



Shabnoor/VRJ

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

WRIT PETITION NO.9966 OF 2019

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**Abhyudaya Dnyanvardhini Sanstha
Through Its President/ Secretary & Anr.**

... Petitioners

V/s.

Chandrakant Shrirang Gaikar & Ors.

... Respondents

WITH

INTERIM APPLICATION NO.13794 OF 2024

**Abhyudaya Dnyanvardhini Sanstha
Through Its President/Secretary & Anr.**

... Applicants

In the matter between

**Abhyudaya Dnyanvardhini Sanstha
Through Its President/Secretary & Anr.**

... Petitioners

V/s.

Chandrakant Shrirang Gaikar & Ors.

... Respondents

WITH

INTERIM APPLICATION NO.15870 OF 2024

Chandrakant Shrirang Gaikar

... Applicant

In the matter between

**Abhyudaya Dnyanvardhini Sanstha
Through Its President/Secretary & Anr.**

... Petitioners

V/s.

Chandrakant Shrirang Gaikar & Ors.

... Respondents

Mr. Satyajeet A. Rajeshirke with Prashant Kulkarni a/w
Shubham Vasekar a/w Gautam Kulkarni for the
petitioners.

Ms. Jui Kanade a/w Shivani Samel a/w Shruti Tulpule
for respondent No.1.

Ms. Snehal S. Jadhav, AGP for State – respondent
Nos.2 & 3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 18, 2025

JUDGMENT:

1. This Petition, instituted under Article 227 of the Constitution of India, assails the judgment and order dated 2 August 2019 rendered by the learned Presiding Officer, School Tribunal, Mumbai in Appeal No.7 of 2018. By the impugned decision, the Tribunal was pleased to allow the Appeal instituted by Respondent No.1, thereby setting aside the order of termination dated 23 February 2018 (effective from 24 February 2018).

2. The facts and circumstances giving rise to the present Petition, briefly stated, are as follows:

(i) According to the Petitioners, Respondent No.1 has been serving as an Assistant Teacher in the institution since 14 June 1999. It is their case that from 21 January 2000 until 13 May 2013, several memoranda were issued to Respondent No.1 to caution him about his alleged misconduct, inappropriate behavior, and failure to adhere to the discipline expected of a teacher. It is further asserted that the Annual Confidential Reports (ACRs) of Respondent No.1 from 2007 to 2013 contained adverse remarks, indicative of repeated lapses. Despite such adverse reports, the Petitioners extended salary increments and other emoluments to Respondent No.1, abiding by the relevant rules and regulations. They maintain that these increments were

granted in the hope that Respondent No.1 would rectify his conduct and to avoid any arbitrariness or victimization.

(ii) On 13 June 2013, Respondent No.1 is stated to have addressed complaints to as many as nineteen different authorities, including the police, levelling allegations of a serious but allegedly baseless nature against the management. The Petitioners contend that these complaints caused considerable harassment to the Headmaster as well as the Managing Committee, thereby affecting the working environment.

(iii) Owing to this conduct, the Petitioners initiated minor disciplinary action by issuing Respondent No.1 a penalty of withholding one increment for a period of one year from 1 July 2013, which was subsequently restored in the following year. On 12 December 2013, Respondent No.2–Education Inspector directed Respondent No.1 to abide by the instructions issued by the Headmaster and the Management, to focus on academic responsibilities, and to refrain from lodging complaints without following the prescribed procedure.

(iv) On 27 July 2014, a statement of allegations was furnished to Respondent No.1, culminating in the initiation of an inquiry on 16 October 2014. The Petitioners aver that Respondent No.1 did not participate in the inquiry despite being accorded opportunities, a conduct that eventually led the inquiry committee to hold the charges against him as

proved and recommend termination. Consequently, on 18 October 2014, Respondent No.1's services were terminated.

3. Aggrieved, Respondent No.1 filed Appeal No.39 of 2014 before the learned School Tribunal, Mumbai. The School Tribunal, upon hearing the parties, dismissed the appeal on 2 August 2016. Respondent No.1 challenged the said dismissal before this Court by way of Civil Writ Petition No.13054 of 2016. This Court, by its judgment dated 27 July 2017, set aside the Tribunal's order with a direction to conduct a de novo inquiry while reinstating Respondent No.1 into service w.e.f. 1 August 2017. The question of back wages during the interregnum was left to be determined based on the outcome of the fresh inquiry.

4. In compliance with the directions of this Court, the Petitioners reinstated Respondent No.1 on 1 August 2017.

5. Pursuant to the order of this Court, a fresh inquiry committee was constituted. Initially, the Secretary of the Managing Committee, Mr. Mahesh Kisan Karle, was appointed as the Management's nominee. Respondent No.1 raised an objection to the said appointment, whereupon Mr. Rahul Hule, another member of the Managing Committee, was inducted as the Inquiry Officer. The record indicates that due opportunity to defend was afforded to Respondent No.1; however, once again, the inquiry committee concluded, on 17 February 2018, that the charges stood proved and recommended the penalty of termination. Consequently, the Petitioners proceeded to issue a fresh order of termination dated 23 February 2018, effective from 24 February

2018.

6. Aggrieved by the termination, Respondent No.1 filed Appeal No.7 of 2018 before the learned School Tribunal, Mumbai on 26 February 2018. During the pendency of the appeal, the Petitioners, citing financial constraints, expressed a willingness on 7 March 2018 to revoke the termination and comply with any direction of the School Tribunal. By an order passed on 26 February 2018 (which was later formalized), the School Tribunal quashed and set aside the fresh inquiry, holding it to be vitiated, and thereby nullified the order of termination dated 23 February 2018. Notably, Respondent No.1 stood reinstated in service, and the Tribunal granted him notional continuity in service w.e.f. 18 October 2014 until 31 July 2017. The Petitioners, therefore, seek intervention of this Court under Article 227 of the Constitution to examine the correctness, legality, and propriety of the impugned order of the School Tribunal.

7. Mr. Satyajeet Rajeshirke, the learned Advocate for the Petitioners, has assailed the impugned decision of the School Tribunal on the ground that it has not sufficiently appreciated the substantive merits of the case and has granted relief to Respondent No.1 solely upon the purported admissions under Order XII, Rule VI of the Code of Civil Procedure, 1908. He contended that such reliance is misplaced, as the Tribunal did not undertake a thorough examination of the pleadings and the evidence but proceeded to grant back wages in disregard of the well-settled principle that an employee seeking back wages must plead and establish that he was not gainfully employed elsewhere during the interregnum. In

support of this position, he placed reliance on the judgment of the Hon'ble Supreme Court in *Deepali Gundu Survase vs. Kranti Junior Adhyapak & Ors. (2013) 10 SCC 324*, which underscores that the burden lies upon the employee to specifically plead non-employment or unemployment, failing which the relief of back wages may not be accorded as a matter of course.

8. Learned Counsel further asserted that the mere fact that the son of the President of the Management was appointed as the Inquiry Officer cannot ipso facto render the entire inquiry void ab initio. According to him, under the relevant service or disciplinary rules, the President is entitled to nominate a representative from the Managing Committee, and the son of the President, being a duly appointed committee member, cannot be disqualified solely on that ground. Learned Counsel sought to draw an analogy with the principle that an employer may nominate any competent member of the Management to participate in disciplinary proceedings, provided the rules of natural justice are scrupulously observed. He urged that the School Tribunal erred in concluding that such an appointment is inherently tainted by bias.

9. Opposing these submissions, Ms. Jai Kanade, the learned Advocate appearing on behalf of Respondent No.1, maintains that the inquiry officer's appointment is replete with procedural impropriety and is vitiated by a strong likelihood of bias, given that he is the son of the President who initiated the disciplinary action. She drew attention to the sequence of events wherein, initially, the representative of the Management in the inquiry proceedings was indeed the same person who later became the

Inquiry Officer. In her submission, it matters little that he was formally “nominated”; the essential point is that he lacks the neutral and detached stance indispensable for a fair disciplinary inquiry.

10. As to the plea of gainful employment, learned Counsel for Respondent No.1 stoutly refuted the allegation that there was no specific denial or statement regarding employment status. She pointed to a rejoinder on record wherein Respondent No.1 made a clear statement on oath that, post-termination, he was not engaged in any gainful employment. She argued that such a categorical averment discharges the burden cast upon Respondent No.1 to prove the entitlement of back wages, as envisaged in *Deepali Gundu Survase (supra)*. Learned Counsel urged that the School Tribunal rightly granted the relief of back wages as a corollary to its finding that the inquiry stood vitiated by procedural impropriety and real likelihood of bias.

11. In fortification of her contention on the issue of bias, Ms. Kanade has placed reliance on the judgment of this Court in *Rajashri Shahu Chhatrapati Shikshan Sanstha, Nagpur & Anr. vs. Mangala w/o Rajesh Mankar & Ors. (2019) 5 Mah LJ 418*, to reiterate the principle that even an ostensible or perceived conflict of interest may amount to a violation of the rules of natural justice, thereby invalidating the disciplinary proceeding. She submits that in light of the established legal doctrine *nemo iudex in causa sua* (no one can be a judge in his own cause), the Tribunal’s determination that the inquiry proceeding was tainted is wholly justified.

12. This Court's supervisory jurisdiction under Article 227 is circumscribed by the well-settled principle that it does not ordinarily re-appreciate evidence or correct mere errors of fact. However, it can and must intervene where there is a jurisdictional lapse, illegality, or perversity apparent on the face of the record, as reiterated in *Waryam Singh vs. Amarnath* (AIR 1954 SC 215) and reinforced in *Radhey Shyam vs. Chhabi Nath* (2015) 5 SCC 423.

13. Thus, this Court shall proceed to examine whether the Tribunal, in allowing the Appeal and directing notional continuity of service, exercised its jurisdiction within the permissible confines of law or traveled beyond the scope of judicial review envisaged under the statutory framework.

14. Heard learned counsel for the parties and perused the material on record. The principal question that arises for consideration is whether the inquiry conducted against the Respondent-Teacher stood vitiated by bias, and further, whether the Management had a pre-determined stance to terminate the service of the Respondent-Teacher. In order to arrive at a finding on these issues, it is imperative to examine not only the constitution of the Inquiry Committee but also the manner in which the inquiry proceedings were conducted. In this context, I am guided by the well-settled principle *nemo judex in causa sua* (no one shall be a judge in his own cause). An inquiry, to pass judicial muster, must be free from the vice of perceived or real bias and must adhere to the fair-play principle enshrined in the rules of natural justice.

15. The factual matrix, as discernible from the record, indicates that the Respondent–Teacher, on 13 June 2013, lodged a complaint against the President of the School, alleging misappropriation of funds and harassment. Such allegations, prima facie, reveal the existence of strained relations between the Respondent–Teacher and the Management. One cannot lose sight of the possibility that subsequent disciplinary proceedings may have been influenced or colored by the acrimony arising out of these serious allegations. While it is permissible for an employer to take disciplinary action against an errant employee, the same must be premised on substantive evidence of misconduct and executed in a fair and unbiased manner, as held in *State of Uttar Pradesh vs. Saroj Kumar Sinha (2010) 2 SCC 772*.

16. On 8 July 2014, the Respondent–Teacher was served with a statement of allegations, which included an incident dated 18 February 2000, wherein he was alleged to have imposed physical punishment on a student of the 9th class. The Respondent–Teacher had purportedly been warned in writing for this incident. The statement of allegations further charged that the Respondent–Teacher habitually left school premises without the Headmaster’s permission, disregarded the prescribed syllabus, and failed to extend extra classes to students with lower comprehension abilities. He was also accused of outrightly refusing additional teaching assignments. It is true that an institution is well within its rights to discipline a teacher for acts of omission and commission detrimental to the academic environment. However, such proceedings must satisfy the touchstone of procedural propriety, as

underscored by the Hon'ble Supreme Court in *ECIL vs. B. Karunakar (1993) 4 SCC 727*. A mere cataloguing of allegations is insufficient; the disciplinary authority must undertake a scrupulous inquiry free from undue influence or bias.

17. The record discloses that the initial Inquiry Committee constituted by the Management comprised Mr. Mahesh Karale and Mr. Rahul Hule, with Mr. Hule acting as the Presenting Officer. Subsequently, on 15 September 2017, Respondent No.1 raised objections against Mr. Karale, asserting that he had served as a peon in the school, was a complainant against the Respondent–Teacher, and thus not a neutral individual. Accepting this objection, the Management replaced Mr. Karale with Mr. Hule as the Inquiry Officer. However, this led to a further grievance from the Respondent–Teacher, who pointed out on 9 October 2017 that he had filed a criminal complaint against the President, Mr. R.G. Hule, and his wife—both of whom are the parents of Mr. Hule, now appointed as the Inquiry Officer.

18. The Inquiry Committee that eventually emerged comprised Mr. Hule as the Convener and his mother, Mrs. Alka Hule, as the Presenting Officer. The School Tribunal, upon evaluating these developments, noted that there was prima facie a legitimate apprehension of bias in the constitution of the Inquiry Committee itself. It further observed that “readymade” examination-in-chief statements of witnesses were placed on the record by the Management. The Tribunal’s finding in that regard is reminiscent of the principle that an inquiry must be conducted with impartiality and actual participation of the witnesses, rather than

on the basis of preconceived or pre-scripted statements.

19. The Tribunal also took cognizance of a letter dated 13 June 2013 from the Director of Education, which seemingly triggered a more pronounced dispute between the parties. According to the Tribunal, the sequence of events—starting from the Respondent–Teacher’s complaints of misappropriation, followed by the Management’s actions—indicated that the inquiry might have been initiated with an oblique motive to terminate the Respondent–Teacher. While an employer is not barred from taking disciplinary action against an employee who raises allegations, the legitimacy of the disciplinary process depends upon its transparency and objectivity.

20. The Tribunal’s inference that the appointment of a peon and family members of the President in pivotal roles on the Inquiry Committee, coupled with the prior hostilities, gave rise to a real likelihood of bias, cannot be brushed aside. The principle that justice should not only be done but also be seen to be done is foundational in cases of domestic inquiries. Hence, the presence of family members and individuals who had lodged complaints against the Respondent–Teacher indeed casts a serious shadow over the impartiality of the entire proceeding.

21. The learned counsel for the Petitioners has strenuously argued that the mere appointment of the President’s son as the Inquiry Officer, in and of itself, does not nullify the inquiry, emphasizing that the President is entitled to appoint a person of his choice. While it is true that an employer may designate any

competent representative or member of its governing body to conduct a disciplinary inquiry, it must also be borne in mind that such an appointment should withstand scrutiny on the anvil of fairness and absence of bias.

22. In the present case, as undisputedly recorded, Respondent No.1 had lodged a criminal complaint against both the father and mother of the Inquiry Officer. Further, prior to his appointment as the Inquiry Officer, the President's son was serving as the Management's Representative in the very same inquiry. This replacement came about after the previous Inquiry Officer—who was employed as a peon with the Management—was found to be unsuitable owing to a lack of neutrality. These facts reveal a chain of events that point toward the possibility of a pre-determined stance against Respondent No.1. As rightly contended by the Respondent-Teacher, and relying on *Rajashri Shahu Chatrapati Shikshan Sanstha, (supra)*, any inquiry tainted with such serious infirmities of bias and lack of neutrality cannot stand the test of fairness, a foundational hallmark of domestic inquiries. In fact, a Coordinate Bench of this Court has reiterated that, once such malice or bias in the initiation and conduct of the inquiry is established, permitting a de novo inquiry would only perpetuate harassment and afford the Management an unwarranted “premium” on its biased actions.

23. Furthermore, upon examining the nature of the charges levelled against Respondent No.1, it emerges that they are, at best, either stale or insufficiently grave to warrant the extreme penalty of dismissal—let alone necessitate a third inquiry. Notably, one of

the primary charges relates to an incident in the year 2000 where Respondent No.1 was accused of administering corporal punishment to a 9th standard student. The Management had already issued a written warning back then. The remaining allegations, comprising acts such as leaving the school premises without permission and refusing additional teaching duties, may constitute misconduct warranting caution or minor penalties but do not, *prima facie*, rise to the level of warranting another full-fledged inquiry ending in dismissal. As the Hon'ble Supreme Court observed in *Saroj Kumar Sinha (Supra)*, the essence of disciplinary proceedings is to ensure that legitimate misconduct charges are probed in a fair, meaningful manner, not to serve as a tool for vindictive action. Considering these factors, a further remand for yet another inquiry would be a futile exercise and unjust to Respondent No.1.

24. As regards the direction to pay full back wages to Respondent No.1 for the period from 18 October 2014 to 31 July 2017, Respondent No.1 has placed on record a categorical statement on oath that he was not gainfully employed elsewhere during the disputed period. This assertion, standing uncontroverted, entitles him to back wages in accordance with the principle enunciated by the Hon'ble Supreme Court in *Deepali Gundu Survase (supra)*, which places the burden on the employer to show that the employee was otherwise gainfully employed in order to deny back wages.

25. It is relevant to note that the Management has filed an affidavit stating that it had engaged one Mrs. Aruna Bhaskar

Dubey as an Assistant Teacher in lieu of Respondent No.1 during period from 18 October 2014 to 31 July 2017. It is further averred that the Management paid an honorarium to Mrs. Dubey from its own coffers, without receiving any grant-in-aid or reimbursement for her salary. Therefore, it would be open to the Management to forward a proposal, along with the requisite documentation, to the Education Department, highlighting the fact that Mrs. Dubey was engaged and that no grant-in-aid had been received for her salary. The Education Department, after verifying the authenticity of the statements in the affidavit dated 17 February 2025, shall release the necessary grant-in-aid for the said period within eight weeks from receipt of the proposal.

26. From the record, it is evident that the Management has duly complied with the Order dated 27th April 2022 by depositing the sum of Rs.10,31,696/–, representing fifty percent of the back wages adjudged in favour of Respondent No.1. Accordingly, Respondent No.1 shall be entitled to unconditionally withdraw the sum so deposited. In light of these submissions, the Management is directed to forthwith process and remit balance back wages due to Respondent No.1 for the period from 18 October 2014 to 31 July 2017.

27. With the foregoing observations and directions, the Writ Petition stands disposed of, with no order as to costs.

28. All pending interlocutory applications stand disposed of.

(AMIT BORKAR, J.)