

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10311 OF 2019
WITH
INTERIM APPLICATION NO.9755 OF 2024

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.10.07
13:25:29 +0530

1. Shailendra Education Society,
through it's Secretary
 2. Shailendra Education Society's
Secondary School (Marathi),
through it's Headmaster
- ... Petitioners

Vs.

1. Rajkumar Maruti Patil
 2. Deputy Director of Education
 3. Education Inspector (West Zone)
 4. The State of Maharashtra
- ... Respondents

Mr. Mihir Desai, Senior Advocate with Mr. Chetan Mali
for the Petitioners.

Ms. Madhavi Ayyaipan with Mr. Aditya Madane i/by
Talekar & Associates, for Respondent No. 1.

Smt. Mamta S. Shrivastava, AGP for Respondent Nos.2
to 4-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 5, 2026

PRONOUNCED ON : OCTOBER 7, 2026

JUDGMENT:

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners challenge the legality, validity, and correctness of the judgment and order dated 16 July

2019 passed by the Presiding Officer of the School Tribunal, Mumbai.

2. The relevant facts, as stated by the original Appellant, which led to filing of the present writ petition are as follows. On 16 June 2008, Respondent No.1 was appointed as a Shikshan Sevak in the category of persons with disability in Petitioner No.2 School, which is run by Petitioner No.1 Trust. On 16 June 2013, after successfully completing his probation period, his services were confirmed, and he was appointed as an Assistant Teacher. His appointment and services were approved by the Education Officer (Primary). On 19 January 2017, a girl student of Class VII wrote in her answer sheet that Respondent No.1 used to sexually molest her friend and classmate and that the mother of the said girl was aware of the incident. On 20 January 2017, the teacher who was checking the answer sheet noticed the allegation. On 21 January 2017, the said teacher informed the Assistant Headmistress about the incident. The teacher and the Assistant Headmistress brought the matter to the notice of the Headmaster. The Headmaster called the mother of the victim girl. On 23 January 2017, the mother of the victim submitted a complaint against Respondent No.1 to the Headmaster. The victim girl submitted a written complaint. On 25 January 2017, the mother of the victim lodged FIR No.41 of 2017 at Dahisar Police Station against Respondent No.1 under Section 354-A of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. Respondent No.1 was arrested in connection with the said offences. He remained in police custody from 26 January 2017 to

31 January 2017 and was remanded to judicial custody on 1 February 2017.

3. It is the case of Respondent No.1 that he was not paid any subsistence allowance during the period of his suspension. According to him, the decision to suspend him for the purpose of initiating a departmental enquiry was taken in the meeting held on 28 January 2017. He claims that he became entitled to subsistence allowance from that date and that non-payment of the same was in breach of Rules 33, 34 and 35. On 28 January 2017, the School Committee decided to suspend Respondent No.1 from service and to initiate a departmental enquiry against him. On 9 February 2017, Respondent No.3 granted permission for his suspension. Respondent No.1 was placed under suspension with retrospective effect from 25 January 2017. It is not in dispute that no subsistence allowance was paid to him during the period of suspension. On 11 February 2017, an order was passed suspending Respondent No.1 from the post of sixth teacher in the Marathi Secondary School run by the institution. On 20 February 2017, the statement of allegations was sent to the residential address of Respondent No.1 while he was still in judicial custody. On 28 February 2017, his mother, through an Advocate, informed the Management that Respondent No.1 was in judicial custody and that he would give his reply after his release. On 20 June 2017, this Court enlarged Respondent No.1 on bail by its judgment and order passed in Criminal Application No.1255 of 2017. One of the conditions of bail was that he would remain outside the jurisdiction of Dahisar Police Station, Mumbai and would not enter

that jurisdiction except for attending the police station as directed. On 4 August 2017, Respondent No.1 submitted his reply to the statement of allegations and denied the allegations made against him. In the said reply, he informed the Management that he could not enter the school premises because of the condition imposed by this Court while granting bail. Between 11 August 2017 and 11 September 2017, the Chief Executive Officer called upon Respondent No.1 to submit any statement, if he desired to do so, failing which the departmental enquiry would be commenced. On 30 October 2017, Respondent No.1, through his Advocate, requested the Management to pay him subsistence allowance so that he could effectively defend himself in the departmental proceedings. He sought reinstatement with full back wages. On 6 November 2017, the Management informed him that an enquiry would be conducted against him and directed him to nominate his representative under Rule 36 of the MEPS Rules. On 8 November 2017, the Management Committee nominated Shri G.S. Pandolskar as its nominee and Smt. Jui Arun Hadkar, a State Awardee Teacher, as the other member of the Enquiry Committee.

4. On 17 November 2017, Respondent No.1 requested the Management to keep the departmental enquiry in abeyance until the decision in Special Case No.113 of 2017 pending before the Special Court, Dindoshi. He again requested payment of subsistence allowance. On 27 November 2017, the Management refused to postpone the enquiry and again directed him to appoint a representative under Rule 36 of the MEPS Rules. On 30 November 2017, Respondent No.1 nominated Mr. P.T. Patil as his

representative. On 7 December 2017, the Petitioners served the charge-sheet upon Respondent No.1. On 21 December 2017, Respondent No.1 submitted his reply to the charge-sheet and requested that the CCTV footage be produced and statements of other students be recorded. It is the case of Respondent No.1 that Rule 37(b) was violated because the first meeting of the Enquiry Committee was held without giving him ten days' notice by Registered Post Acknowledgment Due. According to him, such notice was necessary to enable him to appear before the Committee and produce evidence or examine witnesses, if any. On 28 December 2017, the Enquiry Committee held its first meeting without giving notice to Respondent No.1 or his representative. It is alleged that Rule 37(2)(c), (d)(ii), (iii) and Rule 37(3) were violated. The representative of Respondent No.1 informed the Enquiry Committee that Respondent No.1 could not personally attend the enquiry because of the condition imposed by this Court while granting bail. Despite this, the Committee proceeded with the enquiry and directed the representative of Respondent No.1 to conduct the cross-examination. Respondent No.1 himself was not permitted to cross-examine the witnesses. The witnesses were examined in his absence and, according to him, he was not given a proper opportunity to cross-examine them.

5. According to Respondent No.1, once the Enquiry Committee came to know that he was unable to attend the hearing because of the bail condition, the hearing ought to have been adjourned in terms of Rule 37(3). On 10 January 2018, his representative brought several matters to the notice of the other members of the

Enquiry Committee and the Management. It was pointed out that the list of witnesses had not been supplied to Respondent No.1. It was pointed out that Respondent No.1 could not participate in the enquiry or cross-examine the witnesses because of the condition imposed by the Court while granting bail. It was submitted that, since the criminal case was pending, prior permission of the concerned Court was necessary before referring to evidence which formed part of the criminal proceedings. On 18 January 2018, the Invitee Member of the Committee informed the representative of Respondent No.1 that the list of witnesses on behalf of the Management would be supplied in the next meeting to be held on 18 January 2018. The request made by Respondent No.1 to postpone the enquiry on account of the bail condition was rejected. The reason given was that Respondent No.1 could have approached the Court and sought modification of the said condition. It was stated that the enquiry could not be kept pending because Rules 36 and 37 required the enquiry to be completed within 120 days.

6. On 16 February 2018, Respondent No.1 filed Application No.160 of 2018 in Criminal Bail Application No.1255 of 2017 seeking relaxation of condition No.(iii), which prevented him from entering the limits of Dahisar. On the same day, the Presenting Officer examined two witnesses, namely, Mugdha Shailesh Jadhav, an Assistant Teacher working in the school, and Sunanda Chaban Dalvi, the mother of the victim. The witnesses were examined in the absence of Respondent No.1 and his representative. On 8 March 2018, the two members of the Enquiry Committee stated

that Mr. P.T. Patil had been appointed as representative so that the enquiry could proceed even in the absence of Respondent No.1. It was recorded that, after the representative of the delinquent had examined the witnesses, it would not be proper to give another opportunity to the delinquent to examine them. The letter relied upon by the Presenting Officer during cross-examination was not supplied to Respondent No.1. The objection raised by his representative was nevertheless rejected. The Invitee Member of the Committee stated that all witnesses would be cross-examined by the representative of the delinquent and that Respondent No.1 himself would not be given an opportunity to cross-examine the witnesses. On 15 March 2018, two witnesses were examined before the Enquiry Committee. On 20 March 2018, the representative of Respondent No.1 requested that the documents produced during the examination of the witness be supplied at least to him. The other members of the Enquiry Committee held that there was no obligation upon the Committee to supply those documents to the representative of the delinquent. One witness was examined. On 4 April 2018, the representative of Respondent No.1 requested time to conduct the cross-examination of the witnesses after taking instructions from Respondent No.1, stating that he would not be able to properly conduct the cross-examination without such instructions. The request was rejected on the ground that the enquiry had been delayed earlier at the instance of Respondent No.1 on one or the other ground. The documents requested by Respondent No.1 were not supplied. The Management stated that the application for those documents had

been made under the Right to Information Act to the institution and that the same had no bearing upon the departmental enquiry. It was stated that steps had been taken by the institution to send those documents to Respondent No.1. One witness was examined.

7. On 8 April 2018, one witness on behalf of the delinquent was examined. On 17 April 2018, two witnesses on behalf of the delinquent were examined. It is alleged that Rules 37(4), (5) and (6) were violated. According to Respondent No.1, after completion of the enquiry proceedings, the Enquiry Committee did not send him, by Registered Post Acknowledgment Due, a summary of the proceedings and copies of the statements of the witnesses within four days. He was not given the prescribed opportunity to submit his explanation. It is alleged that the report was prepared only by two members of the Committee. The report submitted by the nominee representing Respondent No.1 was not included in the report and no copy of the same was supplied to Respondent No.1.

8. On 27 June 2018, the Enquiry Committee held a meeting without informing the representative of Respondent No.1. The report was prepared by two members of the Committee, namely, the Convener and the Awardee Teacher, without considering the report submitted by the representative of Respondent No.1. The report recorded that the allegation on the basis of which Respondent No.1 had been suspended was subjudice and that no enquiry had been conducted into that allegation. However, according to Respondent No.1, the Committee proceeded to consider the very same allegations which formed the basis of his suspension. On 29 June 2018, the representative of Respondent

No.1 submitted his report. The said report was not considered by the Enquiry Committee. On the same day, the Enquiry Committee, by a majority of 2:1, decided to terminate the services of Respondent No.1. On 30 June 2018, the Society terminated the services of Mr. Rajkumar Patil on the basis of the report of the two members of the Enquiry Committee. The Society decided to reject the report submitted by the representative of Respondent No.1. On 6 August 2018, this Court declined to modify, at that stage, condition No.(iii) of the bail order which prohibited Respondent No.1 from entering the limits of Dahisar Police Station. However, liberty was granted to him to file a fresh application after the appeal filed by him was decided by the School Tribunal.

9. On 10 October 2018, Respondent No.1 filed an appeal before the School Tribunal, Mumbai, challenging the termination of his services by the Petitioner School. On 16 July 2019, the School Tribunal passed a detailed order allowing the appeal. The Tribunal set aside the order of termination and directed payment of 50% back wages to Respondent No.1. On 31 August 2019, the Petitioners approached this Court seeking quashing and setting aside of the judgment and order passed by the School Tribunal. On 4 September 2019, this Court modified condition No.(iii) of the order dated 20 June 2017 and permitted Respondent No.1 to enter within the jurisdiction of Dahisar Police Station.

10. Mr. Desai, learned Senior Advocate appearing for the Petitioners, submitted that even though the School Tribunal found that the principles of natural justice were violated during the enquiry, the Tribunal could have, at the most, sent the matter back

to the stage from which the illegality had occurred. According to him, the Tribunal could not have directed reinstatement of Respondent No.1, particularly when the allegations against him relate to molestation of a minor girl student in the school. He submitted that, during the period required for completing the fresh enquiry, Respondent No.1 could not claim back wages. According to him, considering the serious nature of the charges, there was a possibility that the fresh enquiry may result in dismissal of Respondent No.1 from service. In support of his submissions, Mr. Desai relied upon the judgments of this Court and the Supreme Court in *Kashiram Rajaram Kathane vs. Bhartiya R.B. Damle Gram Sudhar Tatha Shikshan Prasar Society & Others*, 1997 (3) Mh.L.J. 235, *U.P. State Spinning Co. Limited vs. R.S. Pandey & Another*, (2005) SCC 264, *Saindranath Jagannath Jawanjal vs. Pratibha Shikshan Sanstha & Another*, 2007 (3) Mh.L.J. 753, and *Union of India vs. Y.S. Sadhu, Ex-Inspector*, (2008) 12 SCC 30.

11. On the other hand, Ms. Ayyaipan, learned Advocate appearing for Respondent No.1, submitted that Respondent No.1 was not paid subsistence allowance even after completion of 120 days of suspension. She submitted that the mandatory procedure prescribed under the MEPS Rules for conducting a departmental enquiry was not followed. According to her, although the Rules contemplate holding the enquiry at the school premises, that requirement cannot be applied in a manner which makes it impossible for a suspended teacher to attend the enquiry. She submitted that, in the present case, the bail condition imposed upon Respondent No.1 prohibited him from entering the territorial

limits of the concerned Police Station, which included the area of Dahisar. Respondent No.1 had requested the Enquiry Committee to hold the enquiry at a place outside Dahisar so that he could personally participate in the proceedings. However, according to her, the Enquiry Committee instead required the representative of Respondent No.1 to conduct the cross-examination and did not permit Respondent No.1 himself to cross-examine the witnesses. She submitted that copies of the material documents were not supplied to Respondent No.1. According to her, these circumstances clearly showed that the Management was determined to terminate the services of Respondent No.1 by adopting whatever means were available to it.

12. Referring to the charges and particularly to the statement recorded under Section 164 of the Code of Criminal Procedure, Ms. Ayyaipan submitted that there were material inconsistencies in the statement of the victim. She contended that Respondent No.1 had been falsely implicated in the criminal prosecution initiated against him. She submitted that, even if this Court comes to the conclusion that the departmental enquiry could be conducted afresh, Respondent No.1 ought to be reinstated in service in the meantime. According to her, Respondent No.1 was entitled to receive back wages for the entire period during which he remained out of service.

REASONS AND FINDINGS:

13. I have considered the submissions made by Mr. Desai, learned Advocate for the Petitioners, and Ms. Ayyaipan, learned

Advocate for Respondent No.1.

14. At the beginning, it is necessary to keep in mind that the allegations against Respondent No.1 are serious. The allegation is regarding sexual misconduct with a girl student studying in Class VII and criminal proceedings were started under Section 354-A of the Indian Penal Code and Sections 8 and 12 of the POCSO Act. Therefore, while considering the relief, the seriousness of the allegation cannot be kept aside. However, merely because the allegation is serious, it cannot mean that the employee can be deprived of the procedure which is required to be followed before imposing a major punishment. A serious allegation continues to be only an allegation unless the same is proved in accordance with law.

15. The submission of the Petitioners is that even if there is some defect in the enquiry, the proper course would be to send the matter back to the Management from the stage where the illegality had taken place. It is submitted that the Tribunal could not have ended the disciplinary proceedings by directing reinstatement along with 50% back wages. To this extent, there is substance in the submission. The question is not whether the allegations are serious enough to require an enquiry. There is no dispute that they are. The question is whether the termination can remain when the enquiry in which the misconduct was held to be proved suffered from important defects in the procedure.

16. The legal position on this aspect is settled. In *LIC v. A. Masilamani*, (2013) 6 SCC 530, the Supreme Court has observed in

paragraph 16:

“It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same.”

17. This principle supports the submission of the Petitioners that when the enquiry is found to be defective, the matter has to go back to the disciplinary authority. However, the same judgment makes it clear that while considering whether a fresh enquiry should be allowed, the seriousness of the misconduct is required to be considered. Paragraph 17 states:

“Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved.”

18. In the present case, the allegation is of sexual misconduct against a minor student. Therefore, there can hardly be any dispute that the allegations are serious and require to be decided on their merits through an enquiry which is properly conducted.

19. The Petitioners have relied upon *U.P. State Spinning Co. Ltd.* In paragraph 25 of that judgment, while considering the relief to be granted where there is a defect in the disciplinary process, the Supreme Court relied upon *Managing Director, ECIL v. B. Karunakar*, (1993) 4 SCC 727 and held as under:

“In all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary

proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the outcome.”

20. The Supreme Court, in paragraph 26, directed reinstatement without back wages and made it clear that such reinstatement was only for the purpose of completing the disciplinary proceedings.

21. In *Saindranath v. Pratibha Shikshan Sanstha*, the Full Bench of this Court has considered the position under the Maharashtra Employees of Private Schools Act and Rules. Paragraph 65 of the said judgment is useful in the present matter. The Court, after considering *Dr. Harbhajan Singh Greasy, U.P. State Spinning Co. Ltd.* and *U.P. State Textile Corporation Ltd*, observed:

“wherein the Supreme Court has observed 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 purposes of holding fresh enquiry and no more. So far as backwages are concerned, the entitlement thereof is to make dependent on the outcome of the fresh enquiry.”

22. This principle appears to apply to the present case. At this stage, the Court is not required to decide whether Respondent No.1 has committed the alleged misconduct. What is required to be considered is whether the finding of guilt and the punishment which followed can be allowed to continue when the disciplinary process is found to suffer from defects.

23. The next submission of Respondent No.1 is that the defect in the enquiry was not merely a technical irregularity. It is submitted that he was in judicial custody and was released on bail with a condition under which he could not enter the jurisdiction of Dahisar Police Station except for reporting to the police. It is

submitted that although this difficulty was brought to the notice of the Management, the enquiry was conducted in such a manner that he could not effectively participate in it personally.

24. The right of a delinquent employee is not only that some representative is appointed on his behalf. The employee must have a meaningful opportunity to understand the evidence, give necessary instructions, question the material relied upon against him and put forward his defence before the Enquiry Committee. If the employee is prevented from entering the place where the enquiry is being held, the Management has to consider whether some reasonable arrangement can be made so that the enquiry can continue without taking away his real opportunity of defence.

25. In the present case, Respondent No.1 had informed the Management that because of the bail condition he could not enter the Dahisar area. He had requested that some arrangement be made so that the enquiry could be held at another place. The record before the Court shows that instead of resolving this difficulty in a manner which would protect the participation of the employee, the enquiry was continued through his representative. Nothing has been placed before the Court to show that the employee was given a real and effective opportunity to personally participate in the proceedings within the limits permitted by the criminal court. The Petitioners have submitted that Respondent No.1 had nominated a representative and, therefore, there was no denial of opportunity. This submission cannot be accepted. Merely because a representative is nominated, every defect in the enquiry does not disappear. What has to be seen is whether, considering

the defence as a whole, a fair opportunity was given. In the present case, Respondent No.1 has stated not only that he could not remain personally present, but that his representative was required to conduct the cross-examination, that he himself was not permitted to cross-examine, that relevant documents were not supplied and that sufficient opportunity to give instructions was not provided. These aspects go to the question whether there was effective participation in the enquiry.

26. Respondent No.1 has stated that the list of witnesses was not supplied to him and that relevant documents were not made available. He had sought CCTV footage and statements of other students. Such requests cannot be rejected merely by stating that the charges were serious or that the statement of allegations had been supplied. The statement of allegations only tells the employee what charge has been made against him. It does not give the material by which the Management proposes to prove that charge.

27. The principles of natural justice require that the delinquent employee should know the evidence which is proposed to be relied upon against him and should have reasonable opportunity to answer that evidence. It is not necessary that every request made by an employee must be accepted. However, when the request is connected with the defence and refusal of the same may affect the employee's ability to meet the charge, the Enquiry Committee is required to consider such request and give proper reasons for its decision.

28. There is substance in the submission of Respondent No.1 that the enquiry suffered from material defects in procedure. But this finding does not mean that the allegations against him are false or that he is to be declared innocent. What is found defective is the procedure by which the charges were considered. At this stage, there is no finding as to whether the allegations are true or false.

29. The reliance placed by Respondent No.1 on the statement recorded under Section 164 of the Code of Criminal Procedure cannot result in any finding about the criminal allegation. Respondent No.1 may have pointed out inconsistencies in the statement and may dispute the allegation of misconduct. These are matters which can be considered in the disciplinary proceedings if the same are properly conducted. This Court, while exercising jurisdiction under Articles 226 and 227, is not required to conduct a parallel trial regarding the factual allegations of sexual misconduct. Similarly, the fact that an FIR was registered or that criminal proceedings are pending cannot be treated as proof of misconduct in the departmental proceedings. The disciplinary authority has to reach its own conclusion on the evidence which is brought before it. Therefore, neither registration of the criminal case nor the defence raised by Respondent No.1 can be treated as conclusive by this Court for deciding whether the misconduct is proved.

30. Respondent No.1 has submitted that the departmental enquiry ought to have remained stayed until completion of the criminal case. I am unable to accept this submission as a general

rule. A departmental enquiry and a criminal prosecution operate in different fields and are governed by different standards. A criminal case is concerned with proving guilt under criminal law, whereas a departmental proceeding considers misconduct in service. Therefore, merely because a criminal case is pending, the departmental enquiry does not become invalid. However, in the facts of the present case, the question as to whether the enquiry ought to have been stayed does not affect the decision. The enquiry is being interfered with because the employee was not given an effective opportunity to defend himself in the manner required by law. Therefore, it is not necessary to decide whether, having regard to the facts of this case, the enquiry should necessarily have remained stayed until the criminal case was completed.

31. There is a grievance regarding subsistence allowance. Respondent No.1 has stated that although he was placed under suspension, subsistence allowance was not paid to him as required under the Rules. This issue is relevant because a suspended employee who does not receive the amount payable during suspension may face difficulty in properly defending himself in the disciplinary proceedings. If there was an obligation under the statute or Rules to pay subsistence allowance and the same was not complied with, that question will have to be considered by the competent authority in accordance with the applicable Rules. At the same time, even if non-payment of subsistence allowance is proved, it may have an effect on the validity of the disciplinary process or on the monetary and service benefits to which the

employee may become entitled. But the actual allegations against the employee will still have to be decided in accordance with law.

32. The Tribunal was justified in holding that the enquiry could not be treated as a proper basis for imposing the extreme punishment of termination. The next question is whether the Tribunal was justified in ending the matter and directing payment of 50% back wages to Respondent No.1. In my view, the Tribunal committed an error in granting 50% back wages as a consequential relief without keeping the decision on the charges open. The principle stated in *U.P. State Spinning Co. Ltd.* is clear. Where the punishment is set aside because the enquiry is defective, the employee can be reinstated for the limited purpose of continuing the disciplinary proceedings. The question of back wages and other benefits can be decided depending upon the result of the fresh enquiry. The same principle is found in *Saindranath*. In paragraph 67, while considering a case of “no enquiry”, the Full Bench observed:

“It is open for the School Tribunal to adopt the same route which has been adopted by the Supreme Court in the case of *Dr. Harbhajan Singh Greasy* with some other cases noted supra but the school management cannot be allowed to justify their action for the first time before the Tribunal in case of no enquiry.”

33. The present case is not a case where there was no enquiry at all. An enquiry was held, but the grievance is that it was defective. Therefore, the part of *Saindranath* which deals with the Management trying to justify a case of “no enquiry” before the Tribunal need not be applied in full. The principle regarding the

course to be followed where the enquiry is defective continues to be relevant.

34. I find substance in the submission that the seriousness of the charge cannot be forgotten while deciding the relief. Paragraph 17 of *LIC v. A. Masilamani* states that whether the disciplinary authority should be permitted to complete the enquiry afresh depends upon the gravity of the delinquency involved. Here, the allegation concerns a minor girl student. If the Management is denied an opportunity to establish or disprove the charge through a lawful enquiry only because the earlier enquiry was defective, it would not be proper either for the school administration or for the employee. At the same time, the Court cannot permit the Management to use the seriousness of the allegation as a reason for ignoring the procedural safeguards. The seriousness of the charge is a reason for holding a proper enquiry and not a reason for holding an unfair enquiry. When the charge is serious, there is greater need that the finding of misconduct should be based upon a procedure which gives a genuine opportunity to the employee to defend himself. The observations in paragraph 85 of *Saindranath* are relevant while considering the limits of the power of the Tribunal. The Full Bench observed:

“Therefore, such power is available for being exercised only in the extremely exceptional cases and in compelling circumstances and not in a routine manner in every case.”

35. This makes it clear that procedural flexibility cannot become the normal way of deciding disciplinary disputes. In the present case, there is no material to show that the Management was

completely unable to hold an enquiry. The employee had been released on bail and he had a representative. Therefore, there was no situation where holding an enquiry was impossible.

36. Paragraph 86 of *Saindranath* hold that:

“although we have observed that in certain extremely exceptional and compelling contingencies the school management may, in a case of grave nature of misconduct, dismiss the employee without holding an enquiry but, ordinarily, such an enquiry should not be dispensed with unless it is impossible to hold.”

37. The present case cannot be placed in that exceptional category. The Management did hold an enquiry. The difficulty is that the enquiry was not conducted in a manner which gives confidence that the employee had proper opportunity to meet the evidence brought against him.

38. The Petitioners are right to the extent that the disciplinary proceedings should be permitted to continue from the stage where they became defective. Respondent No.1 is right to the extent that the termination based on the defective enquiry cannot continue. However, Respondent No.1 cannot contend that the procedural illegality must result in unconditional reinstatement with back wages, because the actual charges have not yet been decided through a lawful enquiry. The relief has to be shaped in such a manner which protects both sides. The termination order has to be set aside because it is based on an enquiry which has not followed the requirements of fair procedure. At the same time, the Management must be given an opportunity to continue the

disciplinary proceedings from the stage where the illegality or prejudice had occurred, after properly following the Rules and the principles of natural justice.

39. The fresh proceedings should not be treated as only a formality. Respondent No.1 must be supplied the material which is required to be supplied to him under law. He must be given reasonable opportunity to inspect and meet the evidence relied upon by the Management. His representative must be permitted to participate effectively. If the bail condition is still relevant, the difficulty caused by that condition must be properly considered so that the employee is not prevented from defending himself for a reason which is beyond his control. The Enquiry Committee shall consider the evidence independently and record its findings without being influenced by the observations made in this judgment. The Management shall consider, in accordance with the applicable Rules, the question of subsistence allowance for the period of suspension. This issue cannot be left unattended merely because the termination is being set aside. If any consequence arises because of non-payment, the same shall be decided by the competent authority in accordance with law.

40. So far as back wages are concerned, I do not find it proper to direct payment of 50% back wages at this stage. The entitlement to back wages cannot be decided before the disciplinary proceedings are completed, and the charges are decided. The principle laid down in *U.P. State Spinning Co. Ltd.* requires that the question of back wages and other service benefits should be considered after completion of the fresh proceedings and having

regard to the result thereof. This course avoids an unusual situation. If Respondent No.1 is paid substantial back wages now and the fresh enquiry establishes serious misconduct for which dismissal is justified, the earlier monetary direction may create difficulty with the disciplinary result. On the other hand, if Respondent No.1 is exonerated, his claim for consequential service benefits can be considered in accordance with law. Therefore, keeping the question of back wages pending does not mean that the claim is permanently rejected. It only means that the claim has to be considered at the proper stage.

41. I am unable to accept the contention of the Petitioners that the Tribunal ought to have dismissed the appeal altogether. The Tribunal was right in interfering with the termination because the enquiry suffered from material procedural defects. However, the Tribunal was not right in granting 50% back wages and in treating the disciplinary proceedings as closed. The decision in *LIC v. A. Masilamani* requires that the matter be sent back to the disciplinary authority so that it can take a fresh decision regarding continuation of the enquiry from the stage at which the proceedings became defective. In the present case, considering the nature of the allegations, the Management should be given that opportunity. Respondent No.1 has to be reinstated, but such reinstatement will be for the purpose of completing the disciplinary proceedings. It will not mean that the allegations are false or that Respondent No.1 has been exonerated.

42. The observations in *U.P. State Spinning Co. Ltd.* are relevant. The Supreme Court directed that:

“Respondent 1 shall be reinstated to service but without any back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.”

43. The same course, with necessary changes having regard to the M.E.P.S. Act and Rules and the facts of the present case, would meet the ends of justice. I hold that the impugned order of termination cannot be allowed to continue. However, the direction of the School Tribunal for payment of 50% back wages cannot continue in the manner in which it has been granted. The proper relief is to set aside the termination, restore Respondent No.1 to service for the limited purpose of completing the disciplinary proceedings and send the matter back to the Management from the stage at which the enquiry became defective. 62. While conducting the fresh enquiry, the Management shall not proceed on the basis that the allegations have been proved. The Enquiry Committee shall consider the material afresh from the relevant stage, give reasonable opportunity to Respondent No.1 to participate and defend himself and record its own findings in accordance with the Act, Rules and principles of natural justice.

44. The question of back wages, continuity of service and other consequential monetary or service benefits shall remain open. These questions shall be decided only after the fresh disciplinary proceedings are completed and according to the result of those proceedings and the applicable Rules.

45. In the overall view of the matter, therefore, the Petitioners succeed only to the limited extent that the disciplinary proceedings are required to be continued and the direction for immediate payment of 50% back wages cannot continue. Respondent No.1 succeeds to the extent that the termination founded on the defective enquiry has to be set aside.

46. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) The Writ Petition is partly allowed;
- (ii) The judgment and order dated 16 July 2019 passed by the School Tribunal, Mumbai, in Appeal No. 50/2018, is modified to the extent indicated herein;
- (iii) The order of termination dated 30 June 2018 passed against Respondent No.1 is quashed and set aside;
- (iv) Respondent No.1 shall be reinstated in service as Assistant Teacher, only for the purpose of enabling the disciplinary proceedings to be completed in accordance with law. Such reinstatement shall not be treated as a finding of exoneration from the charges levelled against him;
- (v) The Management shall be at liberty to continue and complete the disciplinary enquiry from the stage after service of the charge-sheet dated 7 December 2017, namely, from the stage of affording Respondent No.1 a proper and effective opportunity to participate in the enquiry and defend himself against the charges. All proceedings conducted

subsequent to that stage shall stand set aside;

(vi) The fresh enquiry shall be conducted in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder, and in accordance with the principles of natural justice;

(vii) In the fresh enquiry, Respondent No.1 shall be supplied with the material documents relied upon by the Management, shall be given reasonable opportunity to inspect and meet the evidence against him, cross-examine the witnesses in accordance with law, produce his defence and give necessary instructions to his representative. His representative shall be permitted to participate effectively in the enquiry;

(viii) The Enquiry Committee shall consider the matter afresh and shall not be influenced by the findings recorded in the earlier enquiry, the order of termination, the judgment of the School Tribunal or the observations made in this judgment on the merits of the charges;

(ix) Respondent No.1 shall be entitled to subsistence allowance and other benefits during the period of suspension, if otherwise payable under the applicable provisions of the MEPS Act and Rules. The Management shall determine the said entitlement in accordance with law;

(x) The question of back wages, continuity of service and all other consequential monetary and service benefits shall

remain open. The same shall be determined by the competent authority in accordance with law and the applicable Rules after the conclusion of the fresh disciplinary proceedings and having regard to the result thereof;

(xi) The direction issued by the School Tribunal for payment of 50% back wages to Respondent No.1 is accordingly set aside;

(xii) The Management shall complete the fresh disciplinary proceedings as expeditiously as possible and, in any event, within four months;

(xiii) It is clarified that this Court has expressed no opinion on the truth or otherwise of the charges levelled against Respondent No.1. The same shall be determined by the competent authority upon consideration of the evidence in the fresh enquiry;

(xiv) The direction of the School Tribunal granting compensatory costs of Rs.25,000/- against Respondent No.1 Management and Rs.25,000/- personally against the Head Master, Shri Sudam Ganpat Kumbhar, is set aside;

(xv) The Petition stands disposed of in the above terms. There shall be no order as to costs.

(xvi) In view of disposal of the writ petition, all pending interim application(s) stand disposed off.

(AMIT BORKAR, J.)