



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10245 OF 2024

The President,
Samajseva Shikshan Sanstha,
Nai Chakur, Tq. Omerga,
Dist. Dharashiv.

.....PETITIONER
(Ori. Respondent no.1)

VERSUS

1. Satyapramod Govindrao Kulkarni,
Age: 45 years, Occu. : Service,
R/o Kasgi, Tq. Omerga,
Dist. Dharashiv.

.....RESPONDENT
(Ori. Petitioner)

2. The Education Officer (Primary)
Zilla Parishad, Dharashiv.

.....RESPONDENT
(Ori. Respondent no.3)

3. The Headmaster,
Shri Sharadchandraji Pawar Prathmik
Vidyalaya, Nai Chakur,
Tq. Omerga, Dist. Dharashiv

.....RESPONDENT
(Ori. Respondent no.2)

Mr. V. D. Salunke, Advocate for the Petitioner

Mr. A. V. Patil (Indrale), Advocate for the Respondent No.1

CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 16TH JULY, 2025

PRONOUNCED ON : 28TH JULY, 2025

JUDGMENT :-

. The respondent no.1 was appointed as Assistant Teacher with Shri Sharadchandraji Pawar Prathmik Vidyalaya, Nai Chakur (hereinafter referred to as school), which is a private school, run by Nai Chakur Samajseva Shikshan Santha (hereinafter referred to as society).

2. The respondent no.1 was initially appointed on the post of Assistant Teacher with Shri Sharadchandraji Pawar Prathmik Vidyalaya, which is a private school, run by the petitioner/society. The respondent no.1 was promoted to the post of Head Master in the said school on 05.07.2004, and was working on the said post since then.

3. According to the petitioner, there were several complaints against the respondent/Head Master, his work was not up to the mark and there were several complaints, due to which the management decided to conduct inquiry against respondent/Head Master. The respondent no.1 was thereafter placed under suspension vide suspension order dated 30.04.2019. After holding enquiry, the services of the respondent no.1 were initially terminated vide termination

order dated 26.08.2019.

4. The respondent no.1 preferred an appeal under Section 9 of the The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as MEPS Rules), being appeal no.48 of 2019. The said appeal came to be partly allowed by the learned School Tribunal, vide judgment dated 14.12.2021. The termination order dated 26.08.2019 was set aside on the ground that the management had failed to follow the procedure prescribed for conducting inquiry under Rules 36 and 37 of the The MEPS Rules, 1981, as also, on the ground of failure to comply with the principles of natural justice. While setting aside the order of termination, the Tribunal granted liberty to the management to hold fresh inquiry against the respondent/Head Master.

5. The respondent/Head Master challenged the said judgment and order passed by the learned Tribunal to the extent it granted liberty to the management to hold fresh inquiry by filing a petition before this Court being Writ Petition No.3764 of 2022. The said petition came to be

dismissed vide judgment dated 12.04.2022.

6. Thereafter, the petitioner issued statement of allegations calling upon the respondent no.1 to offer his explanation with respect to allegations levelled against him. Thereafter, on 24.03.2022, chargesheet came to be issued by the President of the petitioner/society to the respondent no.1. The respondent no.1 filed reply dated 02.04.2022 in response to the chargesheet. Pursuant to the said chargesheet, the inquiry was completed and report dated 17.08.2022 was submitted under the signature of said Awardee Teacher and Convener. The Inquiry Committee held that eighteen out of twenty six charges were proved against the respondent/Head Master and recommended termination of services of the respondent/Head Master.

7. The respondent/Head Master did not appoint his nominee on the Inquiry Committee, although, he was asked to appoint his nominee and also did not participate in the inquiry proceeding. The respondent/Head Master raised grievance with respect to non payment of subsistence allowance and expressed inability to participate in the inquiry proceeding.

The services of the respondent/Head Master came to be terminated again vide order dated 20.08.2022.

8. The respondent/Head Master challenged the said order of termination dated 20.08.2022 by filing appeal before the learned School Tribunal, being appeal no.43 of 2022. The respondent/Head Master raised several grounds in the memorandum of appeal including the inquiry being vitiated on account of failure on the part of the management to make payment of subsistence allowance as also failure to comply with mandate of Rules 36 and 37 of the MEPS Rules. The respondent/Head Master raised a contention that the President of the petitioner/society, had issued the chargesheet, which is illegal.

9. The Management filed reply opposing the appeal. After hearing the matter, the learned Tribunal has allowed the appeal vide judgment and order dated 12.08.2024. The termination order dated 20.08.2022, came to be quashed and set aside and the management was directed to reinstate the respondent/Head Master in service with continuity of service, full back wages and all other consequential benefits.

10. The learned Tribunal did not find favour with the contention raised by the respondent/Head Master that the inquiry was vitiated on account of failure on the part of the Management to make payment of subsistence allowance. The learned Tribunal found that the chargesheet issued against respondent/Head Master, which was issued by the President of the petitioner/society was defective. It is observed that the President of the management was also the Convener and therefore, the chargesheet was defective and since inception of the inquiry, which is done by issuance of chargesheet was itself defective, the entire inquiry was vitiated. The learned Tribunal has also held that the chargesheet was issued by the President, who was also a Member of the Inquiry Committee, which resulted in breach of principles of natural justice in as much as the prosecutor himself became the Judge.

11. Having held that the termination order was bad in law, the learned Tribunal observed that the respondent/Head Master had made oral statement before it that he was not gainfully employed elsewhere since the date of his termination and in view of this statement, the learned Tribunal has held

that the respondent/Head Master was entitled to full back wages.

12. Mr. V. D. Salunke, the learned Advocate for the petitioner contended that the findings recorded by the Tribunal are completely unsustainable. He contends that the learned Tribunal has erred in properly interpreting the provisions of Rules 36 and 37 of the MEPS Rules and applying the same to the facts of the case. He contends that since, inquiry was being held against a Head Master, it was a statutory compulsion that the President should be a Member of the Inquiry Committee and also its Convener. He contends that the chargesheet is also required to be issued by the President since inquiry was being held against Head Master. He criticises the findings and observations by the learned Tribunal holding that the inquiry was vitiated on the ground that the President was Convener and Member of the Inquiry Committee. As regards back wages, the contention of Mr. Salunke is that the respondent/Head Master did not make any averment in the memorandum of appeal that he was not gainfully employed after his termination while the appeal was

pending and was therefore not entitled to any back wages. He placed reliance on *Namdeo Vanji Bachav Vs. Dhule District Central Co-operative Bank Limited*, reported in *2014 (4) Mh.L.J 768* and *Vidya Vikas Mandal Vs. The Education Officer*, reported in *2007 (3) Mh.L.J 801* to support his contention. He contends that the respondent/ Head Master also did not file any separate affidavit in this regard. He further submits that a mere oral statement allegedly made at the stage of final hearing of the appeal, will not be sufficient to hold that the respondent/Head Master has discharged the initial burden of proof that he was not in gainful employment during pendency of the appeal.

13. Mr. Salunke makes a submission in the alternative that since, termination order is set aside on the ground that the inquiry was vitiated, the learned Tribunal ought to have granted liberty to the petitioner to conduct fresh inquiry against the respondent/Head Master. He contends that the respondent/Head Master cannot derive any benefit from technical defects in the inquiry held against him. He argues that it will not be in interest of justice to allow an employee

against whom there are serious allegations of misconduct to be reinstated in service only because the inquiry is held not to be conducted in accordance with law. He places reliance on the judgment of this Court in the first round of litigation in support of his contention.

14. In response to the alternate submission made by Mr. Salunke, that on inquiry found to be defective, the Tribunal could not have ordered reinstatement in service and again liberty ought to have been granted to conduct inquiry against the respondent/Head Master, Mr. Patil contends that such a course can be adopted only once. He contends that if the management does not conduct inquiry in accordance with law, even on second occasion, then, the matter cannot be remanded back again granting permission to conduct fresh inquiry. He has placed reliance on *Head Master, Vivek Vs. Alka Namdeo Khalekar*, reported in *2017(1) MH.L.J 105* and *Madhav Rajendra Narhare Vs. Secretary Banjara Jan-Jagruti Mandal*, reported in *2022(3) MH.L.J 38* in support of this contention.

15. With respect to merits of the matter, Mr. Anand Patil

(Indrale), the learned Advocate for the respondent/Head Master contends that the inquiry was completely vitiated since the chargesheet was not issued by the management, but by the President of the management. He contends that the issuance of chargesheet, which is the first step in holding departmental inquiry itself is flawed and therefore, the entire inquiry is vitiated. As regards back wages, he contends that the statement made by the respondent/Head Master before the Tribunal was sufficient to discharge the initial burden of proving that the respondent/Head Master was not gainfully employed from the date of termination of service till the disposal of appeal. Mr. Patil has relied on a judgment of Hon'ble Supreme Court in the matter of ***M.S.R.T.C. Vs. Mahadeo Krishna Naik***, reported in ***AIR 2025 Supreme Court 1172***.

16. It is undisputed that the respondent/Head Master was working on the post of Head Master while his services were terminated. The constitution of an Inquiry Committee is provided under Rule 36(2) of the MEPS Rules. The committee consists of three members. In case where inquiry is

to be held against a Head Master, the Inquiry Committee comprises of the President of the management, one Member to be nominated by the delinquent Head Master and one Member chosen by the present President of the management from the panel of Head Masters on whom State/National award is conferred. Thus, in view of the statutory mandate, President of the management has to be necessarily a Member of the Inquiry Committee. In view of Rule 36(5), the convener of Inquiry Committee also should be the President, if the Inquiry is to be held against a Head Master. Thus, when inquiry is required to be held against Head Master, the Convener and one of the Members of the Inquiry Committee has to be the President. The inquiry cannot be said to be vitiated only because the President happens to be Convener and one of the Members of the three Members Inquiry Committee. Since, that is mandate of the statute, the contention of Mr. Salunke that inquiry will not be vitiated on this count needs to be accepted.

17. In the present case, the chargesheet against the respondent/Head Master is issued by the President. Rule

37(1) of the MEPS Rules provides that chargesheet containing specific charges is required to be prepared by the management. The term 'management' is defined under Section 2(12) of the MEPS Act. In case of a private School, the management means body of persons administering the School. The management in the present case is a society and as such, the Executive Committee of the society will be the management. It is not in dispute that the chargesheet is issued under signature of the President. It is necessary to examine as to whether the President has merely signed the chargesheet as a representative of the Management or has himself framed and issued the chargesheet. It is necessary to refer to pleadings of the Management in this regard. It is stated in paragraph 13 of the written statement that chargesheet in the present case was sent by the President of the management to the respondent/Head Master. It is categorically stated that in case of an inquiry against Head Master of a School, chargesheet is required to be issued by the President of the management(trust). It is further categorically stated that issuance of chargesheet by the President is in compliance of Rule 37(1). Moreover, the contention of the

respondent/Head Master that the chargesheet is required to be issued by the management is denied by the petitioner. It is thus clear from the pleadings in the written statement itself that the chargesheet is issued by the President alone. It is not the case of the petitioner that chargesheet is prepared by the management. Since, the management of the concerned school is a trust, the Management will comprise of all the trustees i.e. members of managing body in view of the definition of the term 'management' as defined under Section 2(4). There is thus, clear breach of mandate of Rule 37(1) which is apparent from pleadings of the petitioner.

18. It will be pertinent to mention here that whenever a management decides to hold inquiry against a Head Master in relation to major penalty, the President of the management is required to communicate to the Head Master statement of allegations calling for a written explanation from him. The President is required to consider the written explanation tendered by the Head Master and if the same is not found to be satisfactory, he has to place it before the management for its consideration. The decision to hold an inquiry is required

to be taken by the Management. This is the scheme of Section 36(1) and (2) of the MEPS Rules. Rule 37(1) provides that Management shall prepare the chargesheet as required to be read in conjunction with Rule 36(1) and (2). It is thus clear from the scheme of the Rules that the decision to hold inquiry is required to be taken by the Management and chargesheet for holding inquiry is also required to be issued by the Management. The provisions have been held to be mandatory in a catena of judgments of this Court. A copy of chargesheet, which is filed on record indicates that there is no reference to any resolution by the management regarding framing or approval to the contents of chargesheet. There is no document on record to indicate that the chargesheet is framed or approved by the management. Although, the chargesheet has to be dispatched under signature of president, it has to be framed by the management. Since, there is a breach of mandatory condition of law, the inquiry held against the respondent/Head Master is completely vitiated. The order of termination which is a consequence of such inquiry obviously cannot be sustained and is rightly quashed and set aside by the learned Tribunal.

19. The appellant has alleged in paragraph 6 of the appeal that decision to hold inquiry was taken by the management without considering his reply, issued in response to the statement of allegations issued by the President vide letter dated 24.03.2022. The appellant has stated that the letter issuing statement of allegation dated 24.03.2022 was received on 26.03.2022 and that he had replied to the same on 02.04.2022.

20. Perusal of paragraph 26 of the written statement will indicate that the statement of allegation as contemplated under Rule 36(1) was issued by the President on 24.03.2022 and the management has taken decision to conduct inquiry against the respondent/Head Master vide resolution dated 27.03.2022. Thus, within a period of three days from date of issuance of statement of allegations, decision to hold inquiry is taken by the management.

21. It will also pertinent to mention that the Head Master is entitled to a seven days notice for replying to the statement of allegations issued under Rule 36(1). It is apparent from documents filed on record by the petitioner that the statement

of allegations was issued on 24.03.2022 and within period of three days, thereafter, on 27.03.2022 resolution to conduct inquiry is passed. The resolution is passed before 02.04.2022, i.e. the date on which the respondent/Head Master issued reply to the statement of allegations. The management has not considered explanation offered by the respondent before deciding to hold inquiry. Thus, decision to initiate inquiry itself is taken in breach of mandate of Rules 36(1) and (2).

22. It will be pertinent to mention here that the aforesaid aspect as regards breach of Rule 36(1) and (2) is not considered by the learned Tribunal. However, the facts on the basis of which conclusions drawn are a matter of record. In fact, the pleadings and documents filed on record by the petitioner/management themselves are sufficient to conclude that the inquiry was initiated in breach of mandate of Rules 36(1) and (2). Since, this is a second round of litigation and the respondent/Head Master is out of employment, the said issue is decided for the first time in a Writ Petition, which is normally not done. The facts on the basis of which conclusion regarding non compliance of Rules 36(1) and (2) is drawn are

emerging from the pleadings and documents of petitioner/management is also a relevant consideration for recording finding regarding non compliance of the said provision for the first time in Writ Petition.

23. The next question which arises for consideration is as to whether the petitioner/Management can be permitted to hold inquiry afresh against the respondent/Head Master, since, the termination is being set aside on the ground that inquiry is not held in accordance with law.

24. The contention of Mr. Salunke is that the course that was adopted in the first instance by this Court in case of termination of the services of respondent/Head Master at the first instance needs to be adopted once again. Mr. Salunke contends that an employee cannot claim any vested right in procedure and consequently, he cannot claim immunity from disciplinary proceedings only because the inquiry is held to be defective on technical grounds. He places reliance on judgments of this Court in the first round of litigation between the parties. As against this, the learned Advocate for the respondent/Head Master has placed reliance on judgments in

the matter of **Head Master, Vivek** and **Madhav Narhare** (supra) to contend that opportunity to hold fresh inquiry on the ground that the inquiry was vitiated cannot be granted on the second occasion. It will be appropriate to quote following portions from the judgment of **Head Master, Vivek**:

29. However, the submissions made by the learned Advocates for the petitioners do not appear to be restricted to conducting a fresh enquiry after the first enquiry has been set aside for the first time. Their submission is that it is immaterial as to how many times, an enquiry is set aside. The moment it is set aside, the employer would get the legal right to conduct a denovo enquiry. Mr. Godbole submits that principles of natural justice require that the employer should be given a right to conduct a fresh enquiry whenever the enquiry is set aside. I find the said submission to be fallacious for the reason that the intention of law would not only stand frustrated, but if his submissions are accepted, it would result in perpetuating injustice.

32. Be that as it may, in catena of judgments, the Hon ble Supreme Court has held that once the enquiry was set aside for being vitiated, in industrial jurisprudence, the whole enquiry stands watered down and a denovo enquiry needs to be conducted before the Labour Court or the Tribunal, as the case may be. In service law relating to the MEPS Act, 1977 r/w the Rules of 1981, if the enquiry is vitiated at a particular stage in the employment, a fresh enquiry needs to be commenced from the stage at which it was vitiated. In the event, the enquiry is vitiated from the stage of issuance of statement of allegations or constitution of the Enquiry Committee or the issuance of the charge sheet, a fresh enquiry could be ordered.

33. The principles of natural justice are not like a rubber band or an unruly horse. These principles are not to be stretched till they snap or result in causing injustice than

intended justice. After the first opportunity for conducting a denovo or fresh enquiry is granted to an employer, it would not mean that a fresh enquiry needs to be permitted on every occasion when the enquiry is vitiated. This would lead to an unending process and while the Managements would reap the benefits of conducting denovo enquiry on umpteen occasions, the employee would have to suffer the rigours of litigation, accompanied by unemployment, poverty and ignominy.

25. The said judgment is followed in the matter of **Madhav Rajendra Narhare**. Both these cases arise out of MEPS Act. The judgments clearly hold that opportunity of conducting fresh inquiry, in case where an inquiry is vitiated for some or the other reason can be granted only once. It is held that this process of opportunity to cure the defect cannot continue as an unending process. The judgment in the matter of **Head Master, Vivek** also holds that granting repeated opportunities will result in the management reaping benefits of its own wrongs at the cost of the employee, who will have to suffer the rigour of litigation accompanied by unemployment, poverty and ignominy. In view of the clear exposition of law, in the aforesaid two judgments, fresh opportunity to hold inquiry cannot be given to the petitioner/management on second occasion. The learned Tribunal has rightly granted the relief of reinstatement in service on holding that the inquiry is

not conducted in accordance with law.

26. Perusal of the memorandum of appeal will demonstrate that the respondent/Head Master has not averred that he was not gainfully employed elsewhere. It undisputed that the respondent/Head Master has also not filed any separate affidavit in this regard. It is well settled by a catena of judgments of the Hon'ble Supreme Court and this Court that the initial burden of proving that he was not gainfully employed in the period intervening the date of termination and reinstatement in service is on the employee. The burden of proof although is very light, the employee is required to make a statement either in the memorandum of appeal or by filing a separate affidavit that he was not gainfully employed during the relevant period. Once, the employee makes such statement in the memorandum of appeal or by filing separate affidavit, the burden shifts on the employer to prove that employee was gainfully employed during the relevant period. However, the burden shifts on the employer only after employee makes statement as aforesaid. In the case at hand, as mentioned above, no such statement was made.

27. It appears from the judgment of the learned Tribunal that an oral statement was made by the respondent/Head Master that he was not gainfully employed since the date of termination of his services during the course of final hearing of the appeal. Such statement could not have been relied upon by the Tribunal. The statement was also made at the stage of final arguments. It is not clear as to whether the said statement was made in the presence of any representative of the petitioner/management or its Advocate.

28. The learned Advocate for the respondent/Head Master has placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***Mahadeo Krishna Naik***. However, perusal of the said judgment and particularly paragraph 44 thereof will demonstrate that the legal position that the employee has to plead the fact of his non employment still holds good. Hon'ble Supreme Court has referred and reaffirmed the principle laid down in this regard in the matter of ***Deepali Gundu Surwase vs Kranti Junior Adhyapak & Ors***, reported in ***(2013) 10 SCC 324***.

29. It is apparent that the respondent/Head Master did not

make any statement in the memorandum of appeal and also did not file separate affidavit stating that he was not in gainful employment elsewhere after termination of his services and during pendency of the appeal. He has made oral statement during the course of final hearing. It is not clear as to whether this oral statement made in the presence of any representative of petitioner/management or its Advocate. It is undisputed that the said statement is not made during the course of any evidence. In such circumstances, the oral statement, reference to which is made in the order passed by the learned School Tribunal will not serve the purpose. Such statement cannot be valid substitute for pleading or affidavit.

30. The learned Tribunal has erred in awarding full back wages to the respondent/Head Master relying upon the said oral statement. The impugned order is liable to be quashed to the extent of it awards back wages.

31. It will be pertinent to mention that although, initially subsistence allowance was not paid to the respondent/Head Master, the arrears thereof have been cleared and the respondent/Head Master has received subsistence allowance

to the extent of 50 percent of his salary for the initial period of four months from the date of his suspension and thereafter, 75 percent of his salary towards suspension allowance. The suspension allowance is paid till the date of termination of services. Learned Advocate for the respondent/Head Master has confirmed the same during the course of hearing of the petition in the presence of the respondent, who was personally present in the Court. It is well settled that the amount of suspension allowance is required to be deducted while computing back wages. Thus, a substantial amount is received by the employee while he was out of employment.

32. In the result, Writ Petition is **partly allowed**. The order passed by the learned Presiding Officer, School Tribunal, Solapur in Appeal No.43 of 2022 is maintained except for the direction for payment of back wages. The respondent/ Head Master is entitled for reinstatement in service with continuity and all consequential benefits except back wages.

33. Civil Applications, if any, stand **disposed** of.

(ROHIT W. JOSHI, J.)