

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5279 OF 2008

NAVNATH
SITARAM
WAGHMARE

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Veena V. Pathare)
Age about 43 years,)
Occu: At present Household,)
171/27, Raju Kamathi Chal,)
Ghodapdeo Road, Mumbai- 400033.) ...Petitioner

Versus

1. Chief Executive Officer/Secretary,)
Bombay Thiruvallvarmanram,)
Village Road, Bhandup, Mumbai- 400078.)
)
2. Principal)
(Mr. R. Yesuraj Samuel))
Bombay Thiruvallvarmanram's,)
Bright High School & Junior)
College, (secondary section),)
Village Road, Bandup, Mumbai- 400078.)
)
3. Shri Jagdishan, Conveyor,)
Veena Pathare enquiry committee,)
Bombay Thiruvallvarmanram, Village Road,)
Bhandup, Mumbai- 400078.)
)
4. Education Inspector, Greater Mumbai,)
North zone, Chembur, Mumbai.)
)
5. Education Officer,)
Bruhanmumbai Mahanagarपालिका,)
Education department, Hindu Colony,)
Dadar, Mumbai.) ...Respondents

WITH
INTERIM APPLICATION (ST) NO. 21943 OF 2023

Veena V. Pathre)
 Age : about 57 Years)
 Occ: At present Household Residing at 171/27,)
 Raju Kamathi Chawl Ghodapdeo Road, Mumbai-)
 400 033.)
 Presently residing at C/o. Vikas Pathre,)
 3D, 2006, New Hind Mill Transit Compound,)
 20th Floor, R.B. Marg, Ghodapdeo,)
 Mumbai- 400 033.) ...Applicant
IN THE MATTER BETWEEN)
 Veena V. Pathre) ... Petitioner
Versus
 Chief Executive Officer/Secretary & Ors.) ...Respondents

Mr. Kishor Patil a/w Ms. Akshada Nagrale & Mr. Anish Kikle i/b Mr. Nilesh Mandavkar for the Petitioner.

Mr. Rahul R. Tiwari for Respondent No.1.

Dr. Dhruiti Kapadia, AGP for the Respondent/State.

CORAM : M.M. SATHAYE, J.

DATE : 06th OCTOBER, 2026

JUDGMENT :

1. Invoking Article 226 and 227 of the Constitution of India, Petitioner is challenging order dated 29.01.2008 passed by Presiding Officer School Tribunal Mumbai Region, at Mumbai ('the Tribunal' for short) in Appeal No. MUM/53/2005. By the said impugned order, the Petitioner's appeal is dismissed. The said appeal was filed challenging the order of termination dated 27.09.2003, by which the Petitioner's service was terminated with immediate effect.

2. In this judgment, the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and Rules, 1981 are hereinafter referred to as ('the said Act' and 'the said Rules' for short).

BACKGROUND

3. The Petitioner filed the said appeal contending *inter alia* as follows. That Respondent No.1 is the Secretary of the Educational Institute and Respondent No.2 is the Principal of Bright High School & Junior College, which is linguistic minority institution. That school is unaided but recognised by the education department. That Petitioner was working in the said school as Clerk-cum-Translator since 03.08.1992. That there were no complaints against her regarding her work and conduct. That when she complained about sexual abuse by Respondent No.2-Principal, the Management started harassing her by issuing false memos and show cause notices. That the Management made illegal appointment of one Mr. Dominic Xavier as in-charge officer from 01.01.2003, who also misbehaved with her. That she filed police complaint on 21.02.2003. That the Management held inquiry against Petitioner without following due procedure and in absence of evidence and in gross violation of principles of natural justice. That without the charges being proved, the inquiry committee by majority recommended major penalty. That Consequently, termination order was issued, which is illegal.

4. The Respondent-Management appeared and filed written statement contending *inter alia* as follows. That the Petitioner's work and performance was not satisfactory. That many complaints regarding misbehavior, misconduct, negligence in duties and absentism were received. That several memos were issued to the Petitioner from time to time. That statement of allegation was served upon her and her explanation was found unsatisfactory. That therefore the Management resolved to hold inquiry. That chargesheet was issued. That three

members' inquiry committee was constituted as per the said Rules. That the Petitioner's nominee was included in the inquiry committee. That fair and full opportunity was given to the Petitioner to defend herself.

5. The Tribunal who heard and tried the said appeal was pleased to dismiss it under impugned order dated 29.01.2008.

6. In these circumstances, the Petitioner filed the petition which was admitted on 05.02.2009. No interim relief was granted.

7. During pendency of the petition, the Petitioner filed above interim application placing on record the Order passed by Metropolitan Magistrate 53rd Court Mulund, Mumbai in Criminal Case No. 20/S/2003 dated 06.08.2016, by which, the Petitioner is acquitted from the offence punishable under Section 499, 500 and 506 of the Indian Penal Code, 1860 ('IPC' for short). The same is being considered below.

SUBMISSIONS

8. Learned counsel for the Petitioner submitted that procedure contemplated under the said rules was not followed and there are admitted lapses in the procedure adopted by the Management. That Rule 33(1) and 35(1) of the said Rules are breached as there is no approval. That there is no Management resolution supporting suspension. That the Management resolution is back-dated. That pre-inquiry, provided under Rule 36 is not conducted in case of major penalty. That main witness Mr. Dominic Xavier has not been examined for which no sufficient explanation is given. That the Petitioner was not permitted to cross-examine the witnesses. That the convener has to forward copies to the employee to which employer has right to respond, as provided under Rule 37(4 & 5), which is not followed. That from

1992 till 2002, the Petitioner had clear and unblemish record and she is also acquitted of the criminal charges involving the same allegations. That in 2024, the Petitioner has attained the age of superannuation however, the Petitioner has not worked anywhere from 2003 till today, thereby suffering from financial losses. That the Tribunal has not considered whether rules are properly followed or not. That the Management ought to be directed to pay compensation to the Petitioner.

9. On the other hand, learned counsel for the Respondent-Management submitted that Petitioner's conduct was not good and the management has followed proper procedure as provided under the said Rules, giving full and fair opportunity to the Petitioner. That the impugned order itself records that witnesses were cross examined on behalf of the Petitioner. That no real prejudice is shown to have been suffered by the Petitioner. That the impugned order is passed on appreciation of evidence taking probable view and therefore there is no perversity in the impugned order. Therefore, the petition be dismissed.

10. Learned AGP appearing on behalf of the education authorities has supported the impugned order.

REASONS AND CONCLUSION

11. At the outset, it is necessary to note that in cases like this, what is important to be seen is whether the delinquent has suffered material and real prejudice. During the inquiry proceedings, minor irregularities in the procedure will not vitiate the entire inquiry proceedings and outcome, unless real prejudice is shown to have occurred.

12. In **Indra Bhanu Gaur Vs. Committee Management of MM**

Degree College and Ors. (2004) 1 SCC 281, the Hon'ble Supreme Court while considering a case of termination and prejudice caused to the delinquent, held that 'it is only a person who is ready and willing to avail the opportunity given, who can make a grievance about denial of any opportunity and not a person who despite repeated opportunities given and indulgence shown, exhibits defiance and total indifference to cooperation.'

In the present case, it has come on record that the Petitioner has chosen not to lead any evidence. If that be so, then Petitioner has not taken available opportunity.

13. It has come on record that the Petitioner raised objection to the nominee appointed by the Management and therefore to avoid difficulties, the Management replaced its nominee with another person and thereafter the inquiry committee proceeded

14. The Tribunal has held that the Petitioner and her nominee have attended all meetings and participated in the proceedings and the tribunal has also found that Petitioner was given fair and proper opportunity to cross-examine the witnesses. The copies of the minutes of inquiry, meetings, report and summary of inquiry proceedings are supplied to the Petitioner. The Tribunal clearly recorded finding that sufficient opportunities was given to Petitioner to defend herself and principles of natural justice are followed.

15. So far as the argument about non-examination of Mr. Dominic Xavier is concerned, the Tribunal on appreciation of evidence has found that after the assault and threat of dire consequences given by the Petitioner, said Mr Xavier left Mumbai and settled elsewhere and was

therefore not available to appear before the inquiry committee at relevant time. This explanation has been accepted by the Tribunal. It is seen from record that many other witnesses were examined, including the Principal, CEO, and other employees of the school and they all were cross-examined.

16. So far as the order of acquittal is concerned, it is important to note that acquittal is from the offence punishable under section 499, 500 and 506 of IPC, which is defamation and criminal intimidation. However, the inquiry committee has considered following charges against the Petitioner.

17. There are in all nine charges against the Petitioner. Charge No.1 is regarding negligence in discharging duty about collecting examination fee and tuition fees. Charge No.2 is regarding absentism without prior permission. Charge No. 3 is collecting amount of Rs. 7700/- from students without permission of the School authorities and embezzlement thereof. Charge No. 4 is about making false allegation of sexual abuse against the Principal. Charge No. 5 is about insubordination. Charge No. 6 is about threatening and blackmailing the superiors and members of the Management. Charge No. 7 is in respect of giving threats of dire consequences to colleagues and superiors. Charge No.8 is about willful negligence in not forwarding examination forms and Charge No. 9 is regarding physical assault upon Mr. Dominic Xavier on 21st February 2003.

18. Hence, it is clear that the nature of charges which were considered by the inquiry committee against Petitioner (which is subject matter of this petition) were many more than defamation and criminal intimidation. In that view of the matter, it cannot be said that the

acquittal from the criminal case will have any material bearing on the impugned order.

19. So far as the argument about the management resolution being back-dated is concerned, it is seen from the documents produced on record that the order of suspension is dated 21.02.2003 and extract of resolution dated 21.02.2003 is printed on 25.02.2003. Merely because the extract is printed 4 days later will not make the resolution back-dated.

20. So far as the argument that 'the Petitioner was not permitted to cross-examine is concerned, perusal of the copy of the inquiry report indicates that the Petitioner has participated in the inquiry committee meeting and has asked questions to witnesses. Therefore, there is no merit in the said argument and sufficient compliance with Rule 37 is seen. Even the Tribunal has categorically held that the Petitioner has cross-examined the witnesses. Nothing was shown to the Court from the record to come to a positive conclusion that the Petitioner was not permitted to cross-examine.

21. It appears from the impugned order that specific argument based on Rule 33(1) and 35(1), about prior permission of the concerned authority, was not advanced and it is being argued for the first time in writ petition. Even the appeal memo filed in the Tribunal does not indicate any specific ground raised based on alleged breach of Rule 33(1) and 35(1). Therefore, obviously, the Respondent-Management did not have an occasion to meet the said contention. Considering the inquiry committee's report and further considering the fact that sufficient opportunity has been given to the Petitioner to defend her case, the said irregularity will not vitiate the inquiry

proceedings or its outcome.

22. In the aforesaid facts and circumstances and for reasons indicated above, there is no perversity in the impugned order. The view taken by the Tribunal is the most probable view. Re-appreciation of evidence (for coming to contrary conclusion) is not possible. There is no reason to interfere.

23. **Writ Petition is therefore dismissed.** Rule is discharged. No order as to costs. In view of disposal of writ petition, pending interim application is also disposed of.

24. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)