ON : APRIL 19, 2024

JUDGMENT :-

1. The management as well as the employee have impugned
the judgment and order of the learned Presiding Officer, School
Tribunal, Latur, passed in Appeal No.16 of 2009 dated 01.10.2009.

2. Respondent No.1 in Writ Petition No.7446 of 2009 will be
referred to as the "appellant", and the petitioners will be referred to as
the "respondents" as to their original status before the School
Tribunal.

3. The parties are not in dispute that the appellant was
appointed by following due procedure of law. He was terminated on
30.04.2007. He had impugned that termination by Appeal No.51 of
2007. When the appeal reached for hearing, the respondents
withdrew the termination order 30.04.2007 and ultimately, the
appellant withdrew the appeal. Thereafter, on 18.12.2008, a show

cause notice was issued to him framing 17 charges. Out of those six charges, the subject matter of the previous appeal was the same. The charges levelled against the appellant are summarized as follows :

- (a) Consistent absence from the duties;
- (b) Deliberate non-submission of the explanations;
- (c) Failing to hold extra classes for the students;
- (d) Not performing the educational work;
- (e) Unnecessarily beating the students;
- (f) Not staying at the headquarters;
- (g) Adamant behavior with the seniors;
- (h) Not participating in cultural programs;
- (i) Deliberate negligence in discharging the duties;
- (j) Doing the false correspondence against the society threatening to;
- (k) Pressuring the school management and the students;
- (l) Valuing of the answer sheets incorrectly and giving less marks.
- (m) Causing disturbance during the inquiry process.

4. The appellant had levelled the allegations against the respondents that in 2007, respondent Nos.1 and 2 demanded Rs.2,00,000/- towards his appointment. He had paid Rs. 3,00,000/- at the time of his appointment. He refused to pay money again. Therefore, the respondents started harassing him and levelling false allegations. The respondents denied the allegations. However, the

respondents have a case that the appellant was negligent in performing his duties and committed misconduct. Therefore, after due departmental inquiry, he was terminated. The Committee was constituted strictly as per the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short). They also did not deny the termination and withdrawal of the earlier termination order. It was pleaded that the appellant used to leave the school without leave from the Headmaster. He was absent from 04.01.2006 and 15.01.2006 without leave and intimation. The Headmaster issued him notices. However, he did not improve his behaviour. The appellant made a false representation before the authority and published the newspaper news item, making false allegations against the institution. The students had many complaints against him. The complaints of misbehaviour with the female students were also received. Therefore, by following the due procedure of law, he was terminated.

5. The petitioner had impugned the termination order, contending that the inquiry committee was not constituted strictly as per the MEPS Act. A fair opportunity was not granted to him to contest the inquiry. The principle of natural justice has not been followed. He cannot be jeopardized for the same charges that were alleged earlier, and the termination order based upon those charges was withdrawn. He submits that one of the members of the inquiry

committee, Mr. M.S. Karkare cannot be a judge of its case as he was convener cum member of the inquiry committee. The order sheets dated 08.04.2009 of the inquiry committee were also changed. The proceedings of the inquiry committee were violative of Rule 37 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('Rules, 1981' for short). The whole proceeding was vitiated for violating the provisions of the M. E. P. S. Act

6. The learned Tribunal held that the appellant's services were illegally terminated on the basis of the inquiry report. Against that finding, the management has preferred the writ petition and against the negative finding of constituting the inquiry committee as per MEPS Act, the appellant has preferred another writ petition. The management has impugned the judgment and order mainly on the ground that the Tribunal has no power to reduce the punishment or impose the punishment as per his own. Once the Tribunal held that the inquiry was properly conducted, he can not exercise the powers to reinstate the appellant. The School Tribunal has no power to re-appreciate the evidence lead before the inquiry committee and substitute his own conclusions. Unless the principles of natural justice have been violated, the Court has no authority to go through the elaborate evidence. The principles of natural justice have not been violated. Therefore, there was no scope to interfere with the termination order.

7. The appellant has assailed the impugned judgment and order mainly on the grounds that the learned Tribunal has erred in believing the inquiry report and its constitution. The Tribunal did not consider that a fair opportunity was not granted to the appellant to cross-examine the witnesses, and the charges Nos. 2, 17 and 19 were vague. The Tribunal did not take appropriate judicial review of the impugned order.

8. The learned counsel for the respondents has vehemently argued that the Tribunal has erroneously modified the punishment. Such an order is without jurisdiction. The Tribunal has no power to reassess or re-appreciate the evidence. To bolster his arguments, he relied on the number of case laws. He prayed that the impugned order is *prima facie* illegal as regards modifying the punishment on the basis of re-appreciation of evidence. He also referred to the findings of the Court to justify his contention.

9. The learned counsel for the appellant submits that the Tribunal has the power of the Civil Court. Therefore, the Tribunal can re-appreciate the evidence. It is the only authority to enter into the findings on the charges. The management was biased. The assessment of the question papers may differ from person to person. Hence, there shall not be a straight jacket for valuing the answer sheets. The management, at his whims, cannot say that the assessment of the question papers done by the appellant amounted to

negligent of services. The Tribunal has plainly referred to the evidence led before the Tribunal, and the material has not been re-appreciated before the inquiry committee.

10. He also submitted his notes of written arguments. In the notes of written arguments, the facts have been reiterated, and the questions raised before the Tribunal have also been requested. It has been contended in the notes of written arguments that since the principles of natural justice have not been followed, the opportunity of cross-examining the witnesses is not granted. Non-supply of the documents i.e. statement of witnesses in spite of written complaint or violation of principle of natural justice. There were two reports of the inquiry committee. However, both were violating Rule 37 of the Rules, 1981. The charges levelled against the appellant were vague and not proved. His notes of written arguments seem that he has emphasized only on the legality of the constitution of the Committee and violated the principles of natural justice. He also relied on a bunch of documents.

11. In reply, learned senior counsel for the respondents submitted that the fact remains that some witnesses were not examined. The committee report was by a majority of 2: 1. The term 'principle of natural justice is wider. The request to cross-examine the witnesses was done deliberately late. That does not mean that the principle of natural justice has not been followed. Even he did not ask

for cross-examination. Hence, it was presumed that he declined to cross-examine the witnesses. The objections raised in the writ petitions were without foundation. In case, if one of the committee members refuses to sign the report, it cannot be said that it was not a combined award. In the absence of a nomination by the employee, as per Rule 36(4) of Rules, 1981, the Committee of two members is not bad in law. Again, he referred to various case laws and prayed that the petition be dismissed.

12. After hearing the respective counsels, the following points arise for determination:

- (I) Was the inquiry committee constituted as provided under Rule 36 of the Rules, 1981?
- (II) Should there be a combined award signed by all committee members, else bad in law?
- (III) Can the Tribunal re-appreciate the evidence and substitute his own opinion?
- (IV) Has the Tribunal power to reduce or change the nature of punishment imposed by the employer?

13. The appellant has no complaint about complying with the formalities of serving the charge sheet, statement of imputation and other statutory and mandatory procedures as required under Rules, 1981 for initiating departmental inquiry. However, he has raised the

objection that the Committee constituted under Rule 37 was not constituted as per the mandate of the law.

14. He has objections that one of the members Mr. D.H. Bhosale of the inquiry committee, was not the national awardee. He was over 75 years. Another member Shri Karkare cannot act as a member of the Committee as well as the convener. Therefore, the inquiry he conducted is illegal. To bolster his arguments, he relied on the case of Vidya Vikas Mandal and Anr Vs. Education Officer and Anr, 2007 AIR (SC) (Supp) 395. In this case, the inquiry committee was not constituted as per Rule 37(6) of the Rules, 1981. This Court had directed the management to constitute the Committee in accordance with the rules and to go in the matter afresh. If the Committee constituted under Rule 36 is defective, the Tribunal has to remit the matter to the management with a direction to hold the inquiry afresh from the stage where the defect has been committed. In the case at hand, it is evident that Mr. Bhosale was a national awardee. The entire proceeding was gone as per rules. It is the further argument of the learned counsel for the appellant that Mr. D.H. Bhosale was above 75 years old. Hence, not competent to be appointed as a member. However, the learned Tribunal has correctly observed by relying on the judgment of Sudha Bhaskarrao Sasikhede Vs. Yashodabai Shikshan Sanstha and Others, 2003 (4) Mh.L.J. 659 that the rule does not disqualify an awardee teacher if he is above 65

years of age. There is no age restrictions of appointing a member of the School Committee. Therefore, there is no substance in the arguments that the constitution of the Committee is bad only for the reason that Mr. Bhosale, the member of the Committee, was above 75 years old and such persons are not eligible to be appointed as a committee member.

15. The further objection is that another member was the convener cum member and it is prohibited under the rules. Sub-rule (5) of Rule 37 of Rules, 1981 provides for nomination of the convener. It has been provided therein that the convener of the inquiry committee is the nominee of the President and he shall maintain all relevant record of the inquiry. The role of the convener is to maintain all the relevant record of the inquiry. Therefore, there may not be illegality in appointing the member of the Committee as a convener.

16. Considering the material available on record and rule 37 of the Rules 1981, there is no substance in the objection that the inquiry committee was not constituted strictly as per the mandate of Rule 36 of Rules, 1981.

17. It is the vehement arguments of the learned counsel for the appellant that the third member of the Committee did not put his signature on the report of the two members. It is not a combined report. Therefore, the inquiry report is bad.

18. It is admitted fact that two members have recorded the finding against the appellant, and one is in his favour. The inquiry report was by the majority of 2:1. The member nominated by the appellant has submitted his independent dissenting report.

19. Learned counsel for the respondents submits that every member of the managing Committee had the right to prepare their independent report and the rule of majority would prevail.

20. Sub-rule (6) of Rule 37 provides for recording the findings on the charges against the employee and its decision on the basis of these findings. The inquiry committee has also to suggest a specific action to be taken against the employee. It is the duty of the inquiry committee to forward the copy of the findings and the proposed specific action to the employee/head, Education Officer or Deputy Director by registered post acknowledgement. The management has no scope to take an independent decision other than the action specifically proposed by the inquiry committee. The management is bound to implement the decision of the inquiry committee. Rule 37 is silent about submitting a joint report. Every member of the inquiry committee has independent rights to record the findings and conclusion and differ from the conclusions of other members. Therefore, it cannot be accepted that the report/decision of the management committee shall be combined. There appears no violation of the rules. Hence, the objection of the appellant that for

want of the combined decision of the inquiry committee, the inquiry vitiates has no force.

21. Learned counsel for the respondents has vehemently argued that the learned Tribunal has erred in law in re-appreciating the evidence and substituting his opinion. He has referred to the findings of the Tribunal. He also argued that the Tribunal had violated the law by re-appreciating the evidence of the witnesses before the inquiry committee. To bolster his arguments, he relied on the case of Gram Vikas Shikshan Parishad and Anr Vs. Shivaji Hindurao Kamble and Anr, in Writ Petition No.190 of 2017 with another writ petition of the Bombay High Court decided on 14.02.2018, *Shivaji Education Society through its Secretary Vs. Presiding Officer, Schools Tribunal and another, 2001 (Supp). Bom.C.R. 400.* By catena of judgments, the law is well settled that the School Tribunal cannot re-appreciate the evidence and substitute its opinion to the one taken by the inquiry committee. The nature of power that flows from section 9, read with section 11(2), is restricted to the enquiry on the basis of whether the decision was without any legal evidence on record. The scope of enquiry cannot be enlarged to re-appreciate the evidence of the witnesses before the Enquiry Committee by substituting the opinion of the Enquiry Committee or the Management. Re-appreciating the evidence of each witness is exceeding the jurisdiction.

22. A perusal of the findings of the Tribunal clearly establishes that he discussed the entire material produced before the inquiry committee and substituted his own opinion for the opinion taken by the inquiry committee. However, he also held that two charges, absence from duties without intimation and leave and valuing the answer sheets incorrectly, have been proved.

23. Learned counsel for the appellant has vehemently argued that the Tribunal has the power of the Civil Court. Therefore, the Tribunal can re-appreciate the evidence. To bolster his arguments, he relied on the Shri Brijlal Biyani Vidya Niketan Shikshan Prasarak Mandal and Anr Vs. Bharti w/o. Khanderao Dabhade and Anr, 2016 (1) ALL MR 797 and Saindranath s/o Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha, AIR Bom R 119, 2007.

24. In the case of Shri Brijlal (supra), the issue was whether the Tribunal could be termed as a Civil Court, which possesses power under Order XVIII, Rule 4 of the Code, to record the oral evidence of witnesses. The Court held that the School Tribunal exercising jurisdiction under Section 9 of the MEPS Act possesses all the powers that are conferred by the Code on the Courts of original jurisdiction, and the Tribunal can be termed as a "Civil Court", which possesses power under Order XVIII, Rule 4 of the Code to record the oral evidence of witnesses. Even if the provision is titled as "Right of appeal to Tribunal to employees of a private school", it can be termed

as continuation of suit and the power of the School Tribunal becomes coextensive with that of the Trial Court and what could be done by the Trial Court in the proceedings of the suit can always be done by the School Tribunal in its appellate jurisdiction in the interest of justice. The School Tribunal can, therefore, conduct the proceedings of an appeal as the Court of original jurisdiction to administer the oath, record the evidence as contemplated by Order XVIII, Rule 4 of the Code of Civil Procedure by permitting the parties to examine and cross-examine the witnesses, etc.

25. In the case of Saindranath (*supra*), the issue was referred to the Larger Bench regarding the powers of the School Tribunal constituted under the Act of 1977 as there were conflicts of views. Two pronouncements conflicted with the powers of the Tribunal to record the evidence itself. The Hon'ble Division Bench analyzing the entire scheme of the M.E.P.S. Act held that the Tribunal has power to take additional evidence on record, mainly in the contingency, when the management wants to supplement its evidence already on record, at the same time, the employee has also a corresponding right to lead additional evidence either in rebuttal or to supplement his attempt to dislodge the action of the management, again but subject to the provision of Order 41 Rule 27 of C.P.C. This is independent power of the Tribunal given under Sub-rule (1)(b) of Rule 27 of Order 41 of C.P.C.

26. Learned counsel for the appellant tried to point out that since the Appellate Court has powers to allow the parties to lead the evidence as provided under Rule 27 of Order 41 of C.P.C. and it is a Civil Court, the Tribunal has every power to re-appreciate the evidence.

27. Per contra, learned counsel for the respondents vehemently argued that the law is well settled that the Tribunal is not sitting as Appellate Authority though the appeal has been provided under Section 9 of the Act. He also referred to the judgment of Gram Vikas (supra). He further relied on the case of B.C. Chaturvedi Vs. Union of India and Others, (1995) 6 SCC 749, Shivaji Education Society (supra), Anant R. Kulkarni Vs. Y.P. Education Society and Ors, 2013 AIR (SC) 2098, State of Maharashtra through Secretary, Agriculture, Animal Husbandary, Dairy Development and Fisheries Department, Mantralaya and Others Vs. Madhukar Suryabhan Ingale, 2020 (6) Mh.L.J. 267, State of Karnataka and Another Vs. Umesh, (2022) 6 SCC 563, Manik Abas Jadhav Vs. Mira Bhayandar Municipal Corporation and Others, 2019 (2) Mh.L.J. 693, Thapar Education Society and another Vs. Shyam Maroti Bhasarkars and others, 1997 (3) Mh.L.J. 709.

28. In the case of B.C. Chaturvedi (supra), the Hon'ble Supreme Court had discussed the judicial review and the powers of the Tribunal to interfere with the findings of fact based on the

evidence before the inquiry committee and held that the judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned with determining whether the inquiry was held by a competent officer, whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review, does not act as appellate authority to re- appreciate the evidence and arrive at its own independent findings. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice, in violation of

statutory rules prescribing the mode of inquiry, or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. The ratio of this case has been consistently followed in other cases relied upon by the respondents.

29. The Hon'ble Supreme Court, in the case of State of Karnataka (supra) again reiterated that in the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The Court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court, in the exercise of judicial review, must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) the findings of the disciplinary authority suffer from perversity; and (v) the penalty is disproportionate to the proven misconduct.

30. Re-appreciation of evidence and allowing the parties to lead the evidence are two distinct issues. The judgment the appellant relied upon regarding the powers of the Tribunal to allow the parties

to lead the evidence is not a matter of judicial review. It is an opportunity for the parties to supplant the material to prove and disprove the charges against the delinquent. Such action cannot be equated with the power of the Tribunal under judicial review. The law is already well settled, and the direct rules of evidence and proof do not apply to departmental inquiries. The sufficiency of evidence is also not within the realm of judicial review. The standard of proof required for a criminal trial is not allowed in departmental inquiries. The findings of the learned Tribunal are clearly in the form of re-appreciation of the evidence. So far, the charges that the Tribunal has declined to accept have been proved. However, he believes the two charges are consistent absence and incorrect valuation of the answer sheets/papers of the students.

31. The respondents have raised the objection that the Tribunal has no power to reduce the punishment proposed by the inquiry committee. Section 11, sub-section (2) of the M.E.P.S. Act, is crystal clear, empowering the Tribunal to modify the penalty if it is disproportionate in order to prove misconduct. Therefore, it does not require more discussion.

32. Learned counsel for the respondents has vehemently argued that the charges against the appellant of incorrect assessment of the mark sheets and giving lesser marks to the students is misconduct as defined under Rule 28(5) of Rules, 1981. He has

vehemently argued that the learned Tribunal has incorrectly observed that the case of Shikshan Prasarak Mandal, Wadegaon and another Vs. The Presiding Officer, School Tribunal, Amravati and others, 2007 (3) ALL MR 773 does not apply when the ratio laid down in the said case was squarely applicable to the case at hand. He would submit that once the Tribunal accepted that such a serious charge had been proved against him, he ought not to have interfered with the punishment specified by the Committee.

33. Sub-rule (5) of Rule 28 defines the term 'misconduct'. It includes the violation of the Code of conduct. Rule 22 of the said Rules provides for the Code of conduct and duties of the teachers and non-teaching staff. Sub-clause (d) of sub-rule (2) of Rule 22 speaks of impartiality of the teacher in assessment of the students and the teacher shall not deliberately overmark or undermark or victimize students on any ground. The charges against the appellant giving lesser marks have been proved. The appellant has no evidence against such serious charges in rebuttal. Violating the Code of conduct is misconduct for which the severe penalty of termination from services may be imposed. The Bombay High Court, in the case of Shikshan Prasarak Mandal (supra) dealt with identical case in which the teacher was held guilty of malpractices while undertaking the work of valuation of the answer papers of the Higher Secondary examination. The Court has discussed Rules 28(3) and 22 (2)(d) of the Rules and

held that the order of dismissal of the teacher from the services was proper. It has also been held that the teacher who does not himself honour his own position and sanctity of such important examination and, on the contrary, violates it cannot claim any right to be continued as a teacher.

34. The arguments of the learned counsel for appellant that there is no straight jacket formula and assessment of answer sheets may differ person to person is correct. One can understand if the difference in valuation of answer sheets by more person than one is reasonable. However, such rule would not apply the cases where the difference is vast and it is evident that lesser or higher marks are given with malafides. It was the evidence of respondent that there was vast difference in the valuation done by the appellant by independent valuer of the same subject. Therefore, his arguments would not save the appellant.

35. The next argument of the learned counsel for the appellant is that the non-supplying of true copies of the documents to the delinquent employee is a violation of the principles of natural justice. To bolster his arguments, he relied on the case of Mahalaxmi Shikshan Sanstha Vs. State of Maharashtra and Others, MEC 864. Therefore, the matter is liable to be remitted to the inquiry committee for holding an inquiry afresh. He also argued that opportunity to cross-examine the witnesses was also not granted to the appellant.

36. Learned counsel for the respondents submits that when the witnesses were examined, the appellant did not deliberately cross-examine the witnesses and, with a mala fide intention to protract the inquiry, has subsequently asked for cross-examination of the witnesses.

37. The nature of serious allegations of not valuing the answer sheets correctly and absence from duty without leave and intimation were the matters of documentary evidence. The burden was on the appellant to prove that he was absent on securing a leave or on intimation. This negative burden was not on respondent. The documentary evidence on record was available on record. The appellant had no evidence in rebuttal. The documentary evidence established the serious charges against the appellant, namely that he was negligent in discharging his duties and unfair in assessing the answer sheets of the students. The serious allegations of violating the Code of conduct have been proved. The appellant had no explanation why he did not cross examine the witnesses immediately. So the committee was right drawing the inference that appellant does not want to cross examine the witnesses. The inquiry was conducted according to the law.

38. The learned Counsel for respondents also submits that the allegations of the appellant that the roznamas have been manipulated is also unfounded, and there is no material to believe his

allegations. The appellant never complained that he had not received the charge sheet containing the specific charges. He never complained that the charges were vague. On the contrary, he responded to the charges supplied to him along with the necessary documents. The documentary evidence before the inquiry committee was stronger and sufficient to believe that serious charges against the appellant had been proved. Therefore, in the peculiar facts and circumstances of the case, it cannot be accepted that the principle of natural justice has been followed. Therefore, it is not a fit case to remit to the inquiry committed for fresh inquiry.

39. Considering the ratio laid down in the case of Shikshan Prasarak Mandal (supra) and the misconduct of the appellant in not valuing the answer sheets properly, the punishment of the termination from his services was legal, proper and correct. However, the learned Tribunal has erred in law in modifying the punishment. Therefore, it is liable to be set aside. In view of the discussion above, the following order is passed :

ORDER

- (i) Writ Petition No.7446 of 2009 is allowed.
- (ii) The impugned judgment and order of the learned Presiding Officer, School Tribunal, Latur, passed in Appeal No.16 of 2009 dated 01.10.2009, is quashed and set aside and the appeal of employee stands dismissed.

- (iii) Rule is made absolute in the above terms.
- (iv) Writ Petition No.8180 of 2009 stands dismissed.
- (v) Rule is discharged.
- (vi) No order as to costs.

(S.G. MEHARE, J.)