



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5939 OF 2022

1. Maheboob A. Razak Shanediwan
R/o Gunjoti, Tq. Omerga,p
Dist. Osmanabad

...PETITIONERS

...VERSUS...

1. The President,
Mohammadiya Education Society,
At Post – Gunjoti, Tq. Omerga,
District Osmanabad.
2. The Secretary,
Mohammadiay Education Society,
At Post Gunjoti, Tq. Omerga,
District Osmanabad.
3. The Headmaster,
Urdu High School, Gunjoti,
Tq. Omerga District Osmanabad.
4. Education Officer (Secondary),
Zilla Parishad, Osmanabad.

...RESPONDENTS

WITH
WRIT PETITION NO. 12901 OF 2022

1. The President,
Mohammadiya Education Society,
At Post – Gunjoti, Tq. Omerga,
District Osmanabad.
2. The Secretary,
Mohammadiay Education Society,
At Post Gunjoti, Tq. Omerga,
District Osmanabad.
3. The Headmaster,
Urdu High School, Gunjoti,
Tq. Omerga District Osmanabad.

...PETITIONERS

...VERSUS...

1. Maheboob A. Razak Shanediwan
R/o Gunjoti, Tq. Omerga,
Dist. Osmanabad.

2. Education Officer (Secondary),
Zilla Parishad, Osmanabad.

...RESPONDENTS

(1) In Writ Petition No. 5939 of 2022 -

- *Mr. V. D. Gunale, Advocate for the Petitioner*
- *Mr. V. D. Salunke, Advocate for Respondent Nos. 1 to 3*
- *Mr. V. M. Chate, AGP for Respondent No. 4/State*

(2) In Writ Petition No. 12901 of 2022 -

- *Mr. V. D. Salunke, Advocate for the Petitioners*
- *Mr. V. D. Gunale, Advocate for Respondent No. 1*
- *Mr. V. M. Chate, AGP for Respondent No. 2/State*

ORDER : ROHIT W. JOSHI, J.

DATE : JULY 18, 2025

JUDGMENT:

1. The present petitions are filed by a teacher and also the management, challenging the judgment and order dated 23.03.2022 passed by the learned Presiding Officer, School Tribunal, Pune Region at Solapur in Appeal No. 11 of 2017. The petitioner in Writ Petition No. 5939 of 2022 will hereinafter be referred to as the 'teacher' and the petitioner in Writ Petition No. 12901 of 2022 will be referred to as the 'management'. The management is a public trust registered under the Maharashtra Public Trust Act, 1950, which runs a school named Urdu High School, Gunjoti. The teacher was appointed in the said school vide appointment order dated 15.03.2007. His services were duly approved by the Education Officer. The school is admitted to 100% grant-in-aid.

2. While he was in service, the teacher was associated as secretary in some small savings group. An FIR was registered against him and other office bearers of the said societies on 01.01.2017. The teacher was arrested and produced before the concerned Magistrate on 02.01.2017, and thereafter, he was released on bail.

3. In view of the above, the management suspended services of the teacher on 03.02.2017. The management also issued statement of allegations to the teacher on 03.02.2017. The teacher issued reply to the statement of allegations on 13.02.2017. Thereafter, the management conducted enquiry against the teacher. Two members of the enquiry committee i.e. the Management's Representatives and the State Awardee Teacher submitted report dated 28.04.2017, on the basis whereof, services of the teacher came to be terminated vide termination order dated 30.04.2017.

4. In this backdrop, the teacher filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to as the '**MEPS Act**'). The contentions in the appeal are that the act of being a part of small savings group does not constitute misconduct; that the enquiry was not conducted in accordance with Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as '**MEPS Rules**'), principles of natural justice

were not followed and the suspension allowance was also not paid to the teacher till the date of termination of service.

5. The management opposed the appeal by filing reply. It contended that, since the teacher was engaged in business of money lending through small savings group; he was involved in a criminal offence, which had received wide publicity all over, the image of the school was tarnished. Additionally, it was alleged that the teacher was not performing his duties properly. As regards allegations pertaining to non-compliance of principles of natural justice and the procedure prescribed under Rules 36 and 37, the management denied the same.

6. After hearing the rival submissions, the learned Tribunal was pleased to partly allow the appeal preferred by the teacher, vide judgment and order dated 23.03.2022. The learned Tribunal has declared that the termination order dated 30.04.2017 is wrong and illegal and on such declaration being granted, it granted liberty to the management to conduct a fresh enquiry against the teacher, with a further direction to complete the same within a period of six months. The Tribunal further directed that if the management decides to hold a fresh enquiry against the teacher, he will be treated as under suspension during the enquiry period and will be entitled to receive subsistence allowance.

7. The teacher has challenged the order passed by the learned

Tribunal to the extent that it permits the management to conduct fresh enquiry against him, by treating him under suspension during enquiry period. The teacher has prayed that the appeal should be allowed in its entirety by issuing direction to the management to reinstate him in service with full back wages and other consequential benefits, including continuity in service from the date of termination.

8. The petition came up for hearing before this Court initially on 14.06.2022, while issuing notice in the matter, this Court directed that the enquiry against the teacher may continue, however, final decision should not be taken till the next date. This *interim* order dated 14.06.2022 was initially granted till the next date i.e. 26.07.2022. This interim order appears to be extended from time to time till 03.07.2023. Perusal of orders passed thereafter indicate that interim order is extended on some dates and on some dates it is not extended.

9. The petition filed by the management, being Writ Petition No. 12901 of 2022, was listed for hearing, and on 16.12.2022, while issuing notice in the matter, the Court directed that *interim* order passed in petition filed by the teacher will be applicable to the petition filed by the management as well. Thus, this Court had permitted the management to commence and continue with the enquiry. The only restraint imposed was that no final decision should be taken during the pendency of the proceedings.

10. Shri. V. D. Gurnale, learned advocate for the teacher, contends that the learned Tribunal had rightly held that the enquiry was completely vitiated, inasmuch as it was conducted in total disregard to the mandate of Rule 36 and 37 of the MEPS Rules. He further contends that having held so and having declared the termination to be illegal, the Tribunal ought to have specifically ordered reinstatement of the teacher in service. He further contends that the act of being a part of management of small savings group (बचत गट) is not a misconduct under Rule 28(5) of the MEPS Rules, and therefore, there was no question of permitting the management to initiate a fresh enquiry against the petitioner - teacher. He, therefore, claims that Clauses 3 and 4 of operative part of the judgment of the Tribunal be quashed and that the management be directed to reinstate the petitioner in service with continuity and all consequential benefits from the date of termination, along with full back wages.

11. Per contra, Mr. V. D. Salunke, the learned advocate for the management, contends that the learned Tribunal ought to have upheld the order of termination. He further contends that the enquiry was conducted strictly in accordance with law and in full compliance with Rules 36 and 37 of the MEPS Rules. He further states that, admittedly, the teacher was involved in a gross act of indiscipline by indulging in money-lending activities, and therefore, the management was entitled to

terminate his services.

12. The learned Tribunal observed that the management had served a statement of allegations on the teacher vide communication dated 03.02.2017, and the teacher had furnished his explanation in response vide letter dated 13.02.2017. It is then stated that the management issued a document titled as a charge-sheet dated 18.02.2017 and prepared a *panchnama* recording that the teacher had refused to accept the same. Subsequently, the management passed resolution dated 17.03.2017 to conduct enquiry against the teacher. The Tribunal has held that there was no material on record to indicate that charge sheet was served on the teacher. In view of such finding, it is held that enquiry was conducted in contravention of Rule 37(1) of the MEPS Rules. It is further held that the charge sheet was not containing specific charges, which also resulted in breach of Rule 37(1). It is also held that after recording evidence of witnesses on 20.07.2017, the teacher was not given adequate opportunity to conduct cross examination of the witnesses examined by the management resulting in violation of Rule 37(2)(c) and (d)(i) and (ii). It has further observed that two members of the enquiry committee furnished final report on 28.04.2017, and the teacher's representative submitted his separate report on 29.04.2017 and immediately thereafter, the termination order was issued on 30.04.2017. The enquiry report is held to be vitiated, as it was not issued jointly by

all the three members of enquiry committee, and there was no evidence of any deliberation between all the three members. Likewise the Tribunal has also held that seven days time, as provided under Rule 37(4)), was not granted to the teacher to respond to the enquiry report. In view of the above irregularities, it is held that the termination order was bad. Having held so, the Tribunal deemed it appropriate to grant liberty to the management to conduct a fresh enquiry against the teacher.

13. Rule 36(1) provides that if a management decides to hold an enquiry against a teacher, initially the Chief Executive Officer of the management must issue a communication intimating the allegations to the employee concerned and call for his written explanation within a period of seven days. Rule 36(2) provides that if the reply is furnished by the employee and the same is not found to be satisfactory by the Chief Executive Officer, he shall place it before the management and the management shall then decide as to whether the enquiry should be conducted or not. If the management decides to conduct enquiry, it must prepare a charge sheet containing specific charges and serve the same on the employee concerned through registered post acknowledgment due.

14. In the case at hand, the statement of allegations is issued on 03.02.2017, to which the teacher has replied on 13.02.2017. The charge sheet is issued on 18.02.2017. It is contended that it was sought to be

served on the teacher by hand delivery. It is alleged that the teacher refused to accept service of charge sheet. It is thus, undisputed that the charge sheet was not sent to the teacher by registered post acknowledgment due as is contemplated under Rule 37(1).

15. A perusal of the charge sheet will demonstrate that it does not refer to any resolution passed by the management. The charge sheet is issued under signature of convener of the enquiry committee. It does not appear that the management has prepared the charge sheet which is again a breach of Rule 37 of the MEPS Rules.

16. It will also be pertinent to mention that after completion of the enquiry, the two members of the enquiry committee have furnished report on 28.04.2017 and the termination order is issued shortly thereafter, on 30.04.2017. It is obvious that mandatory seven day period for furnishing explanation to the enquiry report is not provided to the teacher, which amounts to a clear breach of the mandate under Rule 37(4) of the MEPS Rules.

17. It will also be pertinent to state that two members of the enquiry committee have submitted enquiry report on 28.04.2017, whereas the teacher's representative has submitted a separate report on 29.04.2017. The learned Tribunal has rightly observed that the material on record does not indicate that all the three members of the enquiry

committee deliberated together to consider the evidence on record. It is well settled by a catena of judgments of this Court that an enquiry report must be prepared jointly by all the three members of the committee and must be issued under signature of all the three members.

18. In view of the aforesaid, it is evident that there is a clear breach of statutory provisions in conducting enquiry. The learned Tribunal has, therefore, rightly declared that the termination order dated 30.04.2017 is illegal.

19. Normally, when any departmental or disciplinary action is set aside on account of non-compliance of statutory procedures or on similar grounds, the employer must be granted an opportunity to conduct a fresh enquiry in accordance with law. There can be no quarrel with this well established proposition. However, the facts of the present case are peculiar because the principal allegation against employee does not amount to misconduct. During the course of hearing of the present petitions, the management only harped upon the teacher being a part of management of small savings group. Indeed, the enquiry was initiated against the teacher only after he was arrested in relation to activity related to the small savings group. In this regard, it is necessary to examine as to whether being a part of management of such small savings group will be a ground for imposing major penalty on a teacher under

Rule 28(5) of the MEPS Rules. Rule 28(5) of the MEPS Rules provides that a teacher shall be liable for punishment on the following grounds.

20. Rule 28(5) of the MEPS Rules reads as under:-

“(5) An employee shall be liable to be punished on one or more of the following grounds, namely:

- (a) Misconduct;*
- (b) Moral turpitude;*
- (c) Wilful and persistent negligence of duty;*
- (d) Incompetence.*

For the purpose of this rule;

- (a) "Misconduct" shall include the following acts, namely:-*
 - (i) breach of the terms and conditions of service laid down by or under these rules;*
 - (ii) violation of the code of conduct; and*
 - (iii) any other act of similar nature;*
- (b) "Moral turpitude" shall include the following acts, namely:-*
 - (i) immodest or immoral behaviour with a female or male student or employee; and*
 - (ii) any other act of similar nature."*
- (c) "Wilful negligence of duty" shall include the following acts, namely:-*
 - (i) dereliction in, or failure to discharge, any of ;the duties prescribed by or under these rules;*
 - (ii) persistent absence from duty without previous permission; and*
 - (iii) any other act of similar nature;*
- (d) "Incompetence" includes the following acts, namely:-*
 - (i) failure to keep up academic progress and uptodate knowledge in spite of repeated instructions in that behalf and provision of facilities;*
 - (ii) failure to complete the teaching of the syllabus determined for the year within the fixed periods for reasons not beyond his control;*
 - (iii) any other act of similar nature."*

21. The case of the management is that act of the teacher in running the small savings group amounts to a misconduct. It is, therefore, necessary to examine, as to whether the teacher has committed breach of any terms and conditions of service or violated the

code of conduct, or committed any act of similar nature. The duties and code of conduct for teaching and non-teaching staff are provided under Rule 22. There is no specific prohibition under Rule 22 against being a part of any body such as small savings group. The closest relevant provision is Rule 22(g), which provides that full time teaching staff of a school shall not accept any part time employment on payment or for any other consideration without prior written permission of the school authority. The management does not allege that the teacher was receiving any payment or any other consideration for working with the said small savings group. Likewise, it also needs to be mentioned that he was working as secretary of the group, which cannot be termed to be an employment. In view of the above, it is difficult to hold that the teacher had indulged in any act of misconduct taking allegations of management on their face value.

22. Apart from this, although the School Tribunal has permitted the management to conduct a fresh inquiry against the teacher *vide* its judgment and order dated 23.03.2022, the management has not initiated fresh enquiry till date. In this regard, it will be necessary to state that the Tribunal directed the management to complete the enquiry within a period of six months, if it so desired. The said period expired in September, 2022. However, the management filed writ petition challenging judgment passed by the Tribunal on 17.10.2022. It will also

be pertinent to mention that while issuing notice in the petition filed by the teacher *vide* order dated 14.06.2022, this Court did not restrain the management from initiating and continuing with the enquiry as per order passed by the learned Tribunal. This Court only restrained the management from taking final decision in the matter. It was open for the management to initiate fresh enquiry against the teacher, if it so desired. The teacher is out of employment since 30.04.2017. He was placed under suspension on 01.02.2017. In such circumstances, it would now be unfair and unjust to permit the management to hold a fresh enquiry against the teacher. A natural form inordinately long period of three years and 3 months speaks for itself.

23. In view of the above, Clauses 3 and 4 of the operative order dated 23.03.2022 passed by the learned school Tribunal are required to be quashed and set aside.

24. Since learned Tribunal has declared that termination order dated 30.04.2017 was illegal, it was incumbent on the part of Tribunal to pass such order of reinstatement in service in favour of the teacher. The Tribunal has seriously erred in not directing reinstatement of the teacher in service. It will be pertinent to mention that the Tribunal permitted the management to conduct fresh enquiry against the teacher. It is well settled that enquiry can be conducted by a management against its employee only while the employee is in employment. *Vide* Clause 4 of

the operative order, the Tribunal has directed that in the event the management decides to hold fresh enquiry, the petitioner would be deemed to be under suspension during the enquiry period. This means that the learned Tribunal was aware of this legal position. It appears that due to inadvertence, specific order of reinstatement in service is not passed. It goes without saying that an employee can be placed under suspension only if he is in employment. This error that has **crept** in the order of the learned Tribunal needs to be corrected. The operative order passed by the learned Tribunal needs to be modified by directing the management to reinstate the teacher in service along with continuity and all consequential benefits.

25. As regards the issue of back wages, the learned advocate for the management contends that the employee has not made any statement that he is not gainfully employed elsewhere from the date of termination of service till the date of judgment of the learned School Tribunal. The learned advocate for the teacher contends that a separate affidavit is filed along with appeal regarding non employment. The learned advocate for the teacher has drawn attention to the affidavit dated 17.01.2017, filed by the teacher along with the appeal. It is stated in this affidavit that the teacher will not accept any gainful employment elsewhere. It will be pertinent to mention that the said affidavit is dated 17.01.2017. The services of the teacher were terminated on 30.04.2017.

The appeal is decided on 22.03.2022. The contents of the said affidavit even if accepted on the face value will not be sufficient to hold that the teacher has made a statement that he was not gainfully employed during the relevant period.

26. The Hon'ble Supreme Court has in the matter of ***Deepai Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors*** reported in ***(2013) 10 SCC 324*** held that in order to claim back wages, the employee must make a statement in the appeal or complaint that he has not gainfully employed elsewhere after termination of his services or that he should file a separate affidavit in this regard. It is held that once such statement is made by the employee, the burden of proving that the teacher was in gainful employment is for the management to discharge. However, it is necessary for the teacher to first make a statement that he was not gainfully employed during the relevant period. Perusal of the affidavit dated 17.01.2017 will demonstrate that the teacher has merely stated that he will not accept any gainfully employment during the period of suspension. The said statement does not satisfy the requirement as laid down in the matter of ***Deepai Gundu Surwase*** (Supra). In view of the aforesaid, the teacher will not be entitled to back wages.

27. For the reasons recorded above, both the petitions are disposed of in the following terms.

ORDER

(i) Writ petition no. 12901 of 2022 filed by the management is **dismissed**.

(ii) Writ Petition No. 5939 of 2022 filed by the teacher is **partly allowed** as follows :

(a) Clauses 3 and 4 of the operative order in the judgment and order dated 23.03.2022, passed by the learned Presiding Officer, School Tribunal, Pune Region, Solapur in appeal No. 11 of 2017 are quashed and set aside.

(b) The management (Mohammadiya Education Society) and (Head Master, Urdu High School, Gunjoti) are directed to reinstate the petitioner/Maheboob A. Razak Shanediwan, in service forthwith, with continuity in service and all consequential benefits, excluding back wages.

(c) The petitioner/teacher will be entitled to full salary from 24.03.2022 and onwards. The management/Mohammadiya Education Society will be liable to pay the said salary to the petitioner.

[ROHIT W. JOSHI, J.]