



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8093 OF 2022

1. The Secretary
Gokul Samajik and Educational Sanstha
Gaurgaon Tq. Kallam
Dist. Osmanabad.
2. The President
Gokul Samajik and Educational Sanstha,
Gaurgaon Tq. Kallam.

.....PETITIONERS

VERSUS

1. Pradeep Bhairavnath Shingare
Age: 43 years, Occu. Headmaster,
Jaibhavani High School, Gaurgaon,
Tq. Kallam, Dist. Osmanabad,
R/o Khamgaon, Tq. & Dist. Osmanabad.
2. The Education Officer (Secondary)
Zilla Parishad, Osmanabad.

.....RESPONDENTS

**WITH
WRIT PETITION NO.5124 OF 2022**

Pradip s/o Bhairavnath Shingare
Age: 47 years, Occu: Service,
R/o: Khamgaon, Taluka and
District Osmanabad.

.....PETITIONER

VERSUS

1. The Secretary
Gokul Samajik and Educational Sanstha
Gaurgaon Tq. Kallam
Dist. Osmanabad.

2. The President
Gokul Samajik and Educational Sanstha,
Gaurgaon Tq. Kallam, Dist. Osmanabad
3. The Education Officer (Secondary)
Zilla Parishad, Osmanabad.

.....RESPONDENTS

Mr. S. S. Jadhavar, Advocate for petitioner in WP. No.5124/2022 and for respondent no.1 in WP. No.8093/2022
Mr. T.M. Venjane, Advocate for petitioner in WP. No.8093/2022 and for respondent nos.1 and 2 in WP. No.5124/2022.
Mr. V. S. Badakh, AGP for respondent-State

CORAM : ROHIT W. JOSHI, J.
DATED : 05TH AUGUST, 2025

JUDGMENT :-

. Both these petitions arise out of same judgment and order dated 07.12.2021, passed by the learned Presiding Officer, School Tribunal, Solapur in appeal no.12 of 2017. The petitioner in Writ Petition No.5124 of 2022 is the original appellant/employee and the petitioners in Writ Petition No.8093 of 2022 are Secretary and President of Gokul Samajik and Educational Sanstha Gaurgaon, Tq. Kallam, Dist. Osmanabad. The petitioner in Writ petition No. 5124 of 2022

was working on the post of head Master in a school run by Gokul Samajik and Educational Sanstha Gaurgaon, namely, Jaybhavani High School. The petitioners in Writ Petition No. 5124 of 2022 and 8093 of 2022 will hereinafter referred to as employee and management respectively.

2. The employee was initially appointed on the post of Assistant Teacher with Jaybhavani High School, Gaurgaon, run by the petitioner/management. He was subsequently promoted to the post of Head Master in the said school. His services have been terminated by the management vide order dated 25.04.2017 with effect from 26.04.2017. Employee challenged the order of termination by filing appeal as per Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'the MEPS Act') vide appeal no.12 of 2017.

3. The learned Tribunal has held that the inquiry conducted by the management was not in accordance with Rules 33, 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as 'the MEPS Rules') and has accordingly set aside

the order of termination dated 25.04.2017. Having quashed the order of termination, the learned Tribunal allowed the management to conduct fresh inquiry in accordance with law directing that the inquiry be completed within period of six months after the end of appeal period. Needless to mention that the judgment and order passed by School Tribunal in an appeal filed under the MEPS Act is not subject to any further appeal. The learned Tribunal directed that till the completion of inquiry, the employee will be treated under suspension and will be entitled to receive subsistence allowance.

4. The employee has challenged Clauses 3 and 4 of the operative order on the ground that the learned Tribunal could have at best granted permission or leave to conduct fresh inquiry, however, direction for conducting fresh inquiry could not have been issued and also on the ground that having set aside the order of termination, the learned Tribunal ought to have passed an order of reinstatement in service in favour of the employee.

5. Per contra, the management has also challenged the judgment and order on the ground that the findings by the

learned Tribunal that the inquiry was not conducted in accordance with law is incorrect and as such, the order of termination ought not to have been quashed.

6. The employee has filed the petition on 06.02.2022. Notice in the said petition was issued vide order dated 06.06.2022. Office note dated 29.07.2022, records that service on respondent nos.1 and 2, Secretary and President of management was completed before the said date. The management has filed the petition on 07.05.2022. Notice in the said petition was issued vide order dated 02.08.2022.

7. Initially, on 06.08.2015, the President of management issued statement of allegations to the employee calling upon his explanation with respect to allegations levelled therein. Allegations are pertaining to incompetence, particularly inability to teach his subject properly, failure to obey instructions and willful and deliberate dereliction of duty in not furnishing the audit report on time; insubordination and financial irregularity. The employee furnished his response to the statement of allegations on 17.08.2015, denying the allegations. As regards the completion of audit, the employee

came up at the stand that the management did not extend proper co-operation, which was the reason for the delay. As regards financial irregularity, he stated that the allegation that he was receiving House Rent Allowance (HRA), although he was not staying at the head quarter was incorrect.

8. Thereafter, the Secretary of the management issued letter dated 24.08.2015, to the Education Officer, seeking permission to initiate inquiry against the employee. The Education Officer issued letter dated 03.10.2015, stating that the management may proceed with inquiry in accordance with the MEPS Rules by constituting Inquiry Committee as per the said Rules. It will be pertinent to state that the permission of Education Officer is not required for initiating inquiry against an employee and the Education Officer has neither granted nor refused the permission vide communication dated 03.10.2025. The Education Officer has merely stated that the management may proceed with the inquiry in accordance with the MEPS Rules. Initially one Udaysinh Vitthalrao Raje-Nimbalkar appointed on the Inquiry Committee as State Awardee Teacher. However, since the said State Awardee

Teacher had expressed inability to work as member of the Inquiry Committee, he was substituted by one Govind Dattatray Bhure as member of Inquiry Committee. The employee appointed one Prakash Shinde as his representative on the Inquiry Committee. The petitioner/management issued chargesheet dated 20.08.2016. The chargesheet is issued under signature of Secretary of the management. The employee filed reply to the chargesheet on 06.09.2016. The inquiry was conducted from 05.10.2016 till 01.04.2017. In the meanwhile, the employee was placed under suspension vide order dated 16.01.2017.

9. After completion of inquiry, the two members namely; the President and State Awardee Teacher furnished report dated 21.04.2017 recommending termination of services of the employee. The employee's representative furnished separate report dated 24.04.2017, recommending discharge. In view of the above, the management issued termination order dated 25.04.2017, thereby terminating services of the employee with effect from 26.04.2017.

10. As stated above, the employee filed appeal challenging

the order of termination being appeal no.12 of 2017. Perusal of memorandum of appeal will indicate that the employee raised grounds pertaining to correctness of findings recorded in inquiry report dated 21.04.2017, furnished by the President of the management and State Awardee Teacher. Apart from this, grounds pertaining to breach of provisions of the MEPS Rules particularly Rules 36 and 37 thereof are also raised. The employee also contended that the inquiry was liable to be quashed since he was not paid any amount towards subsistence allowance from the date of suspension till the date of termination. The management filed its written statement opposing the contentions raised.

11. The learned Tribunal after hearing the parties, has allowed the appeal vide judgment and order dated 07.12.2021. The learned Tribunal has held that the decision to initiate inquiry against an employee is required to be taken by the management. It is held that although, it is the contention that decision to initiate inquiry was taken by the management, the pleadings does not suggest that the decision taken by such management. It is observed that there is no reference to the

resolution passed by the management taking decision to initiate inquiry against the employee. It is further observed that names of members of Inquiry Committee were not communicated to the employee by registered post as required under Rules 36(3). The learned Tribunal has also held that the petitioner was suspended after commencement of inquiry and did not take any decision with respect to payment of subsistence allowance. It is further held that the management had also not sought permission of the Deputy Director of Education before suspending the employee and also did not pay the subsistence allowance, which cause serious prejudice to the employee. It is further observed that representative of the employee was not allowed to conduct cross examination of the management's witnesses, which resulted in breach of principles of natural justice. The learned Tribunal has also observed that the last date of inquiry was 01.04.2017, which was the date fixed for recording evidence of the employee. It is held that thereafter, next meeting was held on 21.04.2017 when inquiry report was submitted by two members viz; President and State Awardee Teacher. It is also observed that the explanation furnished by the employee on 05.04.2017,

although sent on correct address, was returned unserved as it was not accepted. Lastly, it is held that the material on record did not indicate that all the three members had applied their mind in joint deliberation for purpose of preparing inquiry report. It is held that the report is vitiated since there was no joint consolidation on deliberation by all three members of the Inquiry Committee. In such circumstances, it is held that the inquiry was defective and order of termination was accordingly quashed and set aside. However as mentioned above, the learned Tribunal has directed the management to hold fresh inquiry and conclude the same within period of six months. It is also directed that the employee will be treated as under suspension during the inquiry period.

12. The learned Advocate for the employee Mr. Jadhavar contends that once the order of termination was set aside, it was incumbent for the learned Tribunal to pass order of reinstatement in service in favour of the employee. He further contends that although an affidavit was filed stating that the employee was not gainfully employed after his termination, still the learned Tribunal did not award any back wages. He

further contends that the learned Tribunal could not have directed the employer to conduct inquiry and at best leave could be granted to conduct inquiry, if the employer so desired.

13. Per contra, Mr. Venjane, learned Advocate for the management argues that the learned Tribunal has erred in holding that the inquiry was vitiated. He states that the inquiry is conducted in accordance with law and further that the allegations against the employee are very serious in nature. He contends that the learned Tribunal should have dismissed the appeal. Mr. Venjane criticizes the finding by the learned Tribunal that the inquiry was vitiated on the ground that name of State Awardee Teacher was not communicated by registered post. He also criticizes the finding that opportunity of cross examination was not give to the employee. His contention is that employee was inviting upon cross examination to be conducted by his representative on the Inquiry Committee, which is legally impermissible. He further states that assuming that there are some technical defects in the inquiry, unless prejudice is established, that by

itself cannot be a ground for setting aside order of termination.

14. Mr. Venjane, the learned Advocate for the management is right in his submission that the inquiry could not be said to be vitiated only because names of members of Inquiry Committee were not communicated to the employee by registered post. In this regard, it needs to be stated that the employee was made aware about the names of members of the managing committee and he had also appointed his nominee/representative on the committee. As such, no prejudice is caused to the respondent only because the names were not communicated by registered post.

15. Mr. Venjane is also correct in his submission that the representative of employee on the Inquiry Committee could not conduct cross-examination of the management's witnesses. The Inquiry Committee under the Rules is a three member committee. In case of inquiry against a head, the Inquiry Committee must comprises of the President, one State Awardee Teacher, chosen by the President and one member to be nominated by the head. The three member committee is

constituted for the purpose of conducting inquiry. The employee's nominee on the Inquiry Committee cannot function as defence representative. The function performed by an Inquiry Committee in a disciplinary proceeding is a *quasi* judicial function. The members of Inquiry Committee, irrespective of the person who has appointed them must function independently as an individual performing quasi judicial function. The teacher's nominee cannot act as his representative while functioning as member of Inquiry Committee.

16. The learned Tribunal has failed to appreciate this aspect of the matter and has erred in holding that the inquiry was vitiated because the employee's nominee on the Inquiry Committee was not permitted to conduct cross examination of the management's witnesses.

17. However, the inquiry is vitiated in the present case on other grounds. Under Rule 37 of the MEPS Rules, the chargesheet has to be prepared by the management. In the present case the chargesheet is issued under signature of the Secretary. There is no statement in the chargesheet that it is

framed by the management, likewise, no document is produced to indicate that the chargesheet is framed by the management. The learned Tribunal has held that the chargesheet in the present case is not framed by the management and therefore inquiry gets vitiated on this ground. The finding recorded by the learned Tribunal in this regard appears to be correct. Since, the chargesheet is not framed by the competent authority, inquiry conducted based on such chargesheet will be vitiated. Consequently, the order of termination will also have to be set aside.

18. It must also be mentioned that three members Inquiry Committee functions as one committee, the members of the committee have to furnish the inquiry report together. Even if, they cannot agree on the conclusions, at least they must deliberate over the matter together. In the present case, the Inquiry Committee has furnished two separate reports. There is no material on record to indicate that the employee's nominee was called for joint deliberation. There is nothing to infer that joint deliberation was done by all three members of the Inquiry Committee. The inquiry report is certainly vitiated

on this Count.

19. In view of the above, it must be stated that the chargesheet in the present case does not appear to be framed by the management and likewise, the members of Inquiry Committee have also not indulged in joint deliberation for the purpose of preparing inquiry report. The inquiry proceedings are indeed vitiated as is rightly held by the learned Tribunal.

20. In view of the above, the learned Tribunal was justified in setting aside the order of termination. However, while the order of termination was set aside, it was necessary to pass an order of reinstatement. The natural consequence of setting aside order of termination will be that the employee will be entitled reinstatement in service. The learned Tribunal has directed the management to initiate inquiry against the employee and has stated that the employee shall be treated as under suspension during the pendency of the inquiry. This will indicate that the learned Tribunal was aware of the legal position that the fresh inquiry cannot be conducted unless the employee is initially reinstated in service. It appears that order of reinstatement remained to be passed due to oversight.

21. Mr. Jadhavar, the learned Advocate for the employee criticizes Clause 3 of the operative order on the ground that at best, leave could not have been granted to the management to conduct fresh inquiry, since, the inquiry was held to be vitiated. He contends that direction for holding inquiry could not have been issued. He further contends that the judgment is delivered on 07.12.2021 and inquiry was directed to be completed within a period of six months and despite this, the management did not initiate inquiry within the stipulated period and filed the petition on 07.05.2022, after a period of five months from the date of judgment and order passed by the learned Tribunal. He therefore contends that inquiry is not initiated by the management till the date, although, there is no interim order passed in either petition restraining it from doing so.

22. Mr. Venjane submits that inquiry was not conducted in terms of order passed by the learned Tribunal since the employee had challenged the said judgment and petition filed by the employee is pending.

23. Although, the employee has challenged the judgment

and order passed by the learned Tribunal, this Court has merely issued notice in the said petition. This Court has not granted any interim relief in favour of the employee restraining the management from conducting inquiry. It must also be stated that the management has entered appearance in the matter. It has also filed a substantive petition challenging the judgment and order passed by the learned Tribunal. Management is assailing the order on the ground that the inquiry is conducted in accordance with law. In the event, there was any confusion on the part of the management, it was open for it to seek appropriate orders from this Court in this regard.

24. Employee is placed under suspension with effect from 16.01.2017. It is not in dispute that he is out of employment till date. The learned Advocate for the employee submits that suspension allowance is also not paid to him. The learned Tribunal has also recorded finding in this regard. Although, the learned Advocate for the management states that some amount is paid towards suspension allowance, the management has not placed any documentary evidence on

record indicating payment of the same. It needs to be held that employee has not received any amount either towards salary or towards suspension allowance till the date i.e. for a period of eight years and seven months. At this stage, it will be unfair and unjust to permit the management to conduct inquiry against the employee. It was open for the management to conduct inquiry against the employee in terms of judgment dated 07.12.2021, passed by the learned School Tribunal. However, despite lapse of a period of over four years and seven months from the date of judgment, the management has not initiated disciplinary inquiry against the employee. In such circumstances, Clause 3 of the operative order of the judgment dated 07.12.2021, will have to be quashed. The management cannot be permitted to conduct inquiry against the employee at this stage having regard to inordinate delay for which no worthwhile explanation is offered. This Court is also of the opinion that serious prejudice will be caused to the respondent/employee if management is allowed to conduct inquiry against him on the ground that the employee has not received suspension allowance.

25. Although, normally when order of termination is required to be set aside due to any defect in the inquiry, the employer is granted permission to cure the defect by holding inquiry from the stage from which illegality or irregularity creeps in the disciplinary inquiry or even by allowing to conduct de novo inquiry. However, in the case like the present where the employee has not received suspension allowance for a period of over eight and a half years and the management has not initiated inquiry for a period of over four and a half years from the date of judgment passed by the learned Tribunal, it will be unfair and unjust to allow the management to conduct fresh inquiry against the employee at this stage. Clause 3 of the operative order therefore needs to be quashed and set aside.

26. Mr. Jadhavar states that the employee has made a statement in the appeal that he was not gainfully employed elsewhere after termination of services. He contends that there is no contrary statement by the management in its reinstatement. He further contends that employee has discharged his initial burden by making averment that he was

not gainfully employed elsewhere after the date of termination. He contends that upon such statement being made, the burden that the employee was gainfully employed elsewhere will shift on the management. Mr. Jadhavar contends that the management has failed to discharge the said burden in as much as it has failed to bring any material on record to prove gainful employment of the employee elsewhere. He therefore contends that on the termination being set aside, order of back wages must follow as a matter of course.

27. Per contra, Mr. Venjane contends that mere statement that employee was not gainfully employed will not serve the purpose. In order to discharge the initial burden, the employee must also explain as to how he could make both ends meet while he was out of employment. He contends that since the order of termination is being set aside, a technical ground order of back wages should not be passed.

28. Having heard the rival submissions on the point of back wages, in the considered opinion of this Court, the employee has made a definite statement that he was not gainfully

employed elsewhere after termination of his services. The management has been unable to bring any contrary material on record. However, it is also true that the employee has not explained as to how he had survived for this long period despite being out of employment. In such circumstances, in the considered opinion of this Court, ends of justice will be subserved by holding that the employee will be entitled to 75 percent of amount of his salary from the date of termination towards back wages. The employee will be entitled to full salary with effect from 07.12.2021 i.e. the date of judgment of the learned Tribunal.

29. The parties have placed on record judgment dated 07.07.2025, in the matter of ***Bhagwan Ramrao Sarse Vs. The Chief Executive Officer, Late Atul Shikshan Prasarak Mandal And Ors. (Writ Petition No.806 of 2025-Aurangabad Bench)***. In the said matter, services of an employee were terminated and order of termination was set aside on the ground that the inquiry was defective. This Court directed that the employee was required to be reinstated in service for the purpose of fresh inquiry. It was held that the employee will be entitled to

subsistence allowance pending the disciplinary inquiry. In view of the fact that the school was admitted to grant-in-aid, this Court directed the management to forward bills of the employee for subsistence allowance to the Education Officer with further directions to the Education Officer to release the bills within a period of two months. Similar view is taken by this Court in the matters of *Arpan Shikshan Prasarak Sanstha & Anr Vs. The education officer (primary), amravati (writ petition no.6842 of 2015 dt.26.09.2016-nagpur db)* and *ku. Sudarshani D/o. Damduji Thul Vs. The Presiding Officer, Nagpur (Civil Application No.1395 of 2015 in Writ Petition No.1347 of 2001 Dt.12.09.2017-Nagpur SB)*. Both these cases rely upon judgment of the Hon'ble Supreme Court in the matter of *Educational Society and Ors Vs. State of Maharashtra and Ors.*, reported in *(2016) 3 SCC 512*, wherein the Hon'ble Supreme Court has held that in case where services of an employee are terminated and reinstatement is ordered with back wages, normally the liability to make payment of back wages will be on the State Exchequer if the school is admitted to grant in aid, appointment of the employee was duly approved and the post was not filled in by

the employer management. However, the Hon'ble Supreme Court has also stated that in certain situations, the liability to make payment of back wages cannot be fastened on the State Exchequer. In the facts of the said case, it was held that payment of back wages could not be directed to be made from State Exchequer, since Inquiry Committee was not constituted as per rules, mandatory provisions of law were not followed and the punishment inflicted by the management was held to be without jurisdiction.

30. The learned Advocates appearing for the employee and the employer jointly submit that in the facts of the present case, it will be expedient that the payment of unpaid salary is directed to be made by the State Exchequer, since the school is admitted to grant in aid and the appointment of employee was duly approved.

31. Each case is required to be examined in the backdrop of its own facts. Blanket directions for payment of back wages by the State cannot be issued. The appropriate course to be adopted will be that the management can forward pay bills with respect to back wages of the petitioner to the Education

Officer with request to release the amount of back wages payable to him. If the pay bills are cleared, back wages can be paid through the State Exchequer. However, if the pay bills are not cleared, the management will have to bear the burden of payment of back wages. It will be open for the authority, competent to release the grants to take appropriate decision in this regard. The said decision be taken having regard to the facts of the case. In the event, the bills are not cleared, it will be open for the management to take the recourse to appropriate legal proceeding in that regard. However, the management must pay the amount of back wages and salary with effect from 07.12.2021 i.e. the date of judgment by the learned Tribunal to the employee on or before 31.12.2025.

32. In view of the above Writ Petition No. 8093 of 2022 is **dismissed**.

33. Writ petition No.5124 of 2022 is **partly allowed** as under:

- a) Clauses 3 and 4 of the operative order of the judgment and order dated 07.12.2021, passed by the learned Presiding Officer, School Tribunal

Solapur in appeal no.12 of 2017 are quashed and set aside.

b) The respondent nos.1 and 2, Secretary and President respectively, of Gokul Samajik and Educational Sanstha, Gaurgaon are directed to reinstate the petitioner, 'Pradip Bhairavnath Shingare' in service forthwith with continuity and all consequential benefits alongwith 75 percent back wages and full salary from 07.12.2021 and onwards till the date of reinstatement in service to be paid on or before 31.12.2025.

34. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)