



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8312 OF 2022

Girdhar S/o Anandrao Thaori,
Aged about 53 years, Occ. Nil,
R/o Haladgaon, Tah. Samudrapur,
District Wardha

PETITIONER

VERSUS

1 President, Dr. B.R. Ambedkar Shikshan
Sanstha, Bidkar Ward, Hinganghat, Dist.
Wardha

RESPONDENTS

2 Secretary, Dr. B.R. Ambedkar Shikshan
Sanstha, Bidkar Ward, Hinganghat,
Dist. Wardha, Shri Anil S/o Atmaram
Jawade, Aged about 59 years,
R/o Hinganghat, Dist. Wardha

3 The Head Master, Dr. B.R. Ambedkar
Vidyalaya, Bidkar Ward, Hinganghat,
Dist. Wardha

4 The Education Officer (Secondary),
Zilla Parishad, Wardha

Mr. Sagar K. Lambat, Adv. h/f Mr. K.K. Lambat, Advocate for
petitioner

Mr. M.V. Samarth, Senior Advocate a/b Mr. N.S. Khandewale,
Advocate for Respondent Nos. 1 to 3

WITH

WRIT PETITION NO. 1463 OF 2020

1 President, Dr. B.R. Ambedkar Shikshan
Sanstha, Hinganghat, District Wardha

PETITIONERS

- 2 Secretary, Dr. B.R. Ambedkar Shikshan Sanstha, Hinganghat, District Wardha, Shri Anil S/o Atmaram Jawade, Aged about 59 years, R/o Hinganghat, Dist. Wardha
- 3 The Head Master, Dr. B.R. Ambedkar Vidyalaya, Hinganghat, District Wardha

VERSUS

- 1 Girdhar S/o Anandrao Thaori, Aged about 53 years, Occ. Service R/o Haladgaon, Tah. Samudrapur, District Wardha
- 2 The Education Officer (Secondary), Zilla Parishad, Wardha

RESPONDENTS

Mr. M.V. Samarth, Senior Advocate a/b Mr. N.S. Khandewale, Advocate for petitioners
Mr. S.P. Bhandarkar, Advocate for Respondent No.1
Mr. S.V. Narale, AGP for Respondent / State

CORAM: SACHIN S. DESHMUKH, J.

DATED : 5th AUGUST, 2025

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The challenge in these petitions is to the order rendered by the School Tribunal allowing the appeal presented by the employee i.e. petitioner in Writ Petition No. 8312/2022, setting aside the order of termination with direction to reinstate and pay the back-wages to the

extent of 50%, whereas, the employee has presented the petition seeking 100% back-wages.

3. The teacher, appointed in the year 1991 after due procedure of law, eventually attained the status of permanency by virtue of operation of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Services Regulation Act, 1977) [For short “MEPS Act”]. However, in the wake of the registration of crime on 06.04.1994, the employee, came to be detained. Based on the registration of the FIR and eventual arrest, the order of termination was served on the employee on 30.11.1998. The order of termination is in the wake of registration of the crime and eventual arrest of the petitioner from 06.04.1994 to 10.04.1994. Since the offence of moral turpitude was registered against the employee, the management resolved to terminate the services of the employee.

4. Aggrieved by the order of the termination, the employee presented an appeal before the School Tribunal. During interregnum, the trial commenced on the basis of the registration of the FIR concluded into acquittal of the employee on 24.12.2002. The appeal presented by the employee was resisted by the management by submitting its detailed written statement wherein an attempt was made to justify the termination of the employee owing to the threat of

the students and their parents stating that in the event of the continuation of service by employer, they would withdraw the students enrolled in the school. Although, the management has an independent authority to conduct the enquiry to ascertain the charges of misconduct, however, their written statement is silent about such averments in that regard. An attempt is made to justify the termination principally on the ground of registration of FIR, arrest and the threat by the parents to withdraw the students enrolled in the school.

5. The School Tribunal while considering the claims and rival claims put-forth by the litigating sides, has framed the issue in relation to the appointment of the petitioner as per Section 5 of the MEPS Act and predominantly the issue in relation to the termination order being illegal. Further, the issue of entitlement of the employee for reinstatement with continuity in services along with back-wages has been framed and answered. As far as the issue in relation to termination is concerned, the Tribunal has taken into account the statutory protections those are available to the employee by virtue of the Rules and Regulations, more particularly, Rule 36, 37 and 38 of the Maharashtra Employees of Private Schools, (Conditions of Service) Rules, 1981 (for short “Rules of 1981”) are not complied with as such eventually allowed the appeal by setting aside the order

of termination with the order of reinstatement and payment of 50% back-wages with other peculiar benefits from the period of reinstatement along with costs.

6. While raising challenge to the order of the School Tribunal, Mr. M.V. Samarth, learned Senior Counsel has submitted that the employee was accused of a serious offence, which is an offence of moral turpitude, as such, the management is justified in terminating the service of the employee. Further submission is put-forth that even if the termination is issued without adhering to the mandate of Rules, those act as a protection to the employee against imposition of penalties either minor or major and in the present case it is a major penalty being imposed since the termination is served upon the employee. Therefore, an enquiry is not warranted. In the process, Mr. Samarth, learned Senior Counsel has placed reliance on the following judgments :-

- i) (2023) 19 SCC 588, Imtiyaz Ahmad Malla Vs. State of Jammu and Kashmir and others;
- ii) (2025) 3 ALL MR 405, Western Coal Fields Ltd. Vs. Manohar Govinda Fulzele;
- iii) AIR 1990 SCC 1054, Workmen of Bharat Fritz Werner (P) Ltd. Vs. Bharat Fritz Werner (P) Ltd.
- iv) AIR 2021 SCC 923, State of Uttarakhand Vs. Smt. Sureshwati;

v) **1994(1) Mh.L.J. 524, Sindhu Education Society and another Vs. Kacharu Jairam Khobragade and another**

7. Per contra, Mr. S.P. Bhandarkar, learned counsel supported the order of the Tribunal and further advanced the submission in support of claim for 100% back-wages stating that the order of termination is patently illegal, as such, the employee would be entitled for full back-wages. It is further submitted by the learned counsel for the employee that the statutory protections as those are available to the employee before imposing penalties, the rigors as provided under the MEPS Act and Rules thereunder are to be respected in their letter and spirit. Mr. Bhandarkar, learned counsel further submitted that Rule 33 of Rules of 1981, regulates the procedure for inflicting major penalties and it obligates the management to first decide whether to hold an enquiry and to place the employee under suspension. Equally, attention of this Court is invited to sub-rule (5) of Rule 33 of Rules of 1981 that an employee against whom proceedings have been taken of criminal charge or who is detained in any law for the time being in force, shall be considered under suspension. Preceded by such decision of the management as is mandated by virtue of Rule 33 of Rules of 1981, the provisions of Rule 36 also springs into action after conducting the enquiry in the event if the employee is found to be guilty and management decides to hold an enquiry, the same shall be

done through properly constituted enquiry committee. Coupled with the mandate of Rules 36 and 37, provides for procedure of enquiry. Admittedly, since the termination order is without adhering to the Rules of 1981, same is unsustainable and the Tribunal has, therefore, rightly held the order of termination by the management as contrary to the statutory protection of the employees. It is further submitted by Mr. Bhandarkar, learned counsel that in the wake of the deletion of Sub-Rules (2) and (3) of Rule 28 of Rules of 1981, which the legislature has rightly deleted since the management as in the present case has weaponized the said provision by directly terminating the services of the permanent employee as noted in the present case without adhering to the statutory protection available to the employee, therefore, supported the order of the Tribunal and prayed for dismissal of the petition.

8. The contention of Mr. Bhandarkar, learned counsel for employee to have entitlement for full back-wages was pressed into service relying on the judgments of Hon'ble Supreme Court and this Court.

(i) (2013) 10 SCC 324, **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others;**

(ii) (2022) 3 SCC 683, **Pradeep S/o Rajkumar Jain Vs. Manganese**

Ore (India) Limited and others;

**(iii) Writ Petition No. 2907/2006, Sau. Sandhya W/o Anil
Deshmukh Vs. The State of Maharashtra and another**

**(iv) 2024 SCC OnLine Bom 3506 Dinesh Manik Suryavanshi Vs.
Education Officer, Brihanmumbai Municipal Corporation.**

9. Having considered the rival submissions between the litigating sides, the fact remains that the employee was appointed in the year 1991 by following due procedure of law, has attained the status of permanent Teacher by virtue of operation of provisions of the MEPS Act. That being so, the entitlement of the permanent teacher to statutory protection cannot be denuded under any eventuality. The statutory protections are conferred upon the permanent employee as is evident from the provisions of Rules of 1981, do not in any manner permit the management to directly impose major penalty of termination of services. The statutory regime as can be seen from the provisions of Rule 28 of Rules of 1981, which provides for removal or termination of the employees may be a temporary or permanent for either minor or major misconduct as is classified by virtue of Rule 31 of Rules of 1981. Further perusal regulates imposition of the minor or major penalties. Admittedly, the employee is a permanent employee, it is for the management to decide first to hold an enquiry and also

place the concerned employee under suspension, if the employee is decided to be suspended. Preceded by the aforesaid protections, Rule 36 obligates the management to constitute an enquiry committee which shall conduct an enquiry where major penalties are to be inflicted.

10. Equally, further perusal of Rule 37 mandates the management to prepare a charge-sheet containing specific charges and handing over the same with the statement of allegations and the explanation of the employee with eventual decision of the enquiry committee while following the aforesaid mandate. Admittedly, none of the Rules herein are followed by the management and the service of the employee is terminated on the solitary ground that the employee is facing serious charge of moral turpitude. As a matter of record, the provisions in the shape of Sub-Rules (2) and (3) of Section 28 were on the statute book permitted the dismissal as has been done in the present case, however, in the wake of deletion of Sub-Rules (2) and (3) of Section 28, therefore, now it is not open for the management to justify its order of termination without adhering the Rules those control, regulate and govern the imposition of major penalty. The submission of Mr. Samarth, learned Senior Counsel that the employee was charged with an offence of moral turpitude, as such, was facing the criminal prosecution, thus, is not entitled for the statutory

protection and cannot be countenanced in the wake of the fact that statutory protections cannot be annihilated as has been done in the present case by the employer.

11. When confronted with the query that the prosecution which was initiated against the employee has ended into an acquittal, still, the counsel for management submitted that the employee, who was charged with offence of moral turpitude, even if the trial has ended in acquittal is of no use for such employee whose continuance in the school has its own impact when it comes to the girl students admitted in the school. Even this submission deserves no consideration since the competent Court of criminal jurisdiction has rendered its verdict acquitting the employee, therefore, the same deserves no consideration. Therefore, the order as has been rendered by the Tribunal deserves no interference. The Tribunal has taken into account the permanent status of the employee vis-a-vis, the entitlement for statutory protections those are available to the permanent employee and departure with the same has been dealt by the Tribunal while allowing the appeal in the letter and spirit by applying and conferring those protections on the permanent employee. Therefore, attempt to justify the order of termination without conducting enquiry deserves no consideration by this Court. So far as reliance placed by Mr. Samarth, learned Senior Counsel on

the judgments is totally misplaced since the service conditions and regulations of the employee in those cases are materially different and the principle deduced on the basis of the relevant Rules and Regulations applicable to the concerned employee cannot be *ipso facto* made applicable to the employee since the service conditions are regulated by MEPS Act and Rules of 1981, are applicable and in no manner recognizes the act of imposing major penalty and eventually terminating the services in the manner as has been done by the employee without conducting enquiry as mandated by rules.

12. The counsel for the employee, on the other hand, while justifying the order of reinstatement prayed for full back-wages in view of glaring circumstances that the employee who has suffered trials and tribulations at the instance of the management while issuing the order of termination in such an unprecedented manner and in derogation with statutory regulations, therefore, prayed that the reinstatement essentially has to be with 100% back-wages. In support of the same, Mr. Bhandarkar, learned counsel has placed heavy reliance on the case of **(2013) 10 SCC 324**, (supra) para 22 and 23 of the said judgment as well as **(2022) 3 SCC 683** (supra) and the judgment of this Court in the case of **Sandhya Deshmukh Vs. State and Dinesh Suryawanshi Vs. Education Officer** (supra). There is no debate that the order of reinstatement has to be followed with back-

wages, however, it is matter of record that the employee during the aforesaid period has officiated the public office on account to the elections to Panchayat Samiti. Therefore, in my considered view, the employee who has officiated the public office has reaped the benefits owing to such officiation, as such, may not be gainfully employed, but that fact remains that the benefits have been availed by such officiation. Therefore, Mr. Samarth, learned Senior Counsel is justified in submitting that considering the fact that the employee has officiated the public office of Panchayat Samiti and eventual position as Chairman by the employee is not disputed by Mr. Bhandarkar, learned counsel, therefore, the order of 50% back-wages as awarded by the School Tribunal deserves to be annulled. As such clause 4 by which the payment of 50% back-wages stands modified. The rest of clause 4 of the order of the Tribunal is maintained. The order of reinstatement along with other benefits shall be in the exclusion of the 50% back-wages.

13. Writ Petition No. 8312/2022 is dismissed and Writ Petition No. 1463/2020 is hereby partly allowed, in terms of abovestated observations. Rule accordingly. No order as to costs.

(SACHIN S. DESHMUKH, J.)