



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

WRIT PETITION NO. 6621 OF 2012

Khune Devanand Nagnath (Died)
Through L.Rs.

- 1(a) Prabhawati Devanand Khune
Age : 56 years, Occu. : Housewife
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.
- 1(b) Kanishk Devanand Khune
Age : 29 years, Occu. : Nil
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.
- 1(c) Seema Devanand Khune
Age : 28 years, Occu. : Housewife
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.
- 1(d) Bhushan Devanand Khune
Age : 23 years, Occu. : Nil
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.

.. Petitioners

Versus

1. Terna Public Charitable Trust
Terna Nagar,
Engineering College Premises
Solapur Road, Osmanabad
Through its Secretary.
2. The President
Terna Public Charitable Trust
Terna Nagar,

Engineering College Premises
Solapur Road, Osmanabad.

3. Education Officer (Secondary)
Zilla Parishad
Osmanabad.

4. Govt. of Maharashtra
School Education Dept.
Mantralaya, Mumbai.

.. Respondents

**WITH
CIVIL APPLICATION NO. 11935 OF 2022
IN
WRIT PETITION NO. 6621 OF 2012**

Khune Devanand Nagnath (Died)
Through L.Rs.

1(a) Prabhawati Devanand Khune
Age : 56 years, Occu. : Housewife
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.

1(b) Kanishk Devanand Khune
Age : 30 years, Occu. : Nil
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.

1(c) Seema Devanand Khune
Age : 29 years, Occu. : Housewife
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road, Osmanabad.

1(d) Bhushan Devanand Khune
Age : 23 years, Occu. : Nil
R/o. : Bhushan Niwas, Vikas Nagar
Udashi Road Osmanabad.

.. Applicants

Versus

1. Terna Public Charitable Trust
Terna Nagar,
Engineering College Premises
Solapur Road, Osmanabad
Through its Secretary.
 2. The President
Terna Public Charitable Trust
Terna Nagar,
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Solapur Road, Osmanabad.
 3. Education Officer (Secondary)
Zilla Parishad
Osmanabad.
 4. Govt. of Maharashtra
School Education Dept.
Mantralaya, Mumbai.
- .. Respondents

Dr. R. J. Godbole, Advocate for the Petitioners.
Mr. Sachin S. Tambe, Advocate h/f Mr. Santosh S. Jadhavar,
Advocate for Respondent Nos. 1 & 2.
Mr. R. B. Dhaware, AGP for Respondent Nos. 3 & 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 20th September, 2025.

Date on which judgment pronounced : 08th October, 2025.

JUDGMENT :-

1. This writ petition is at the instance of a Headmaster who was terminated from services, challenging judgment and order passed by the learned Presiding Officer, School Tribunal, Solapur

dated 29.09.2011. By way of impugned judgment and order the appeal of the petitioner came to be dismissed with costs confirming his termination. During the pendency of the petition, the petitioner expired on 01.02.2021 and now, the legal heirs are on record. Respondent No. 1 is the charitable trust running a school. Respondent No. 2 is the President of the said trust. Respondent No. 3 is the Education Officer (Secondary), Zilla Parishad, Osmanabad. Respondent No. 4 is the State of Maharashtra.

2. The facts, in short, giving rise to the present petition are that, the petitioner came to be appointed on 06.11.1985 as an Assistant Teacher in an aided school. He came to be appointed as Headmaster from 01.08.1998. When he was serving as Headmaster, he was required to go on leave. On 19.09.2004 he sought extension of leave period. The management, however, did not accept the request of extension. It is stated that, on 31.10.2004 the petitioner met with an accident and suffered serious injuries. On the advise of the doctor he applied for further medical leave, however, the same was also not granted by the management. The management instead sent communication

dated 02.12.2005 as to why no inquiry be initiated against him ? and to nominate the representative of the petitioner in the inquiry committee. A charge-sheet came to be issued on 22.08.2006. The petitioner denied the charges and prayed for dropping the inquiry and reinstatement.

3. Further, it is the case of the petitioner that, the management by force obtained one letter of apology from the petitioner dated 20.02.2007. On completion of inquiry, the petitioner came to be terminated by order dated 25.05.2007. The petitioner challenged said termination by filing an appeal before the School Tribunal bearing Appeal No. 48/2007. The appeal came to be dismissed and thus, the petitioner is before this Court.

4. The learned advocate Dr. Godbole for the petitioners vehemently argued that, the respondent did not conduct inquiry in a fair manner. There is violation of Rule 36(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "M.E.P.S. Rules"). The procedure under rule 37(4) was not followed. In view of rule 37 (6) of the M.E.P.S. Rules, he submits that, the report which was

submitted by the committee was not a combined report. The report is not signed by the representative of the employee Mr. Ratan Wagh. He relies upon the judgment in the case of **Vidya Vikas Mandal & Anr. Vs. The Education Officer & Anr.** reported in **MANU/SC/7084/2007.**

5. The learned advocate Mr. Tambe holding for learned advocate Mr. Jadhavar for respondent Nos. 1 and 2 vehemently opposes the petition. It is submitted that, it is the petitioner himself who has committed misconduct. It is because of his misconduct the inquiry was initiated. The petitioner nominated his representative in the inquiry committee. The petitioner appeared before the inquiry committee. In the inquiry, the charges framed were proved. Therefore, the inquiry committee submitted report and it is on that basis the action is taken. The learned advocate further submitted that, the petitioner accepted his guilt by letter dated 20.02.2007 and also accepted that, henceforth he would not commit any misconduct. He submits that the learned Member of the Tribunal has rightly dismissed the appeal.

6. This Court has gone through the record and proceeding and

heard the submissions. From the inquiry report it is seen that, there were serious charges against the petitioner. He was on leave for prolonged period. His medical certificates were not believed. He could not prove the certificates. It is recorded that the petitioner was found indulging in the activities of fabricating T.C. of students etc. He has committed forgeries in the the columns of the caste, date of birth etc. He had taken the examination fees from some of the students, however, the forms were not forwarded which resulted into loss of one year of some of the students. He had given certificates to some of the employees showing a different pay scale which was not applicable. On the basis of such certificates bank even disbursed loan. He had felled tress in the school premises without permission and did not deposit the amount of such tress. The said inquiry report is signed only by two persons i.e. one by the President and by one other member. However, the said report is not signed by third member Mr. Wagh. There is letter of apology on record wherein, the petitioner has stated that, he would not commit any mistakes in future, however, there is no any act written of alleged misconduct. There is affidavit prepared by Mr. Wagh stating that the petitioner

was forced to give letter of apology. He could not give his report. As even the dates of the committee's meeting were not informed to him. Looking at the above position, it is clear that, third member has not signed the report.

7. The reliance of the petitioner is on rule 36 (1) of the M.E.P.S. Rules. The said rule reads as under :

“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] 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 acknowledgment due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(2)

(3)

.....”

8. In the present case, it is seen that, no compliance of rule 36 (1) of the M.E.P.S. Rules is seen. Rule 37 (4) of the M.E.P.S. Rules reads as under :

“37. **Procedure of inquiry-** (1)

(2)

(3)

(4) The Convener of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgment due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.”

9. In the present case, the respondents failed to show that such report was forwarded to the employee – petitioner. Rule 37 (6) of the M.E.P.S. Rules reads as below :

“37. **Procedure of inquiry-** (1)

(2)

(3)

(4)

(5)

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy

Director, as the case may be, by registered post acknowledgment due. Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgment due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.”

10. It is necessary that, a combined report should be submitted signed by all the members of the inquiry committee. If any of the members does not concur with the finding of the committee, he shall give his separate opinion along with the report. In the present case, it is specific contention of the petitioner that the report of the committee was signed only by President and one member. Respondent could not show that the third member had also signed the report or that he had given his opinion.

11. In the case of Vidya Vikas Mandal (*supra*), the Hon’ble Supreme Court considering rule 37 specifically rule 37 (6) of the M.E.P.S. Rules held that, the provision of rule 37 (6) is mandatory in nature and there has to be strict compliance of the said rule. In the said case, out of three members the report was submitted only

by one member nominated by the management within time stipulated as per rule 37 (6). Other two members including independent member did not submit their report within the prescribed period. The High Court in that case dismissed the contention of the employee. On finding that the report was not a combined report it was held that, the High Court committed serious error in accepting such report. The order of termination based upon such report was held to be contrary to the rules and was set aside. In that case, it was also observed that, there was no proper compliance of rule 36(2)(a). The inquiry was directed to be conducted afresh by treating the employee under suspension.

12. In the present case, as observed there is no compliance of rule 37(4) and (6) of the M.E.PS Rules. There is also no compliance of rule 36(2)(a). One course available to this Court is to remand the matter for fresh inquiry. However, since the petitioner is no more, now fresh inquiry cannot be directed. It is cardinal principle that, no inquiry can be held against a dead person. Therefore, this option is not open for the Court now.

13. So far as in the case of Mohd. Irshad Ahmad Vs. Talha

Education and Welfare Society, Karajgaon and others reported in 2012 (3) Mh.L.J. 291 this Court at Nagpur considered rule 37(4), (5) and (6) of the M.E.P.S. Rules in the light of judgment in the case of Vidya Vikas Mandal (*supra*). This Court again held that, compliance of rule 37(6) of the M.E.P.S. Rules is mandatory and in absence of compliance of the said provision, the rule was made absolute and the petition of the employee was allowed by setting aside the judgment and the order passed by the learned Presiding Officer, School Tribunal. The order of termination by the management was quashed and set aside. The management was permitted to continue and complete the proceeding of inquiry from the stage of issuance of summary of charges.

14. In the present case, the only option with the Court now is to quash and set aside the impugned judgment and order dated 29.09.2011 passed by the learned Presiding Officer, School Tribunal, Solapur in Appeal No. 48/2007 and to quash and set aside the impugned order of termination dated 25.05.2007 passed by the management. Hence, the following order :

ORDER

(I) The writ petition stands allowed in terms of prayer clauses (B) and (C).

(II) Rule is made absolute in above terms. No order as to costs.

(III) Since the petitioner is no more, all the benefits be paid to the legal heirs of the original petitioner i.e. present petitioner Nos. 1(a) to 1 (d).

(IV) In view of disposal of writ petition, nothing survives in the civil application and the same is also disposed of.

(KISHORE C. SANT, J.)

PS.B.