

(1) **Sudhir Shikshan Sanstha,**
Through its Secretary,
Shri Rajesh Kashinathji Masurkar,
168, Om Nagar, Nagpur – 24

... PETITIONER(S)

// VERSUS //

(2) **The Education Officer (Secondary),**
Zilla Parishad, Nagpur

.... RESPONDENT(S)

Shri A.D. Mohgaonkar, Advocate for the Petitioner(s)

Shri P.P. Thakare, Advocate for the Respondent No. 1

Shri H.D. Futane, AGP for the Respondent/State

[illegible]

CORAM : M.S. JAWALKAR, J.

CLOSED FOR JUDGMENT ON :- MARCH 12, 2025

JUDGMENT PRONOUNCED ON :- APRIL 29, 2025

JUDGMENT :-

. **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) By this Petition, the Petitioners have challenged the judgment dated 21/03/2024 passed in Appeal STN No. 09/2022 by the learned School Tribunal, Nagpur by which the Appeal filed by the Respondent No. 1 came to be allowed.

(3) The facts giving rise for filing of the present Writ Petition are as under:-

On 26/06/2009, the Respondent No. 1 came to be appointed in the Petitioner No. 2 – School. On 05/09/2015, the approval was granted by the Education Officer to the appointment of the Respondent No. 1. According to the Petitioners, as it was found that the Respondent No. 1 is involved into the acts of misconducts, such as tampering with the documents, the Management resolved to hold enquiry against the Respondent No. 1. On 13/05/2021, the Show Cause Notice was

issued by the Management to the Respondent No. 1. No reply was given by the Respondent No. 1 to the said Show Cause Notice. Moreover, the notice was also received back by the Management. On 08/06/2021, the statement of allegations came to be issued by the Management. On 16/06/2021, the Respondent No. 1 filed her reply to the statement of allegations. As the reply was found to be unsatisfactory, the Management resolved to constitute an Enquiry Committee. On 09/08/2021, the Respondent No. 1 was served with the Charge Sheet along with 123 documents. It is submitted that complete enquiry was conducted as per the Rules, giving all the opportunity to the Respondent No. 1 to defend. On 23/02/2022, upon completion of the enquiry, as the Respondent No. 1 was found guilty of the misconducts, her services came to be terminated. Being aggrieved by the same, the termination order was challenged by the Respondent No. 1 by filing an Appeal bearing STN No. 09/2022 before the learned School Tribunal, Nagpur.

(4) It is submitted that on 25/04/2023, the learned Tribunal, without considering the record and without giving proper

opportunity to the Petitioners, allowed the Appeal of the Respondent No. 1. The said judgment of the learned School Tribunal was challenged by the Petitioners before this Court vide Writ Petition No. 2981/2023 whereby this Court remanded the matter back to the learned Tribunal by categorically holding that the Tribunal has not discussed the material as well as the evidence on record which were before the Tribunal and though 14 witnesses were examined, there was no reference in the judgment. On 21/03/2024, the learned Tribunal, after remand, again allowed the Appeal of the Respondent No. 1. The said judgment dated 21/03/2024 passed by the learned School Tribunal is the subject matter of challenge in the present Writ Petition.

(5) Shri A.D. Mohgaonkar, learned Counsel for the Petitioners submitted that despite the specific directions given by this Court, the learned Tribunal has committed the same illegality and has delivered the judgment without considering the material on record in the nature of oral evidence as well as the documentary evidence. It is submitted that the learned Tribunal, though has

not framed the issue regarding the legality and propriety of the inquiry, has proceeded to give finding that the Chief Executive Officer appointed by the Management acted as a Judge because he issued the charge-sheet, statement of allegations, and he was the main witness in the enquiry and also cross-examined the Respondent No.1. It is submitted that there is no bar for the Chief Executive Officer to appear in the enquiry as a witness. The said Chief Executive Officer appointed by the Management was the author of the documents, and therefore, he was a necessary witness in the matter. Though he was not a Member of the Enquiry Committee, the learned Tribunal has proceeded to hold that he acted as a Judge. It is submitted that the charges against the Respondent No. 1 have been proved specifically based upon the documentary evidence and the oral evidence before the Enquiry Committee. The Enquiry Committee, after considering the same, has given a detailed finding and has reached to the conclusion that the charges are proved. Hence, the impugned order is liable to be quashed and set aside.

(6) Shri A.D. Mohgaonkar, learned Counsel for the Petitioners, in support of his contentions, relied on the following citations:-

“(a) *Suryabhan Maruti Avhad vs. Mahindra & Mahindra Ltd., 2011 (1) CLR 457;*

(b) *Regional Manager, U.P.S.R.T.C., Etawah vs. Hoti Lal & another, 2003 (3) SCC 605;*

(c) *Tata Infomedia Ltd. vs. Tata Press Employees Union & another, 2005 (3) Mh.L.J. 105;*

(d) *State Bank of India & others vs. Ramesh Dinkar Punde, (2006) 7 SCC 212;*

(e) *Kashiram Rajaram Kathane vs. Bharatiya R.B. Damle Gram Sudhar Tatha Shikshan Prasar Society & others, 1997 (3) Mh.L.J. 235;*

(f) *State of Punjab vs. Dr. Harbhajan Singh Greasy, (1996) 9 SCC 322;*

(g) *Bharatiya Seva Acharya Education Society vs. School Tribunal, Nagpur, 2014(2) Mh.L.J. 879;*

(h) *Thapar Education Society & another vs. Shyam Maroti Bhasarkar, 1997 (3) Mh.L.J. 709*

(i) *Secretary, Ahilyabai Holkar & another vs. Venkatrao Dnyanoba Mane & another in Writ Petition No. 7446/2009, 2024 SCC OnLine Bom 1130*

(j) *Gajanan vs. Shri Shivaji Education Society, Raipur & others in Writ Petition No. 1236/2015, 2018(2) Mh.L.J. 852; &*

(k) *Sulochana Daulatrao Thakare vs. Sangam Shikshan Sanstha & others, 2004(4) Bom. C.R. 488*

(7) *Per contra*, Shri P.P. Thakare, learned Counsel for the Respondent No. 1 submitted that the learned Tribunal has rightly held that termination of the Respondent No. 1, based on illegal Departmental Enquiry, is vindictive and malafide and thus directed the Management to reinstate the Respondent No. 1 in service with continuity and full back wages. All the allegations made in the body of the Petition are denied by the Respondent No. 1 by saying that the same have been made in order to falsely implicate the Respondent No. 1. It is submitted that the Petitioner No. 1 also happens to be the Headmaster of the Petitioner No. 2 - School and surprisingly, the charge sheet, statement of allegations and the witness as also the termination order were issued by the Petitioner - Secretary/Headmaster himself and he also acted as the Chief Executive Officer and also cross examined the Respondent No. 1 in the capacity as witness of the Management.

(8) It is further submitted that the Departmental Enquiry was initiated only because the Respondent No. 1 was agitating her grievance as regards non-payment of her salary either from the State Government to the extent of 20% - 40% and remaining from the Petitioner - Management. There are various Reports submitted by the Education Department wherein it has come on record that the Petitioner - Management is not taking any step to submit the details of the Respondent No. 1 to ensure the Education Department to release her part of the salary to the extent of 20% and 40% apart from remaining salary from the Management. After the Appeal of the Respondent No. 1 came to be allowed, the Respondent No. 1 was persistently requesting the Petitioner - Management to permit her to join the duties, but she was neither permitted to join nor paid any back wages. It is submitted that the learned Tribunal was just and proper in directing the Petitioner to reinstate the Respondent No. 1 in service with continuity and full back wages as she had also filed affidavit that she is not gainfully employed, and therefore, no fault can be found in such directions. As such, it is prayed that the

Petition, being without any substance and merit, deserves to be dismissed with costs.

(9) Shri P.P. Thakare, learned Counsel for the Respondent No. 1, in support of his contentions, relied on the following citations:-

“(a) *Nandkumar Mahadeo Dengane vs. Bhavika Vidya Prasarak Mandal, 2008 (5) Mh.L.J. 598;*

(b) *Mohd. Irshad vs. Telha Education and Welfare Society, Karajgaon & others, 2012(3) Mh.L.J. 291; &*

(c) *Ratan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & others, AIR 1993 SC 2155.*”

(10) Heard learned Counsel for both the parties at length. Perused impugned order and documents placed on record, considered citations relied on by both the parties. The main ground raised by the respondent that the Secretary/ Executive Officer is not having any authority to act as Chief Executive Officer. Second ground raised is that the Chief Executive Officer participated in enquiry, which is not permissible. The third

ground raised is that it is a case of victimization. For the sake of convenience Rule 2 (1) (c) which defines Chief Executive Officer is reproduced which reads as under:

“Rule 2 (1) (c) “Chief Executive Officer” means the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered to execute the decisions take by the Management.”

(11) On perusal of Resolution of the Sudhir Shiksha Sansthan dated 06.06.2021 (page 1219), there was a Resolution passed whereby the Secretary was directed to issue show cause notice of the statement of allegation and directed to give 10 days time to submit her explanation. It is specifically mentioned that the show cause notice, which was sent to respondent Kiran Bhujade was returned back as it is refused by the said Kiran. Thereafter, the chargesheet was served along with documents and respondent has filed a reply to it on 16.06.2021.

(12) The contention raised by the respondent as well as what is observed by the School Tribunal that Chief Executive Officer acted as a Judge in his own cause. However, if Constitution at

enquiry Committee constituted by Management is seen Shri Rajesh Masurkar is not the member of Enquiry Committee. Shri Prakash Masurkar, Shri Bhau Wasnik and Shri Kamaldas Deshpande are the three members of the Inquiry Committee. There were 29 meetings were held and Management examined 14 witnesses. All the witnesses were cross-examined by the respondent No.1. Their defence were also recorded. On perusal of enquiry report shows that ample opportunity was granted to the respondent No.1.

(13) By resolution dated 11.05.2021, the Secretary was directed to issue show cause notice asking respondent No.1's explanation. Accordingly, though notice was served, it was returned back by the said respondent No.1. If affidavit of evidence of Chief Executive Officer is perused (page 1107 to 1115), there are in all 20 charges of which, he has filed affidavit. Moreover, he has signed as a Chief Executive Officer. It also appears on record that an Enquiry Committee/Management appointed Shri Prakash Masurkar as Convener so also one Shri Bhau Wasnik, State Awardee Retired Teacher has appointed as a member and it was

informed to the respondent to suggest name of her representative. It also appears from record that respondent No.1 Kiran Bhujade nominated to Shri Kamaldas Deshpande, Retired Headmaster as a representative of respondent No.1 as accepted by the Management. Thus, the Committee is constituted of three persons namely Shri Prakash Masurkar, Shri Bhau Wasnik and Shri Kamaldas Deshpande.

(14) It appears that respondent No.1 raised an objection to the appointment of State Awardee Teacher on the ground that he is not on panel of the same District. He shall also raised an objection to the Chief Executive Officer to give evidence. She has refused the letter issued by Convener of the Enquiry Committee. For the sake of convenience, Rule 36 is reproduced which reads as under:

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

(2) [If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide' within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer

within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b)

(3) [The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgement due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect.]

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule (2).

(5) *[The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.*

(6) *The meetings of the Inquiry Committee shall be held in the School premises during normal school hours or immediately thereafter, if the employee agrees and even during vacation.”*

(15) Rule 37 (2)(d) (iii) provides Procedure of Enquiry which also contemplates sufficient opportunities shall be given to examine all witnesses notified by both the parties. Thus, what is prerequisite that there has to be a properly constituted enquiry committee, if there is case of major penalty are to be inflicted. The Chief Executive Officer authorised by the management in this behalf shall communicate to the employee or the Head concerned as the case may be by registered post acknowledgment due. The allegations and demand from employee for written explanation within seven days from the date of receipt of the statement of allegations.

(16) In the present matter, the Management appointed the Secretary/Headmaster as a Chief Executive Officer and resolution to that effect is placed on record. What would be the Constitution of Enquiry Committee is also provided under Rule 36. Accordingly, opportunity was granted to the employee to suggest her nominee representative to the Enquiry Committee. Shri Kamaldas Deshpande came to be appointed as a representative of respondent No.1. He was supplied with the copy of statement of allegations. Thus, it appears that there is due compliance of Rule 36. Rule 37 (4) provides that “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.

(17) The employee shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceedings, either personally or by registered post acknowledgment due.”

(18) It is contended by respondent No.1 that the Convener supplied the whole proceedings instead of summary proceeding, that would not cause any prejudice to respondent No.1. After receipt of said further explanation, the Inquiry Committee shall complete the enquiry and communicate its finding on the charges against the employee and its decision on the basis of finding, to the management.

(19) Initially the Management resolved to issue to show cause notice for the misconduct committed by respondent No.1. Accordingly, notice was issued on 30.05.2021. However same was received back. Therefore, again in the meeting dated 06.06.2021, the Management decided to conduct enquiry as it was found that respondent No.1 may suffer for a major penalty for the said misconduct. The Secretary as Chief Executive Officer accordingly issued a statement of allegations on 08.06.2021. It appears that respondent No.1 submitted her reply to the statement to allegation on 16.06.2021. The same was placed before the Management. The Managing Committee, considering the reply, decided to constitute Inquiry Committee by passing the

resolution. The Inquiry Committee was constituted as per Rule 36 and complete enquiry was conducted by granting due opportunity to the respondent. The services of respondent No.1 came to be terminated on 23.02.2023. Respondent No.1 challenged the said order by preferring an appeal.

(20) It is a matter of record that after the school was admitted to grant, the letter was given to respondent No.1 for submitting the relevant documents, respondent No.1 not only refused to receive the letter, but proceeded to make complaint against the school to the Minister, Education Department, Secretary, Education Department, Commissioner, Director etc. Before conducting inquiry, she was given opportunity to nominate her representative. All the proceedings are signed by representative of respondent No.1 so also respondent No.1 herself. They were given copies of proceedings.

(21) In appeal before the School Tribunal, the School Tribunal failed to frame the issue with regard to the fairness and propriety of the inquiry or any perversity of the findings arrived at by the Inquiry Committee, specifically when, termination preceded by

the Departmental Inquiry. Without there being any issue with regard to fairness and propriety of enquiry, the School Tribunal has recorded that inquiry was initiated with vindictive mind as the Secretary who was working as Headmaster acted as Chief Executive Officer to the Committee and he himself has acted as a Judge in his own cause. Admittedly, he was not a member of Inquiry Committee. He was authorized to issue chargesheet and statement of allegation as per the Resolution of Management and he has executed the decision of Management as per Rules.

(22) The judgment of School Tribunal dated 25.04.2023 was challenged by the petitioner before this Court in Writ Petition No.2981/2023. This Court pleased to remand the matter back categorically holding that the Tribunal has not discussed the material as well as the evidence, which was before the Tribunal and though 14 witnesses were examined, there was no discussion in the judgment. After remand, the School Tribunal again allowed the appeal. Again, without framing any issue as referred above, on legality and propriety of enquiry and in respect of the perversity of the finding by the Inquiry Committee come to the

conclusion that it is vindictive. The findings recorded by Tribunal that the Chief Executive Officer appointed by the Management acted as a Judge because he issued the chargesheet, statement of allegations and he was made witness in the inquiry and also cross examined the respondent No.1. On perusal of Rule 36 and 37, the Management is empowered to nominate their Chief Executive Officer, there is no bar for the Chief Executive Officer to appear in the enquiry as a witness. As he was not the member of Inquiry Committee, there is no question of acting as a Judge. Moreover, as per rules, the Chief Executive Officer is required to execute the decision of the Management.

(23) Learned Counsel for petitioner also relied on the judgment in ***Suryabhan Maruti Avhad (supra)***, wherein this Court held as under:

“5. The appellant then filed Complaint (ULP) No. 602 of 2003 in the Labour Court, Mumbai alleging that the disciplinary action taken against him and the enquiry proceedings were not fair and proper. He also challenged his termination from service. On completion of pleadings and hearing of the parties, the First Labour Court by its judgment and order dated

24th August, 2006 held that the enquiry conducted by the respondent was not fair and proper and its findings were perverse. The respondent was then granted liberty to justify its action in court. The matter was then carried in revision by the respondent. The Revisional Court partly allowed the Revision Application to expunge the remarks and observations of the learned labour Judge. It however maintained the part of the order directing the respondent to lead evidence and justify its action of termination of the appellant.”

(24) Learned Counsel for petitioner placed reliance on ***Regional Manager, U.P. SPTC, Etawah and others (supra)***, wherein the Hon’ble Apex Court held as under:

“The court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the

decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court are not proper.”

(25) Learned Counsel for petitioner also relied on **Tata Informedia Limited (supra)**, wherein this Court laid down certain principles governing conduct on disciplinary enquiry:

“Disciplinary enquiries are not governed by the strict rules of evidence contained in the Evidence Act. The charge in a disciplinary enquiry has to be established on a preponderance of probabilities and not by proof beyond reasonable doubt that would govern a criminal trial; (ii) Though the strict rules of evidence and proof do not govern a disciplinary proceeding the enquiry must nevertheless be consistent with the fundamental principles of fair play and natural justice. The Enquiry Officer has to consider the material objectively by eschewing considerations

which are extraneous to a proceeding governed by fair play; (iii) In each case where the finding that has been arrived at in a disciplinary proceeding is sought to be questioned, the essential question to be asked is whether the hiding of misconduct is based on some evidence or on no evidence at all. A finding which is based on no evidence is liable to be interfered with because it is then susceptible to the inference of arbitrariness and perversity. An approach which is perverse or arbitrary is the very negation of fair play and objectivity; (iv) Once a finding in a disciplinary enquiry is based on some evidence, the sufficiency of evidence in proof of the finding lies beyond the scope of scrutiny of the reviewing Court. The finding must, however, be supported by legal evidence. The test of perversity is that a finding is not supported by legal evidence or where the finding is such as no reasonable body of persons would have arrived at on the basis of the material on the record; (v) Wide as it is, the jurisdiction of the Labour Court under section 11-A of the Industrial Disputes Act, 1947 is not unlimited. Section 11-A does not confer an arbitrary power on the Industrial Tribunal or the Labour Court. The jurisdiction is supervisory in nature, to be exercised where the finding in a disciplinary enquiry is based on no evidence; where there has been a transgression of the principles of natural justice or where the finding is perverse in the sense that no reasonable body of persons could have arrived at such a finding.

Where finding of misconduct was arrived at in disciplinary proceeding was sustainable with reference to evidence on record-

Labour Court could not have transgressed the limits of its own jurisdiction in interfering with the findings – Order of Labour Court quashed.”

(26) Learned Counsel for petitioner placed reliance on **Secretary, Ahilyabai Holkar and another (supra)**, on the same point of Judicial Review and powers of the Tribunal, wherein this Court held as under:

“28. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned with determining whether the inquiry was held by a competent officer, or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceedings. When the authority accepts that evidence and conclusion

receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review, does not act as appellate authority to re- appreciate the evidence and arrive at its own independent findings. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice, in violation of statutory rules prescribing the mode of inquiry, or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. The ratio of this case has been consistently followed in other cases relied upon by the respondents.”

It can be seen from the order that nowhere School Tribunal held that finding recorded by the Inquiry Committee is perverse or violative of principles of natural justice or against any rule, nor even discussed the findings recorded by the Inquiry Committee. Without considering any finding the Tribunal held that termination was illegal.

(27) On perusal of judgment of School Tribunal, Nagpur, it appears that School Tribunal on page Nos. 30 to 107 reproduced the appeal in its entirety and from page Nos. 145 to 150 reproduced the reply and reasoning part is there from page Nos. 153 to 164. He again reiterated in paragraph Nos. 255 to 258 what is the case of the appellant. In paragraph 262, the learned Tribunal observed that for charge No.1 to 20, Shri Rajesh Masurkar, is the key witnesses. Shri Masurkar has himself issued charge-sheet and statement of allegations and he further held that his evidence for proving the charge cannot be accepted and and held that the person cannot be a judge in his own cause. In fact, the Chief Executive Officer is not the member of Inquiry Committee and he was authorized to supply statement of allegation to the Inquiry Committee. As to charge No.2, the School Tribunal held that though witnesses Shri Sunil Gaikwad, Ms Priyanka Mohod and Mithun Meshram deposed that appellant entered in headmaster's room on 26.3.2021 at 10.40 a.m. in absence of headmaster and signed muster roll in one sitting from 04.12.2020 to 26.03.2021. The learned School Tribunal held that as Shri Masurkar in respect of same deposed

that he was present on 26.03.2021 at 10.40 a.m. in school and, therefore, he held that charge cannot be said to be proved. Learned School Tribunal failed to appreciate that he was in the school. He has not deposed that he was in his room at the relevant time.

(28) So far as charge Nos.1, 3, 5, 6, 7, 8, 11, 14, 16, 18 and 19, the School Tribunal on these charges held that to prove these charges only Shri Rajesh Masurkar is examined who was issued charge sheet, statement of allegations and again held that a person cannot be judge in his own cause. As such, totally discarded the evidence of Shri Rajesh Masurkar and straightly jumped to the charge No.4. The learned Tribunal failed to appreciate that charge sheet and statement of allegation issued by him in the capacity of Chief Executive Officer.

(29) The evidence of Shri Suraj Hatwar was discarded by the School Tribunal on the ground that the appellant has signed muster roll on that day and also attended the same. In fact, charge was different, she was directed to accompany the students to the venue however, she alone went to the venue and even after

program is over, she without taking care of students, went away from the place. Without considering all these factors, the School Tribunal discarded the evidence of Suraj Hatwar on the ground that there was signature of respondent No.1 on muster. It appears that without considering the charge and supporting documents, the School Tribunal passed the impugned order. There was notice to all the teachers in respect of the said Chorus “Vande Mataram” program. Apart from this, the respondent No.1 was also issued with individual letter in that regard by the Headmaster.

(30) Learned Counsel for petitioner relied on ***Thapar Education Society (supra)***, wherein this Court held in para 18 as under:

“18. The Tribunal has further held that the Committee was biased as Dr. Shenoy, who was the Secretary, was not competent to be nominated as a member of the Enquiry Committee. It is observed that being a Secretary, Dr. Shenoy entertained the correspondence in respect of the subject covered by the enquiry. From this alone, the Tribunal further jumped to the conclusion that he acted as a Disciplinary authority and also has acted as a member and convener of the Enquiry Committee. Firstly, it

has to be said that in view of rule 36(2)(a)(i) of the Rules, a representative of the management, who is a member thereof and who is authorised by the President of the Management, shall act as the member of the Enquiry Committee. Therefore, if Dr. Shenoy was nominated and which nomination has not been questioned by the management. There was nothing wrong if he acts as such. Merely because he, as a Secretary, has entertained the correspondence, it cannot be said that he becomes both the complainant and the judge. After all, he would be acting in different capacities while acting as the Secretary and while acting as a member of the Enquiry Committee. The learned Member of the Tribunal has clearly missed this aspect. Further, merely because he was a Secretary, it could not be said that he would have a bias and the whole Enquiry Committee would be biased. There is absolutely nothing to suggest that there was any bias as such, and the observation in that behalf appears to be the wholly erroneous observation.”

In the present matter, the Secretary is not even the member of Inquiry Committee. It appears that the School Tribunal has not discussed any of the judgment placed on record by the Management.

(31) Even in respect of the Charge No.9, it appears that the learned School Tribunal without going through the Charge No.9

held that the charges not proved as she has performed the duty. The charge is not about non performing of the duties, but it is in respect negligence in duty and obstruction created in National program. The document placed in support of the charge, appears not even gone into.

(32) Similarly, in respect of the Charge No.10, the learned School Tribunal without going through the evidence placed on record, come to the conclusion that Shri Vishal Ande was examined in this regard. The said work of updation of voters list organized on National level was given by Headmaster to Shri Vishal Ande. Therefore, there is no grievance remained. However, the school tribunal failed to consider the documentary evidence on record which shows that many important letters noticed to attend meetings were returned back by the respondent No.1. The show cause notice issued on 15.5.2017 and other documents in relation to Charge No.10 are sufficient to demonstrate that the respondent No.1 was deliberately not following the instructions even in respect of the National program and updation of voters list. These letters also indicate

that there were 6 members appointed as Praganak to carry out this work. In spite of repeated letters, the respondent No.1 has not collected the material for said survey. Five persons appointed for said survey submitted the report, however, respondent No.1 required to issue letter to submit the same. In fact as held in ***Secretary, Ahilyabai Holkar and another (supra)*** and ***Tata Infomedia Ltd (supra)***, the jurisdiction is supervisory in nature, to be exercised where the findings in a disciplinary enquiry is based on no evidence where there has been a transgression of the principles of natural justice or hear the finding is perverse in the sense that no reasonable body of persons could have arrived at such a finding. Once a findings in a disciplinary enquiry is based on some evidence, the sufficiency of evidence in proof of the finding lies beyond the scope of scrutiny of the reviewing Court.

(33) There was report of Supervisor appointed in this regard on program for updation of voters list, duly informed to the Commissioner as he has received report of 5 persons out of 6 and

respondent No.1 till today, has not submitted any report. These material documents were not considered by the School Tribunal.

(34) In fact, the Inquiry Committee has duly considered these letters, communications issued by the Headmaster as well as Supervisor to the Commissioner of Election Commission. The Inquiry Committee also take a note of refusal of notice by respondent No.1's application for leave. As such, there is no any scope that there was any one sided inquiry. On perusal of inspection of evidence and documents and minutes by the Inquiry Committee (page 672 to 713), it appears that Committee supplied every documents in evidence which is considered by the Inquiry Committee to respondent No.1, it has also discussed the evidence of witnesses and their cross examination. The Inquiry Committee also considered the evidence of each and every witness along with its cross examination. The denial of respondent No.1 about her signature on some documents were duly proved by the Management by obtaining opinion of handwriting expert and as per handwriting expert opinion, the

signatures which were denied by the respondent No.1 Kiran Bhujade is of Respondent no. 1 only.

(35) Learned counsel for petitioners relied on ***State Bank of India and others (supra)***, wherein the Hon'ble Apex Court held as under:

“9. It is impermissible for the High Court to reappreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellant Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.”

In the said matter also there was clinching evidence found by the Inquiry officer against the charged officer is in the form of handwriting expert, which proved that the handwriting is that of the charged officer.

“12. From the facts collected and the report submitted by the inquiry officer, which has been accepted by the disciplinary authority and the Appellate Authority, active connivance of the respondent is eloquent enough to connect the respondent with the issue of TDRs and overdrafts in favour of Bidaye.

13. We are, therefore, clearly of the view that the High Court has erred both in law and on facts in interfering with the findings of the inquiry officer, the disciplinary authority and the Appellate Authority by acting as a court of appeal and reappreciating the evidence.”

(36) As I have discussed above, I have no hesitation to note that the inquiry was conducted by following all provisions of law and by granting full opportunity to the respondent No.1. Moreover, the Inquiry Committee has minutely considered each and every documents, evidence of witnesses and arrived at conclusion.

(37) The learned Counsel for petitioners relied on ***Kashiram Rajaram Kathane (supra)***, in support of his contention that if the inquiry is become invalid on the ground that the President of the Management giving evidence in support of the charge levelled against the delinquent Headmaster. The President herself was one of the three members constituting Enquiry Committee. It is held that the inquiry vitiated as Convener President of the Society had incurred disability by giving evidence. The decision of Enquiry Committee quashed and

delinquent reinstated with opportunity to Employer to proceed with the enquiry from the stage where it becomes invalid.

It is contended that in the present matter the Executing Officer is neither the member of Enquiry Committee nor the Convener nor there is any finding in that regard by the School Tribunal, that enquiry is vitiated on this ground.

(38) In ***State of Punjab and others (supra)***, relied on by the learned Counsel for petitioner, wherein it is held that “*it is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. The matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action in accordance with law.*” In the present matter the School Tribunal has not framed any issue regarding legality propriety or perverse finding recorded by the Inquiry Committee. He has not considered any supporting documents and evidence deposition of the witnesses. The evidence placed on record is not weak piece of evidence, but there are concrete evidence of the misconduct on the part of

respondent No.1, her subordination and her conduct not befitting to the teachers.

(39) Learned counsel for petitioner relied on ***Bharatiya Seva Acharya Education Society, Nagpur and others (supra)***, in support of his contention that order of termination consequent to disciplinary proceedings and once it is found that the enquiry was vitiated on the technical grounds, the course open for the Tribunal was to permit the management to conduct *de novo* enquiry from the stage from which, it is found to be vitiated. The question of payment of backwages does not arise and would depend upon the final outcome of fresh enquiry.

(40) Learned Counsel for respondent No.1 vehemently argued that the order passed by the School Tribunal is perfectly justified. There is no any ground to set aside the same. It is his contention that as respondent No.1 was claiming on salary, this enquiry was initiated with vindictive manner. Learned Counsel for respondent No.1 relied on ***Rattan Lal Sharma (supra)***, in support of his contention that no one can be judge of his own cause. However, facts are distinguishable as in the said matter, the charge was to

the effect that a particular sum on account of amalgamated fund for the month of December was given to the appellant by Shri Maru Ram who was teacher in charge of the amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and he himself deposed to establish the said charge and thereafter again joined the enquiry committee. In the present matter, Secretary, Executive Officer was never member of Inquiry Committee, therefore, there is nothing in the hands of Secretary to take the decision. As such the judgment cited by learned Counsel for respondent is not applicable in the present matter.

(41) Similarly, the learned Counsel for respondent No.1 relied on ***Mohd. Irshad Ahmad (supra)***, in the said matter, this Court held that in Rule 37 (4) the word uses 'shall' which is mandatory. It is in respect of forwarding of the summary proceeding by the Convener of Inquiry Committee to the employer. It is not disputed that the respondent No.1 has received the same and even she filed reply to it. As such, there is compliance of Rule 37 (4). After going through the judgment of

School Tribunal, there is no finding even after remand, what is the illegality impropriety or perverse finding recorded by Inquiry Committee. There is no issue at all framed to that effect. As such, orders passed is without appreciating the charges levelled nor the evidence and supporting documents on record. The Inquiry Committee has granted due opportunity of hearing to the respondent No.1 and cross examine the witnesses of the petitioner. There is due discussion by the Inquiry Committee as well as it has considered the documents placed on record by the petitioner as well as respondent No.1. The Inquiry Committee had also considered the evidence recorded during the enquiry. There is no any contention that documents are not supplied within time.

(42) It appears from the dates that all time limits are followed before inquiry as well as in the inquiry. However, considering the evidence on record, it is not the case of no evidence. On the contrary, on perusal of Inquiry report, any prudent man came to the conclusion that there is subordination by the respondent No.1, misconduct and she has acted not befitting to her post. As

such the judgment and order passed by the School Tribunal is patently erroneous without application of mind and without considering the evidence on record and without considering what was the charges. He has presumed without referring to the charge, the charge is not proved. As such, even after remand, the School Tribunal failed to appreciate the evidence on record and recorded perverse finding in respect of the charges as proved. Not a single judgment cited by the petitioner was discussed. As such, order passed by the School Tribunal is liable to be quashed and set aside. Accordingly, I proceed to pass the following orders.

ORDER

- (1) The Writ Petition is allowed.
- (2) The judgment and order dated 21.03.2024 passed by the learned School Tribunal, Nagpur in Appeal STN No.09/2022 is hereby quashed and set aside.
- (3) The order passed by the disciplinary authority is hereby confirmed.

(4) The Writ Petition stands disposed of in above terms.

(M.S. JAWALKAR, J.)

R.S. Sahare