IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5840/2024

PETITIONER :	Mangalsingh Amarsingh Rathod, Aged about 45 years, Occupation : Service, Head Master (Under Suspension), Mahatma Phule High School, Nimgaon, Tah. Nandura, Dist. Buldhana.
...VERSUS...	
RESPONDENTS :	1. Mahatma Phule Shikshan Sanstha, Nimgaon, Tah. Nandura, Dist. Buldhana, Through its President and Conveynor of Inquiry Shri K.R. Ingle.
	2. Education Officer (Secondary), Zilla Parishad, Buldhana.
	3. Mahatma Phule High School Nimgaon, Tah. Nandura, Dist. Buldhana, Through its In-Charge Head Master.
	Mr. R.B.Dhore, Advocate for petitioner
	Mr. V.K.Paliwal, Advocate for respondent Nos.1 and 3
	Mr. N.R.Patil, AGP for respondent No.2

CORAM :	AVINASH G. GHAROTE
	AND
	ABHAY J. MANTRI, JJ.
DATE	07/03/2025

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the parties.

2. The question to be considered and answered is whether the nominee of the Head in terms of Rule 36(2)(b)(ii) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short hereinafter “MEPS Rules”), on the Enquiry Committee, which has to be formed amongst the employees of any private school, can be a retired/former employee of a school. The request of the petitioner, who was the Head of the institution for appointing a retired employee, has been rejected.

3. Mr. Dhore, learned Counsel for the petitioner, submits that considering the purport and object of Rule 36(2)(b)(ii) of the MEPS Rules, which permits the Head to nominate a person to be a member of the Enquiry Committee, is to ensure a reasonable and fair opportunity in the matter of balancing the composition of the Committee, it would be permissible for the Head, facing an enquiry, to nominate a former/retired employee on the Enquiry Committee. He further submits that considering the fact that the enquiry may go on for a number of days, it would be difficult for a serving/current employee to effectively work on the Committee, as he would have to, at times, seek leave from his parent institution and so also permission to participate in the enquiry, which may or may not be granted, thereby hampering the working of the Committee, the nomination of a former/retired

employee, would be apt and proper, for the effective functioning of the Committee itself. It is also his contention that since the learned Full Bench, in ***Shikshan Prasarak Mandal, Awasari (BK) Vs. Ramesh Bhimrao Narayankar and others 2016 SCC Online Bom 562*** while considering Clause 36(2)(a)(iii) and 36(2)(b)(iii) which permits State/National awardee teacher to be one of the members to be chosen to the Disciplinary Committee, has held that such a person could also be retired teacher, the same reasoning and logic would be applicable to the member to be nominated by the Head/employee to the Enquiry Committee in terms of Rule 36(2)(b)(ii) of the MEPS Rules. He further submits that since the nomination by the Head of an employee, is for the purpose of balancing the composition of the Committee, a purposeful interpretation, should be given to the provision. Reliance is placed upon ***Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni Band and others 1983 (1) SCC 124*** and ***K.B. Khatavkar Vs. S. Taki Beligrami (1971) 73 Bom.L.R. 570*** as well as ***The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and others (1973) 1 SCC 813***, which dilate upon how a beneficial legislation has to be interpreted, to support his contention.

4. Mr. Paliwal, learned Counsel for the respondent Nos.1 and 3 vehemently opposes the contention and submits that a retired / former employee cannot be permitted to be nominated by the Head to the Disciplinary Committee, in view of Section 2(7) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (for short hereinafter "MEPS Act"), which while defining an 'employee', defines it to be an employee in service. Reliance is also placed upon Rule 10 of the MEPS Rules, which defines categories of employees and ***Namdev Tukaram Patil and Ors. Vs. The State of Maharashtra and Ors., 2022 (1) Mh.L.J. 303.***

5. Mr. Patil, learned Assistant Government Pleader for the respondent No.2, invites our attention to the preamble of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 to point out that the Act is a beneficial piece of legislation, enacted to protect the interest of the employees and the provisions in the Act and the Rules framed thereunder will have to be viewed with that angle. He also invites our attention to Rule 36(2)(a)(ii) and (b)(ii) of the MEPS Rules, to submit that when an option has been granted to the Head/employee to nominate, the nomination can be from anywhere, which also indicates that no restrictions are put on the right of the Head/employee to nominate a retired employee to the

Committee. Reliance is also placed upon Rule 37(2)(c) of the MEPS Rules to submit that reasonable opportunity of defence has to be granted which is the duty of the Committee. He also invites our attention to Rule 8(8)(b) of the The Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which permits the Government Servant to take the assistance of a former Government Servant to present the case on his behalf. He, therefore, submits that a restriction ought not to be put on the power of nomination of a person to the Committee by restricting the meaning of the word 'employee', to a serving employee, as that would cause complications, in the constitution, as well as working of the Committee and at times, would lead to the Head or delinquent employee not having an effective opportunity to balance the composition of the Committee.

6. Insofar as the purpose and object of the MEPS Act is concerned, Mr. Patil, learned Assistant Government Pleader, is right in contending that the MEPS Act and the Rules framed thereunder are a beneficial piece of legislation, enacted for the benefit and protection of the rights of the employees, which is indicated from a reading of the language of its preamble. The MEPS Act and the Rules framed thereunder will therefore have to be construed with this background

and an interpretation which leans in favour of the employee, then would be preferable, considering the intent of the enactment.

6.1. In ***The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.*** (supra) while considering the manner in which beneficial piece of legislation is to be interpreted, it has been held as under :

> *"**35.** We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of the section."*

6.2. In ***Dilipkumar Raghavendranath Nadkarni Band*** (supra), the Hon'ble Apex Court while commenting on the change in scenario in the conduct of domestic enquiries, has elucidated as under :

*"**9.** We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.*

***10.** Even in a domestic enquiry there can be very serious charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum-Prosecuting Officer and an Enquiry Officer a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay rolls labour officers, legal advisers — lawyers in the garb of employees — and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased Judge?. The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to*

> *these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in M.H. Hoskot v. State of Maharashtra [(1978) 3 SCC 544 : 1978 SCC (Cri) 468 : AIR 1978 SC 1548 : 1978 Cri LJ 1678] clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation."*

Though the judgment in ***Dilipkumar Raghavendranath Nadkarni Band*** (supra) has been rendered in the context of legal representation being afforded to an employee in a domestic enquiry, however, the spirit of the judgment in fact emphasizes that while conducting the domestic enquiry, the scales must always be balanced, for the management, has all the wherewithal and expertise at its command, whereas the employee, does not, on account of which a beneficial interpretation of the legislation is warranted, to afford a reasonable and fair opportunity to the employee.

6.3. Reliance is also placed upon ***K.B. Khatavkar*** (supra) which dilates upon how a beneficial legislation has to be interpreted, to support his contention.

7. In ***Ramesh Bhimrao Narayankar*** (supra) the learned Full Bench, was considering the language of Rule 36(2)(b)(iii) and Rule 36(2)(b)(iii) of the MEPS Rules, which provides one member of the Enquiry Committee to be from the panel of teachers/Head Masters on whom State/National Award has been conferred, to be chosen by the Chief Executive Officer/President. While considering the purpose of the MEPS Act and the Rules framed there under, this is what has been said :

> ***"37.*** *All the provisions of the Act and the Rules especially those outlining the qualifications, duties and responsibilities of the Head, Teachers and Employees other than teachers coupled with the Code of Conduct prescribed for them, the consequences of violation thereof, the penalties for the same, demonstrate that a private school employee performs a public duty. He can be penalised for serious misconduct, indiscipline and immoral so also immodest conduct. The inquiry leading to such penalty cannot be a private or domestic affair. The State makes provision for the same by the Rules for good reason. Even private education needs to be regulated to subserve larger public good. The State as a trustee of the public ensures that sanctity, purity and probity in the field of education is not sacrificed when it goes in private hands. None can profit or benefit at the cost of core moral and social values. Education is not trade and business but a noble, charitable and philanthropic activity. If that is the basis, then, penalties on teachers and others ought to be imposed by treating them fairly, reasonably and in a non-discriminatory manner. The respect for them and their position, image in the society should be borne in mind. While inflicting penalties and punishing them every attempt is made to guarantee that their version is truthfully and completely presented or placed before the inquiry Committee. That guarantee and assurance comes by permitting and providing for effective representation by all those involved in the inquiry and the silent, yet most important third entity, namely, the society at large. Further, a judicial officer in the form of a Presiding Officer of a School Tribunal, if approached by the employee of a private school, examines the record of such inquiry and determines the issue of its*

legality and validity. For that examination and scrutiny as well, the composition and constitution of the inquiry Committee is vital."

In respect of the question as to whether the State/National awardee teacher has to be a member of the teaching staff, this is what has been held :

***"38.** We do not see how any interpretation other than as suggested by Mr. Bandivadekar can be placed on sub-clause (iii) of clause (a) of sub-rule (2) of Rule 36 of MEPS Rules. If the Chief Executive Officer has to choose one member from the panel of teachers on whom a State or National award has been conferred, such member need not be a serving awardee teacher or a teacher who is conferred with the award, empaneled and working as a member of the teaching staff. All that the definition of the expression "Teacher" as appearing in section 2(26) means that he should be a member of the teaching staff and that will include a head of the school. **Section 2(7) defines the expression "Employee" to mean any member of the teaching and non-teaching staff of a recognized school. Thus, a teacher is an employee but every employee is not a teacher. An employee can be a part of non-teaching staff of a recognized school.** The head of a school and the member of teaching staff, both being expected to teach, have thus been termed as teachers. However, by aid of this definition and all these expressions, we cannot construe sub-rule 2(a)(iii) of Rule 36 of the MEPS Rules restrictively. A narrow or restricted interpretation would defeat the purpose of insertion of sub clause (iii) totally. The Chief Executive Officer has to choose one member from the panel of teachers on whom a State or National award has been conferred. His choice is not narrowed down to only members of the teaching staff of that particular private school or other private school on whom a State or National award has been conferred. Therefore, that member need not necessarily be a serving awardee teacher. Even a retired empanelled awardee teacher but from the panel can be chosen by the Chief Executive Officer. The only requirement is that he should be an empanelled awardee teacher. If the award is conferred on the teacher, then, both a serving and a non-serving teacher meaning thereby a retired awardee teacher, can be chosen by the Chief Executive Officer, provided his name is in the panel of the awardee teachers. If the interpretation suggested by Mr. Machhindra Patil and others is placed on sub-clause (iii) of clause (a) of subrule (2)*

of Rule 36 of MEPS Rules, then in a given case, it would give rise to a peculiar situation. In a given case, the panel may contain names of both serving and retired teachers but by the time the choice is exercised, such serving teachers may have retired or been superannuated from service. The Legislature did not intend that the inquiry Committee should not be constituted with three members. Its constitution in terms of sub-clauses of clauses (a) and (b) of sub-rule (2) of Rule 36 is the rule and the exception is only in the event of a situation arising and contemplated by another sub-rule of Rule 36 of the MEPS Rules. Therefore, the Chief Executive Officer in the case may choose one member from the panel of the teachers on whom a State or National award has been conferred. He can be a serving or a retired teacher but his name must appear in the panel of awardee teachers. Similarly, in the case of inquiry against a head, the President can choose from the panel of headmasters one member on whom a State or National award has been conferred. Again this member need not be a serving or working headmaster.

39. *Ultimately we must be aware that we are construing a provision which enables holding of an inquiry through a properly constituted inquiry Committee. Such a Committee is obliged to conduct an inquiry only in cases where major penalties are to be inflicted. Such inquiry has to be conducted after the management takes a decision in terms of sub-rule (1) of Rule 36 of MEPS Rules. The inquiry Committee has to be constituted in the manner provided by sub clauses (a) and (b) of sub-rule (2) of Rule 36 of MEPS Rules. Thus, an interpretation which facilitates and assists the constitution of a proper inquiry Committee must be placed on the provisions. It is clear from what we have emphasised above that MEPS Act is an Act which regulates the recruitment and conditions of service of employees in certain private schools. The avowed object, namely, to ensure that employees have security and stability in service with a view to enable them to effectively and efficiently discharge their duties towards pupils and guardians in particular and the institution and society in general, should be borne in mind. Therefore, while regulating recruitment and conditions of service of employees in certain private schools, the Act contains comprehensive measures to take care of situations where the employees are found to have misconducted themselves. If their conduct and behaviour is unbecoming of an employee of a private school, then that conduct has to be inquired into. That cannot go unpunished. We have found from a perusal of all the rules and the substantive provisions of the Act, which must be read together and harmoniously, that major*

penalties include a reduction in rank and termination from service. They are to be inflicted for misconduct, moral turpitude, wilful and persistent negligence in duty and incompetence. There could be minor penalties but misconduct, as defined, is an inclusive term and includes all that is enumerated in Rule 28(5)(a). Hence, the public interest further demands that the inquiry ought to be fair, just, independent and impartial. An employee must have minimum security as is envisaged in the preamble to the Act. The security and stability of service cannot be compromised by inflicting light heartedly or casually a punishment or a penalty which is major in character. A disciplinary inquiry is a serious proceeding. The principles of natural justice have to be followed as is apparent from a reading of Rule 37 of the Rules, which sets out the procedure of inquiry. In such circumstances, if the constitution of the inquiry Committee is improper or incomplete, that will not only jeopardize the security and stability assured to the employees but would be detrimental to the public interest. If inquiry at the hands of an improperly constituted inquiry Committee results in serious prejudice or miscarriage of justice, then the public interest would suffer immensely. An employee who has indulged in serious misconduct amounting to moral turpitude may have to be retained in service if inquiry is found to be defective or deficient in any manner resulting in serious prejudice and a travesty of justice. It is in these circumstances that we are not in agreement with the counsel taking a contrary view who insist that only an in-service awardee teacher can be part of the inquiry Committee.

40. *The arguments of Advocate Machhindra Patil and others overlook the plain words of the sub-clauses and the setting and pattern in which they appear. There has to be a member from the side of management and he/she has to be nominated by the management from amongst its own members. Similarly, there has to be a nomination from the employee's side, often termed as a defence representative. He/she could be nominated by the employee, against whom an inquiry is directed, from amongst the employees of another private school. That member need not be an employee of a private school in which the employee is serving or working. That freedom of nomination is given to the employee so that he chooses as his representative a person in whom he has complete faith and trust. The management cannot dictate terms to him in this matter. He can nominate one person from amongst the employees of any private school and communicate his or her name in the manner set out in Rule 36. However, when the wording of*

sub-clause (iii) is perused carefully and minutely, it is apparent that a third person's involvement is contemplated, apart from the nominee of the management and the employee who take care of their respective interests. An awardee teacher, i.e., one on whom a State or National award has been conferred, is expected to take care of the society's interest and of the public at large. He is expected to be independent in true sense of the term. Meaning thereby not influenced by any interested versions or views. It is in these circumstances that the obligation on the Chief Executive Officer is to choose, as a third member, a teacher from the panel of teachers on whom a State or National award has been conferred. That such a panel has been maintained by the State is not disputed. That from such a panel a choice can be made by the Chief Executive Officer, is also not disputed. The word "Panel" means in this case a list and the legislature employs the word "chosen" deliberately. The act of choosing means selecting out of a greater number. Once a choice is given to the Chief Executive Officer to select a teacher from the panel, then specific words would have been inserted to limit or restrict such choice had that been the legislative intent. The absence of such limiting or restrictive phrases would lend support to our construction of this sub-clause as above. However, this does not mean the choice of the Chief Executive Officer cannot be questioned by the delinquent-employee and if a particular choice or selection is challenged as vitiated by bias, arbitrariness and mala fides resulting in the inquiry being unfair, unjust and unreasonable or partial, then, depending upon the prejudice established and proved, the Tribunal/Court can always interfere with the same. We do not read anything more in the sub-clauses and which is not specifically inserted therein. Once the words are plain, unambiguous and clear, then, there is no warrant for prefixing the expression "Teacher" as "in-service teacher". In that event, it would not be possible for the Chief Executive Officer to choose a third member. In all cases then, the inquiry Committee would not be complete. It is in these circumstances that we are unable to agree with the narrow interpretation placed on this sub clause.

42. *Thus the argument that the word "Teacher" appearing in of Rule 36(2)(a)(iii) must be construed and interpreted with the aid of section 2(26) of MEPS Act, cannot be accepted because the same overlooks the context. It is a well settled rule of interpretation that in a statute where a word of wide and general amplitude may require a narrow interpretation depending upon the context, that word will carry a different meaning and connotation while*

construing and interpreting some other provision in the same Act. Therefore, it would not be proper to apply the definition of the expression "Teacher" as understood by the employees' counsel. Even otherwise, we have found that the definition of the word "Teacher" is only to denote him as a member of the teaching staff and to include therein the head of the school. It is not that this definition would necessarily mean a member of the serving teaching staff or a functional teaching staff or a member of the teaching staff working in a private school. A teacher even after his superannuation or retirement carries this nomenclature for the Act confers upon members of the teaching staff certain benefits post retirement. We have scanned the rules extensively and completely to see if throughout the Rules, the use of the word 'teacher' is restricted to mean an in-service teacher. We have not been able to find any such restrictive or limited invariable use. Therefore, everything depends on not just the text but the context. The Act lays down the qualifications of the teachers, their scales of pay and allowances and their service conditions which it seeks to regulate. Therefore, in Rule 17 which is titled as superannuation and reemployment, there is a specific age prescribed for superannuation but equally there is a power to reemploy him even beyond the age of superannuation. We therefore, do not see any scope for the rigid interpretation as is placed on the definition of the term "Teacher" appearing in section 2(26) of the MEPS Act.

44. *For the elaborate reasons that we have indicated above, we are unable to accept the contentions of either Mr. Tapkir or Mr. Kulkarni. There is no warrant for reading sub-clause (a)(iii) of sub-rule (2) of Rule 36 of MEPS Rules as suggested by them. If their interpretation is accepted, then, it would be easy to influence the choice of the Chief Executive Officer. Apart from their own nominee the management may include in the inquiry Committee only an serving awardee teacher. Then a complaint would be made by the delinquent employee that the scales are uneven. If the scales are to be balanced and the inquiry should be unbiased and impartial, then it is not possible to place a narrow interpretation as suggested by both the learned counsel. The requirement is that the panel of teachers on whom a State or National award is conferred as maintained by the State Government or by the officers in the Education Department, from that panel any teacher can be chosen by the Chief Executive Officer. He may not necessarily be a teacher serving the management which is holding the inquiry. He has to be a awardee teacher but may not be serving for even a teacher on the*

verge of retirement can be awarded. It is only an award winning teacher who can be empaneled and from such a panel the Chief Executive Officer has to make a choice. There is no restriction placed on his choice and advisedly. It is expected that he will not choose an awardee teacher favourable or pliable to the management. An award is conferred on a teacher for his excellence and merit. It is his teaching abilities and his exemplary character which won him an award. The presence of an awardee teacher ensures impartiality of the inquiry. The inquiry has to be free of bias and prejudice. If the interpretation suggested by Mr. Kulkarni and Mr. Tapkir is accepted, that may facilitate inclusion of somebody convenient or congenial or friendly to the employer/management. In such circumstances, we are unable to accept the interpretation placed by them. Mr. Kulkarni suggested that inclusion of third member namely an awardee teacher is to ensure quality to the inquiry. Thus, it is not the quantity that matters but a qualitative presence, on his own showing. We cannot attribute to the Legislature inclusion of somebody for the sake of inclusion and de hors the context as well as the object and purpose sought to be achieved by such inclusion. It is not a mere addition of one more number. Once the object and purpose so also the context is understood, then, these contentions deserve to be rejected. They are accordingly rejected."

It is, thus, apparent that while construing the provisions of Rule 36(2)(a)(iii) and (b)(iii) of the MEPS Rules, and the appointment of an awardee teacher to the Enquiry Committee, the learned Full Bench, has given an expansive meaning to the word 'teacher', and has held that the same has to be construed in the context in which it has been used and its meaning cannot be restricted or controlled by the definition in Section 2(26) of the MEPS Act and will have to depend on the contextual background in which the word has been used. It has therefore been held that though Section 2(26) of the MEPS Act defines

'teacher', to mean a member of the teaching staff and includes the Head of the School, this definition cannot be applied while construing the word 'teacher', as occurring in Rule 36(2)(a) (iii) and (b) (iii) of the MEPS Rules as the same would be totally out of context, altogether.

8. In ***D. K. Chaplot Vs. Regional Manager, National Insurance Company & others 2001 SCC OnLine Raj 360***, the learned Division Bench, while considering the question as to whether a retired employee of the company can be permitted to appear as a defence assistant to defend the delinquent in the inquiry proceedings, has held as under :

> *"**10.** The disciplinary proceedings as against the employees of the respondent Company are governed by the General Insurance (Conduct, Discipline & Appeal) Rules, 1975, (for short, to be referred to as the Conduct Rules). To deal with the controversy, it would be appropriate to first refer to the definition of 'employee'. Rule 2(g) provides that 'employee' means any employee of the Corporation and/or its Subsidiaries other than the casual, work charged or contingent staff. So far as appointment of defence assistant by the delinquent is concerned, sub-rule (6) of Rule 25 of the Conduct Rules provides that the employee may take the assistance of any other employee but may not engage a legal practitioner for this purpose. However, there is no specific provision in the Conduct Rules framed by the respondent Company so as to debar a retired employee to take part as a defence assistance in the disciplinary proceedings.*
>
> ***11.** A bare perusal of the language of sub-rule 6 of Rule 25 of the Conduct Rules would make it clear that while framing the conduct rules the only intention of the rules making authority was to restrict the services of a legal practitioners to be utilised by the delinquent in his/her defence in the departmental inquiry. Admittedly, the rule does not specifically provides for taking assistance of a retired employee, but at the same time it also does not mention that only the existing employee may take part as a defence assistance in the inquiry proceedings against an employee.*

12. *To deal with the question, it must also be noted that the Rules making authority while specifically restricting the services of a legal practitioner only, have left open the services of 'any other employee' for being utilised as defence assistant by a delinquent employee in the inquiry proceedings. If the provisions of rule 2(g) which defines the word 'employee' and the provisions of Rule 25(6) of the Conduct Rules are read together, it would be crystal clear that neither the retired employee is excluded from the definition of employee contained in rule 2(g) nor there is any exclusion of a retired employee from the words 'any other employee' as contained in rule 25(6) of the Conduct Rules.*

13. *We may also take assistance of various conduct rules governing the disciplinary proceedings framed by the different States, Corporations, Semi Government Departments, Banking Institutions and the Government of Rajasthan. Instead referring to various conduct rules, we must refer only to the conduct rules framed by the Government of Rajasthan, namely, the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. Like Rule 25(6) in the instant case, there is rule 16(5) in the Rules of 1958. It would be proper to quote rule 16(5) of the CCA Rules, 1958, which reads as under:*

> *"Rule 16(5) - The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant or retired Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority, having regard to the circumstances of the case, so permit."*

14. *Thus, it is evident from a bare reading of Rule 16(5) quoted above that a Govt. servant may take the assistance of a retired Govt. servant in the inquiry proceedings and rest of the provision as to the restriction of services of a legal practitioner in both the rules is same. In the present case, if we go through the language of Rule 25(6) of the Conduct Rules, it would make it abundantly clear that the Rules making authority intended only to restrict the services of a legal practitioner and therefore, it can safely be inferred that the Rules making authority left open very wide options by using the words 'the services of any other employee' including a retired employee.*

> ***15.*** *Admittedly, to be an employee, it is essential that there must exist relation of master and servant. It cannot be said that if a person retires from services, he is ceased to be an employee. He is always an employee and would remain as an employee, may be as a retired employee, and the relation of master and servant continues till he survives. Even after the death of a Government servant, he is considered to be a deceased employee.*
>
> ***16.*** *While interpreting the rule, we are conscious that general words in a statute must receive a general construction unless there is something in the Act itself such as the subject matter with which the Act is dealing or the context in which the said words are used to show the intention of the Legislature that they must be given a restrictive meaning.*
>
> ***17.****----*
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> ***18.*** *The words 'employee may take assistance of any other employee but may not engage a legal practitioner for the purpose' appearing in Sub-Rule (6) of Rule 25 of the Rules must be given wider effect and it must be construed that an employee may take assistance of any other employee including a retired employee but he may not be a legal practitioner. We do not find any ambiguity in Rule 25(6) of the Rules. In our considered opinion, the language of the rule is plain, clear and explicit and no question of its interpretation does arise except that the words 'any other employee' used in the rule should be given fair construction and the words any other employee must include a retired employee as well."*

Thus, considering the purpose and intent of the provision, it has been held that the term 'employee', in the background in which it has been used, cannot be given a restrictive meaning and will have to be construed to mean to include a retired employee too, as there is no specific exclusion.

9. In ***K.B. Khatavkar*** (supra) another Full Bench of this Court, while considering on reference a question, 'whether a retrenched

employee is an employee', within Section 3(13) of the Bombay Industrial Relations Act, 1949 and can apply for reinstatement to a Labour Court under Section 78 and 79 of the said Act ?, in the background of the definition of an 'employee', as contained in Section 3(13), held as under :

> *"Section 3(13) - 'employee' means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes -*
> *(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);*
> *(b) a person who has been dismissed or discharged from employment on account of any dispute relating to change in respect of which a notice is given or an application made under S.42 whether before or after his dismissal or discharge;"this is what has been held :*
> *10. --------. A mere consideration of these definitions gives rise to certain important points which are noteworthy. The first is that in the definition of an "employee" though its main part speaks of any person employed in any industry, the second part containing the inclusive definition, particularly clause (b), refers to a person who has been dismissed or discharged from employment. In other words, the person dismissed or discharged would be an employee but curiously enough a retrenched employee does not find place in the definition of "employee". A dismissed or discharged employee also has his employment terminated just like a retrenched employee and yet the former is entitled to all the benefits of the Act but not a retrenched employee because it is said he is nowhere mentioned. Could it have been the intention in this Act to exclude a retrenched employee when a dismissed or discharged employee is considered an "employee" ? Secondly, a consideration of the definition of "industrial matter" shows (from the main part of the definition) that an industrial matter is any matter relating to employment and we can see absolutely no reason why the person who is retrenched and asks to be reinstated does not raise a question "relating to employment". It also speaks of rights or duties of employers or employees or the mode, terms and conditions of employment. Now retrenchment is matter of codified law in chapter VA of the Central Industrial Disputes Act and employers*

have a duty to observe the provision and the employees have a right to be reinstated therefore the question of retrenchment and reinstatement would clearly fall within the definition of "industrial matter". What is more, the definition includes all matters pertaining to "the dismissal or non-employment of any person". The expression "non-employment of any person" is somewhat curious. In the definition of "employee" the words used are "dismissed or discharged" whereas in the definition of "industrial matter" in S. 3(18)(a) the words used are "the dismissal or non-employment of any person". Undoubtedly the expression "non-employment" is much wider than the word "discharged". "Discharge" is only one form of non-employment and under "non-employment" come termination of employment, dismissal, discharge and retrenchment. The definitions themselves therefore indicate beyond any shadow of doubt that where retrenchment takes place and the employee applies to be reinstated it would be an "industrial matter". The question is whether in spite of this definition of "industrial matter" it was intended to exclude an employee who has been retrenched from the definition of "employee".

11. -------. When the entry speaks of unemployment of persons previously employed, we can see no reason whatsoever for holding that retrenchment would not be included in this category. A person who is retrenched by his employer would equally well be a person who is unemployed but previously employed and who would also be entitled to reinstatement as indeed the workers have claimed in both these petitions.

14. We do not think such a conclusion is necessarily forced upon us. On the other hand, it seems to us that the definition of "employee" in S. 3(13) is wide enough to cover a retrenched employee. All that it says is that "employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry. The essential thing to find is therefore whether a person is employed for work in any industry and receives remuneration therefore. It is not necessary to limit the meaning of the words "any person employed" to "any person employed at the time that the dispute arose", and therefore we can safely hold having regard to the clear indications given by the other provisions of the Act. That it means any person employed to do work at any time and that the definition has no reference to the point of time at which the person whose case is under consideration was doing this work. It is also clear from what we have said that in the context of the other provision of the Act to which we have referred above it is necessary that we should hold that an employee means

> *any person employed at any time to do any skilled or unskilled work for hire or reward in any industry. If this construction of the definition is not to be given it is clear that we would be rendering nugatory large parts of the Act particularly the provisions which we have mentioned above. What is still worse, we would be rendering nugatory provision of Chapter VA of the Central Industrial Disputes Act (India Act XIV of 1947) which deal with the right of the worker not to be retrenched without the conditions precedent under S. 25F the procedure for retrenchment under S. 25G and the re-employment of the retrenched workmen under S. 25H. If no remedy would be available to such persons who are retrenched it would be idle to make these provisions in the Industrial Disputes Act. Moreover, before we come to any such conclusion, viz., that the retrenched worker has no remedy, we must be compelled of the absolute necessity to do so which having regard to the provisions of the Bombay Industrial Relations Act we have shown is not necessary.*
>
> *21. In the result, we answer the question as follows :-*
>
> *A "retrenched employee" is an employee within S. 3(13) of the Bombay Industrial Relations Act, 1946 and can apply for reinstatement to Labour Court under Ss. 78 and 79 of the said Act.* -------.

It would be thus apparent that considering the nature of the legislation, a wider and meaningful interpretation, which would further protect the rights and entitlements of an employee, has to be given preference, rather than the one which negates such rights and entitlements.

10. Thus, what has been considered and held in the judgments discussed above, in our considered opinion, we do not see any ground as to why the same logic and reasoning as applied in ***Ramesh Bhimrao Narayankar*** (supra) should also not apply to Section 2(7) of the MEPS Act which defines employee to mean any member of the teaching and

non-teaching staff. If this is not so then the right granted to an employee facing an enquiry, to nominate one person on the Enquiry Committee, would become restrictive, resulting in denial of a fair and reasonable opportunity to the delinquent employee, to balance the composition of the Enquiry Committee. In fact, the conclusion by the learned Full Bench in ***Ramesh Bhimrao Narayankar*** (supra) is clearly supported by what has been held by the Learned Full Bench in ***K.B. Khatavkar*** (supra).

11. In fact, if the 'Employee', to be nominated on the Enquiry Committee by the Head is a non-serving/retired employee, then as rightly contended by Mr. Dhore, learned Counsel for the petitioner, such a retired/non-serving employee, would definitely be in a better position, uninfluenced by the pulls and pressures of the management being in employment apart from which a retired/non-serving employee, would also be able to devote time to the enquiry, not being required to seek leave from the management, which employs him, either to participate in the enquiry by becoming a member of the Committee or to seek leave to attend such meetings of the Enquiry Committee, the conclusion of which cannot be predicted, in a given timeline.

12. This is more so as Rule 37(3) of the MEPS Rules enjoins upon the delinquent employee to be responsible to see that his/her

nominee is present during the enquiry, which at times would be difficult, if the nominee, is a serving employee, dependent upon the discretion of his/her management to get leave for participating in the enquiry.

13. The expression 'from amongst the employees of any private school', as occurring in Rule 36(2)(a)(ii), (b) (ii); 37(2)(c) of the MEPS Rules needs to be considered, which for the sake of ready reference, is reproduced as under :

> *"36. **Inquiry Committee** :-*
> *(1) If an employee is allegedly found to be guilty of any of the grounds specified in sub-rule (5) of Rule 28 and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a Committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgment due to the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.*
> *(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say,-*
> *(a) in the case of an employee-*
> *(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name*

shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;
(ii) one member to be nominated by the employee from amongst the employees of any private school;
(iii) One member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred.
(b) in the case of the Head referred to in sub-rule (1)-
(i) one member who shall be the President of the Management;
(ii) one member to be nominated by the Head from amongst the employees of any private school;
(iii) One member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred".
(3) The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub- rule (2) by registered post acknowledgment due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within fifteen days of the receipt of the communication to the effect."
(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him to the Inquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of the nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as provided in sub-rule (2).
*37. **Procedure of Inquiry :-** :-*
2 (c) The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defending his case."

The expression 'from amongst the employees of any private school', will have to be read in the contextual background, in which it has been used. The above expression, according to us, has been used in a most generalized and wider sense, and not a restrictive one,

for construing so, would result in restricting the freedom, which has been granted to the Head/Employee, in the matter of nominating their choice of the person to be a member of the Enquiry Committee, whose result would at times, can be detrimental to the Head/Employee, which therefore, calls for such Head/Employee, to exercise the right to nominate a person of its choice, freely, without any fetters, whatsoever, subject only to the condition that such a nominee, is or was an employee of any private school, at some point of time or the other.

14. This, in our considered opinion, is further apparent from the fact that in stark contradiction to the expression 'from amongst the employees of any private school', as occurring in Rule 36(2)(a)(ii) ; Rule 36(2) (b) (ii) and Rule 36(3) of the MEPS Rules in the same contextual background uses the expression 'directing him to nominate a person on his behalf on the proposed Enquiry Committee'. Rule 36(4) of the MEPS Rules also uses the expression 'the person nominated by him', in the same contextual background of constitution of the Enquiry Committee. Though it may be contended that the use of the expression 'person', has to be read in relation to the expression 'from amongst the employees of any private school', doing so, in fact, creates an absurdity. It is also material to note that there is no express exclusion of a retired/non-serving employee, for being nominated on the Enquiry

Committee as the nominee of the Head/Employee, for had it been so, the Legislature would have definitely used terms of exclusion, by stating that such an employee, necessarily has to be a serving employee and none else, which are absent.

15. Let us consider the word 'employee', as defined in Section 2(7) of the MEPS Act, in the contextual background of some of the provisions where it has been used, relevant for the discussion in the present matter. Section 2(7) of the MEPS Act, defines the word 'employee', as under :

> *"2(7) "employee" means any member of the teaching and non-teaching staff of a recognised school and includes Assistant Teacher (Probationary)"*

In ***Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and others (2004) 1 SCC 755***, it has been held that the word 'employee', in different enactments has to be interrelated having due regard to the different aims and objects of the various labour legislations.

16. In the above background, let us consider the word 'Employee' as defined Section 2(7) of the MEPS Act in context of right of appeal under Section 9, which also uses the word 'employee' in Sub- Section (1) and (2). Section 9 of the MEPS Act reads as under :

> *"9. (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school —*

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the management ; or

(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8 :

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be :

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

[the other sub-sections not being relevant for the present discussion are not reproduced].”

17. If the word ‘employee’, is granted a restricted meaning to mean a serving employee only, as is sought to be canvassed by Mr. Paliwal, learned Counsel for the respondent Nos.1 and 3, based upon its definition as contained in Section 2(7) of the MEPS Act, then Section 9 would become unworkable, as would be deemed to confer rights on an ‘employee’ -meaning a serving employee- of a right to file an appeal against his termination, which termination would then no longer permit him, to be construed as an employee. A meaningful, purposeful and contextual interpretation, will therefore have to be

given to the word 'employee', based upon the context in which it is used. In the context of Section 9, where the word 'employee', is used in conjunction with granting such 'employee', a right to file an appeal against his/her termination, the same necessarily will have to be held to mean a former or out of service or non-serving employee, which expression shall hold good, till such time, the appeal is allowed by the Tribunal, restoring the status of the non-serving employee, to that of a serving employee, which would then be in consonance with the definition in Section 2(7) of the MEPS Act.

18. A similar reading of the word 'employee', as occurring in Section 11 (2) (a), (b), (e), (f) and (3) will have to be done, as that contemplates reliefs which may be granted to an employee by the Tribunal, upon such employee succeeding in his appeal under Section 9 of the MEPS Act before the Tribunal, which would be impermissible to be granted if the word 'employee', is restricted to an employee in service.

19. It would thus be apparent that the word 'employee', as defined in Section 2(7) of the MEPS Act and the Rules framed thereunder cannot be given a rigid meaning to say that it means only a serving employee, but will have to be given a purposive meaning based upon the context in which it is used, which considering the contextual

background would also mean and include a former/non-serving employee, so as to avoid any absurdity.

20. That a contextual interpretation is called for is indicated from the English language, itself, specially, in regard to what has been said about a Homonym. A Homonym is a word that is spelt and pronounced like another word but that has a different meaning. To cite an example the word 'Bank' means a place where money is kept when used in the context of commerce, and when used in the context of flowing water means the edge of the water flow. The word, therefore has to be understood in the context in which it has been used. The word 'current', used in the context of water or electricity would mean 'flow of water/electricity' but when used in the context of events would mean 'up-to-date'. Thus, a contextual interpretation is the norm and not an exception. It is, thus, apparent that the expression 'employee', as occurring in Rule 36(2)(a)(ii) and (b) (ii) of the MEPS Rules will have to be read and construed independently and its meaning cannot be controlled by the definition of the word 'employee', as defined in Section 2(7) of the MEPS Act, as doing so would lead to a situation, where their meaning cannot be reconciled with each other.

21. The word 'employee', as used in Rule 36(2)(a)(ii) and (b) (ii) of the MEPS Rules having regard to the purpose and intent of the

Rules, in granting an opportunity to the employee/Head in nominating a person to the Enquiry Committee, as already indicated above, has been used in a most generalized sense, of the term, and according to us, does not preclude a retired/non-serving employee, being included within its ambit, as doing so would give a purposeful meaning to the provisions, considering that such a nomination is for balancing the composition of the Enquiry Committee.

22. Though Mr. Paliwal, learned Counsel for the respondent Nos. 1 and 3, relies upon Rule 10 of the MEPS Rules, it merely defines the categories of employees and nothing else and thus would have no relevance and bearing upon the question under consideration. ***Namdev Tukaram Patil*** (supra) relied upon by him, is of no relevance to the matter in issue in hand as it considers the definition of employee under Section 2 (7) of the MEPS Act in the context of transfer in terms of Rule 41 of the MEPS Rules.

23. In the result, in view of the discussion made above, we hold that it would be permissible for a Head/Employee, in exercise of the provisions of Rule 36(2)(a)(ii) and (b) (ii) of the MEPS Rules to nominate a former/retired employee as his representative on the Enquiry Committee. We, therefore, allow the writ petition in the above terms. The consequence of this would be that the Enquiry Committee

constituted in contravention to what has been held above would be illegal, on account of which the enquiry report, dated 16/10/2024 and consequently the resultant termination of the petitioner by the order dated 16/10/2024 from the post of Headmaster, as well as the communications dated 24/08/2024 and 01/07/2024 rejecting/ disqualifying the nominee of the petitioner on the Enquiry Committee all are hereby quashed and set aside and we direct the constitution of the Enquiry Committee, in light of what has been held in this judgment.

24. Rule is made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

(ABHAY J. MANTRI, J.) (AVINASH G. GHAROTE, J.)

At this stage, Mr. Paliwal, learned Counsel for the respondent Nos.1 and 3 seeks stay to the effect and implementation of the judgment for a period of four weeks.

Though the learned Counsel for the petitioner objects to the same, however, considering the request and the fact that the petitioner has been terminated on 16/10/2024 from the post of

Headmaster, we grant the request and stay the effect and operation of the judgment for a period of four weeks from today.

(ABHAY J. MANTRI, J.) **(AVINASH G. GHAROTE, J.)**

Wadkar