



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5338 OF 2025

1. Shri. Bandu Bhaurao Rohankar
Aged about____years,
Occupation : Service,
Headmaster, Smt. Indira Gandhi
High School, Junasurla, Tah. Mul,
District Chandrapur.

... **PETITIONER**

...VERSUS...

1. Yogiraj Shri Viktubaba Shikshan Sanstha,
Having registered PTR No. F-694 (ch.)
Through its President.
2. Shri. Siddharth Domaji Ramteke,
Aged about major,
Occupation : Private.
3. Smt. Jeejabai Domaji Ramteke,
Vice president, Aged major,
Occupation : Housewife.
4. Shri. Sudhir Narayan Gowardhan,
Aged major, Occupation : Farmer.
5. Smt. Shashikala Narayan Gowardhan,
Aged major, Occupation : Farmer,

All R/o Juna Surla, Tah Mul,
District – Chandrapur.
6. Shri. Kishor Yadaorao Dhude,
Aged about major,
Occupation : Retired,

R/o. Ward No. 2, Besides the civil
Court Building, Saoli Tah. Saoli,
District – Chandrapur.

7. The Education Officer (Secondary)
Zilla Parishad, Chandrapur.

...RESPONDENTS

Mrs. Radhika Bajaj, Advocate for the petitioner.
Mrs. M. S. Naik, AGP for the respondent no. 7/State.
Mr. M. M. Dhandekar, Advocate for the respondent no. 1.
Mr. S. S. Ghate, Advocate for the respondent nos. 3 to 5.
Mr. P. A. Jibhkate, Advocate for the respondent no. 6.

CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 01st APRIL, 2026.
PRONOUNCED ON : 20th APRIL, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

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

2. The petition filed under Article 226 of the Constitution of India prays for quashing suspension order dated 14.08.2025 issued pursuant to the show cause notices dated 24.06.2025 and 26.06.2025 it further prays for a direction to set aside the

disciplinary proceedings and enquiry initiated against the petitioner as per the letter dated 18.08.2025.

3. The facts as can be seen from the record are as under:-

a) The petitioner is the Headmaster of Smt. Indira Gandhi High School, Junasurla, District Chandrapur, which is an institution run by the respondent no. 1 Society. The respondent no. 1 Society is a society duly registered under the Societies Registration Act, 1860, and also under the Maharashtra Public Trust Act, 1950, (for short 'Act of 1950') and has been conferred the status of a Religious Minority Institution by the State of Maharashtra.

b) It is further stated in the petition that, there being factions within respondent no. 1, the respondent No. 2 and 3 herein claimed to have conducted elections for the management of the trust on 06.09.2021, pursuant to which the said respondents filed a Change Report bearing No. 230 of 2022 before the Charity Commissioner.

c) It is further stated that on the other hand, the faction led by respondent no. 6 herein conducted election on 14.11.2021 and accordingly filed Change Report No. 13 of 2022. Both the change reports are pending adjudication before the competent authority.

d) It is further stated in the petition that, on 05.04.2022, an advertisement was issued by respondent no. 2 for filling up the post of teachers. This advertisement was challenged by the respondent no. 6 by filing a writ petition before the Court bearing Writ Petition No. 7355 of 2022, wherein this court observed that the dispute as to rival claims of management are to be adjudicated under Section 41 (D) of the Act of 1950.

e) In the backdrop of these facts, to avoid uncertainty and recognizing the need to ensure continuity and stability in the administration of the educational institutions, the petitioner approached the Education Officer (Secondary), Zilla Parishad, Chandrapur), i.e., the respondent no. 7 herein, vide communication dated 23.02.2022, with a request to clarify as to how the schools would be running in absence of a private management and a school committee, who is supposed to take administrative decisions. In

response to the said communication, the respondent no. 7 clarified vide letter dated 25.02.2022 that the Headmaster of the school is the ex-officio Secretary of the School Committee, and furthermore no member of the school committee excepting the head shall directly or indirectly interfere with the internal administration of the school. The petition also avers that a Government Circular dated 19.11.2001 specifically provides that in the absence of a legally constituted school committee the Headmaster shall be competent to appoint Shikshan Sevak for a period of three years.

f) Furthermore, owing to the large scale vacancy and disruption of academic work, the parent teachers association and the Local Management Committee resolved to make an interim arrangement to fill the vacant teaching posts within the school so as to ensure that the students should not suffer. In pursuance of this resolution, the petitioner sought permission from the respondent no. 7. However, the said request did not evoke any response.

g) The rival faction again challenged this advertisement before the Assistant Charity Commissioner by way of Application No. 176 of 2024 filed under Section 41(A), in which interim relief was

granted on 09.10.2022. Being aggrieved by the same, the petitioner was constrained to approach this Court by filing a Writ Petition No. 6549 of 2024 wherein this Court directed the Assistant Charity Commissioner to decide the application expeditiously and in any case within a period of six weeks from the date of the order. In pursuance to the order of this Court the Assistant Charity Commissioner decided the application and passed an order on 12.03.2025 thereby directing the parties to take decisions only by majority after passing of the resolution. The petitioner states that the said final order is also challenged by him by filing a writ petition before this Court bearing Writ Petition No. 2573/2025 which is pending adjudication.

h) In the backdrop of these facts, it is the contention of the petitioner that only with an intention to harass the petitioner, he was issued a show cause notice on 24.06.2025 alleging that audits for the period 2020 to 2025 were not conducted by the petitioner thereby violating Rule 28 (5)(a),(c), and (d) of the Maharashtra Employees of Private School (Conditions of Services) Rules, 1981, (for short the 'MEPS Rules, 1981'). An explanation was called within 7 days from the receipt and it was further informed that in

view of Rule 31 (1) to (5) and Rule 32 the increment of the petitioner was proposed to be withheld.

i) Thereafter, another show cause notice was issued on 26.06.2025 calling upon the petitioner to furnish an explanation regarding the illegal appointment of Smt. Kanchan Marshettiwar and Mr. Kunal Satpute on the post of Shikshan Sevak. Again vide letter dated 05.07.2025 the respondents informed the petitioner about the stoppage of his annual increment for the period from 01.07.2025 to 01.07.2026 on trivial grounds. Thereafter on 08.07.2025 the respondent issued a statement of allegations against the petitioner only to create a foundation for initiating disciplinary action. The said allegations pertain to entrusting of the petitioner with a responsibility of managing the accounts of the school and ensuring that the statutory audits were carried out because it is alleged in the said statement of allegations that the petitioner failed to complete and submit the audits to the respondent trust. Other allegations are also made in the said statement regarding omission to record the absence of one Kailas Borkar and continuing with disbursement of salary without any deduction. Another allegation was regarding failure to convene meeting in furtherance of

resolutions passed by the trust. The last allegation was regarding failure to obtain prior permission from the Education Officer and in spite of that publishing advertisement for filling up two vacancies of Shikshan Sevak.

j) It is further alleged in the petition that thus the petitioner was bombarded with multiple communications which had insidious consequences during such a short period of time thereby creating undue pressure and intimidating him. The petitioner therefore addressed a communication on 12.07.2025 requesting a copy of resolution passed in the meeting held on 04.07.2025 resolving to stop his increments as well as the minutes of the meeting. It was also stated in the said communication that it is only after the receipt of these documents, the petitioner would be in a position to furnish effective and comprehensive explanation to the allegations. It is an averment in the petition that despite repeated requests the said documents have not been provided to the petitioner. The petitioner was therefore constrained to address communication on 16.07.2025 to the respondent no. 7 stating that the decision taken by the respondents to withhold his annual increment was wholly without jurisdiction in view of the order of the Assistant Charity

Commissioner passed on 05.04.2022 which expressly directed the respondents not to take any major policy decisions during the pendency of the said request. By another communication addressed on the even date the petitioner requested that the impugned enquiry proceedings initiated against him be stopped.

k) In the backdrop of this ongoing feud between the respondents and the petitioner, the 4th respondent in his capacity as the Secretary of the Trust proceeded to issue a suspension order on 14.08.2025. In the said order it was stated that since the petitioner has not replied to the statement of allegation a decision was taken in the meeting held on 08.08.2025 to place the petitioner under suspension with immediate effect. Thereafter vide communication dated 18.08.2025 it was informed to the petitioner that an inquiry committee has been constituted against him which surprisingly comprised of the respondent no. 4 the very person who was spearheading the vindictive actions against the petitioner along with other persons. Vide said communication it was also directed that the petitioner should nominate the name for inclusion as a member of the committee as per the MEPS Act and Rules. All these communications and more particularly the issuance of suspension

order dated 14.08.2025 and a subsequent communication dated 18.08.2025 is challenged the present petition.

4. We have heard Mrs. Radhika Bajaj, learned counsel for the petitioner, as also Mrs. M. S. Naik, learned AGP for the respondent no. 7/State, Mr. M. M. Dhandekar, learned counsel for the respondent no. 1, Mr. S. S. Ghate, learned counsel for the respondent nos. 3 to 5, and Mr. P. A. Jibhkate, learned counsel for the respondent no. 6.

5. Mrs. Radhika Bajaj, learned counsel for the petitioner by taking us through the record of the matter submits that the suspension order issued by the respondent no. 4 is perverse and all the consequent actions of initiating disciplinary proceedings is bad in law. It is her submission that the petitioner being a headmaster of the school was an ex-officio secretary of the school committee and was therefore lawfully empowered to discharge administrative functions including the filling up of vacant teaching post more particularly in view of the ongoing feud between the management. She further submits that even though the petitioner had repeatedly requested for a copy of resolution passed in the meeting as also the

minutes thereof to reply to the statement of allegations, the same were not supplied to him. It is therefore her submission that the said action is in breach of principles of natural justice and therefore the entire design of the respondent in suspending and proceeding against the petitioner departmentally falls on ground. By taking us through Rule 33 of the MEPS rules, 1981, the learned counsel for the petitioner submits that the power to place a headmaster under suspension is vested exclusively with the president of the management and not with any other office bearers. However in the present case since the purported suspension order has been issued by the respondent no. 4 who claims to be a secretary of the parallel action of the trust, the said action is without any authority of law. It is her submission that even though on merits the statement of allegation does not make out any case of grave misconduct and only revolves around trivial administrative aspects. She therefore prays for quashing the entire action of suspending the petitioner and proceeding departmentally against him.

6. She relies on judgments of this Court in the matter of *National Education Society, Nagpur and another Vs. Mahendra s/o baburao Jamkar and another* reported in 2007(3) Mh.L.J. 707,

Vidya Vikas Mandal and Another Vs. Education Officer and another reported in (2007) 11 SCC 352, ***Prabhakar Rayappa Biradar vs. State of Maharashtra and others*** reported in (2007) 2 Bom CR 426, ***Sandeep Ram Meghe and others vs. Pundlikrao Balaji Gohad (dead) and others*** 2013 reported in (4) Mh.L.J. 703.

7. Per contra, the learned counsel appearing for the respondent no. 1, i.e., the trust opposes the petition. By taking us through the reply filed by the respondent no. 1 the learned counsel submits that the petition is not maintainable for suppression of material facts. In his submission the petitioner has suppressed from this Court that he has actually waived to give the right of objecting the formation of the inquiry committee formed by the management. On merits he submits that the respondent nos. 2, 3, 4, 5 and 6 are the lastly approved trustees of the trust and out of them respondent nos. 2 to 5 are re-elected to the office for which change report bearing change report no. 230 of 2021 is pending. He submits that it is the respondent no. 6 alone who is opposing the entire board of trustees and has opposed the election of the board the said respondent no. 6 in an attempt to stall the election, challenges the order of the Assistant Charity Commissioner passed on 22.07.2021 for

conducting the elections by filing a writ petition before this Court vide Writ Petition No. 3031 of 2021. However the same was withdrawn. Accordingly elections were held in general body meeting on 06.09.2021 and the change report is pending.

8. He further submits that in the backdrop of these facts, and in spite of being aware that the elections are already held, the respondent no. 6 showed a parallel election on 14.11.2021 in violation of the orders of the Charity Commissioner. He further submits that the respondent no. 6 was never in administration of the trust. As far as the petitioner is concerned, it is the submission of the learned counsel for the respondent no. 1 that he has breached the provisions of the MEPS Act and issued an advertisement on 13.09.2022 without taking the respondent management into confidence. This led the management filing a writ petition before this Court bearing Writ Petition No. 6107 of 2022. This court vide order dated 29.09.2022 held that the appointments, if any, made by the petitioner would be a subject matter of approval of the Education Officer. In view of this observation, the writ petition came to be withdrawn. Thereafter, the management filed an appeal before the Deputy Director of Education wherein it was

found that the appointments effected by the petitioner were not in accordance with the providence of the MEPS Act. He further submits that taking undue benefit of the initial approvals the petitioner again issued an advertisement on 23.09.2024. It is his submission that even though an impression is being tried to create by the petitioner and the respondent no. 6 that there are factions in the trust, there is no such factionalism in the trust and it is only the respondent no. 6 who in collusion with the petitioner is carrying out these nefarious activities. It is therefore his submission that it is the petitioner and the respondent no. 6 who are to be blamed for the state of affairs.

9. As far as the suspension order is concerned, learned counsel for the respondent no. 1 submits that when it was found that certain acts and omissions have been committed by the petitioner, it was decided in the meeting of the trust held on 04.07.2025 to constitute an enquiry committee for enquiring into the serious misconduct of the petitioner. It was also resolved that in view of the difficulty due to death of the recorded president Sri Doma Ramteke and also Uddhav Ghanmode it was resolved to delegate the powers to the recorded secretary Shri Sudhir Gowardhan for

communicating the statement of allegations and calling explanation from the petitioner. It is his further submission that in spite of giving sufficient time to reply to the statement of allegations no reply was received from the petitioner which constrained the management to seek permission to suspend the petitioner. However, since there was no response from the Education Department, on 05.08.2025 the respondent management resolved to suspend the petitioner and give him suspension allowance as admissible.

10. He further submits that perusal of the resolution would show that in order to constitute the enquiry committee the management has duly considered the peculiar situation and necessity that the president and the vice president have expired and therefore the management resolved to delegate the powers to the secretary who would act as a convener of the enquiry proceedings. It is his submission that in accordance with the said decision of the management dated 08.08.2025 order of suspension came to be issued on 14.08.2025.

11. He further submits that in pursuance to the communication of Constitution of the enquiry Committee, the petitioner has nominated his representative and therefore the petitioner has acquiesced with the said Act and cannot question the same. He further submit that the enquiry has proceeded further and now only the examination of defence witnesses is to be recorded. It is therefore his submission that this Court would not or rather reluctant to interfere under Article 226 of the Constitution of India in view of the said facts. He relies on judgments of this Court passed in Writ Petition No. 5967 of 2017 *M. S. Ahluwalia v. Western Coalfields Limited and others*, *Ganesh s/o Mahadeorao Thawre v. Central Hindu Education Society, Nashik and another* reported in (2007) 6 Mh.L.J. 589, *Secretary, John Wilson Education Society, Mumbai and another v. Sanjay remanand Athavale and another* reported in (2017) 2 Mh.L.J. 121.

12. Mr. S. S. Ghate, learned counsel appearing for the respondent nos. 3 to 5 as also oppose the contentions in the petition. It is his submission that right to investigate and enquire into the misconduct is a right conferred upon the management and therefore this Court will be loathe to interfere the said right unless a case of patent

arbitrariness is made out. While adopting the submissions made by the learned counsel for the respondent no. 1, Mr. Ghate submits that the petitioner is only one of the employees of the Trust and therefore it does not lie in his mouth to allege that there is a dispute with respect to the management and conduct of the Trust. He further submits that the petitioner and the respondent no. 6 are hand in glove and are filing litigation one against another as stated supra. He also submits that the respondent no. 2 to 6 are the recorded Trustees, however the Respondent No. 2 to 5 are on one side and the respondent no. 6 is on the other side. He submits that the petitioner was never a trustee but is posing himself to be one and acting and interfering in the administration without any reason or cause and authority. It is his submission that the petitioner and the respondent no. 6 are unwarrantedly creating a nuisance under the garb of there being a faction in the Trust. While emphatically denying that there are any factions in the Trust, the learned counsel for the respondent nos. 2 to 4 submits that the show cause notice impugned in the petition was duly served upon him after following due process in that regard. He further submits that if according to the petitioner, the foundation of the charge sheet and the Enquiry is fragile, the Committee would, after appreciation of the said fact,

would think about exonerating him. It is therefore his submission that the right of the Employer to conduct a Departmental Enquiry cannot be curtailed in such manner as has been sought to be done by the petitioner. He denies all the grounds as raised in the petition and states that suspension is a tool in the hands of management to avoid the misuse of power and the deterioration in administration and therefore is not a punishment. He therefore submits that mere suspension cannot be a subject matter of challenge.

13. He further submits that even though headmaster being ex-officio secretary of a school committee under the MEPS Act and Rules, that by itself does not mean that the petitioner can initiate a policy decision of making a recruitment without there being any resolution of the management of the minority institution. Thus, the act of making appointments in the capacity of headmaster is *dehors* the powers of the Headmaster rendering it *void ab initio*.

14. As far as the fact of respondent no. 4 acting as a secretary, the learned counsel submits that, since the then President has expired, there was nothing wrong in respondent no. 4 who is recorded secretary being delegated by the Managing Committee all

the powers to sign the order of suspension. He presses into service the judgments that have done by the learned counsel for the respondent no. 1. In a nutshell, he prays for dismissal of the petition being devoid of merits.

15. On the other hand, the respondent no. 6 by filing his submissions has supported the claim of the petitioner.

16. The Petitioner has also filed a rejoinder, clarifying the fact regarding submission of salary bills. The filing of rejoinder was necessitated due to the fact that learned counsel for the respondent nos. 3 to 5 tendered a bank account statement in the present matter stating that the petitioner has submitted salary bills for the month of August and September, 2025, in spite of being suspended. The rejoinder states that the petitioner stood suspended vide order dated 14.08.2025 which was received on 15.08.2025 till this date the petitioner was discharging his duties. Thus the amount reflected in the bank account is salary for the month of August 2025 till the date the petitioner was actually working. The rejoinder further states that the petitioner did not submit his own salary bills for the month of August to the Education Officer being aware that he had

been suspended though the concerned clerk had already uploaded the same online without the knowledge of the petitioner. The rejoinder further states that during the pendency of the petition, only recently, i.e., on 13.01.2026, petitioner received a cheque of Rs 1 lakh towards alleged subsistence allowance however the said cheque does not specify as to which month or period the said amount has been paid. It is the contention of the petitioner in the rejoinder that the subsistence allowance being 50% of the salary comes to Rs. 73,852/- and thus the total subsistence allowance comes to Rs. 3,69,262/-. Thus assuming that the cheque is of the subsistence allowance, even though it is not sufficient.

17. We have perused the contentions canvassed by the learned counsels for the respective parties and with their able assistance gone through the record of the matter. It is the basic contention of the petitioner that order dated 14.08.2025 and the earlier order dated 08.07.2025 of the statement of allegation is unsustainable in law. The main ground for assailing the statement of allegation is that the documents which were sought by the petitioner, vide his communication dated 12.07.2025, i.e., the minutes of meeting and the resolution are not even supplied to the petitioner due to which

he could not file a reply to the statement of allegation. In this regard, it is evident to point out that in the reply filed by the respondent no. 3 to 5 a specific averment has been made regarding the petitioner being supplied with the said documents. However, what is conspicuous in the said reply in para 10 thereof is that there is no date mentioned regarding the alleged supply of the documents. The relevant portion in the reply is as under:-

"10. That, there is no dispute that respondent no. 4 is the appointed Secretary of the Trust which is extracted from Schedule-I recorded trustee and as per the resolution the petitioner was served with the order of suspension on 14.08.2025. The petitioner has duly replied to the statement of allegation. The demand of resolution dated 04.07.2025 were sought for was duly supplied to the petitioner on_____."

18. The next ground which is pressed into service regarding non-compliance of Rule 33 of the MEPS Act. Rule 33 of the said Act provides for procedure for inflicting major penalties Sub-Rule 1 which would be relevant for the present purpose is reproduced as under :-

33. Procedure for Inflicting major penalties

(1) If an employee is alleged to be guilty of ¹[any of the grounds specified in sub-rule (5) of rule 28] and if there is

reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such orders.

19. An exception is carved out in Rule 35 of the MEPS Act which is reproduced as under:-

35. Conditions of suspension

(1) In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

(3) In case where the employee is suspended with prior approval, he shall be paid subsistence allowance under the

scheme of payment through Co-operative Banks for a period of four months only and thereafter, the payment shall be made by the Management concerned.

(4) In case where the employee is suspended by the Management without obtaining prior approval of the appropriate authority as aforesaid, the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of inquiry shall be made by the Management itself.

(5) The subsistence allowance shall not be withheld except in cases of breach of provisions of sub-rule (3) or (4) of rule 33.

20. Thus a conjunctive reading of sub-Rule 1 of Rule 33 and Rule 35 would lead to an inevitable conclusion that obtaining prior permission of the Education Officer (or any other authority) is a condition precedent for suspending the employee concerned. It thus goes without saying that if the management chooses to suspend an employee without prior approval, the situation would be clearly within the teeth of sub-Rule 3 and 4 of Rule 35 quoted supra.

21. The contention of the petitioner is that there is no prior approval as contemplated under these Rules. In rebuttal, the respondent no. 1 as also the respondent no. 3 to 5 have admitted that there is no prior approval. But it is their contention that no such approval is needed as there is a right in the management to proceed with the enquiry and suspend the employee.

22. We have given our thoughtful consideration to the said contentions canvassed by the learned counsel for the respondents. As can be seen from the reply of the respondent no. 1, the management in fact had applied to the Education Officer seeking permission to suspend the petitioner vide communication dated 15.07.2025 and 17.07.2025. Therefore, having communicated to the Education Officer, in our considered opinion, now the management cannot turn back and say that in fact the permission was not needed. The contention therefore is liable to be discarded. Even assuming that such a permission was not required, as contended by the learned counsel for the respondents, as we have mentioned supra, sub-Rule 4 of Rule 35 would squarely cover the situation and it would be a statutory obligation of the management to pay subsistence allowance even during the first four months of

suspension and for further period thereafter till the completion of the enquiry.

23. As pointed out by us supra, by way of rejoinder, the petitioner has categorically stated that he has received only an amount of rupees 1,00,000/- and has also pointed out that the same is not the entire payment of subsistence allowance. This fact has not been denied by the respondents by filing a counter to the same. In this regard judgment of Hon'ble Apex Court in ***Jagdamba Prasad Shukla Vs. State of U.P. and others*** reported in (2000) 7 SCC 90 relevant para no. 8 is reproduced as under:-

“8. The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension i.e. from the suspension till removal. One of the reasons for not appearing in inquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was

the illness of the appellant. The appellant in reply to the show-cause notice stated that even if he was to appear in inquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed.”

24. Even otherwise, the power to suspend an employee vest in the management only in case of emergency and when there is a prima facie case for his removal or there is a reason to believe that the continuance of the employee in an active service is likely to cause embarrassment or to hamper the investigation of the case. Needless to mention that such a contingency as contemplated under the Rule has to be reflected in the order impugned or at least in the resolution of the managing committee suspending the employee. If the order of suspension dated 14.08.2025 is perused, the said order is grossly insufficient to satisfy the said requirement. The said order

nowhere contemplates that a satisfaction has been reached by the managing committee in the resolution and therefore the employee is suspended. Even the resolution of the managing committee dated 05.08.2025 placed on record by the respondents themselves only states that the petitioner being headmaster can destroy the evidence and can cause hindrance in the smooth working of the enquiry committee.

25. This in our view is not enough to satisfy the statutory requirement which has to be strictly followed. The said resolution as also the suspension order are thus totally unsustainable in law cannot be countenanced.

26. As far as the contention regarding the statement of allegation being supplied by the secretary who has been delegated, the learned counsel for the petitioner has relied upon judgment in National Education Society referred supra in which a question framed by the full Bench of this Court was that:-

"2. The questions which arise for our consideration and which are required to be answered by this Full Bench are framed as under :

(i) "Whether the Head Master of a school by virtue of his position as such becomes the Chief Executive Officer, as defined in Rule 2(c) of the M.E.P.S. Rules, 1981 as held in the case of *Kankubai Shrivakashram Trust and ors. vs. Kamal w/o Dattatraya Khajurkar and ors.*, reported in 1992 Mh.L.J. 216, or whether "Such Headmaster would be the Chief Executive Officer only if he is empowered to execute the decisions of the management, as held in the case of *Shri Govind Bal Mandir Shikshan Sanstha vs. Suhas Dattatraya Kogekar and ors.*, reported in 1988 (II) C.L.R. 1."

(ii) "Whether the President of the management has to be a member of the Enquiry Committee as specified in Rule 36(2)(b)(i) for holding disciplinary enquiry against the Head, whether or not he is the Chief Executive Officer within the meaning of Rule 2(c) of the Rules of 1981."

27. The answers are found in para 18 and 19 which are reproduced as under:-

"18. Rule 36(1)(a) of the Rules provides for constitution of Inquiry Committee in respect of an employee while Rule 36(2)(b) provides for constitution of Inquiry Committee for the Head. We have already quoted the definition of "Head" in terms of section 2(9) of the Act. If it is held that there is no

requirement for the President of the management to be a member of the Inquiry Committee in case of the Head who is not the Chief Executive Officer, providing separate Inquiry Committee for the Head in Rule 36(2)(b) would be nugatory. In case such an interpretation is accepted Head of the school would be an employee for the purposes of Rule 36(2)(a) and there was no need to have separate constitution of Inquiry Committee in terms of section 36(2)(b). It is well settled that the Legislature does not use any word unnecessarily. It would be appropriate to quote paragraph 9 of the judgment of the Apex Court in Utkal Contractors and Joinery Pvt. Ltd. vs. State of Orissa, reported in AIR 1987 SC 1454. In para 9, the Apex Court observed as under :

“..... Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily.....”

19. We, therefore, hold that in case of Head whether or not he is empowered to act as Chief Executive Officer, the President of the management shall be a member of the Inquiry

Committee as contemplated by Rule 36(2)(b)(i) of the Rules of 1981."

28. As far as judgment of the Full Bench in ***Awdhesh Narayan K. Singh Vs. Adarsh Vidya Mandir Trust and another*** reported in **2004 (1) Mh.L.J. 676** Trust is concerned, the proposition in the said judgment cannot be disputed. The conclusions drawn by the Full Bench are reproduced herein under :-

"59. For the foregoing reasons, our conclusions are as under:

(i) Normally, an employee of a recognised school may be placed under suspension by the management after obtaining prior permission/approval of an authority in accordance with sub-rule (1) of Rules 33 and 35 of the Rules;

(ii) In extraordinary circumstances and emergent situations, where an employee is alleged to be guilty of grave charges and there is reason to believe that in the event of the guilt being proved against him/her, he/she is likely to be reduced in rank or removed from service and the management decides to hold an inquiry, he/she may be placed under suspension under sub-rule (4) of Rule 35 without obtaining prior approval of education authority;

(iii) Where an employee of a recognised school is placed under suspension with prior approval as required by sub-rule (1) of Rules 33 and 35, sub-rule (3) of Rule 35 will operate and

subsistence allowance will be paid in accordance with the said provision;

(iv) Where an employee of a recognised school is placed under suspension without approval, sub-rule (4) of Rule 35 will apply and subsistence allowance will be paid by the management as laid down in the said provision;

(v) Vanmala did not lay down correct law on the point and is hereby overruled. All subsequent decisions either following or reiterating Vanmala also stand overruled;

(vi) Shyamrao Tukaram is approved as laying down correct law on the point."

29. It is thus imperative that the president of the management has to be a member of the enquiry committee as contemplated by Rule 36(2)(b)(i) of the Rules of 1981. As far as the judgments pressed into service by the learned counsel for the respondents are concerned, and more particularly judgment of ***Ganesh s/o Mahadeorao Thawre v. Central Hindu Education Society, Nashik and another***, the said judgment reflects in the said matter. The Division Bench after going through the definition of "management" as defined in Clause 12(c) of Section 2 held that it can be a body of person administering such school with such incorporated entity. However in the said case bye-laws empowered the Branch

Managing Committee to control the affairs of the school and then the Chairman of the such Branch Managing Committee could be the president of “management for the purpose of Rule 36(2)(b) MEPS Rules. The said judgment also records that if one were to consider the plight of the president of the society running hundreds of schools then the president has to participate at all enquiries against the heads of the school. In the said case as stated there are only two schools and therefore as we have already stated supra, the said judgment reflects on the facts of the case and do not take the case of the respondent any further. The other judgment relied on by the respondents in *Secretary John Winston Education* referred to supra follows judgment of *Ganesh s/o Mahadeorao Thawre v. Central Hindu Education Society, Nashik and another* which we have deciphered herein above. It only concludes that the MEPS Rules do not only prohibit delegation of authority in an appropriate case. However, in the said case also the management was running about 15 institutions in 5 districts and the president in that term was held to be authorized to delegate or to nominate the representative of the manager. In this case, admittedly the respondent no. 1 trust is running only two schools and therefore the said judgments cannot be of any aid to the petitioner.

30. However, we agree with contentions of the learned counsel for respondents as due to death President/Vice-President the Secretary was delegated power to issue order of suspension due to doctrine of necessity in view of non-availability of President and Vice President and also MEPS Rules do not expressly prohibit such a delegation.

31. As we have already held above that the power to suspend an employee without seeking any approval from the concerned Education Officer has to be based on a subjective satisfaction and the same should reflect in the resolution and the order of suspension since the said power is an exception to the normal rule of seeking approval of the Education Officer before suspending the employee. We have already held that the management cannot be permitted to say that no approval was needed to suspend the employee in view of the fact that admittedly the management has applied for seeking approval. Secondly, neither the resolution of the managing committee or the suspension order reflects any subjective satisfaction as contemplated under the Rules. Therefore, the order of suspension cannot withstand the scrutiny of law.

32. We are refraining ourselves to comment upon and draw inference regarding the correctness or otherwise of the charges in the departmental enquiry being aware of limitations of judicial review as stated in the judgment of this Court in Writ Petition No. 5976 of 2017. However a glaring fact is regarding the show cause notice dated 24.06.2025 which speaks about seeking explanation regarding omission to do audit of the accounts of the schools and for not relieving one Mr. Prakash Ghonmode. The said show cause notice calls for explanation as to why the increment should not be stopped. However, thereafter, it is pertinent to note that vide communication dated 05.07.2025 the management respondent no. 1 intimated the petitioner that the management has resolved to stop one increment. Thus the punishment of stoppage of increment was already imposed as far as charge no. 1 is concerned.

33. As we have already observed that the management has failed to prove that it has in fact supplied documents, due to which the petitioner was put to grave prejudice and was not in a position to reply to the said charges. This omission in our view is serious and cannot be brushed aside lightly. However, we cannot lose sight of the fact that the management has right to proceed against the

employer but only after supplying the adverse material against him and permitting him to put forth his defence.

34. Thus, in our considered opinion, the suspension does not withstand the scrutiny of law in view of the above reasons recorded by us.

35. The learned counsel for the respondents also points out that the enquiry has already commenced and near completion in as much as it is only the defence witnesses who are to be examined. Even though that may be a factor worth consideration, however we cannot loose sight of the fact that the present petition is filed on 02.09.2025 challenging orders as mentioned above. Notices were issued by the Court on 24.09.2025. Nothing has been placed on record to show the various dates on which the enquiry proceeded. However, the fact remains that the enquiry has proceeded further only during the pendency of the petition before this Court and now the respondents cannot be permitted to say that only because the enquiry is near completion, no interference is called for.

36. In that view of the matter, in our considered opinion that the petition deserves to be partly allowed. We, therefore, pass the following order:-

ORDER

- i) Writ Petition is partly allowed.
- ii) The suspension order dated 14.08.2025 is quashed and set aside. Likewise, the enquiry proceedings till date are also quashed and set side.
- iii) The respondent no. 1 is directed to supply all documents as demanded by the petitioner vide letter dated 12.07.2025 within one week from today.
- iv) The petitioner is permitted to submit his statement of defence within one week thereafter. The respondent would commence *de novo* enquiry thereafter.

v) The respondent is free to seek permission from the Education Officer before suspending the petitioner if in its opinion, enquiry cannot proceed without suspending him.

37. Rule is made absolute in the above terms. Writ Petition is disposed of.

(NANDESH S. DESHPANDE, J.) (SMT. M.S. JAWALKAR, J.)
Shubham

1. After pronouncement of judgment and we setting aside the suspension order as also the inquiry proceeding held till the date, learned counsel appearing for the respondent nos. 1 and 2 prays for staying the effect of the judgment.

2. Learned counsel for the petitioner opposed the contentions. However, looking to the overall circumstances of the matter, we stay the effect of judgment for further period of four weeks from today.

3. However, it is also made clear that, since we have set aside the inquiry and even though the fact that the judgment has been stayed at the behest of respondent nos. 1 and 2, we direct the inquiry should not be proceeded further for a period of four weeks from today.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)

Shubham