



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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7129 OF 2024

Nilkanth Bapurao More	}	
Age-53 years, Occ: Nil	}	
(Terminated as Incharge Head Master)	}	
R/o. Yogasandesh Niwas, Shivajinagar,	}	
Ghodaj Road, Kandhar, Taluka-Kandhar,	}	
District-Nanded-431 714	}	Petitioner

Versus

- | | | |
|---|---|--|
| 1. The State of Maharashtra | } | |
| Through its Secretary | } | |
| Education Department, Mantralaya, | } | |
| Mumbai-400 032 | } | |
| | | |
| 2. Vidyavardhani Bahuuddeshiya Shikshan Sanstha, | } | |
| Taluka-Kandhar, District-Nanded, | } | |
| Through its Secretary | } | |
| (Self-Declared)-431 714 | } | |
| | | |
| 3. Vidyavardhani Bahuuddeshiya Shikshan Sanstha, | } | |
| Taluka-Kandhar, District-Nanded | } | |
| Through Its President | } | |
| (Self-Declared)-431 714 | } | |
| | | |
| 4. Saint Namdeo Maharaj Secondary School | } | |
| | } | |

Panshevadi, Taluka-Kandhar, District- }
Nanded, }
Through Its Head Master/In-Charge H.M. }

5. The Education Officer (Secondary) }
Zilla Parishad Nanded, }
Taluka & District-Nanded-431 601 }

6. The Administrator }
Saint Namdeo Maharaj Secondary School, }
Panshevadi, Taluka-Kandhar, District- }
Nanded-431714 }

Mr.V.D. Sakpal, Senior Advocate a/w Vishwambhar Bhosale i/b
Mr.S.T. Chalikwar, for the Petitioner.
Mr.S.G. Sangle, AGP, for Respondent-State.
Mr.R.J. Godbole, for Respondent No.2.
Mr.Mayur Bharatrao Borse, for Respondent No.4.

CORAM : R.M. JOSHI, J.

RESERVED ON : 8th DECEMBER 2025

PRONOUNCED ON : 12th DECEMBER 2025

ORAL JUDGMENT :-

. This Petition filed under Article 227 of the
Constitution takes exception to the judgment and order dated
30th January 2024 passed in Appeal No.24 of 2021 by School
Tribunal, Latur, whereby the challenge is raised to the order of
dismissal of the Petitioner dated 4th October 2021 came to be

rejected.

2. The facts which led to the filing of this Petition can be narrated in brief as under:-

It is a case of the Petitioner that, he came to be appointed as Assistant Teacher on 7th August 1996, initially for the period of two years on probation. His services were approved by the Education Officer and consequently he came to be confirmed in the service by order dated 30th December 1998.

3. It is his further case that, the change report bearing No.887 of 2009 filed under Section 21 of the Maharashtra Public Trust Act, 1950 ('MPT Act' for short) was rejected and since then there is no approved Managing Committee by the Charity Commissioner. It is also claimed that there are only three valid members in the Trust. It is further claimed that, the Respondent No.2 is not the member of the Trust and that his claim to that effect has been rejected by the Deputy Charity Commissioner, Nanded. It is further averred that, one of the members of the Trust Mr.Ladekar, complained against illegal sale of the property of the Trust to the Respondent No.2 and the Deputy Charity

Commissioner has undertaken suo-moto proceedings against the Trustees. It is also claimed that the change report submitted by Respondent No.2 in Enquiry No.729 of 2020 came to be rejected and therefore the Respondent No.2 is not Secretary and Respondent No.3 is not President of the Trust.

4. It is also claimed by the Petitioner that on 22nd June 2021 Director of Education appointed Administrator to run the affairs of the school who has taken the charge w.e.f. 8th March 2022 for the period of two years which is extended further for a year thereafter. The said appointment of the Administrator is confirmed by the Hon'ble Minister in Appeal and though Writ Petition is filed against the said order, this Court has not stayed the operation of the same.

5. In the light of the afore-stated peripheral facts, it is contended by the Petitioner that as per the seniority list of Assistant Teacher the senior most teacher Mr.Rathod was unwilling to accept the post of the Incharge Headmaster and hence resigned from the service. It is thereafter the Petitioner who was the senior most employee came to be promoted as

Incharge Headmaster of the school. This promotion was granted approval by the Education Officer. The Petitioner however claimed that he tendered resignation of the post of Incharge Headmaster due to his ill health on 29th March 2019 which was rejected by the Management. He further claims to have sent medical leave application to the President of the Trust on 1st July 2019. First show cause notice came to be issued on 5th October 2019 by Respondent No.2 to the Petitioner however no further action was taken in that behalf. On 2nd February 2021 another show cause notice was issued to the Petitioner by Respondent No.2. Charge-sheet came to be issued on 18th March 2021 to the Petitioner who was Incharge Headmaster of Secondary School and charges are related to his work as in the said capacity. It is claimed that, in order to conduct an enquiry of the Incharge Headmaster the Enquiry committee must consist and should be headed by the President, and other members being awardee Headmaster and representative of teacher. It is further claimed that the Enquiry Department constituted to conduct Departmental Enquiry against the Petitioner is *void abinito*. It is

also contended that, Respondent No.2 issued show cause notice to the Petitioner and also became member of the Committee and hence principles of natural justice are flouted. It is claimed that the enquiry has been not conducted in consonance with Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules' for short).

6. The Petitioner claim to have made complaint to the Education Department with regard to the illegalities being committed in conduct of the enquiry. The committee however finalized the enquiry report on 21st July 2021 and dismissed the Petitioner from service. The Petitioner preferred Appeal against the said order of the dismissal under Section 9 of the Act. Since, the said Appeal is dismissed by the School Tribunal, this Petition.

7. The learned senior counsel appearing on behalf of Petitioner submits that the Tribunal has committed error in not considering the objections raised by the Petitioner in Appeal taking exception to the authority of Respondent No.2 to initiate enquiry and also to become a member of the Enquiry Committee. It is further argued by pointing out the previous

proceedings in connection with the MPT Act, that there is not only rejection of the change reports submitted by Respondent No.2 but also his claim of being member of the Trust has been rejected. It is argued that, with appointment of the Administrator to manage the affairs of the school, the Management does not retain any power to take any policy decision including conduct of enquiry against an employee. The learned counsel for the Petitioner submits that since no action was initiated against the Petitioner on the basis of first show cause notice and as there is no provision for issuance of second show cause notice, in the Rules, the enquiry proceedings initiated on the basis of the second show cause notice is not valid.

8. It is submitted that, since the Petitioner was Incharge Headmaster, for the purpose of the conducting enquiry against him there ought to have been committee consisting President of Trust and awardee Headmaster as representative of the Management with employees representative. It is further submitted that, no employee representative was appointed and the Petitioner himself was treated as employee representative

which is contrary to the provisions of Rule 36. It is argued that the enquiry report submitted by such committee could not have been acted upon and of the basis on which no termination order can be passed. According to him these submissions were duly put forth before the Tribunal, but the Tribunal has failed to appreciate the same correctly, which resulted into passing of impugned order. To support his submission, he placed reliance on following judgments :

Sr.No.	Particulars
1	<u>Sidhleshwar Shikshan Sanstha V/s. The State of Maharashtra</u> Reported in 2016 (4) Bom.C.R.-29 (on the point of proceedings and MPT Act and MEPS Act- Power of appointment of employee)
2	<u>Sayyed Yusuf Sayyed Moosa V/s. The State of Maharashtra.</u> Reported in 2014 SCC Online Bom-4572 (Only authorised person to conduct enquiry)(In case of Head President shall be member of Committee under Rule 36(2) (b)(i)
3	<u>Shobha Ravindra Chaudhari V/s. The State of Maharashtra & Ors.</u> Reported in 2025-BHC-AUG-2241-DB (On the point where multiple change reports are filed and the powers of Assistant Charity Commissioner)
4	<u>National Education Society V/s. Mahendra Baburao Jamkar</u> Reported in (2007) 3 Bom-C.R. 521

(On the point of Rule 36(2)(b) of the 1981 Rules.)(In case of head President only to conduct enquiry.)

5 **Gramin Shikshan Prasarak Mandal V/s. Laxman Shyamrao Parate**

Reported in (2015) 6 Bom.CR.-126

(On the point of different inquiry powers of Inquiry Committee towards Head and employees).

6 **Vidya Vikas Mandal & Ors V/s. The Education Officer and Ors.**

Reported in (2007) 11 SCC 352

(On the point of applicability of rule 36 and 37 of MEPS Rules,1981 to the employees. Enquiry report must be submitted by all three members considering or otherwise.)

7 **Rajshri Sahu Chh. Shikshan Sanstha & Ors V/s. Mangala & Ors.**

Reported in (2019)5 Mh.LJ.-418 and 2019 SCC Online Bom 1196

(On the point of irregularities in the appointment of CEO of inquiry committee and working of School Tribunal)

8 **National Integration and Education Welfare Society V/s. The Presiding Officer School Tribunal Amravati Division.**

Reported in 2022(3) Mh.L.J.-140 (202!) 6 All.M.R.-789
[Non-compliance of Rule 36(2)]

9 **The Manmad St. Xavier Society and Ors. V/s. State of Maharashtra & Ors.**

Reported in 2006(3) Mh.L.J. 852

(Regarding a person who has acted as a prosecutor in a matter cannot sit in judgment in the same cause.)

10 **Dipali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalay & Ors.**

Reported in (2013)-10-SCC-324
(on the point of power of the High court to interfere in the order of the Tribunal)

11 **Ayyapa Kadiwal V/s. President Local Governing Council**

Reported in 2000(4) Mh.L.J.-470

(On the point of termination of employees and reinstatement with back wages)

12 **Yavatmal Islamiya Annaglo Urdu Education Society V/s. Mujib Ahmed Abba Ali & Ors.**

Reported in (2010) Labour and Industrial Cases 918

(Time of reinstatement with back wages)

9. The learned counsel appearing on behalf of the contesting Respondent opposed the Petition with submission that while exercising jurisdiction under Article 227 of the Constitution, this Court cannot sit over the judgment and order passed by the Tribunal as Appellate Court as court of appeal but only has to consider perversity in the order impugned, if any and then only the order could be interfered with. On merits it is his submission that, the issues sought to be raised in relation to the orders passed under the MPT Act, would be beyond jurisdiction of the School Tribunal and consequently of this Court too cannot take cognizance of the same nor record any finding thereon. It is

argued that it is accepted that the last change report filed by the Respondent No.2 is rejected by the Deputy Charity Commissioner, Revision has been preferred against the said order which is pending before the Joint Charity Commissioner. It is his submission that, the said order has not attained finality and therefore it is not open for the Petitioner to claim that, the Respondent Nos.2 and 3 have no right to take action against him. He drew attention of the Court to the facts indicating the appointment of Petitioner as an Incharge Headmaster being done by Respondent Nos.2 and 3, so also he having tendered resignation to them. It is submitted that once Petitioner has accepted the *locus standi* of Respondent Nos.2 to 3 in managing the affairs of the school, now it is not open for him to take any different/contrary stand.

10. It is further submitted that, it was open for the Petitioner to take exception to the Constitution of committee in the enquiry itself. However, except for filing written statement to the charge-sheet and causing appearance on solitary date in the enquiry proceedings, the Petitioner has neither participated nor

contested the enquiry proceedings. It is his submission that the Tribunal has rightly taken into consideration the said aspect and has also refused to entertain the documents sought to be placed before the Tribunal which were not even attempted to be produced before the Enquiry Committee. With regard to validity of the constitution of the Enquiry Committee by relying upon judgment in case of *Nagpur Shikshan Mandal V/s. Haribhau Mohod¹*, Bombay, Division Bench, it is submitted that the Incharge Headmaster is not a substantive appointment and therefore for all other purposes the Petitioner would continue to remain Assistant Teacher and that in such circumstances the enquiry need not be conducted by the President. He also drew attention of the Court to the judgment of the Division Bench in the case of *Dr.Dipak Vishwanthrao Muley V/s. State of Maharashtra²*, to argue that the issuance of second show cause notice does not effect validity of the enquiry proceeding as the enquiry proceeding starts from the date of the issuance of the charge-sheet from not the date issuance of show cause notice.

1 Letters Patent Appeal No.77 of 2007

2 Writ Petition No.11955 of 2018

11. At the outset, it is to be recorded that, there is no dispute with regard to the fact that the provisions of MEPS Act and Rules are applicable to the parties. Further it is admitted that Petitioner was appointed as Assistant Teacher on 7th August 1996 and was confirmed in the service with approval of the Education Officer on 30th December 1998. Similarly, there are disputes pending before the Competent Authorities under the MPT Act, with regard to the correctness/validity of the change report submitted by Respondent No.2 and issue of his membership is subjudice. So also, it is not in dispute that the Administrator came to be appointed to manage the affairs of the school by order dated 20th January 2022 and he took charge on 8th March 2022. Moreover, Petitioner does not dispute the fact of issuance of show cause notice to him by Respondent No.2 on 5th December 2019 and no action being taken there upon, so also issuance of show cause notice dated 2nd February 2021 and charge-sheet dated 18th March 2021 and receipt thereof by the Petitioner is accepted fact. In the Enquiry Proceeding the Petitioner submitted written statement and caused appearance on one date. The enquiry

proceeded ex-parte against him. After conclusion of the Enquiry, Report came to be submitted to the Management on 27th September 2021. The Management by passing resolution decided to dismiss the Petitioner from service and accordingly order of dismissal dated 30th January 2024 came to be issued.

12. From the averments of rival parties so also from the documentary evidence placed before this Court it can be said that there are proceedings pending under the MPT Act before the Competent Authorities and one of such proceeding is rejection of change report bearing No. 729 of 2020. Though change report has been rejected by Deputy Charity Commissioner, Revision has been filed against the said order which is pending before the Joint Charity Commissioner. Similarly, in respect of the membership of Respondent No.2, the proceeding in that regard has not attained finality as Petition is pending before this Court.

13. In order to consider the *locus standi* of the persons who initiated action against petitioner under the MEPS Act, neither Tribunal under the provision of the MEPS Act nor this Court can go into the issue of correctness or otherwise of the

orders passed by the Authorities under the MPT Act. Nor contentions which are required consideration by Authorities under MPT Act could be taken cognizance and decided by said authorities only and not by Court dealing with issues under MEPS Act. Now a question would arise as to whether it is open for this Court or the Tribunal to hold on the basis of rejection of change report that, Respondent Nos.2 and 3 had no authority to take action against the Petitioner. As rightly submitted by learned counsel for Respondent that in case if Revision is allowed against the rejection of change report, the order passed under the MEPS Act would not be faulted, similarly, also in view of the fact that the orders passed under the MPT Act have not attained finality, the Court has to take note of the conduct of the parties and also whether any specific plea was raised by the Petitioner during the enquiry or at any time prior thereto taking exception to the *locus standi* of Respondent Nos.2 and 3 to take action against him.

14. Needless to say that, party cannot be permitted to approbate and reprobate. Record indicates that the Petitioner was appointed as Assistant Teacher and was asked to hold post of

Incharge Headmaster by Respondent Nos.2 and 3, without any demur he accepted the said order. Similarly, when he tendered resignation of the post of Incharge Headmaster on 20th September 2019 it was addressed to the Respondent No.3. It is Respondent No.3 who has rejected the said request and thereafter accepting the said order, Petitioner continued to act as Incharge Headmaster. In the light of the conduct of the Petitioner himself, now it would not be open for him to take exception to the *locus standi* of Respondent Nos.2 and 3 acting on behalf of the Management of the Trust and to take action against him and such plea deserves no entertainment.

15. An issue is raised before this Court as to whether the provisions of Rule 36 and 37 are flouted in conduct of the Departmental Enquiry. It is claimed that since the Petitioner was working as Incharge Headmaster, no enquiry could have been conducted by Respondent No.2 as only a Secretary and the President could have chaired the said committee.

16. In order to appreciate the said issues and submissions it would be relevant to take note of the provisions of the Act and

Rules which prescribe for the different categories of employees. Perusal of the act and rules framed there under, indicate that there is neither derogation of Incharge Headmaster provided nor any pay scale is made applicable thereto.

17. As to what is a status of a person holding a post as incharge has been dealt with by the Division Bench of this Court in the case of *Nagpur Shikshan Mandal (Supra)*. It would be relevant to take note of the observations made therein in Paragraph Nos.7 and 9 which read thus :

7. The appellants have placed reliance on the judgment of the Supreme Court in the case of Ramakant Shripad Sinai Advalpalkar v. Union of India & ors reported in AIR 1991 SC 1145. In the said case, the appellants had sought a mandamus directing the respondents to absorb him in an equivalent post to that of Treasurer of a financial institution of the former Portuguese Government in Goa after its take-over by the Indian Government. The appellant was holding the post of Grade III Officer. In the year 1963 the post of Treasurer in the establishment having fallen vacant, the appellant was asked to perform the duties of the post of Treasurer on the stipulation that he would draw, besides the monthly salary of his own post, a given amount of

allowance. In the above set of facts, the Supreme Court held thus:

"The arrangements contemplated by this order plainly does not amount to promotion of the appellant to the post of Treasurer. The distinction between situation where a Government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a "charge allowance". Such contemplated where exigencies of public situations are service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement."

9. *It is a settled position in service jurisprudence that when a person is made to act as an in-charge in a higher cadre on account of administrative exigencies, the said assignment cannot be termed as promotion and does not cloth him with any right qua the promotional post. He is not even paid in the scale of pay admissible to the promotional post. To hold that an appeal under Section 9 of the MEPS Act is maintainable against an order of appointment as an in-charge would tantamount to conferring a higher status on a person appointed as an in-charge on account of stop-gap arrangement being made. The same cannot be done. Thus, the respondent no. 3*

has not assumed any right to the promotional post on account of he being appointed as an in-charge Assistant Head Master. If this be the position in law, the necessary corollary thereof is that no one including the respondent no.1 can be said to be aggrieved by such an appointment. A person would be aggrieved only when a substantive appointment by promotion is made. The learned counsel for the respondent no.1 has also placed reliance on an unreported judgment of Division Bench of this Court in the case of Pramod Vasantrao Deshmukh v. The State of Maharashtra and ors (Writ Petition No. 3230 of 2007) which goes to dismiss the writ petition. One of us (Shri R.C. Chavan, J) is a party to the said judgment. The question as to whether an appeal is maintainable under Section 9 of the MEPS Act against an order of appointment by come up for as in-charge had not consideration directly, nonetheless this Court has dismissed the writ petition by placing reliance on the same judgment the correctness of which is questioned in the present Letters Patent Appeal rendered by the learned single Judge and relegated the petitioner to alternate remedy assumed to be available to the petitioner before the School Tribunal in the form of an appeal. As the question which has arisen in the present Letters Patent Appeal did not fall for consideration and has not been decided by the Division Bench, the said judgment does not lay down any ratio which would bind this Court.

With a risk of repetition, it is pointed out that the said petition was not entertained by observing that an alternative remedy in the form of appeal is available. In this view of the matter, the said judgment does not carry case of the respondent no.1 any further.

18. Thus, it is clear from the afore-stated observations and also in view of the provisions of act and rules, when a person is called upon to act as an incharge in a higher cadre on account of administrative exigences the said appointment can neither be treated as promotion nor the rights qua the promotional post can be created or claimed. Herein this case, the Petitioner was appointed as Incharge Headmaster. Neither there is any provision under the Act or Rule recognizing such position as a separate cadre/category of the employee and since the Petitioner was admittedly not appointed as Headmaster, question of applying the Rules applicable to the Headmaster in conduct of the Departmental Enquiry would not arise. For all practical purposes, Petitioner would be considered as Assistant Teacher and procedure applicable for the said post would be required to

be followed. This Court therefore finds no substance in the objection raised by the Petitioner with regard to the validity of the Committee constituted to conduct enquiry against him.

19. It is sought to be argued that the Secretary who issued notice of enquiry could not have become part of enquiry Committee and to support this submission reliance is placed on Judgment in case of *The Manmad St. Xavier Society and Ors.* (Supra). There cannot be dispute made with regard to proposition of law that no one should be a judge of his own cause. However, it needs to be considered whether the Chief Executive Officer is required to issue show cause notice and there is no embargo for him to become part of enquiry Committee. If rules require notice to be issued by Secretary then it must be issued by him only. Moreover, it cannot be said that such person has individual/personal cause against the employee, to prohibit him from being part of enquiry Committee. Moreover, in judgment of *The Manmad St. Xavier Society and Ors. (Supra)* it was held that on that count alone enquiry is not held to be proper but another member of Committee had resigned from

Committee and deposed against employee. In the said case personal bias was found against employee. In considered view of this Court, the same absent herein. The Secretary is same person who appointed the Petitioner as Incharge Headmaster and also refused to accept resignation. Most importantly, Petitioner has failed to take part in the enquiry and there is nothing from record to hold personal bias of Secretary. Thus, the said objection raised of Petitioner does not deserve acceptance, in peculiar facts of the case.

20. It is further argued that, on the basis of the first show cause notice no action was initiated whereas there is no provision of the issuance of second show cause notice before initiating Departmental Enquiry. In this regard, reference can be made to the judgment in case of *Dipak Muley (Supra)*. No doubt the said proceedings were under the Maharashtra Civil Service Rules and therein there was specific provision indicating the commencement of the enquiry after issuance of the charge-sheet. However, in the instant case the Rule 37 clearly indicates that the actual conduct of the enquiry would commence from issuance of

charge-sheet as it is only thereafter the delinquent employee is required to furnish written statement and then the actual hearing of the enquiry would be commenced. It needs to be appreciated that the whole purpose of issuance of show cause notice to the employee is to seek his explanation and if such explanation is found satisfactory, the Management may drop further action of issuance of the charge-sheet and conduct of enquiry. Thus it cannot be said that, issuance of two show cause notices would affect the action initiated by the Management is vitiated in any manner.

21. Perusal of the record of the enquiry conducted against the Petitioner indicates that except on 4th August 2021, he did not attend the proceedings of enquiry. There is material on record to indicate the compliance of Rule 37 in conduct of inquiry as the proceedings of enquiry were duly forwarded to the delinquent employee and there was due notice to petitioner of hearing of enquiry. This Court finds substance in the contention of the counsel for the contesting Respondents that the objection with regard to the Constitution of Committee ought to have been

raised at the initial stage and that too before the Enquiry Committee and non-raising of such objection would amount to waiver of the said objection on the part of the Petitioner. It is sought to be argued on behalf of petitioner that constitution of enquiry committee is void, as it does not include the teachers representative. In this regard it would be relevant to take note of Rule 36, which reads thus:

“36. Inquiry Committee.

(1) If an employee is allegedly found to be guilty on [any of the grounds specified in sub-rule (5) of rule 28] [*These words were substituted for the words 'misconduct or misbehaviour of a serious nature' by Notification No. PST/1083/194-SE-3-Cell, dated 20-12-1984.*] and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(2) [If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in

sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide' within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee –

- (i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;
- (ii) one member to be nominated by the employee from amongst the employees of any private school;
- (iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1)

- (i) one member who shall be the President of the Management;
- (ii) one member to be nominated by the Head from amongst the employees of any private school;
- (iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.]

(3) [The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgement due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the

name along with the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.] *[Sub-rules (3) and (5) were substituted by Notification No. PST/1083/194/SE-3-Cell, dated 20.12.1984.]*

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule (2).

(5) [The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.] *[Sub-rules (3) and (5) were substituted by Notification No. PST/1083/194/SE-3-Cell, dated 20.12.1984.]“*

22. As already held above, the petitioner would be treated as Assistant Teacher and committee of enquiry would consist of management nominee, member to be nominated by employee and one member chosen by CEO from panel of Awardee

teachers. Sub rule 3 requires communication of member nominated and appointed for awardee teachers and asking Employee to nominate a person on his behalf on proposed enquiry.

23. Record indicates that on receipt of communication of the enquiry the petitioner was required to nominate his member in committee. No appointment is made by petitioner in stipulated time. Once no such nomination is made in prescribed period, it is open for the members appointed to proceed with the enquiry. In case of non-appointment of nominee, the employee shall suffer. It cannot be accepted that no enquiry can be proceeded with in case employee fails to nominate his representative. If such contention of the Petitioner is accepted, then the provisions of MEPS Act would become redundant as in case employee does not appoint his representative, no enquiry could ever be conducted against such employee. An employee would never appoint representative so that further action could be avoided, which cannot be said to be the intention of the statute. With regard to the appointment of the Administrator,

admittedly Administrator took charge of Management of school, after order of dismissal is passed against Petitioner. There is nothing on record to indicate that Management was prevented by any Competent Authority from proceeding with enquiry or taking action thereon. Further, most importantly there is nothing to indicate that Petitioner was prevented from appearing in enquiry for reason beyond his control. If he consciously fails to appear in enquiry & raise issues, as now sought to be raised he should blame himself and suffer therefor. If an employee is permitted to avoid participation in enquiry proceedings, though opportunity was available, he cannot be allowed to raise issues after his dismissal, which were open to be raised there in enquiry.

24. Insofar as the merit of proof of charges is concerned the Petitioner has failed to contest the said charges in the enquiry proceeding. It was always open for the Petitioner to place before the Enquiry Committee evidence in his defense which he has failed in this case. As rightly held by the Tribunal that any amount of the documents placed before the Tribunal for the first time cannot be take into consideration as the said evidence is

absent before the Enquiry Committee. The law on the point of interference in the Enquiry Committee's report is fairly settled to say that it is not open for the Tribunal to sit as Appellant Court over the said finding of enquiry and the Court is required to see as to whether the findings are consistent with the material evidence on record. It is not permissible for the Tribunal to substitute its own opinion, and this Court cannot sit as an appellate authority over the Tribunal's jurisdiction so as to record independent findings. While exercising power of superintendence, this court has to see whether the Tribunal has acted in legal bounds and that order impugned has not resulted in miscarriage of justice. Having regard to these facts of the case, this Court finds no perversity in the impugned judgment and order passed by the School Tribunal in order to cause any interference therein, in exercise of court jurisdiction.

25. Consequently, Petition deserves to be dismissed.

26. All pending Applications are disposed of.

(R.M. JOSHI, J.)