

(1997) 06 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 3505 with 3508 of 1993

Thapar Education Society and others

APPELLANT

Vs

Shyam Maroti Bhasarkar and another

RESPONDENT

Date of Decision : 10-06-1997

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 2(26)

Citation : (1998) 2 ALLMR 399 : (1998) 2 LLJ 461 : (1998) 3 MhLj 709 : (1997) 3 MhLj 709

Hon'ble Judges : V.S. Sirpurkar, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : Sunil Manohar, for the Appellant; A.M. Badar, A.G.P., V.N. Bagale and K.R. Lambar, for the Respondent

Judgement

V.S. Sirpurkar, J.—These two petitions were disposed of on June 10, 1997 and the orders impugned therein passed by the School Tribunal were set aside and the appeals filed by the respondent-teachers were directed to be dismissed. The order was declared in the open Court. Following are the reasons in support of the same.

Petitioner No. 1 in both the petitions is an Education Society registered under the Societies Registration Act and runs a school which is represented herein by the Head Master and is impleaded as Petitioner No. 2. Respondent No. 1 in Writ Petition No. 3505 of 1993 is one Shyam Maroti Bhasarkar, a teacher working in petitioner No. 2/School at Ballarpur, District Chandrapur, while Respondent No. 1 in Writ Petition No. 3508 of 1993 is one Shri P. K. Pandhare, also a teacher working in the same school. Since the controversy is common to both these teachers, both the petitions were heard simultaneously and were disposed of also.

2. Separate charge-sheets were filed against these two respondent/teachers by the management of the petitioner/School. As many as ten charges were levelled against both these teachers/respondents. Charges are practically common. They

pertain to an incident which took place on October 11, 1988 on which day, the said two teachers are alleged to have taken along with them a girl called Chanda from her residential house, at night, not with honourable intention, without the permission of her parents. It is further alleged that the two respondents/teachers tried to and actually indulged in the illegal physical intimacy with the girl and thereafter since some unsocial elements decamped along with the girl, the incident was reported by these very teachers, firstly to the Security Guards of the Ballarpur Industries, in whose area the school is situated. It is the further allegation that this incident was reported to the Ballarpur Police Station in the midnight by the Security Guards as also the said teachers, and the statements of these two teachers were recorded. It is also a further allegation that thereafter the father of the girl also came and reported about the missing of the girl and her having been taken away by these two teachers. It is an admitted position that on the basis of this incident and the reports made to the police station, the two teachers were arrested and the investigation proceeded against them, which facts, when became public, caused consternation in the student community and affected the working of the school also, inasmuch as the students did not allow the school to be run.

3. The charges levelled against the respondents/teachers pertain to this incident alone and can be summarised as under :

1. That, the two teachers induced a girl from her house in the night hours to come out with them, with the carnal intimacy.
2. That, they informed the Security staff of Ballarpur Industries at about 11.45 p.m. that few unknown persons were kidnapping a girl who was accompanying them at their instance for the sexual intimacy.
3. That, they involved each other by suggesting that the girl was taken by the other teacher, by alluring her by showing her five-rupees note.
4. That, they had induced the girl who was of unsound mind, as per the First Information Report filed by the father of the girl.
5. That, they had confessed the guilt and admitted the same in the statement of Facts given to the police.
6. That, the entire incident was widely reported in all the local and other newspapers tarnishing the image of the school.
7. That, the school, which had about 3000 students, stopped the functioning of the same and demanded the immediate termination of these two teachers, and the incident in question caused consternation in the parents and residents of the colony, who started demanding an action against these two teachers.
8. That, even the teaching staff expressed openly against the shameful incident.
9. That, the acts done by both of them, amounted to violation of Code of Conduct applicable to the teachers.

10. That, delinquent Shyam Bhasarkar was involved in the threatening and was given to liquor.

In short, the whole charges revolve around the incident dated October 11, 1988. It is the common case that the police did not choose to proceed against these respondents/teachers, on the ground of paucity of plausible evidence, and they were discharged. However, an Enquiry Committee was constituted as per the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 4 (hereinafter referred to as "the Act" for the sake of brevity). The Enquiry went into the whole affair and the two respondents/teachers were found guilty, in pursuance of which, they were dismissed from the service. This dismissal was challenged by the respondents/teachers before the School Tribunal by way of two separate appeals u/s 9 of the Act. These appeals were allowed by the School Tribunal, which set aside the findings by the Enquiry Committee, firstly on the ground that the Enquiry Committee was not properly constituted and had not given fair opportunity to the respondents/teachers, that it had also acted against the Rules of natural justice and had breached the concerned Rules, inasmuch as it was not properly constituted and it did not supply the documents etc. to the delinquent teachers and that it had also not given a fair opportunity to them. It was also further held that misbehaviour was not proved, inasmuch as the teachers were already discharged by Court. The School Tribunal has also commented upon the fact that the time-schedule as is required to be observed under the Rules was not maintained. The two appeals have been disposed of by the common orders. However, two separate petitions have been filed, as has already been stated, by the petitioners.

4. Shri Sunil Manohar, learned Counsel appearing on behalf of the petitioners, has strenuously contended that the Tribunal has totally misconceived its jurisdiction and has erroneously chosen to interfere with the findings of fact of the Enquiry Committee, in holding that the incident did not take place as was alleged in the charge-sheet. His contention is that merely because the said teachers were discharged, it did not mean that no incident ever took place, as has been held by the Tribunal. The learned Counsel contends that the reasoning for this finding of the Tribunal is wholly defective and is not warranted at all. Shri Manohar then contends that the findings of the Tribunal, that the enquiry was not in keeping with the principles of natural justice and was in breach of the various Rules, is also wholly uncalled for and the Tribunal had misread the provisions of Rules 33, 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (hereinafter referred to as "the Rules", for the sake of brevity).

5. Shri V. N. Bagale, the learned Counsel appearing on behalf of respondent Shyam Bhasarkar in Writ Petition No. 3505 of 1993, as also Shri K. R. Lambat, learned Counsel appearing for respondent P. K. Pandharein Writ Petition No. 3508 of 1993, have supported the findings and have strenuously contended that there was no incident as alleged by the management and the whole incident was blown

out of proportion. They have also reiterated that the whole enquiry was nothing but a conspiracy against the concerned teachers in order to deprive them of their rightful promotions and the institution of the enquiry itself was a mala fide exercise. They have further reiterated that the enquiry was not in keeping with the principles of natural justice and was in breach of the various provisions of law, inasmuch as the Enquiry Committee was not properly constituted; the committee did not adhere to the time-schedule as required by the Rules; it failed to supply necessary documents like copy of the report, etc., to the delinquents; that it was influenced by the management and it actually took the help of the Law Graduate, while such legal aid was denied to the delinquents and as such the enquiry was nothing but a farce. Both the learned Counsel have also reiterated that the incident had not taken place nor was it proved that the girl was taken out by the two delinquents from her house. They contended that even if the girl accompanied them, it could be of no consequence so as to cause any slur against the two delinquents.

6. On the backdrop of these rival contentions, the correctness of the order passed by the Tribunal is to be tested. It will be worthwhile first to see whether the incident has taken place and in what manner and whether the present delinquents had any concern with the same. The learned Counsel for the petitioner/Management has taken us through the enquiry report as also through the various statements relied upon by the management during the enquiry. These statements include the report made by one Dattu Balaji Ghatole, alleged to be the father of Chanda, as also the statement given by respondent Bhasarkar to the Principal, Thapar School on July 15, 1989; the statement given by respondent Bhasarkar to the police during investigation, as also the statements given by the other delinquent/respondent Padmakar Pandhare and the statement-cum-report given by the Security Staff to the authorities of the Ballarpur Industries Ltd.

7. According to the reports of the Security Guards, at about 12.15 at night, while Mohd. Shabbir and Gopal Krishna were on the usual round in the premises, Shri Shyam Bhasarkar came there on a cycle and reported that a girl was kidnapped by about 3 persons and was taken away by them in an auto-rickshaw, that he (Bhasarkar) tried to stop those persons but could not do so. On that Shri Bhasarkar kept the bicycle there and sat in the jeep and all the three persons reached near D. S. Gate from where the girl was allegedly kidnapped, where they met the other delinquent, viz., P. K. Pandhare. They also found an auto-rickshaw parked, which was deserted. They tried to search the girl, but to no effect. That, Shyam Bhasarkar was shouting taking the name of the girl. When the Security Staff asked him as to how he knew the girl, Shri Bhasarkar admitted that he and Pandhare had enticed the girl and were bringing her for enjoying her, from New Colony by Rani Mandir Road, where on the Main Road near the Gate an auto-rickshaw stopped and Gundas took her away. Thereafter, all these persons went to Pandhare's house, took him and went to the Police Station for report. This report was made to Shri Joseph who was the Security Inspector of Ballarpur

Industries which mentions the names of both the delinquents and the fact that the girl was accompanying them. After the matter was reported to the police, it seems that the police came to know of the name of the girl and went to her house and found that the girl was really missing. It is there that the father reported the matter to the police and alleged against these persons/respondents that they had allured his daughter by showing her a five rupees note and that she was mentally unbalanced.

8. Admittedly, both the delinquents were not arrested on the same day and the police let them go back as their arrest would have affected the S.S.C. Board Examinations which were then going on. They were arrested later on, which caused a commotion in the school and a big Morcha was taken out constituting about 3000 students and the guardians. The demonstrators is demanded immediate action against these delinquent teachers.

9. The stand taken by delinquent/respondent Bhasarkar, at the time of enquiry, as is revealed from the enquiry report, appears to be that it was respondent Pandhare who had come to his residence and left a message that he should contact him (Pandhare), on which Bhasarkar reached the house of Pandhare at 8.30 p.m. From there, both of them went for chewing Pan. They reached up to the Bus Stand when he (Bhasarkar) remembered that he wanted to see his sister-in-law by name Manda who stayed near Masjid near New Colony. Therefore, they went there at 9 p.m. and found that she was not there in the house. However, her brother and sister were in the house. They started returning, when they met Manda's sister whose name was Chanda and she told them that she would accompany them as she wanted to see RAM LEELA. They did not allow her to come with them but she insisted that she would return with her father and therefore, she accompanied them. He also claimed that they were accosted by the watchman who asked him about the girl and he replied that she was his sister-in-law and was going with him for a walk. Bhasarkar further reiterated that the girl started behaving improperly and, therefore, they wanted to extricate themselves from this girl, but the girl did not go away even when she was told and she followed them till Nalla, and on their way back, they saw an auto rickshaw which stopped. The two teachers told the persons in the auto rickshaw that they were mistaken, but the auto rickshaw followed them and thereafter the girl was put forcibly in the auto rickshaw and thereafter the auto rickshaw left towards Chandrapur. They accordingly made the report to the Security Guards and further reported the matter to the police.

Similar such stand has been taken by respondent Pandhare and according to him, it was the girl who herself accompanied them and they were not responsible for taking her away.

In support of their version, the management examined the Security Guards who were on Patrolling duty who supported their version fully. They also reiterated that Bhasarkar had told them that he and Pandhare had taken out the girl for immoral purposes. The statements of the Security Guards given before their

superiors were also proved. The statements given by the delinquent teachers as also the report made against them by the father of the girl have also been brought on record, so also the panchanama executed by the police at the residence of the girl. From all this voluminous evidence, the Enquiry Committee came to the conclusion that the incident was fully proved. However, the Tribunal has taken a very strange course and has proceeded to hold that the findings of the Enquiry Committee were not supported. This question has been discussed by the Tribunal in paragraph 18 of its judgment and the Tribunal found fault with the findings of the Enquiry Committee, as the girl, her father an auto rickshaw-wala were not examined to substantiate the story of the management. The Tribunal has further gone to hold that the Judicial Magistrate, First Class, Rajura had discharged the accused u/s 169 to the Criminal Procedure Code, as the police had not chosen to prosecute them. The Tribunal further observed that merely because the statements were made by the appellants (delinquent teachers) to the Security Guards or Police, it would not be said that they were guilty. This is all that the Tribunal has said while holding that it was unsafe to rely on the version of the Security Guards and Shri Deshpande, the member of the Managing Committee.

10. Shri Manohar very strenuously points out that the Tribunal has never given a finding that no incident at all took place. He points out that the Enquiry Committee had come to the conclusion that these two teachers had gone to the house of the girl and in the absence of her parents, had enticed her and had taken her from her house in the unguarded hours. Not only this, there is a clear admission made in the statement that the girl accompanied them and their intentions in taking away the girl were not exactly honourable. Shri Manohar has also questioned the propriety of mentioning about the discharge of the accused (delinquent teachers) by the Judicial Magistrate, First Class, Rajura, and contended that the criminal case has nothing to do with the behaviour, of these two teachers, which could be straightaway dubbed as an immoral behaviour unbecoming of their position in society as teachers. He also pointed out that because of this there was a great hue and cry and the image of the school itself tarnished. According to the learned Counsel, therefore, there was no question of exonerating the delinquents.

11. Shri Bagale, on the other hand, very strenuously urged that there was nothing wrong if the girl accompanied the two teachers, as the girl was major. It is really a matter of great concern that two teachers should go to the house of the girl at night and should take away the girl without the consent of her parents and then accompanying her under the suspicious circumstances. There has been no explanation whatsoever as to why these persons went to the girl. The versions are conflicting. At one point of time, respondent Bhasarkar insists that he was related to the girl, while before this Court the stand was taken that she was not so related. There is conflicting stand in the statements by both the teachers. According to respondent Pandhare, it was respondent Bhasarkar who was making sexual overture, while according to respondent Bhasarkar, it was

respondent Pandhare who was committing sexual intercourse with the girl. Thus, both the teachers were trying to make each other a prey.

12. It cannot be said even for a moment that the incident did not take place and this is all a concoction. The Tribunal had also chosen to give an extremely brittle finding as regards the taking place of the incident. It has chosen to remain quiet by just mentioning that it would be unsafe to rely on the versions of the Security Guards. All this was wholly beyond the scope of the Tribunal. The Tribunal was not to examine and appreciate the evidence, once it was found that there was material on record of the Enquiry Committee to hold that the incident in question took place. The Tribunal assumes for itself a role of the superior Court sitting in an appeal on the criminal side. This could not have been the proper approach. It should have been realised that the Tribunal has only to see as to whether there was material available for the Enquiry Committee in support of the charges and, indeed, the material available before the Enquiry Committee was voluminous. The Tribunal nowhere says that there was no material available. There were statements of the Security Guards; there were also the statements of the delinquents themselves made before the school authorities as also before the Security Officer of the Ballarpur Industries. There were also the police statements recorded. All these were brought before the Enquiry Committee. There is nothing wrong if these statements were used and relied upon by the Enquiry Committee. In a case reported in *State Bank of Bikaner and Jaipur Vs. Srinath Gupta and another*, the Apex Court had held that the statements made before the police can also be accepted by the Disciplinary Committee. The Apex Court had held therein that the statements u/s 161 may not be admissible in the criminal trials but the statements can be produced in departmental enquiries. Therefore there was nothing wrong if the Enquiry Committee relied upon the statements of the Security Guards made before the police and also the statements made by the delinquents not only before the police but also before the other authorities.

13. The Tribunal has commanded further that the Judicial Magistrate, First Class, Rajura, had discharged the accused u/s 169 of the Code of Criminal Procedure. This discharge was wholly irrelevant for the purposes of the present enquiry. Without going to the correctness or otherwise of the discharge order, it must be observed that merely because the accused persons were discharged, that would not ipso facto mean that the whole incident was a concocted one and imaginary. There is no finding and indeed, there can be none. We have found that the incident has taken place where the delinquents have taken the girl with them, without the consent of the parents in whose legal custody she was. The Tribunal was not concerned with the aspects whether the accused had committed any offence. There may be or may not be the element of the criminality on the part of accused (delinquent teachers). However, we are concerned with the fact whether there was a misconduct on their part, not under the Criminal Jurisprudence but under the Service Jurisprudence. If the two teachers accompany a girl with an idea to have immoral sexual relationship with her at the

dead hours of night and in the process if the girl is kidnapped by some unsocial elements, there could be no doubt about the misconduct on the part of the delinquents accused. The Tribunal has miserably failed to appreciate all these. That apart, the Tribunal could not have gone into all these aspects, in view of the clear law laid down by the Apex Court in the judgment reported in High Court of Judicature at Bombay v. Shri Udaysingh Ganpatrao Nimbalkar 1997 (76) FLR 532, where the Supreme Court has observed in paragraph 9 as under :-

"The only question is whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved It is settled law that the Tribunal has only the power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but review of the manner in which the decision is made. It is meant to ensure that the conclusion, which the authority reaches, is necessarily correct in the view of the Court or Tribunal. When the conclusions reached by the authority is based on evidence, the Tribunal is devoid of the power to reappreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence."

The same view is reiterated by the Apex Court in another decision reported in High Court of Judicature at Bombay v. Shrishkumar Rangrao Patil 1997 (76) FLR 659. In view of this clear pronouncement, the Tribunal was clearly in error in reappreciating the evidence and disbelieving the evidence of the Security Guards, which was produced at the time of enquiry and was relied upon by the Enquiry Committee.

14. In the same manner, the observations made by the learned Member of the Tribunal regarding the non-examination of the unfortunate girl and her father are wholly uncalled for. The learned Member has obviously chosen to discard the evidence of the Guards and the witness produced by the management because of the non-examination of the girl, her father and the auto ricksha-wala. This course was clearly impermissible for the Tribunal. Again, the learned Member should have realised the obvious limitation for the examination of these witnesses. It should have also been realised that there is nothing like an absolute burden of proof on the management. Having admitted that the delinquents were moving along with the unfortunate girl at the dead hours of night, some reasonable explanation should have come also from the delinquent teachers,

which is not to be found at all. What is found is the contradictory and the brittle stand taken by the delinquent teachers from time to time.

15. Shri Manohar also invited our attention to the observations by the Tribunal in paragraph 12 of its judgment where it has suggested as follows :-

"I am not ready to accept the arguments advanced on behalf of the appellants that the management resorted to such tactics in involving the appellants falsely.

It is further contended on behalf of the respondents that the teachers and the students of the school agitated and demanded the termination of these appellants and thus it is submitted that it is futile to say that the appellants were falsely implicated. Having gone through the documents on record and the rival contentions, I find no force in the plea of the appellants that they have been falsely implicated just to debar them from promotions."

Indeed, on the backdrop of these observations in Paragraph 12, it is strange that the Tribunal should have recorded a finding that the incident of the misconduct therein was not proved by the management.

16. The Tribunal has then held that Dr. Shenoy, who was the Secretary and Chief Executive Officer, could not have nominated Shri Y. B. Sadaphal, who was the State Awarded and a retired Head Master, probably because he was a Head Master and not a teacher as contemplated in Rule 36(2)(a) (iii). Of course, the learned Member has not chosen to give a specific finding on the contention raised by the delinquents in his behalf. Probably the contention was that the rule contemplates only a teacher and not a Head Master who was a State Awarded. Apart from the fact that the Tribunal has not chosen to give any finding in this behalf, the contention of the delinquents was clearly incorrect, in view of the fact that a Head Master is clearly covered in the definition of "teacher" as contemplated by Section 2(26) of the Act, which suggests that a teacher would mean a member of a teaching staff and includes the head of a school. The Tribunal has further chosen to rely on a Government Resolution dated February 6, 1986, without discussing as to what the resolution pertained to, in view of what is stated above, it cannot be said that the appointment of Shri Sadaphal on the Enquiry Committee was, in any manner erroneous.

17. 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 convenor 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 wholly erroneous observation.

It was further pointed out and Shri Bagale very strenuously suggested that one Sudhir Deshpande, who was a Law Graduate, was assisting the management in the Departmental Enquiry and, therefore, the delinquent had sought for a permission to engage an Advocate. However, that application dated April 12, 1989 was not even entertained and even no orders were passed on that application. According to the learned Counsel for the respondent, Shri Bagale as well as Shri Lambat, this amounted to the denial of natural justice. It is further reiterated that the said Shri Sudhir Deshpande was a Joint Secretary and he was assisting as a Presenting Officer.

18. Firstly, it is nowhere proved that the said Shri Sudhir Deshpande was a lawyer or, for that matter, even a Law Graduate. There is no factual basis to the contentions raised by the learned Counsel. That apart, the management has produced a letter dated April 24, 1989 on the record of this Court wherein it is informed to the respondent Bhasarkar, the delinquent teacher, that in pursuance of the objection raised by him to the appearance of Shri Sudhir Deshpande, Shri Sudhir Deshpande was being withdrawn from enquiry and he would not be a Presenting Officer. It is then suggested that Shri Sahasrabuddhe, one other member of the Thapar Education Society, would present the case. That appears to be the case from the record of the Enquiry Committee. Therefore, there was no question of entertaining any such objection. The contention of the learned Counsel, that Shri Sudhir Deshpande's presence in the Enquiry Committee amounted to denial of natural justice, has to be rejected.

19. The Tribunal has held that there has been a breach of Rule 37(f) of the Rules, inasmuch as the Enquiry was extended beyond the permissible period of 120 days. Indeed, in this case, it appears that the enquiry was extended beyond the permissible period and lasted almost over an year. The Tribunal has adversely commented on this delay. Rule 37(a) provides that the convenor of the committee shall forward to the employee a summary of proceedings and copies of statements of witnesses by Registered Post, Acknowledgment. Due within four days of the completion and allow him a time of seven days to offer his further explanation. Rule 37(6) provides that once the explanation is received, or if no explanation is received, the Enquiry Committee shall complete the enquiry and communicate its findings on the charges against the employee and its decision thereon, along with the specific action to be taken against the employee, and this

has to be done, according to the said rule, within ten days after the date fixed for receipt of further explanation. Copies of these documents have to be sent by Registered Post to the employee. According to the delinquent teachers, there was a complete breach of these rules and this has resulted in trampling of the rights of the delinquent employees. Shri Manohar severely criticised these findings as extremely vague and dubious. These findings have been given at the end of paragraph Nos. 16 and 17. Even a cursory glimpse at the finding suggests that these findings are not only sketchy but vague also. As regards the finding on the delay in completion of the enquiry and it being extended beyond the period of 120 days, it will have to be said that the language of Rule 37(f) of the Rules itself suggests that the limit of 120 days is not a mandatory limit. The Rule opens with the sentence : "The enquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of the Enquiry Committee, or from the date of suspension of the employee, whichever is earlier, unless the enquiry committee has in the special circumstances of the case under enquiry, extended the period of completion of the enquiry with the prior approval of the Deputy Director". In the first place, the use of the word "ordinarily" by itself, suggests that the period of 120 days is not a mandatory period. The Rule further goes on to say that in case the enquiry is not completed, the employee shall cease to be under suspension and shall be deemed to have joined the duties without prejudice to the continuance of the enquiry. The concluding words of the Rule themselves suggest that the continuance of the enquiry is not prejudiced by the enquiry beyond 120 days and the only result that is obtained is that a teacher, if he is under suspension, his suspension automatically gets revoked entitling him to get his full salary. In the present case, such an eventuality was completely absent, for the reason that the delinquents were admittedly not on suspension. Their suspension was disapproved by the authorities, with the result that even during the enquiry and till they were terminated, they continued to be on duty. Be that as it may, the Tribunal has not bothered to show, nor have the delinquent teachers contended here that the delay on account of the enquiry has caused any prejudice to them. In our opinion, once there is no prejudice shown by the delinquent employees, the provisions of Rule 37(f) really become innocuous. It has come on record, as reiterated by the learned Counsel for the petitioner/ Management, that the whole delay was on account of the continued absence of representative of the delinquent employees. However, that question need not detain us, in view of our interpretation of Rule 37(f) of the Rules.

20. This brings us to the finding recorded by the Tribunal regarding the breach of Rule 37(6) of the Rules. Rule 37(6) essentially has to be read on the backdrop of Rule 37(4). Under Rule 37(4), the convenor of the Enquiry Committee has to forward the summary of the proceedings, copies of statements of witnesses, etc., by Registered Post, within four days of the completion of the steps mentioned in sub-rule (4) of Section 37 to the employee and give him a time of seven days to offer his further explanation. Rule 37(6) provides that after explanation is received, or if no explanation is given by the delinquent employee, then the

enquiry has to be completed by the Enquiry Committee, and the Enquiry Committee has to communicate the findings on charges and the decision on the basis of the findings, to the management, within ten days after the date fixed for receipt of further explanation. At the same time, a copy of this has to be sent to the delinquent and the Education Officer by Registered Post. It is then that the decision of the Enquiry Committee has to be implemented by the management, and the orders therefore are to be issued within seven days from the receipt of the decision of the Enquiry Committee. It is held by the Tribunal that the further explanation was not asked for within the statutory period nor was the period of ten days and seven days mentioned in Rule 37 of the Rules ever observed, Shri Manohar contended that this finding is wholly erroneous, both factually as well as in law. He pointed out that all the documents, including the documents put before the Enquiry Committee by both the sides as also the statements of the witnesses, were made over to the delinquents and the delinquents had acknowledged the receipt of all these documents. Not only this but the delinquents had thereafter offered their explanations also. The documents on record do suggest that aspect.

21. The whole enquiry record was made available to us. The said record was perused by us which suggests that even during the enquiry, copies of all the documents concerned were supplied to the delinquent teachers. The order-sheets definitely point out this position. Indeed, there does not seem to be any objection on record on this aspect, either before the Enquiry Committee or before the Tribunal or even before this Court. The copy of the additional explanation by respondent Bhasarkar is also on record, which is dated May 15, 1990. In this additional explanation, there is the reference that one explanation was given by the said teacher Bhasarkar on April 10, 1990. Thus, both the explanations of the teachers are very much on record. It, therefore, cannot be said that concerned teachers were not supplied with the documents referred to in Rule 37(4) of the Rules. Again, there is no complaint made in that behalf before the Tribunal, nor has it been reiterated before us, in any manner, by the learned Counsel Shri Bagale for respondent Bhasarkar and by Shri Lambat for respondent Pandhare. It seems also from the record that the report had been sent to the representative of these teachers in the enquiry. The report also seems to have been sent along with the findings, to the Education Officer. Though, as contemplated in Rule 37(6) of the Rules, the copy of the report has not been sent to the delinquents, all the other documents seem to have been sent to them. Shri Bagale, therefore, very strenuously supported the finding of the Tribunal that an in-justice was caused on account of the non-service of the enquiry report on the delinquents. We find that the findings even on this aspect recorded by the Tribunal is wholly unsatisfactory. It will be firstly seen that the delinquent teachers have not brought out or proved any prejudice due to the delay caused in completing the enquiry or the delay caused in supply of the document referred to in Rule 37(4) of the Rules. It is probably because the further explanation as contemplated under Rule 37(4) came to be given almost

immediately. It will be seen that the enquiry was completed on May 10, 1990, while the said further explanation was given on May 15, 1990. In the first place, therefore, it is difficult to hold that the enquiry papers as contemplated in Section 37(4) were not supplied in time. Even if it is presumed that they were not so supplied, the very fact that the delinquent teachers had offered their further explanations shortly, would suggest that no prejudice was caused to them on that account. Under Rule 37(5) of the Rules, the delinquents are required to submit their further explanation within seven days from the date of receipt of the summary of proceedings. As has already been pointed out, the said further explanation is very much there on record. There is also an endorsement on record that all the papers had been supplied to the delinquents on May 10, 1990, i.e., on the date when the enquiry came to an end against both the delinquents. Therefore, insofar as the period u/s 37(4) is concerned, there does not appear to be any basis for the finding of the Tribunal and it has to be held that there was no breach of Rule 37(4) as has been recorded by the Tribunal. The Tribunal has clearly ignored the language of Rule 37(4) where it is only the summary of the proceedings and the copies of the statements of the witnesses are to be supplied to the delinquents. Here is a case where each and every document of the whole enquiry seems to have been supplied to the delinquent teachers, the receipt of which they have acknowledged. Thus, the finding of the Tribunal to that effect has to be rejected.

22. As regards the contention of the delinquent-teachers regarding the non-supply of the report as required under Rule 37(6) of the Rules, it does appear that the report had not been sent to the delinquents, though it has been sent to their representative Shri Chaure. There is a clear endorsement to that effect on record, which we ourselves have perused. A glance at this provision would suggest that beyond serving the report, there is nothing that is required to be done by the committee at this stage. The delinquents are not to offer any explanation on the report. It is clearly not contemplated. From the clear-cut language of Rule 37(6), it can be seen that once the report is sent by the Enquiry Committee to the management and to the Education Officer, it is the sole prerogative of the management then to proceed on the basis of that report. There is no opportunity contemplated at this stage by the rule in favour of the delinquent teachers to offer any explanation or otherwise. The non-supply of the enquiry report would not, therefore, by itself, be fatal and would not affect the enquiry and the merits thereof. We have carefully considered the language of Rule 37(6) which is peculiar because beyond the sending of the report to the delinquent, Education Officer and the management, there appears to be no responsibility fixed on the Enquiry Committee. There is no liability of the management also to send such report to the delinquents. Therefore, we are not prepared to hold that non-sending of report, much less within the time frame fixed under Rule 37(6), has affected the enquiry in any manner, or that the principles of natural justice have been denied to the delinquents on that account. The Tribunal has not, in any manner, considered this question and has chosen to

straightaway write a finding against the management on this issue.

That, apart, there is no prejudice either brought out or proved, either before the Tribunal or before this Court. Once it is held that there was no prejudice, it would be difficult to hold that the non-supply has resulted in any injustice to the delinquents. It has been held by the Apex Court in *S.K. Singh Vs. Central Bank of India and Others*, , that the non-supply would be innocuous if employee could not show the prejudice suffered on account of non-supply of the report. We have already shown that there is no scope for the delinquent teachers to make any comments or representation to the management on the basis of the report. It cannot, therefore, be said that there was any prejudice caused to the delinquents in this case because of the non-supply of the enquiry report. This finding of the Tribunal, therefore, has to be rejected.

23. The learned Counsel for the respondent/teachers then haltingly suggested that as per the Circular, dated February 6, 1986, to which a reference has already been made in this judgment, an awardees teacher was not supposed to work on more than one committee at a time. An objection was raised that Shri Sadaphal, who was a State Awardees teacher had been working in the two enquiries, namely, one against respondent Bhasarkar and the other against respondent Pandhare. Now, as a matter of fact, this was common incident against both the concerned teachers. The witnesses were common and the facts were identical. It was not as if the role played by one teacher was different from the other. The enquiry also proceeded simultaneously. In fact, there was no need for two separate enquiries in respect of each teacher and both the teachers could have been dealt with in a common enquiry. Under such circumstances, though in form, these were two enquiries; in substance, it was only one enquiry. Therefore, the said communication/circular of the Government restricting the participation of an awardees teacher to only one enquiry cannot be made applicable to the present case. That apart, on that account, no prejudice has been displayed either before the Enquiry Committee or Tribunal or even before this Court. The contention of the learned Counsel, therefore must be rejected.

24. Shri Bagale then very strenuously contended that all this has been done because respondent/Bhasarkar being a Scheduled Caste was competing for the post of Head Master and, therefore, false allegations have been made against him. We have already dealt with this aspect and found that even the Tribunal has not viewed the enquiry in that manner and has returned a finding that there was no malice either in law or in facts.

25. The learned Counsel then contended that the sentence of dismissal was more harsh as compared to the so-called misconduct on the part of the delinquent teachers. He pointed out that the teachers were discharged and as such it could not be said that the incident was proved or that the delinquent respondents had engaged themselves in any kind of misconduct. We have already given a finding that the proof required in a criminal proceeding cannot be compared with the standard of proof required in the domestic enquiries. The incident has

undoubtedly taken place and it has been proved that these two teachers went to a girl's house with a foul motive, took the girl without the permission of her parents. It has also come in the statements that the girl was mentally disturbed. In their statements before the police and the management, the delinquent teachers had tried to implicate each other and had gone to the extent of admitting that they had an intention to exploit the girl sexually. It has also come on record that on account of the wide publicity, there was a hue and cry in the otherwise calm and quiet life of students and their families to the extent that there were demonstrations against these teachers. The reputation of the school was badly damaged. Teachers are the pillars of the society. They are looked as models by the innocent students; and if the teachers engage themselves in such kind of incidents which get wide publicity, the pure stream of education definitely gets polluted. When there is every effort to keep the students away from the allurements, if their teachers, whom they see as their models, get themselves involved in such nefarious activities, the law will view such activities with stern eyes. This is besides the jurisdictional aspect of this Court interfering in the punishment, in a domestic enquiry, we would be extremely slow to interfere with the quantum of punishment, unless there is an apparent injustice. We do not find any such apparent injustice in the present case.

26. Under the circumstances, we find that the common order of the Tribunal in both these cases is wholly unsustainable and would have to be set aside. We accordingly set aside the order, dismiss the appeals filed by the two respondents/delinquent teachers and uphold the action taken against them by the management. Rule in both these writ petitions is made absolute. However, under the circumstances, there shall be no order as to the costs.

27. Order accordingly.