

(2024) 01 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 5637, 8400 Of 2022

Rukhmini Laxman Jadhao And Others

APPELLANT

Vs

Yavatmal Zilla Akhil Kunbi Samaj And Others

RESPONDENT

Date of Decision : 23-01-2024

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 28, 28(5), 29, 33, 35, 36, 36(1), 36(2)(a), 36(2)(b), 37, 37(1)
Maharashtra Employees Of Private Schools (Conditions Of Services) Regulation Act, 1977 — Section 9

Citation : (2024) 01 BOM CK 0094

Hon'ble Judges : Anil S. Kilor, J

Bench : Single Bench

Advocate : Naresh R. Saboo, K.V.Deshmukh, S.C.Joshi

Final Decision : Allowed/Dismissed?

Judgement

Anil S. Kilor, J

1. Heard learned counsel for the respective parties.
2. RULE. Rule made returnable forthwith. Heard finally by consent of the parties.
3. Both these petitions are arising out of the judgment and order dated 10/08/2022 passed by the School Tribunal, Amravati in Appeal No.39 of 2018, partly allowing the appeal preferred by the petitioner in Writ Petition No.5637 of 2022 challenging her termination as Assistant Teacher.
4. For the sake of convenience the facts in Writ Petition No.5637 of 2022 are being referred to.
5. The respondent No.1 is an Education Society runs various educational institutions at Mahagaon as well as Umarkhed. The respondent Nos. 2 and 3 are recognized schools run by the respondent No.1-Society. The petitioner was appointed as Assistant Teacher by the respondent No. 1-Society.

6. The appellant was served with the show cause notices dated 17/03/2018 and 21/03/2018 calling upon the petitioner to submit her explanation on three charges levelled against her. As the controversy involved does not demand detail scrutiny of the charges, hence, it would suffice to state that, charges were related to misconduct and negligence in duty.

7. On receipt of show cause notices, the petitioner submitted her explanation. Thereupon, an enquiry was conducted against the petitioner and having found guilty she was terminated w.e.f. 27/08/2018 vide order dated 27/08/2018.

8. The petitioner, feeling aggrieved by the termination order, filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to as "the Act of 1977"), raising a challenge to the validity of the termination order mainly on the ground that there was no compliance of Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the Rules of 1981") while conducting the enquiry and as such the enquiry vitiates and consequently the termination vitiates.

9. The learned School Tribunal found substance in the case of the petitioner, accordingly, the appeal was partly allowed vide impugned judgment and order dated 10/08/2022. The operative order reads thus:

"1) The Appeal is partly allowed;

2) The termination order dated 27.08.2020 terminating the services of the appellant is quashed and set aside.

3) The respondents are directed to reinstate the appellant on her former post within 45 days from date of this order.

4) The Management is at liberty to start fresh inquiry against the appellant by following due procedure of law.

5) The management shall complete the fresh inquiry positively within six months from the date of this order.

6) The appellant shall be deemed to be under suspension from date of termination and the respondents shall pay the suspension allowance to the appellant from date of termination order dated 27/08/2020 till reinstatement.

7) The appellant is entitled to full salary from the date of reinstatement if there would be no further orders on the point of suspension as per Rules.

8) The question of payment of back salary of the appellant shall be decided by the management depending upon outcome of the fresh inquiry.

9) Both the parties to bear their own costs.

10) The copy of this order be sent to the Education Officer for information."

10. Thereupon, these two petitions have been filed challenging the judgment and order dated 10/08/2022 passed by the School Tribunal.

11. The Writ Petition No.5637 of 2022 is filed by the appellant/employee. Whereas, the Writ Petition No.8400 of 2022 is filed by the Management and the Schools i.e. respondent Nos. 1, 2 and 3. Hence, it would be appropriate to refer to the prayer clauses of both the Writ Petitions, which read thus:

The prayers made by the petitioner in the writ petition No.5637 of 2022, read thus :

"i) To quash and set aside clause 4 to 8 of operative portion of order dated 10.08.22 passed by Presiding Officer, School Tribunal, Amravati in Appeal No.39/18 annexed to Writ Petition at Annexure-F.

ii) Allow the Writ Petition and direct the respondents to grant full back wages with all consequential benefits to petitioner from date of dismissal dated 17.08.18 till her reinstatement with continuity of service & modify impugned order dated 10.08.22 passed by Presiding Officer, School Tribunal, Amravati in Appeal No.39/18 accordingly.

iii) Pending disposal of writ petition stay order of fresh enquiry against petitioner issued by Presiding Officer, School Tribunal, Amravati in Appeal No.39/18, vide order dated 10.08.22 in Appeal No.39/18 annexed to Writ Petition at Annexure-F.

iv) To grant any other remedy if this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice."

The Prayers in Writ Petition No.8400 of 2022 read thus :

"i. Quash and set aside Clause-6 of the operative part of impugned order dated 10/08/2022 (Annexure-A) passed by the learned Presiding Officer of the School Tribunal in the in Appeal No.39/2018 (Annexure-E); or in the alternative

ii. By writ of mandamus or any other appropriate writ, order or direction, direct the respondent No.1 to pay the subsistence allowance to the respondent No.2 from State Exchequer.

iii) Grant stay to the effect, operation and implementation of the impugned order dated 10/08/2022 (Annexure-A) passed by the learned Presiding Officer of the School Tribunal in the in Appeal No.39/2018 (Annexure-E);

iv) Grant ad-interim ex-parte relief in terms of prayer Clause (iii) above.

v) Allow the petition and grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of this present case and saddle the cost on the respondents."

12. I have heard the learned counsel for the respective parties.

13. The learned counsel for the petitioner submits that, the procedure laid down

in Rules 36 and 37 of Rules 1981, was not followed during the course of enquiry which vitiates the enquiry as well as the impugned order.

14. It is submitted that the petitioner was admittedly working in respondent No.2-School, however, the show cause notice was issued to the petitioner by the respondent No.3, which is contrary to Rule 36 of the Rules of 1981.

15. It is further submitted that no statement of allegation was served upon the petitioner and even before issuing show cause notice the management resolved to hold enquiry, which is impermissible under the law. It is submitted that the respondent No.3 issued the charge-sheet and not by the President of the Society. It is further pointed out that the enquiry was held at Umarkhed whereas, the petitioner was working at Mahagaon in respondent No.2 School.

16. It is further submitted that no opportunity was given to the petitioner to cross-examine the witnesses examined by the management. It is therefore, contended that there was no enquiry at all in absence of compliance of Rules 36 and 37 of the Rules of 1981. It is therefore, submitted that, the liberty granted by the Tribunal to the Management to start fresh enquiry and treat the petitioner under deemed suspension, is contrary to law.

17. Shri Saboo learned counsel for the petitioner in support of his case has placed reliance on the judgment of the coordinate bench of this Court in the case of Madhav Rajendra Narhare ..vs.. Secretary, Banjara Jan-jagruti Mandal, reported in 2022 DGLS (Bom) 583 and National Integration and Education Welfare Society, Akola ..vs.. Presiding Officer, School Tribunal, Amravati reported in 2022 (3) Mh.L.J. 140.

18. On the other hand, the learned counsel for the management submits that the enquiry was fair and proper and as the employee participated in the enquiry and has not raised grounds as regards non-compliance of any Rule, particularly Rules 36 or 37 of the Rules of 1981, during the enquiry, now the employee cannot raise such ground.

19. It is submitted that the School Tribunal has rightly granted liberty to the management to hold the fresh enquiry. However, the order directing to pay suspension allowance is contrary to law as after completion of the enquiry, the management would decide about the back wages and other allowances.

20. It is submitted that as the Doctrine of Relation Back would apply to the present case, entire back wages and benefits incidental and consequential to reinstatement are available to an employee if the subsequent order of punishment in the form of dismissal or termination is held to be bad in law since it relates back to the initial date of dismissal. It is, therefore, submitted that a direction to pay suspension allowance is unwarranted.

21. The learned counsel for the management further submits in alternative as the school is receiving grants, if this Court come to the conclusion that the petitioner is entitled for subsistence allowance, the Education Officer may be

directed to pay the same.

22. The learned counsel for the management in support of his contentions, has placed reliance on the following judgments :

- i) Vidya Vikas Mandal ..vs.. Education Officer, reported in (2007) 11 SCC 352;
- ii) Union of India..vs..Y.S. Sadhu, reported in (2008) 12 SCC 30;
- iii) LIC .vs.. A.Masilamani, reported in (2013) 6 SCC 530;
- iv) Saindranath ..vs.. Pratibha S. Sanstha, reported in 2007 (3) Mh.L.J. 753;
- v) Kashiram ..vs.. B.R.B. Damle .. Society, reported in 1997 (3) Mh.L.J. 235;
- vi) B.S.A.E.Society ..vs..School Tribunal, reported in 2014(2) Mh.L.J. 879;
- vii) Kai. Venkatrao Deshmukh Shilwanikar, Shaikshanik va Samaji Sanstha, Shilwani ..vs.. Sharad Shridharrao Deshmukh, reported in (2016) SCC OnLine Bom 211.
- viii) Tazoddin Rehman Maniyar ..vs.. Shivshakti Samajseva Mandal, reported in 2019(2) Mh.L.J. 242.
- ix) Anita Rohidas Ukade ..vs.. Secretary, Ambika Bahuuddeshiya Mahila Mandal, reported in (2022) SCC OnLine Bom 9030.
- x) Chairman Life Insurance Corporation of India..vs.. A. Masilamani, reported in (2013) 6 SCC 530.

23. In light of rival submissions I have perused the record and the impugned judgment and order.

24. From the rival contentions, it is evident that the whole controversy revolves around a question whether the enquiry conducted by the respondent No.1 was as per the provisions of Rules 36 and 37 of the Rules of 1981?

25. In the circumstances, it would be beneficial to refer to Rule 36 and 37 of the Rules of 1981, which read thus :

"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) in the case of the Head referred to in sub-rule (1) -

(i) one member who shall be the President of the Management; (ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.

(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 the normal school hours or immediately thereafter, if the employee agrees and even during vacation.

37. Procedure of inquiry. (1) The Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convener of the Inquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgement due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.

(2) (a) Within 10 days of the receipt of the copies of charge-sheet and the statement of allegations by the employee or the Head, as the case may be,-

(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convenor of the Inquiry Committee in person or send it to him by the registered post acknowledgement due.

(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convenor of the Inquiry Committee the names of witnesses whom they propose to so examine, and

(iii) If the Management desires to tender any documents by way of evidence before the Inquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the document relied upon by the Management is a register or record of the school it shall permit the employee or the Head as the case may be, to take out relevant extracts from such register or record. The employee or the Head as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence.

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the Inquiry Committee shall meet to proceed with the inquiry and give 10 days notice by registered post acknowledgement due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

(c) The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case.

(d) (i) The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee.

(ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross-examine the witnesses examined on behalf of the Management.

(iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e) All the proceedings of the Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.

(f) The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.

(3) The Management and the employee or the Head, as the case may be shall be responsible to see that their nominees and the witnesses, if any, are present during the inquiry. However, if the Inquiry Committee is convinced about the absence of either of the parties to the disputes or any of the members of the Inquiry Committee on any valid ground, the Inquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.

(4) 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 acknowledgement 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.

(5) The employee or the Head as the case may be 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 etc., either personally or by registered post acknowledgement due.

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgement due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgement due. Thereafter, the decision of the Inquiry Committee

shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgement due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be."

26. On combined reading of Rules 36 and 37 of the Rules of 1981 it is evident that, if an employee is allegedly found to be guilty on any of the grounds specified in sub-rule (5) of Rule 28 of the Rules of 1981 and the management decides to hold an enquiry, it shall do so through a properly constituted enquiry committee who shall conduct an enquiry only in such cases where major penalties are to be inflicted by observing the following compliances:

i) Service of Statement of Allegations :

The Chief Executive Officer in case of an employee and the President in case of the Head shall communicate to the employee or the Head concern by registered post acknowledgment due the allegation and demand from him written explanation within seven days from the date of receipt of date of the statement of allegation.

ii) Explanation by an employee to the Statement of Allegation; The employee may submit his explanation to the statement of allegation within seven days from the date of receipt of date of the statement of allegation.

iii) Decision to conduct the enquiry;

The Chief Executive Officer or the President, as the case may be, finds that the explanation 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 enquiry be conducted against the employee.

iv) Constitution of Enquiry Committee;

If the management decides to conduct the enquiry, the enquiry shall be conducted by an enquiry committee constituted in the manner provided under sub-rule 2(a) and (b) of Rule 36 of the Rules 1981.

v) Charge-sheet;

The management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegation and explanation of the employee or the Head as the case may be, to the convener of the enquiry committee and also forwarded the copies thereof to the employee or the Head concern by registered post acknowledgment, within seven days from the date on which the enquiry committee is deemed to have been constituted.

vi) Written Explanation to the Charge-sheet;

If the employee or the Head, as the case may be, desire to tender any written

explanation to the charge-sheet, he shall submit the same to the convener in person or send it to him by the registered post acknowledgment due, within ten days of the receipt of the copies of charge-sheet and statement of allegation.

vii) Supply of Copies of Documents;

If the management and the employee of the Head, as the case may be, desire to examine any witness they shall communicate in writing to the convener the name of the witnesses whom they proposed to so examine. Furthermore, if the management desire to tender any documents by way of evidence it shall supply true copies of all such documents to the employee or the Head as the case may be. If the document relied upon by the management is a registered or record of the school, it shall permit the employee or the

Head as the case may be, to take out relevant extracts from such registered a record.

The employee or the Head as the case may be, shall supply to the management true copies of all the documents to be produced by him in evidence.

viii) Examination of witnesses;

The management shall have the right to lead evidence and the right to cross examine the witnesses examine on behalf of the employee.

The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross examine the witnesses examined on behalf of the management.

ix) Endorsement by both the parties;

All the proceedings of the enquiry committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token of authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the convener.

x) Forwarding the summary of the Proceedings and copies of Statements of Witnesses;

The convener 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 and allow him a time of seven days to offer his further explanation.

xi) Further explanation by the Employee;

The employee or the Head, as the case may be, shall submit his further explanation to the convener of the enquiry committee within a period of seven days from the date of receipt of the summary proceedings etc., either personally or by registered post acknowledgment due.

xii) Enquiry Report along with findings and decision as regards specific action to be taken;

On receipt of such further explanation or if no explanation is offered the enquiry committee shall complete the enquiry and communicate its findings on the charges against the employee and its decision to the management for specific action to be taken against the employee or the Head as the case may be, within ten days after the date fixed for receipt of further explanation.

xiii) Supply of copy of enquiry report to the employee or the Head as the case may be;

The findings on the charges and the decision on the basis of findings, for specific action to be taken against the employee or the Head as the case shall also be forwarded to the employee or the Head as the case may be, by registered post acknowledgment due.

xiv) Necessary order;

The decision of the enquiry committee shall be implemented by the management which shall issue necessary orders within seven days from the receipt of decision of the enquiry committee, by registered post acknowledgment due.

27. Having considered the necessary compliances needed to be complied with in view of Rules 36 and 37 of the Rules 1981, let us revert back to the facts of the present case to examine whether the management in this case complied the above referred requirements of Rule 36 and Rule 37 of the Rules of 1981.

28. In the case at hand, the record shows that on 15/03/2018 the School Coordination Committee decided to hold an enquiry against the petitioner in pursuance to the complaints received by the management from the teachers namely Shri Gunwant Narayan Shivarkar and Ku.Rukhmini Jadhao and accordingly, to make letter correspondence and to receive information, appointed one Shri Pramod N. Deshmukh as Chief Executive Officer.

29. Thereupon, the Chief Executive Officer issued show cause notices dated 17/03/2018 and 21/03/2018 to the petitioner, levelling three charges against the petitioner and thereby calling upon the petitioner to submit an explanation within seven days.

30. At this juncture, it would be imperative and appropriate to refer to the last paragraph of the show cause notices which read thus:

31. The above referred paragraph of the show cause notices show that, the management by presuming that there was a violation of Rule 28 of the Rules of 1981, sought an explanation from the petitioner why the action under Rule 29 of the Rules 1981 should not be taken against the petitioner. It further says that, if the petitioner fails to submit the explanation within stipulated period of seven days it will be presumed that the petitioner does not want to say anything and in that event, a recommendation would be made to proceed as per Rules 33, 35, 36

and 37 of the Rules of 1981.

32. It is thus, evident that, after submission of the explanation by the petitioner to the Chief Executive Officer, he was supposed to take decision whether to recommend to take action under Rules 33, 35, 36 and 37 of the Rules of 1981 or not. Thus, the said show cause notices cannot be treated as either statement of allegation as contemplated under Rule 36(1) or a charge-sheet under Rule 37(1) of the Rules of 1981.

33. It is also thus, evident that, if no statement of allegation or charge-sheet was issued, there was no initiation of enquiry at all against the petitioner. In the circumstances, it can be said that, the enquiry proceeding in the case at hand was directly started from the stage of constitution of Enquiry Committee by communicating the names of members of the Committee.

34. It is pertinent to note that, from the language of Rule 36(1) of the Rules 1981, it is evident that the enquiry committee can be constituted in case the management wants to hold an enquiry in such cases, where major penalty is to be inflicted. In the present matter, nothing has been brought on record to show such compliance.

35. Moreover, the Tribunal has recorded the following discrepancies relating to conduct of the enquiry:

- a) After submission of reply to the show cause notice on 28.02.2018 no decision was taken by the management within fifteen days to conduct enquiry.
- b) Without disclosing the names of other members of the committee, the petitioner was called upon to nominate her representative on the enquiry committee.
- c) The meetings of the enquiry committee was not held in the school premises i.e. in the respondent No.2- school where the petitioner was serving.
- d) The list of witnesses was not communicated to the petitioner.
- e) Petitioner was not granted an opportunity to cross examine the management witnesses.
- f) The record of the proceedings and the statement of witnesses were not endorsed by both the parties in token of authenticity thereof.
- g) Summary of proceeding was not supplied to the petitioner but only statements of witnesses were given to the petitioner, calling her explanation on the same.

36. The above referred discrepancies compelled the learned Tribunal to observe that the procedure as prescribed under Rules 36 and

37 of the Rules of 1981, was not followed. As such, the enquiry was held to be vitiated by the Tribunal.

37. It is a settled law that in case of no enquiry or defective enquiry, proper relief is to set aside the dismissal with direction to the Management to hold enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purpose of holding fresh enquiry and no more. So far as the back wages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry. (As observed and held by the Hon'ble Supreme Court of India in the cases of Union of India..vs..Y.S. Sadhu (2008)12 SCC 30, LIC .vs.. A.Masilamani (2013) 6 SCC 530, by the Full Bench of this Court in Saindranath ..vs.. Pratibha S. Sanstha 2007 (3) Mh.L.J. 753 and Division Bench of this Court in Kashiram ..vs.. B.R.B. Damle .. Society 1997 (3) Mh.L.J. 235 and B.S.A.E.Society ..vs..School Tribunal 2014(2) Mh.L.J. 879)

38. In light of above referred well settled principles of law, I have no hesitation to hold that, the Tribunal has rightly granted liberty to the management to conduct fresh enquiry by following due procedure. Accordingly, the submission of Shri Saboo, learned counsel for the petitioner that, the Tribunal committed error in granting liberty to initiate de novo enquiry, is rejected.

39. Now, the question remains about the subsistence allowance, if the petitioner in Writ Petition No.5637 of 2022 is put under suspension during pendency of the enquiry. The Hon'ble Supreme Court of India and this Court in similar matters on reinstating the employee and treating him under deemed suspension, directed the Management to pay the subsistence allowance till the final outcome of the enquiry. (As observed and held by the Hon'ble Supreme Court of India in the case of Vidya Vikas Mandal ..vs.. Education Officer (2007)11 SCC 352 and by this Court in the cases of Kai. Venkatrao Deshmukh Shilwanikar, Shaikshanik va Samaji Sanstha, Shilwani and another ..vs.. Sharad Shridharrao Deshmukh and others 2016 SCC OnLine Bom 211, Tazoddin ..vs.. Shivshakti ... Mandal 2019(2) Mh.L.J. 242 and Anita Rohidas Ukade ..vs.. Secretary, Ambika Bahuuddeshiya Mahila Mandal and Oth. 2022 SCC OnLine Bom 9030).

40. Since in the case at hand it is the case of the Management that the petitioner in Writ Petition No.5637 of 2022 was never under suspension during the pendency of the enquiry, the discretion be left with the Management to take decision as regards the same and therefore, Clause-6 of the order was sought to be quashed and set aside by the Management. In the circumstances, I am of the opinion that the Management shall be given such discretion to take decision whether to put the petitioner under suspension during pendency of the enquiry, if enquiry is held.

41. The judgments relied on by the learned counsel for the petitioner in W.P. No.5637 of 2022 in the case of Madhav Rajendra Narhare (supra) and National Integration and Education Welfare Society (supra) are distinguishable and therefore, of no help to the petitioner in W.P. No.5637/2022.

42. Accordingly, I pass the following order:

i) Writ Petition No. 5637 of 2022 stands dismissed.

ii) Writ Petition No.8400 of 2022 is allowed.

iii) The Clause-6 of the operative part of the impugned order dated 10/08/2022 passed by Presiding Officer, School Tribunal in Appeal No.39 of 2018 is set aside and remaining clauses are confirmed.

iv) As the enquiry is permitted to conduct de novo and since the respondent No.2 was not under suspension the management is at liberty to take decision as regards suspension.

v) The Management is directed to pay subsistence allowance if the respondent No.2 is put under suspension pending enquiry, or if decided not to put under suspension, pay salary regularly.

Both the Writ Petitions are disposed of accordingly. No order as to costs.