



THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**WRIT PETITION NO. 12855 OF 2019**

Sunita Raosaheb Suryawanshi  
Age: 42 years, Occu: Service,  
R/o: Nalegaon, Tq. Chakur,  
Dist. Latur.

**... Petitioner**

**VERSUS**

1. Navneet Shikshan Prasarak Mandal  
At Post. Nalegaon,  
Tq. Chakur,  
Dist. Latur.  
Through its President.
2. Navneet Shikshan Prasarak Mandal  
At Post. Nalegaon,  
Tq. Chakur,  
Dist. Latur.  
Through its Secretary.
3. The Head Mistress,  
Trivenibai Patil Girls High School,  
At. Post. Nalegaon, Tq. Chakur,  
Dist. Latur.
4. The Education Officer (Secondary),  
Zilla Parishad, Latur.

**... Respondents**

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Mr. V. D. Salunke, Advocate for Petitioner.

Mr. S. V. Dixit, Advocate for Respondent Nos.1 to 3.

Smt. Chaitali Kutti Choudhari, AGP for Respondent No.4.

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**CORAM : KISHORE C. SANT, J.**

**RESERVED ON : 29<sup>th</sup> August, 2024.**

**PRONOUNCED ON : 13<sup>th</sup> November, 2024.**

**PER COURT :**

. The present petition is filed by an Assistant Teacher against the Management and the authorities challenging the judgment and order dated 15<sup>th</sup> October, 2016 passed by the learned Presiding Officer, School Tribunal, Latur, dismissing the appeal bearing Appeal No.52 of 2012. The appeal was preferred challenging the termination order passed by respondent No.2 / Management dated 8<sup>th</sup> December, 2012.

2 The facts in short are as below:-

The petitioner came to be appointed by respondent Nos.1 and 2 to the post of Assistant Teacher. She was made permanent in due course. While in service, she contested the election to the post of Member, Zilla Parishad, Latur. It is for this reason, the Management issued a show-cause-notice dated 2<sup>nd</sup> February, 2012. It is stated in the said notice that the petitioner is absent without taking leave from 30<sup>th</sup> January, 2012. She has filled in a candidature for the post of Member, Zilla Parishad, Latur without taking prior permission

from the Management and thus, has violated Rule 42 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (the MEPS Rules for short). She is not residing at the headquarter. Some other allegations were made about her performance in the school, disobedience etc. Pursuant to that, an enquiry was held. The enquiry committee submitted its report dated 5<sup>th</sup> December, 2012. On receipt of the enquiry report, the respondent / Management passed a resolution dated 8<sup>th</sup> December, 2012 and decided to terminate the services of the petitioner from 10<sup>th</sup> December, 2012. The petitioner challenged the said termination order by filing an appeal before the School Tribunal, Latur, raising various grounds. The learned Tribunal after going through the record etc., held that the enquiry was properly conducted. The action of termination is rightly taken by the Management and dismissed the appeal. It is against this order, the present petitioner has approached this Court.

3           Mr. Salunke, learned counsel for the petitioner vehemently argued the petition. He submits that the action is taken purely due to political rivalry. The Management did not like the fact that the petitioner contested the election as a candidate setup by Bharatiya

Janata Party (BJP). Contesting election does not amount to misconduct. There is violation of Rules 35(2) and 33 (1) of the MEPS Rules in enquiry. He further submits that for 18 years, there was no complaint against the petitioner. She performed her duties with utmost integrity and obedience. The charges framed against the petitioner were frivolous. No charges were proved during the enquiry. No proper opportunity was given to the petitioner to answer the charges against her and thus, there is violation of the principles of natural justice. The petitioner was falsely prosecuted on the complaint made by the respondent/Management, wherein she came to be acquitted. This clearly shows that there is malice in the mind of the persons in the Management. Though the enquiry needs to be completed within 120 days as per the Rules, the enquiry was not completed and for this reason also the enquiry stood vitiated. No subsistence allowance was paid to the petitioner and on this count also the enquiry is vitiated. He submits that the action is a drastic action. The penalty imposed is a major penalty. The Management could have imposed a minor penalty.

4            Mr. Salunke, learned counsel for the petitioner relies upon the following judgments:

- i) ***Ashok s/o Shahaji Gulbhile Vs. Secretary, Gramvikas Shikshan Prasarak Mandal and others, 2015(5) Mh.L.J. 678;***
- ii) ***Hamid Khan Nayyar Habib Khan Vs. Education Officer, Secondary, Zilla Parishad, Amravati & others, 2004 (6) Bom.C.R. 871;***
- iii) ***Jagdamba Prasad Shukia Vs. State of U.P., AIR 2000 (SCW) 3047;***
- iv) ***Madhukar Laxmanrao Borde Vs. State of Maharashtra and others, 2021 (2) AIR Bom R 512.***

5            Mr. Dixit, learned counsel for respondent Nos.1 to 3 opposed the petition. He supports the judgment of the Tribunal. He submits that the procedure was rightly followed in conducting departmental enquiry. Opportunity was given to the petitioner. No ground of payment of subsistence allowance was raised in the appeal. For the first time, the petitioner has now taken the ground of non-payment of subsistence allowance. About completion of the enquiry within 120 days, he submits that only effect of non-completion of

enquiry within 120 days is that the Management has to pay full subsistence allowance. The committee was duly constituted as per rules. The committee after considering the material on record and after holding due enquiry, held that all the charges are proved. He submits that the learned Presiding Officer, School Tribunal has rightly considered Rules 37(2)(a) and 37(2)(b) and held that the enquiry was properly conducted. The Tribunal also considered Rule 35 of the Rules. He relies upon a Full Bench judgment of this Court in the case of **Awdhesh Narayan K. Singh Vs. Adarsh Vidya Mandir Trust**, reported in, **(2004) 104 FJR 864**. He submits that no prejudice is caused to the petitioner in the enquiry. He prays for dismissal of the petition.

6            Mrs. Kutti, learned AGP also supports the judgment and order passed by the learned Tribunal. Reply is also filed by respondent No.4 / Education Officer.

7            This Court has gone through the petition, replies filed by the respondent/Management and the Education Officer.

8            So far as the judgments are concerned, in the case of

*Ashok s/o Shahaji Gulbhile (supra)*, this Court had recorded a specific finding that the enquiry was conducted in a slipshod manner. In the said case, the enquiry committee was not duly constituted as required by the law. The evidence was not properly recorded. No opportunity to cross-examine the management witnesses was offered to the appellant/petitioner therein. The subsistence allowance was not paid, which caused inconvenience to the petitioner and it is for this reason, the writ petition was allowed by setting aside the dismissal of the appeal and direction was given to reinstate the employee. This Court finds that this judgment is not applicable to the present petition.

9           In the case of *Hamid Khan Nayyar Habib Khan (supra)*, the Division Bench of this Court had considered the effect of non-completion of enquiry within 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee. The Court in paragraph No.8, in fact, has considered the wording of Rule 37(2)(f). It was considered that the word “ordinarily” itself shows that completion of enquiry within 120 days is not an inflexible rule and the enquiry shall not stand vitiated upon the expiry of such period. The only effect is that the suspension ceases to operate and the employee is deemed to have rejoined his duties

without prejudice to the continuance of the inquiry. The Court only held that the petitioner in that case would be entitled to the benefit of the provisions of Rule 37(2)(f).

10           So far as the case of *Jagdamba Prasad Shukia (supra)*, this case is in respect of the intimation by the delinquent during the course of the enquiry that due to financial crunch on account of non-payment of subsistence allowance and because of the illness of the delinquent, the delinquent could not appear in the enquiry, on both these grounds. In that view, it was held to be in breach of the principles of natural justice, as no reasonable opportunity was given to defend. In the present case, no such prejudice is shown to have been caused to the petitioner.

11           So far as the case of *Madhukar Laxmanrao Borde (supra)*, the petitioner therein was terminated in view of the pendency of criminal case. There was also a question of non-payment of subsistence allowance. The question was continuance of suspension beyond 120 days. The submission of the petitioner was that upon lapse of 120 days from the date of suspension, the petitioner was entitled to get full salary. In that view, this Court had revoked the

suspension directing to pay full salary from the date on which the period of suspension exceeded to the period of 120 days.

12            So far as the case of *Awdhesh Narayan K. Singh (supra)*, relied upon by the learned counsel for respondent Nos.1 to 3, the Full Bench of this Court had considered the effect of not getting prior approval of the Education Officer before passing the suspension order. It was considered that the effect is only that it is the Management, who has to pay the subsistence allowance.

13            Now dealing with the submissions, the first submission that contesting election cannot be said to be a misconduct. The management has not taken action for contesting the election. The case of the Management is that the petitioner contested the election without seeking prior permission from the Management. The further charge was absenteeism without taking leave from the school. The first submission therefore, is without any substance as the question was not contesting the election, but was that she contested the election without seeking permission of the Management. So far as violation of Rule 35 is concerned, the allegation is that the Management did not obtain permission of the Education Officer before

suspending the petitioner. As is rightly pointed out by the learned counsel for respondent/Management that the effect of not obtaining permission is only that in such cases, it is the Management who has to pay the subsistence allowance. Thus, this ground also is of no use to the petitioner.

14           The learned Tribunal rightly considered that because of the violation of this rule whether the enquiry vitiated. The petitioner had challenged the suspension order by filing writ petition before this Court. In the said petition, no grievance was raised about non payment of subsistence allowance during the suspension period. So far as constitution of the committee, the learned Tribunal has rightly considered that in view of Rule 36 of the Rules, the committee was rightly constituted. Though the appellant was directed to nominate her member, still she did not nominate any member to the enquiry committee. The Tribunal also considered the provisions of Rule 37. The Tribunal has also considered the judgments on which the parties relied upon in the appeal. The Tribunal has further considered that the appellant has contested the election to the Zilla Parishad and Panchayat Samiti and she was also elected to the said post. During pendency of the appeal, the petitioner was facing criminal prosecution and she was acquitted subsequently. However, that acquittal will not

help her as the criminal case was in respect of charges punishable under Sections 420, 468 and 471 of the Indian Penal Code, whereas the charge-sheet was for some other charges. So far as other charges are concerned in the enquiry report, the Tribunal has rightly dealt with the above aspects as well and dismissed the appeal with costs.

15           After considering the legal position and in view of the above discussion, this Court finds that there is no case made out calling for any interference at the hands of this Court. However, a direction needs to be issued to the Management to pay the subsistence allowance to the petitioner as per the Rules and after 120 days to pay the amount equal to full salary to the petitioner. The amounts are to be paid in case those are not already paid to the petitioner. The amounts be paid within sixty (60) days from today.

16           With this, the writ petition stands disposed of.

**[ KISHORE C. SANT, J ]**