

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10013 OF 2024**

1. Late Lokshahir Annabhau Sathe,
Shikshan Prasarak Mandal,
Pandharpur, Dist. Solapur,
Through its President/Secretary.
2. Late Annabhau Sathe Prashala,
Pandharpur, Dist. Solapur,
Through its Head Master.Petitioners

Vs.

1. Bhagwanrao Gangadhar Mahadik,
Age. 52 Yrs., Occu. Not Known,
R/o. Plot No.15, Manish Nagar,
Pandharpur, Dist. Solapur.
2. The Education Officer,
(Secondary), Zilla Parishad,
Solapur.Respondents

Mr. N. V. Bandiwadekar, Senior Advocate, i/b. Ms. Ashwini Bandiwadekar, for the Petitioners.

Mr. Annat Vadgaonkar, for the Respondent No.1.

Mr. Sanjay D. Rayrikar, AGP, for the Respondent No.2-State.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 23rd SEPTEMBER 2025

JUDGMENT :-

1. Petitioners impugn order dated 3rd May 2023 passed by School Tribunal, Solapur in Appeal No.63 of 2021 thereby directing reinstatement of Respondent No.1 on the post of Head Master with continuity of service and full back wages.

2. Mr. N. V. Bandiwadekar, learned Senior Advocate submits that Respondent No.1 was in employment of Petitioner No.2-School as Head Master. He was served with show cause notices dated 11th December 2018, 19th December 2018 and 11th March 2019 as to several illegalities and irregularities amounting to misconduct. Thereafter, on 9th May 2019, he was served with statement of allegations regarding misconduct committed by him. On 27th March 2020, charge sheet was served for purpose of departmental enquiry. Respondent No.1 denied allegations. Eventually, enquiry was conducted. Respondent No.1 was called upon to appoint his nominee on Enquiry Committee. Eventually, three members Committee was constituted in terms of Rule 36 (2) (b) of Maharashtra Employees of Private Schools (Condition of Service) Rules 1981 (For Short, '**MEPS Rules**').

3. On completion of enquiry, report dated 9th November 2021 was submitted, wherein Respondent No.1 was found guilty of misconduct for the charges and recommended for dismissal from service. However, nominee of Respondent No.1 submitted his descenting report. In pursuance to majority of decision of Committee,

Respondent No.1 was dismissed from service vide order dated 20th November 2021.

4. Respondent No.1 filed appeal assailing order of dismissal before School Tribunal under Section 9(1)(2) of Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (For Short, '**MEPS ACT**'). On 3rd May 2023, School Tribunal allowed appeal and directed reinstatement of Respondent No.1 with continuity of service and full back wages.

5. Mr. Bandiwadekar would invite attention of this Court to points framed and findings recorded by Tribunal and submits that Tribunal concluded that enquiry was not conducted in tune with Rules 36 and 37 of the MEPS Rules, further, while doing so, Tribunal delves into merits of findings recorded by the Enquiry Committee. Eventually, allowed the appeal. According to Mr. Bandiwadekar, once the Tribunal observed that enquiry was vitiated for non-observance of mandate of Rules 36 and 37 of MEPS Rules and enquiry was vitiated, there was no reason to proceed further to examine merits of findings recorded by Enquiry Committee. Further, in such a case, reinstatement of employee could not have been ordered, rather

matter could have been remitted back to Disciplinary Authority to proceed further from the stage, where enquiry has been vitiated. In support of his contention, Mr. Bandiwadekar relies upon observations of Supreme Court in case of *State of Uttar Pradesh & Ors. v. Ranjit Singh*¹ and *State of Punjab & Ors. v. Dr. Harbhajan Singh Greasy*.²

6. Per contra, Mr. Vadgaonkar, learned Advocate appearing for Respondent No.1 would submit that Respondent No.1 was subjected to enquiry pertaining to stale charges. Misconduct is alleged to persist from 2004 onwards. Show cause notice was given in 2017. However, charge sheet is served in the year 2019, only with intention to victimize Respondent No.1-employee. According to Mr. Vadgaonkar, enquiry was in gross violation of mandate under Rules. According to him, constitution of Committee was not in tune with Rule 36(2) of MEPS Rules. Petitioner-Management has appointed Mr. Ajit Kodag without consent of Respondent No.1 as a member of Committee. He would further submit that convener of Enquiry Committee Shri. Balwant Babar himself has acted as witness of management against Respondent No.1. According to him, defects noted by Tribunal in proceedings of enquiry are fundamental. In

1 (2022) 15 SCC 254.

2 (1996) 9 SCC 322.

such cases, there is no reason to remit back matter to Disciplinary Authority for fresh enquiry. In support of his submission, Mr. Vadgaonkar relying upon observations of this Court in case of *Shri. Vilasrao Deshmukh Shikshan Prasarak Va Bahuuddeshiya Sanstha, Buldhana & Anr. v. Santosh Jaising Shele & Anr.*,³ submits that employee cannot be made to suffer rigours of litigation accompanied by unemployment. If the Management has failed to constitute the Enquiry Committee in tune with Rule 36(2) of MEPS Rules and proceeded with enquiry, remand of matter would certainly cause prejudice to Respondent No.1.

7. Having considered submissions advanced by learned Advocates for respective parties and on perusal of reasons adopted by Tribunal in the impugned order, it is certain that Tribunal recorded categorical findings that enquiry was inconsistent with Rules 36 and 37 of MEPS Rules. The School Tribunal observed that constitution of Committee itself was inconsistent. The communication made by management regarding constitution of Committee was contrary to Rule 36(3) of MEPS Rules. It was duty of Chief Executive Officer or President to communicate name of member nominated under Rule 36(2) to

3 Writ Petition No.3420 of 2019 with connected Petitions dtd. 30th August 2023.

Respondent No.1. However, Committee was constituted consisting of President himself, State Awardee Head Master and Mr. Ajit Kodag, Assistant Secretary. Respondent No.1-employee had not appointed Mr. Ajit Kodag. Tribunal has further observed that Committee member asked questions to Respondent No.1-employee. Convener of Enquiry Committee-Shri. Balwant Babar himself acted as witness of Management. Further, composition of Enquiry Committee was changed in 10th Meeting. The Convener of Enquiry Committee acted as Judge. This is taken as serious breach of principles of natural justice. It is further observed that Respondent No.1 was not given summary of enquiry proceedings and copies of statements of witnesses for his explanation as per Section 37(2a)(i) of MEPS Act. Even the report, finding and decision of Enquiry Committee was not given to Respondent No.1-employee. He was not offered an opportunity to explain summary of proceedings in enquiry.

8. The aforesaid observations of learned Presiding Officer depicts serious lapses in conduct of enquiry. There is reason to believe that enquiry was not conducted in consonance with Rules 36 and 37 of MEPS Rules. However, in wake of finding that enquiry vitiated for non-observance of mandate under Rules 36 and 37 of MEPS Rules,

the issue that arise for consideration is whether Tribunal could have proceeded further to examine merits of findings recorded by invalid Enquiry Committee. The aforesaid issue is no more *res integra*. Once the enquiry is vitiated for non-observance of mandate under Rules with glaring technical defects, Tribunal is not expected to enter into merits of the charges levelled against employee. At this stage, reference can be given to observations of this Court in case of ***Bhartiya Seva Acharya Education Society & Anr. v. School Tribunal, Nagpur & Ors.***⁴ Paragraph No.8 of said judgment reads as under:

“8. It is thus apparent that in case where the enquiry is found to be defective, the appropriate relief as has been held in Dr. Harbhajan Singh Greasy's case by the Apex Court is to set aside the order of dismissal with direction to the management to hold an enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as the backwages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry. The case of "defective enquiry" is considered on par with the case of "no enquiry", even in respect of the cases arising out of disciplinary proceedings conducted under the MEPS Act and the Rules framed thereunder.”

4 (2014) 6 Bombay Cases Reporter 26.

9. The aforesaid exposition of law would make it clear that once the enquiry is held to be defective, particularly, the constitution of Enquiry Committee is found contrary to Rules, the enquiry by said Committee is 'no enquiry' in law. Therefore, there is no reason to delve into the findings recorded by invalid Committee.

10. At this stage reference can be given to observations of Supreme Court in case of State of *Uttar Pradesh v. Ranjit Singh (supra)*, in paragraph No.11, which reads thus:

“11. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice inasmuch as the documents mentioned in the charge-sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the enquiry officer/disciplinary authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge-sheet, which are alleged to have not been given to the delinquent officer in the instant case.”

11. In light of aforesaid exposition of law, only course that can be followed in present case is to set aside the impugned order passed by Tribunal and relegate the matter to Disciplinary Authority to conduct enquiry from the stage, it stood vitiated. In present case, since constitution of Enquiry Committee itself was inconsistent with Rules, the enquiry will have to be proceeded at the hands of competent Committee in terms of Rules. Therefore, enquiry needs to be initiated from the stage of charge sheet after following the principles of natural justice and mandate under Rules 36 and 37 of MEPS Rules.

12. In result, Writ Petition is partly allowed in terms of prayer clauses (b) and (c).

13. The Petitioners shall be at liberty to initiate fresh process of enquiry from stage of charge sheet onwards.

14. The Respondent No.1-employee will be now treated under suspension and he will be entitled to subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by Committee within a period of six months from the date of their nomination/constitution.

(S. G. CHAPALGAONKAR, J.)