



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7760 OF 2016

Sau. Yogita w/o Vishwanath Thange, Age : 39 years,
Occ : Service, R/o House No.9, Municipal Colony,
Near T.V. Center, Savedi, Ahmednagar,
Tq. & Dist. Ahmednagar.

...PETITIONER

-VERSUS-

1. The President, Anand Education Society,
Anandnagar, Gulmohor Road, Ahmednagar.
2. The Headmaster, Anand Vidyalaya
(Primary Section), Gulmohor Road, Savedi,
Ahmednagar.
3. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
4. The Administrative Officer,
Mahanagarpalika Shikshan Mandal,
Anandibajar, Ahmednagar.

...RESPONDENTS

Shri R.N. Dhorde, Senior Advocate h/f Shri Vikram R. Dhorde, Advocate
for the Petitioner.

Shri Mukul Kulkarni, Advocate for Respondent Nos.1 and 2/
Management.

Shri S.S. Wagh, Advocate h/f Shri S.T. Shelke, Advocate for Respondent
No.3.

Shri K.N. Lokhande, AGP for the State of Maharashtra.

CORAM : PRAFULLA S. KHUBALKAR, J.

Reserved on : 08th July, 2025

Pronounced on : 19th September, 2025

JUDGMENT :-

Heard learned Senior Advocate Shri R.N.Dhorde instructed by
Advocate Shri Vikram R. Dhorde for the petitioner, learned Advocate
Shri Mukul Kulkarni for respondent Nos.1 and 2 Management and
learned Advocate Shri S.S.Wagh holding for Advocate Shri S.T. Shelke,
for respondent No.3 Education Officer (Primary).

2. **RULE.** Rule made returnable forthwith and heard finally by consent of the parties.

3. By way of instant petition, the petitioner has challenged the judgment and order dated 29.04.2016 passed by the School Tribunal in Appeal No.48/2015 **to the extent of clauses 3 and 4 of the said order** directing respondent Nos.1 and 2/ Management to conduct a fresh enquiry by following legal procedure and by treating the petitioner under suspension. The petitioner has also challenged the conduct of enquiry pursuant to the charge-sheet dated 07.07.2016 by way of amended prayer clause.

4. It needs to be stated here that apart from this petition, the petitioner has filed a separate petition bearing Writ Petition No.2005/2008 challenging the order dated 07.02.2008 passed by the School Tribunal in Appeal No.49/2007 by which, the appeal filed by another employee by name Ravindra Chandrakant Ashtekar, was allowed consequently disturbing the appointment of the petitioner on the post of Headmistress of the school. Since the challenge involved in these two petitions although raised by the petitioner herein based on same factual background, however, pertains to different causes of action and, therefore, the two petitions are decided by separate judgments.

5. Challenge in this petition is to the judgment and order passed by the School Tribunal in the appeal which was filed by the petitioner challenging her termination order dated 09.04.2013.

6. Brief facts, on the basis of which the appeal was filed before the School Tribunal, are stated below:-

(a) The petitioner has stated that in accordance with the interim order passed by this Court in Writ Petition No.2005 of 2008, she was serving as Headmistress from February, 2009 and her appointment was also approved. The Management carried grudge against her and on the basis of the complaint filed by one Mr.Dahatonde, who was parent of a handicapped student of the school, a notice was issued to the petitioner informing constitution of an enquiry committee against her and she was put under suspension. On 21.12.2012, the Education Officer directed the Management to allow the petitioner to discharge her duties as Headmistress and accordingly, when the petitioner reported for duties, she was prevented from entering the Headmaster's office. The petitioner was not allowed to perform her duties as Headmistress and, therefore, she filed complaints before various authorities.

(b) On 01.01.2013, the petitioner was served with charge-sheet with 09 charges and pursuant thereto, the enquiry was conducted by examining six witnesses in between 02.04.2013 to 09.04.2013 and as a consequence of enquiry, the petitioner was served with the termination order dated 09.04.2013.

(c) In this background, the petitioner filed Regular Civil Suit No.688/2013 in the Court of Civil Judge, Junior Division, Ahmednagar. However, jurisdiction of the Civil Court was challenged by the respondent Management vide Civil Revision Application No.148/2014 before this Court, which came to be allowed and the petitioner was directed to approach to the School Tribunal for challenging her otherwise termination.

(d) In this backdrop, the petitioner had filed the appeal before the School Tribunal vide Appeal No.48/2015 challenging her termination order dated 09.04.2013. The petitioner challenged the conduct of enquiry by raising several grounds including authority of the enquiry officer and non compliance of Rule 37(4) of the Maharashtra Employees Of Private Schools (Conditions of Service) Rules, 1981, (for short, “the MEPS Rules”). Amongst several grounds, the petitioner also raised specific ground that the enquiry was vitiated since the same was conducted illegally in a manner that that evidence of six witnesses was recorded in the same meeting on the same day i.e. 08.04.2013 and the decision of the enquiry was also rendered on the same day. Challenge to the enquiry was thus raised on the ground of procedural impropriety and denial of opportunity to the petitioner to submit her explanation/ reply.

(e) While dealing with the challenge raised by the petitioner to the termination as well as enquiry, the Tribunal has although quashed the termination order dated 09.04.2013, but directed the respondent Management to complete the enquiry within stipulated time.

7. Learned Senior Advocate Shri Dhorde appearing for the petitioner vehemently submitted that the impugned directions issued by the School Tribunal vide clauses 3 and 4 are illegal since the conduct of enquiry against the petitioner with respect to charges related to some incidents of the years 2006 and 2007, etc., amounts to gross abuse of powers. He submitted that the respondent management had initiated enquiry against the petitioner only because she had approached this Court vide Writ Petition No.2005/2008 in which, an interim order was passed in her favour allowing her to work as Headmistress. He submitted that initiation of enquiry was thus *malafide* exercise of powers. He further submitted that, illegality of the enquiry conducted by the Management becomes clear in view of observations recorded by the School Tribunal about non compliance with Rule 37(4) of the MEPS Rules. He invited attention of the Court to the order dated 25.01.2016 passed in Writ Petition No.11525/2015 by which, costs of Rs.1 lac was imposed on the Management in view of their grossly arbitrary actions. By referring to each of the charges mentioned in the charge-sheet dated 07.07.2016, Shri Dhorde

vehemently submitted that all imputations with respect to alleged charges are related to incidents of the years 2006, 2007 and 2012 and are thus stale charges. He also submitted that even if the charges are given due consideration, it is clear that charges are vague and *malafide* and cannot be made the basis to conduct any enquiry after so many years. He also invited attention of the Court to the letter dated 18.10.2013 issued by the Education Officer observing therein that there were disputes in between two groups of the Management and the charge-sheet issued by one group of Management cannot be made the basis to conduct an enquiry against the petitioner. On all these counts, he submitted that the directions issued by the School Tribunal to conduct a fresh enquiry are illegal and unsustainable in law. He also submitted that the petitioner is not working since 2012, however, she is entitled for reinstatement with back-wage till today. In support of his submissions, Shri Dhorde relied on the judgment in the matter of *Anant R. Kulkarni vs. Y.P. Education Society and others*, (2013) 6 SCC 515 and submitted that *de-novo* enquiry was not at all warranted in the peculiar facts of this case. He also relied on the judgment in *Bhagwanrao Vishwanath Vyawhare and another vs. Sau. Sunita Gopinath Palve and another*, 2008 (1) AIR Bom R 293 and submitted that the conduct of *de-novo* enquiry against the petitioner is unsustainable in law being *malafide* exercise of powers.

8. As against this, learned advocate Shri Mukul Kulkarni for respondent Nos.1 and 2 Management, made vehement submissions to oppose the petition. He submitted that the main ground of challenge to the enquiry about stale and vague charges, is absolutely unsustainable since the delay, if any with respect to charges, cannot be attributed to the Management. In support of this submission, he invited attention of the Court to the series of events. He also submitted that after the charge-sheet dated 07.07.2016 was issued, the petitioner had submitted the letter dated 12.07.2016 and sought time to file reply and, thus having responded to the chargesheet, challenge raised in this petition cannot be entertained. He submitted that the enquiry initiated against the petitioner was in fact a consequence of communications issued by the officials of Education Department and no *malafides* could be attributed as alleged. As regards the disputes in the Management, he submitted that the letter dated 21.12.2012 issued by the Education Officer about suspension of Headmistress was withdrawn by the Education Officer by subsequent letter dated 05.04.2013. As such, the allegations made by the petitioner are unfounded. He also invited attention of the Court to the report of the Education Officer dated 31.03.2016, which also refers to irregularities and misconduct on the part of the petitioner. By referring to the report dated 24.08.2012 submitted by the committee,

Adv.Mukul Kulkarni would submit that the enquiry was initiated against the petitioner pursuant to communications issued by the Education Department. He strongly opposed the petition by contending that the charges levelled against the petitioner are serious in nature and the Management must be afforded an opportunity to establish the charges by producing necessary evidence. He submitted that the petitioner has conducted misconduct and is not entitled for any kind of reinstatement or back-wages as claimed. He specifically opposed the prayer for reinstatement and back-wages since the petition does not contain any prayer and so also there are no pleadings about the petitioner being not in gainful employment. As regards legal issues, he submitted that the Management is entitled to conduct an enquiry to prove misconduct and only on account of charges being alleged to be stale, the Management cannot be deprived of its right. In support of these submissions, Shri Mukul Kulkarni relied on the following judgments:-

- (a) *Vidya Vikas Mandal and others vs. The Education Officer and others*, (2007) 11 SCC 352.
- (b) *Saindranath vs. Pratibha Shikshan Sanstha and others*, 2007(3) MhLJ 753.
- (c) *Saraswati Seva Sangh vs. Education Officer (Secondary Section), Zilla Parishad, Thane and others*, 2002 (5) MhLJ 388.
- (d) *Dnyaneshwar Govindrao Daigavhane vs. Shubham Bahuuddeshiya Sanstha, Waddhamana and others*, 2018(5) MhLJ 149.

(e) *State of Madhya Pradesh and others vs. Akhilesh Jha and others*, (2021) 12 SCC 460.

(f) *S. Janaki Iyer vs. Union of India and others*, **Civil Appeal No.10858/2024 decided on 20.05.2025. (MANU/SC/ 0748/2025).**

9. In view of the above mentioned submissions, rival contentions fall for my consideration.

10. The controversy involved in the petition is limited to challenge to Clauses 3 and 4 of the order passed by the School Tribunal directing the respondent nos.1 and 2-Management to conduct a fresh inquiry by following legal procedure. As such, it is required to ascertain as to whether the Management need to be allowed to conduct fresh inquiry in view of the facts and circumstances of the instant case. It has to be noted that there are communications on record issued by the officials of Education Department, particularly, the letter dated 11.12.2012 issued by the Education Officer (Primary) which shows that in view of the gravity of the allegations, inquiry was conducted against the Government officials and as a consequence of those communications, the inquiry was required/directed to be initiated against the petitioner. It is pertinent to note that there are nine charges on the basis of which the Management has conducted the inquiry. A perusal of the charges shows that they are with respect to using blank Disability Certificates, providing wrong and misleading information to the parents etc. It thus

becomes clear that the charges levelled against the petitioner are serious in nature and the veracity of the same will be proved only after an opportunity is afforded to the Management to prove them on the basis of available evidence. Considering the fact that the petitioner was holding responsible post of Head Master and considering the nature of allegations/imputation of charges, the final conclusion as to whether she has committed the misconduct can be arrived at only after a full-fledged inquiry is conducted.

11. The main ground on which the petitioner has challenged the directions of the Tribunal to conduct fresh inquiry, are that the charges levelled against the petitioner are stale and vague. The respondents have tried to justify that although the charges are with the respect to incidents of 2006, 2007 and 2012, in view of the directions of the government officials, the enquiry cannot be avoided. So also, at this stage, the charges cannot be considered to be stale merely by reading them. Further, on the basis of material available with the Management, the charges can be proved by leading appropriate evidence during the course of inquiry and the right of the Management to prove the charges cannot be taken away only by labeling the charges as vague charges. On perusal of the charges leveled against the petitioner, at this stage, it cannot be concluded that the charges are so vague in nature that the petitioner is not able to understand the imputations and the

Management need not be given any opportunity to prove the charges. As such, although the petitioner has raised challenge on the ground of the charges being stale and vague, I am of the considered opinion that the Management cannot be deprived of its right to prove the charges.

12. As regards the judgment in the matter of **Anant R.Kulkarni**(supra) relied upon by the counsel for the petitioner, it is crucial to note that the Management was not allowed to conduct fresh inquiry, in view of the retirement of the employee. Although, in this judgment the Hon'ble Supreme Court has observed that the inquiry may not be allowed to be conducted if the charges are not specific and precise, these observations were based on the charges leveled against the employee in that case. In the case in hand, the charges leveled against the petitioner particularly, related to issuance of blank disability certificates and illegal appointment of parents to the School Management Committee etc. cannot be considered to be so vague as not showing any precision and, therefore, in my opinion, the judgment in *Anant R.Kulkarni* is not of any assistance to the petitioner. With due respect to the proposition of law laid down by the Hon'ble Court in this judgment considering the gravity of the charges in the instant matter, the Management need to be afforded an opportunity to prove the charges.

In support of his contentions, learned counsel for the respondent has relied upon the judgment in *Vidya Vikas Mandal & others* (supra)

in which the Hon'ble Supreme Court has dealt with the position of law as regards the right of the Management to conduct an inquiry against an employee.

13. As regards the position of law regarding right of the Management to prove the charges against an employee, it is beneficial to make reference to the judgment of Full Bench of this Court in *Saindranath Vs. Pratibha Shikshan Sanstha and others* [2007(3) Mh.L.J. 753], on which the counsel for the respondent has relied. Paragraph 64 from this judgment is reproduced below:-

“64. In the aforesaid backdrop, we hold that the Tribunal has a power to take additional evidence on record mainly in the contingency, when the management wants to supplement its evidence already on record, at the same time, the employee has also a corresponding right to lead additional evidence either in rebuttal or to supplement his attempt to dislodge the action of the management, again but subject to the provision of Order 41 Rule 27 of C.P.C. This is independent of power of the Tribunal given under Sub-rule (1)(b) of Rule 27 of order 41 of C.P.C. The parties, thereafter, are expected to leave the matter in appeal for being decided by the Tribunal on its own merits.

14. It is thus clear that the right of Management to conduct an inquiry against an employee to prove the charges is crucial and the Management cannot be deprived to prove the charges only on account of the allegations of the same being vague. The contentions regarding the charges being stale and vague cannot outweigh the right of the Management to prove the charges in the peculiar facts of this case.

15. Having regard to the above mentioned factual and legal aspects, I am of the firm view that considering the nature and gravity of the charges levelled by the Management against the employee, the directions issued by the School Tribunal to conduct fresh inquiry are not at all perverse. The petitioner has failed to demonstrate any illegality with the impugned directions. In view of the overall factual circumstances, it is necessary that the controversy is decided by allowing the Management to conduct the inquiry. Further, there are no pleadings and no case is made out for seeking any reinstatement with backwages.

16. It has to be noted that by Clause 4 of the operative part of the impugned judgment and order of the School Tribunal, which is under challenge, the Tribunal has directed the Management to pay subsistence allowance to the petitioner during the pendency of the enquiry. Since this Court has refrained from interfering with Clauses 3 and 4, the Management is bound by the mandate to pay subsistence allowance. Further, it is clear that the Tribunal has quashed the termination order dated 09.04.2013 and consequently the petitioner became entitled for reinstatement. Although the petitioner has filed a separate application bearing Civil Application No.15242 of 2017 claiming direction for release of salary from 2013 onwards, the record does not indicate the actual date on which the petitioner was reinstated and the details of

period for which she has worked. It is therefore directed that the petitioner be paid with salary for the period for which she has actually worked. No separate orders are therefore passed on the said civil application.

17. For the reasons mentioned herein above, no indulgence is warranted under Article 227 of the Constitution of India, with the directions issued by the School Tribunal for allowing the Management to conduct fresh inquiry. It is however directed that the enquiry be conducted only with respect to the charges already levelled as mentioned in the charge-sheet filed on record and the same be conducted by affording reasonable opportunity to both the parties to lead oral as well as documentary evidence. It is also directed that the inquiry be completed expeditiously and in any case within a period of three months from the date of uploading of this judgment.

18. In view of the above directions, the writ petition is disposed of. Pending civil applications are also disposed of. There shall be no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

After pronouncement of the judgment, a request is made for continuation of the interim relief granted by order dated 20.07.2016

by which the Management was precluded from initiating fresh enquiry against the petitioner in relation to the charge-sheet dated 07.07.2016.

Considering the fact that the interim relief was operating during the pendency of the writ petition, the same shall continue to operate for a period of four weeks from today.

(PRAFULLA S. KHUBALKAR, J.)

sjk