2023:BHC-AS:37285

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4232 OF 2022

1. President / Secretary]
Uttar Bhartiya Education Society,]
Acharya Narendra Dev Vidyamandir,]
Sharada Estate, L. T. Road, Vazira Naka,]
Borivali (West), Mumbai – 400 091.]

2. Head Mistress]
Acharya Narendra Dev Vidyamandir,]
Sharada Estate, L. T. Road, Vazira Naka,]
Borivali (West), Mumbai – 400 091.] … Petitioners

Versus

1. Naresh Tejan Thakur]
Age about 44 years,]
Residing at 07, Tripathi Chawl, Near Jugnu]
Bakery, Nalasopara (E), Dist. : Palghar.]

2. Education Inspector]
West Zone, I. Y. College Compound,]
Jogeshwari (East), Mumbai – 400 060.] … Respondents

Mr. Gangadhar Sabnis for Petitioners.
Ms. Jai V. Kanade i/b Rahul Shirgavkar for Respondent No.1.
Mr. A. P. Vanarase, AGP for Respondent No.2.

CORAM :- SANDEEP V. MARNE, J.
DATE :- 05 DECEMBER, 2023

JUDGMENT :

1. The concept of ‘principles of natural justice’, devised essentially to achieve procedural fairness, ensures correct or appropriate decisions. The principle finds embedded in almost all service-related

rules and regulations and its incorporation is aimed at offering full opportunity to an employee to defend himself/herself in respect of accusations made by the employer. However many times, the intricate procedure prescribed for conduct of domestic enquiries result in counterproductive results where the employer is unable to punish an employee who has conducted misconduct. It sometimes becomes a tool in the hands of errant employees to avoid punishments. It is for this precise reason that in ***State Bank of India & Others Vs. S. K. Sharma***[1]***,*** the Apex Court was required to make following observations :

> "*32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter.* ***Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.***"
>
> *(emphasis supplied)*

2. I am faced with somewhat similar position where a Peon working in a School was accused of sexually assaulting a minor girl and terminated from services is directed to be reinstated in service and rewarded with full backwages by the School Tribunal essentially on grounds of non-following of procedural rules of conducting inquiry.

3. ***Rule***. Rule is made returnable forthwith. With the consent of the learned Counsel for parties, Petition is called out for hearing.

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1 ***(1996) 3 SCC 364***

4. Petitioner–Management has filed the present Petition challenging the Judgment and Order dated 11 January 2022 passed by the Presiding Officer, School Tribunal, Mumbai, allowing the Appeal filed by the Respondent No.1 by setting aside termination order dated 15 March 2019 and further directing the Petitioner–Management to reinstate the Respondent No.1 with full backwages and continuity in service and all other consequential benefits.

5. Briefly stated, facts of the case are that the Petitioner No.1 is a trust registered under the provisions of Maharashtra Public Trusts Act, 1950 and also a society registered under the provisions of Societies Registration Act, 1860. It runs Acharya Narendra Dev Vidyamandir ('**Acharya School**'), a secondary school. Respondent No.1 came to be appointed on the post of Peon in another school with effect from 11 December 1996. He was transferred to Acharya School in the year 2003. On 22 March 2014, Smt. Meenakshi Sunil Jha, headmistress of Acharya School, registered FIR with Borivali Police Station alleging that the Respondent No.1 sexually assaulted her minor daughter then aged 12 years. It was alleged in the FIR that her daughter used to visit Acharya School for study after the end of school hours of her own school and while being in Acharya School, Respondent No.1 sexually assaulted her on 3 occasions in March 2017. In pursuance of the FIR lodged against him, the Respondent No.1 was arrested on 22 March 2017. He remained under custody till 4 May 2018 upon grant of bail by this Court. It appears that in pursuance of the proposal sent by the Management for suspension of the Respondent No.1, the Education Inspector granted approval for suspension of the Respondent No.1 vide letter dated 19 April 2017. After the Respondent No.1 was released on bail, letter dated 8 June 2018 was served upon him stating that the Management had already taken a

decision to suspend him and to hold a departmental inquiry vide resolution dated 30 April 2017. The Respondent No.1 was served with copy of resolution dated 30 April 2017.

6. On 25 April 2018, the Chief Executive Officer of Petitioner served Statement of Allegations on the Respondent No.1 under the provisions of Rule 36(1) of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Rules, 1981 ('**MEPS Rules**'). The Respondent No.1 submitted his explanation vide Advocate's letter dated 31 June 2018 denying the allegations. On 30 July 2018, the Management constituted inquiry committee by nominating Shri R. B. Singh as Management's representative (Convener) and Dr. Sangeeta Srivastava, a State Awardee teacher. The Respondent No.1 was called upon to nominate his nominee on the inquiry committee, who suggested name of Dr. Krishna Babali Naik as his nominee. However, since the said nominee was an ex-employee, the Petitioner – Management called upon the Respondent No.1 to suggest name of another defence nominee. Accordingly, the Respondent No.1 nominated Shri Yogesh M. Yadav as his defence nominee by letter dated 24 August 2018. The convener of the inquiry committee served charge-sheet on Respondent No.1 vide letter dated 23 August 2018. The Respondent No.1 denied the charges vide letter dated 29 August 2018. The convener of the inquiry committee communicated the names of 3 witnesses proposed to be examined in the inquiry and the documents to be relied upon by letter dated 3 September 2018. In the letter dated 3 September 2018, acceptance of nomination of Shri Yogesh Yadav as representative of Respondent No.1 was also conveyed. The inquiry commenced from 8 September 2018 and was concluded by conducting 15 sittings up to 9 February 2019. The Respondent No.1 examined 14 witnesses in support of his defence. At the

end of the inquiry, the inquiry committee submitted report dated 9 March 2019 holding the charges to be proved and recommending the penalty of dismissal / termination of the Respondent No.1. Based on the recommendations of the inquiry committee, the Petitioner – Management issued order dated 15 March 2019 terminating the services of the Respondent No.1.

7. The Respondent No.1 filed Appeal No.6/2019 before the School Tribunal, Mumbai, challenging the termination order dated 15 March 2019 and seeking reinstatement in service with full backwages, continuity of service and other consequential benefits. The Appeal was opposed by the Petitioner – Management by filing reply. After hearing both the sides, the School Tribunal proceeded to allow the Appeal of the Respondent No.1 by its Judgment and Order dated 11 January 2022. The School Tribunal has set aside the order of termination dated 15 March 2019 and has further directed the Petitioner – Management to reinstate the Respondent No.1 in service with full backwages, continuity of service and all other consequential benefits. The School Tribunal has directed a copy of the order to be sent to the concerned police station at Borivali for information. The Petitioner – Management is aggrieved by the Judgment and Order dated 11 January 2022 passed by the School Tribunal and has filed the present Petition.

8. Mr. Sabnis, learned Counsel appearing for the Petitioner, would submit that the impugned Judgment and Order passed by the School Tribunal setting aside the termination of the Respondent No.1 and directing his reinstatement with full backwages is unsustainable and liable to be set aside. He would submit that the Respondent No.1 was charged with grave misconduct of sexually assaulting a minor and is being

prosecuted for the offences punishable under Section 354 of the Indian Penal Code, 1860 ('**IPC**') read with Sections 8 and 10 of The Protection of Children from Sexual Offences Act, 2012 ('**POCSO**'). That, the Respondent No.1 remained in police custody for other one year from 22 March 2017 to 4 May 2018. That, charges levelled against the Respondent No.1 are proved by leading sufficient evidence. That, there is evidence on record to support the finding of guilt. That, the inquiry has been conducted by following the principles of natural justice to the hilt. That, punishment imposed is commensurate with the gravity of misconduct. That in such circumstances, the School Tribunal could not have interfered with the punishment imposed on the Respondent No.1.

9. Mr. Sabnis would submit that the findings recorded by the School Tribunal about conduct of inquiry are clearly unsustainable. That, the Respondent No.1 was afforded full opportunity of defence. That, he cross-examined all the 3 witnesses. In such circumstances, the School Tribunal could not have interfered in the penalty imposed on the Respondent No.1. That, the School Tribunal has committed jurisdictional error in passing the impugned order. He would pray for setting aside the order passed by the School Tribunal.

10. *Per Contra*, Ms. Kanade the learned counsel appearing for Respondent No.1 would oppose the Petition and support the order passed by the School Tribunal. She would submit that the entire inquiry has been conducted by the Management and the inquiry committee is a farcical show as the Management was predetermined to terminate the services of the Respondent No.1. That, the entire inquiry has been conducted in an unfair manner. That, the Management had already taken a decision to hold a disciplinary inquiry on 30 April 2017 i.e. before service of

Statement of Allegations under Rule 36(1) of the MEPS Rules on 25 June 2018. That there thus is admitted violation of Rule 36 in taking decision to hold inquiry against the Respondent No.1. That, the constitution of the inquiry committee was erroneous. The Management nominated a legal expert to act as a convener of the inquiry committee. That, total 4 persons acted as members of inquiry committee in violation of the provisions of the MEPS Rules. That, the members of the inquiry committee conducted cross-examination of defence witnesses in addition to conducting examination-in-chief of the prosecution witnesses. By doing so, the members of the inquiry committee did not maintain neutrality and sided with the Management. That, no evidence is produced to connect Respondent No.1 with the allegations of misconduct. That, the CCTV footage, which is treated as clinching evidence, was not provided to the Respondent No.1. The CCTV footage has been relied upon by the inquiry committee for holding the Respondent No.1 guilty of misconduct. That, the Headmistress who is the first informant, was inimical towards the Respondent No.1 on account of inability expressed by the Respondent No.1 to do her personal work. That, the said Headmistress deliberately implicated Respondent No.1 in false accusations. That, no other employee of the school has either witnessed the alleged incident or has deposed as having seen the same. That, the Headmistress's sole testimony cannot be relied for the purpose of visiting Respondent No.1 with extreme penalty of dismissal from service. She would submit that the School Tribunal has rightly applied mind to the evidence before it and has held the findings of the inquiry committee to be perverse. That, no case is made out for interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. She would pray for dismissal of the Petition.

11. Rival contentions of the parties now fall for my consideration.

12. The Respondent No.1 is accused of committing grave misconduct of molesting and sexually assaulting a minor girl aged 12 years who also happen to be the daughter of the Headmistress of the school. The Respondent No.1 is being prosecuted for the offences punishable under Section 354 of the IPC read with Sections 8 and 10 of the POCSO. The victim's statement has been recorded by the Metropolitan Magistrate under the provisions of Section 164(5) of The Code of Criminal Procedure, 1973 on 16 September 2017. The Respondent No.1 remained under custody for long period from 22 March 2017 to 4 May 2018. After release from custody, the Management served upon him Statement of Allegations under the provisions of Rule 36(1) of the MEPS Rules.

13. The School Tribunal has held that the Management decided to suspend the Respondent No.1 and to conduct an inquiry before service of Statement of Allegations and that such an action on the part of the Management amounts to violation of procedure prescribed under Rule 36(1) and (2) of the MEPS Rules. On 30 April 2017, the Management resolved to suspend the Respondent No.1 from the date of service of suspension letter. It was further resolved to serve the suspension letter on him upon his release from custody and thereafter to proceed with the departmental inquiry. Under sub-rule (1) of Rule 36, the CEO of the Management is first required to communicate Statement of Allegations to the employee and to call for his written explanation. Upon receipt of written explanation, the CEO is required to consider the same and in the event of finding the explanation to be not satisfactory, he is required to place the same before the Management under sub-rule (2) of Rule 36. The Management is thereafter required to take a decision for conduct of an inquiry. In this regard, the provisions of Rule 36 are reproduced thus :-

"***36. Inquiry Committee***

(1) If an employee is allegedly found to be guilty on [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 acknowledgement due 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 acknowledgement 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 that effect.]

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him 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 his 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).

[(5) The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.]

(6) The meetings of the Inquiry Committee shall be held in the School premises during normal school hours or immediately thereafter, if the employee agrees and even during vacation."

14. It is by relying on the provisions of sub-rules (1) and (2) of Rule 36 that the School Tribunal has arrived at a finding that the decision to hold inquiry taken vide resolution dated 30 April 2017 before service of Statement of Allegations amounts to violation of the prescribed procedure. In my view, the School Tribunal has completely misdirected itself in recording this finding. The resolution dated 30 April 2017 was adopted essentially to order of suspension of the Respondent No.1. The resolution dated 30 April 2017 reads thus :

"*It is unanimously resolved to suspend peon/employee Mr. Naresh Tijan Thakur with effect from the date of the service of the suspension letter to him.*

It is further resolved to serve the suspension letter upon Naresh Tijan Thakur after his release from jail and then to proceed with the departmental enquiry by servicing charge sheet upon him by following due procedure as per Rules to that effect.

Secretary Shri J. P. Mishra is hereby authorized to sign the suspension letter and such letters required for commencing and completing the enquiry against Naresh Tijan Thakur.

For Utttar Bhartiya Education Society,

President / Secretary / Treasurer"

15. Rule 33 deals *inter alia* with suspension of an employee and sub-rule (1) of Rule 33 reads thus :

> "***33. Procedure for Inflicting major penalties***
> *(1) If an employee is alleged to be guilty of [any of the grounds specified in sub-rule (5) of rule 28] and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employees under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such orders.*"

16. Thus, for placing an employee under suspension, it is necessary for the Management to first take a decision whether to hold an inquiry. Without taking a decision about holding an inquiry, decision to suspend cannot be taken. The resolution adopted by the Management on 30 April 2017 to hold inquiry is a precursor to the decision to suspend him. Therefore, adoption of resolution dated 30 April 2017 by the Management did not amount to violation of procedure under Rule 36(1) and (2). It must also be observed here that after the Respondent No.1 was served with the Statement of Allegations vide letter dated 25 June 2018, he submitted response through his Advocate on 30 June 2018, in which he has not raised any objection about the decision being already taken to hold an inquiry. The response submitted by the Respondent No.1 was considered by the Management and found to be unsatisfactory. The Management thereafter decided to appoint inquiry committee and conveyed the decision to the Respondent No.1 vide letter dated 30 July 2018. In my view, therefore, there is no violation of procedure prescribed under Rule 36(1) and (2) in the present case and the findings recorded by the School Tribunal in that regard are totally unsustainable.

17. The School Tribunal has unnecessarily gone into the issue of requirement of proving the charges in the light of confessional statement given by the Respondent No.1. Ultimately, it is found that the management has conducted inquiry by leading evidence to prove the charges against the Respondent No.1. Thus, Respondent No.1's confessional statements are not the basis for holding him guilty or punishing him. The School Tribunal's discussion on the issue of effect of confessional statement is thus unnecessary.

18. The findings recorded by the School Tribunal about conduct of inquiry in absence of defence nominee are again unsustainable. The Respondent No.1 earlier gave nomination of an ex-employee which was rejected. He thereafter gave name of Shri Yogesh Yadav as the nominee which was apparently accepted by the convener and the acceptance was communicated to the Respondent No.1 vide letter dated 3 September 2018. It appears that during pendency of the inquiry, services of Shri Yogesh Yadav came to be terminated sometime in October 2018. It is management's contention that the said defence nominee was also involved in similar misconduct and was terminated by his school after being found guilty of misconduct. It appears that Respondent No.1 chose a teacher, who himself was under cloud, to act has his defence nominee. There is nothing on record to indicate that he suggested name of any other defence nominee after termination of services of Shri Yadav. The inquiry could not have been kept pending indefinitely. In such circumstances, Respondent No.1 himself was responsible for non-nomination of his defence representative on the inquiry committee. Also of relevance is the fact that despite absence of his defence nominee Respondent No.1 kept on participating in the inquiry and examined as many as 14 defence witnesses. I am therefore of the view that neither the

management was at fault for absence of defence nominee as part of inquiry committee nor such absence would entail setting aside the penalty order.

19. The School Tribunal has further proceeded to hold that the Respondent No.1 was denied opportunity to cross-examine the Headmistress. The examination-in-chief of the Headmistress was recorded by the Inquiry Committee on 3 October 2018. The Respondent No.1 requested for time to conduct cross-examination and the inquiry was adjourned to 13 October 2018. On 13 October 2018, the inquiry could not proceed on account of absence of Convener and the same was adjourned to 27 October 2018, on which date the inquiry could not progress on account of termination of services of Shri Yogesh Yadav, the defence nominee of Respondent No.1. Inquiry was therefore adjourned to 24 November 2018. On 24 November 2018, the Respondent No.1 cross-examined the Headmistress by asking 13 questions. The Respondent No.1 thereafter declared that he did not desire to further cross-examine the Headmistress. Accordingly, a note to that effect was incorporated in the evidence statement of the Headmistress. Far from expressing that he desired to further cross examine her, Respondent No.1 signed the witness statement containing the endorsement that he had completed the cross examination. Ms. Kanade has submitted that the cross-examination conducted by the Respondent No.1 was incomplete, was abruptly terminated and he desired to further cross-examine her. She has relied upon letter of Respondent No.1 requesting for further cross-examination of the Headmistress, which according to Ms. Kanade, was submitted 'immediately after' abrupt closure of the cross-examination of the Headmistress. The said letter is produced at page 215 of the compilation of documents produced on behalf of the Respondent No.1. The letter

bears the date '22 November 2018'. As observed above, the Headmistress was cross-examined by the Respondent No.1 on 24 November 2018 and therefore there was no question of Respondent No. 1 complaining about denial of opportunity to cross-examine the Head Mistress vide letter dated '22 November 2018'. Ms. Kanade is quick enough to clarify that the date '22 November 2018' is inadvertently written on the letter, which appears logical. The letter bears acknowledgment of some authority (possibly of Education Inspector) of '4 December 2018.' The letter was apparently dispatched by Register Post and the date of dispatch is not clearly visible. However, from the acknowledgment by the Education Inspector, it appears that the letter was submitted on 4 December 2018. Therefore, the complaint about non-grant of opportunity to further cross-examine the Headmistress was not 'immediate' as sought to be suggested by Ms. Kanade. Furthermore, the actual purpose of writing the said letter was about non-receipt of reply to letter dated 20 October 2018 in which the Respondent No.1 vaguely stated that he desired to ask 30 more questions to the Head Mistress. In my view, the grievance belatedly sought to be raised in the letter sent on 4 December 2018 was clearly an afterthought as Respondent No.1 had signed the witness statement containing an endorsement of completion of cross-examination on 24 November 2018. The purpose of sending belated letter on 4 December 2018 appears to be to manufacture a possible ground for being raised later. I am of the view that the Headmistress was offered for cross-examination on 3 October 2018, when Respondent No. 1 sought time to conduct cross-examination. The request was recorded and allowed. If the management or the inquiry committee had slightest of intention of not offering the Headmistress for cross-examination, it could have rejected request of Respondent No. 1 on 3 October 2018 itself. There was a long gap of about 51 days for Respondent No. 1 to prepare himself for cross-examination, which was

held on 24 November 2018. Designation of Respondent No. 1 in the school may be that of Peon, but from the manner on which he made various correspondence and examined 14 witnesses in support of his defence, would make it difficult to believe that he is someone who would sign an incorrect endorsement of completion of cross-examination. Therefore, the finding of denial of opportunity to cross-examine the Headmistress recorded by the School Tribunal is clearly unsustainable.

20. The Tribunal has held that failure on the part of the management to supply copy of report of Inquiry Committee amounts to violation of Rule 37(6). Sub-Rule 6 of Rule 37 of MEPS Rules reads thus :

> "*37(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgment due. Thereafter, the decision of the inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgment due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be.*"

21. No doubt Rule 37(6) mandates that the report of the Inquiry Committee is required to be supplied to the employee. It appears that the management has failed to supply report of the Inquiry Committee to Respondent No. 1. The issue is whether the penalty order would be vitiated for such procedural violation. In ***Haryana Financial Corpn. v.***

Kailash Chandra Ahuja[2], the Apex Court had held as under:

> "*21. From the ratio laid down in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice.* ***But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice.*** *If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.*
>
> *44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee,* ***failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated.*** *And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.*
>
> *(emphasis supplied)"*

22. In ***Uttarakhand Transport Corpn. v. Sukhveer Singh***[3], the Apex Court has held as under :

> "*10.* ***It is clear from the above that mere non-supply of the inquiry report does not automatically warrant reinstatement of the delinquent employee. It is incumbent upon on the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report.*** *We have examined the writ petition filed by the respondent and we find no pleading regarding any prejudice caused to the respondent by the non-supply of the inquiry report prior to the issuance of the show-cause notice. The respondent had ample opportunity to submit his version after perusing the report of the inquiry officer. The respondent utilised the opportunity of placing his response to the inquiry report before the disciplinary authority. The High Court*

2 (*2008) 9 SCC 31*

3 *(2018) 1 SCC 231*

> *committed an error in allowing the writ petition filed by the respondent without examining whether any prejudice was caused to the delinquent employee by the supply of the inquiry officer's report along with the show-cause notice. We are satisfied that there was no prejudice caused to the respondent by the supply of the report of the inquiry officer along with the show-cause notice. Hence, no useful purpose will be served by a remand to the court below to examine the point of prejudice.*
>
> *(emphasis supplied)"*

23. Thus, in every case where there is failure to supply inquiry committee report, the punishment order would not be automatically rendered illegal. The delinquent employee needs to set up a case of cause of prejudice by the reason of non-supply of Inquiry Committee Report. After applying these principles to the facts of the present case, it is seen that the only prejudice caused to Respondent No. 1 by reason of non-supply of the inquiry committee report is in the form of reliance by the committee on CCTV footage, which was not provided to Petitioner. This aspect is dealt with in paragraphs to follow, where this Court has arrived at a finding that upon completing discarding the CCTV footage, there is still sufficient evidence in the inquiry to prove the charges levelled against Respondent No. 1. Therefore even on aspect of CCTV footage, non-supply of enquiry report has not caused prejudice to Respondent No. 1 to such a extent that a remand of proceedings is warranted in the facts and circumstances of the case.

24. So far as the issue of non-payment of subsistence allowance is concerned, the suspension of the Respondent No.1 was resorted to after obtaining prior approval of the Education Inspector. The Management has relied upon the provisions of sub-rule (5) Rule 33 in respect of its contention that no subsistence allowance is payable during pendency of criminal prosecution. There appears to be some ambiguity in this regard. Rule 33(5) provides that during detention of an employee in custody, he is

not to draw pay and allowances until termination of proceedings or until he is relieved from detention and in a position to rejoin duties. Since the word 'or' is used between two eventualities of 'termination of proceedings' and 'relief from detention', it is difficult to hold that there can be denial of salary and allowances in every case would be till termination of the proceedings. Be that as it may. The School Tribunal has held that the inquiry is not vitiated until payment or non-payment of subsistence allowance. Therefore, this issue need not be examined further.

25. The School Tribunal's finding about violation of principles of natural justice on account of signing of charge-sheet by Mr. J. P. Mishra and conducting of cross-examination by the members of the inquiry committee are again unsustainable. In absence of any provision for appointment of a Presenting Officer, I do not see any reason why the members of the Inquiry Committee cannot conduct cross-examination.

26. Thus, I find that the Tribunal has erroneously answered Point No.1 in the negative by holding that the inquiry is not conducted in fair and proper manner.

27. Next issue is about perversity in the findings of the Inquiry Committee. The School Tribunal has unnecessarily laid stress on the professional qualifications of Mr. J. P. Mishra and the manner in which the report of the Inquiry Committee is drafted. Respondent No. 1 knew the background of Mr. J. P. Mishra, who is part of managing committee of the Trust. Respondent No. 1 did not raise any objection about Shri. Mishra acting as part of inquiry committee. Therefore the Tribunal has erred in unnecessarily emphasizing the professional qualification of Shri. Mishra. In my view, the Tribunal ought to have restricted its consideration only to the issue of availability of evidence for proof of charges.

28. I have gone through the evidence on record. The Respondent No.1 faced grave charge of sexually assaulting a minor girl. The FIR was lodged by mother of the minor girl who also happens to be the Headmistress of the school. She was examined as the first prosecution witness by recording her examination-in-chief on 3 October 2018 and cross-examination on 24 November 2018. She has given the account of the manner in which the Respondent No.1 indulged in the acts of molestation and sexual assault. Her deposition in answer to question no.11 speaks volumes about the conduct of the Respondent No.1. Considering the statements made in answer to question no.11, it would not be appropriate to reproduce the same. The said deposition of the mother is sufficient to prove the charge of molestation and sexual assault on the part of the Respondent No.1. In the cross-examination, the Respondent No.1 has not been able to make out any case for arriving at a finding that the deposition given by mother of a sexually assaulted minor child is unbelievable. The School Tribunal ought to have appreciated that deposition given by mother of a minor child could not have been lightly brushed aside considering the nature of charge faced by the delinquent. The learned Member of the Tribunal was expected to be more sensitive to the issue rather than giving undue importance to the technicalities. In my view, the deposition of the mother who also happens to be the first informant, is sufficient to hold the Respondent No.1 guilty of the misconduct alleged against him.

29. It must be borne in mind that the test of proof of charge in a domestic inquiry is preponderance of probabilities. The charge need not be proved beyond reasonable doubt. Courts and Tribunals cannot go into the issue of adequacy of evidence. Once it is found that there is some evidence on record in respect of findings of guilt, the Courts and Tribunals

would stay their hands and would not interfere in the finding of the guilt. It would be apposite to refer to the following observations made by the Apex Court in its judgment in ***Kuldeep Singh v. Commr. of Police***[4], :

> "*10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.*
>
> *(emphasis supplied)*"

30. In a domestic inquiry even hearsay evidence can be taken into consideration. In the present case, the minor girl was not expected to be examined as a witness and subjected to cross-examination by Respondent No. 1. The girl has narrated the incident to the mother, who is the first informant and deposed about the events of sexual assault and molestation. In ***State of Haryana v. Rattan Singh***[5], the Apex Court had held that even hearsay evidence is admissible in domestic inquiry. It is held :

> "*4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if*

4 ***(1999) 2 SCC 10***

5 ***(1977) 2 SCC 491***

perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

(emphasis supplied)"

31. More recently, the Apex Court in ***State of Karnataka v. Umesh***[6], has reiterated the principles that govern the disciplinary enquiry and criminal trial. It is held :

"*16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence.* ***The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities****. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.*

22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of

6 ***(2022) 6 SCC 563 : (2022) 2 SCC (Cri) 655***

misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct. [State of Karnataka v. N. Gangaraj, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547; Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806; B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80; R.S. Saini v. State of Punjab, (1999) 8 SCC 90 : 1999 SCC (L&S) 1424 and CISF v. Abrar Ali, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310]

(emphasis supplied)"

32. In ***M. Siddiq (Ram Janmabhumi Temple) v. Suresh Das***[7], the Constitution Bench has expounded the concept of preponderance of probability :

"***The standard of proof***

720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. ***Phipson on Evidence formulates the standard succinctly : If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not.*** *[Phipson on Evidence.] In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372] , Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)*

"(1) … It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice."

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7 ***(2020) 1 SCC 1***

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater [Bater v. Bater, 1951 P 35 (CA)] , where he formulated the principle thus : (p. 37)

"… So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter."

33. In State of ***Rajasthan Vs. Heem Singh***[8], the Apex Court has held as under :

"*33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings.* ***The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service.*** *At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is*

8 ***2020 SCC OnLine SC 886***

> *some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.*
>
> *(emphasis supplied)*"

34. Thus in domestic inquiry, strict rules of evidence are not applicable. Even hearsay evidence is admissible. On perusal of evidence, if a person of ordinary prudence reaches a conclusion that the occurrence of an event alleged is probable, such evidence is sufficient to prove misconduct in domestic inquiry. This is the test of preponderance of probability. On the other hand, in a criminal trial, the charge has to be proved beyond reasonable doubt and any contradiction or lacunae in evidence casting doubt about occurrence of an event would entitle the accused to a benefit of doubt, resulting in an acquittal. In my view, applying the above test, it cannot be held that the finding of guilt recorded against the Respondent No.1 suffers from vice of perversity. There is sufficient evidence on record to hold the Respondent No.1 guilty of charges levelled against him.

35. It is sought to be suggested on behalf of the Respondent No.1 that the Headmistress has implicated him in false accusations out of bias and malice. It is difficult to believe that a mother would use a 12 year old daughter for the purpose of falsely implicating a Peon in her school. Nothing is brought on record to indicate any extreme animosity between the Headmistress and the Respondent No.1 which would result in the Headmistress taking unthinkable step of setting up her 12 years old daughter for levelling allegations of molestation and sexual assault against a peon working in her school. Therefore, the evidence given by the Headmistress who happens to be the mother of the victim, cannot be

brushed aside on a specious plea of alleged animosity towards the Respondent No.1.

36. Ms. Kanade has laid much stress on the issue of failure to supply CCTV footage to the Respondent No.1. She has submitted that the inquiry committee has relied upon the CCTV footage for holding the charges to be proved. Here, Ms. Kanade may be right in submitting that the inquiry committee could not have relied upon the CCTV footage while holding the Respondent No.1 guilty of the charges. The Management, on the other hand, has sought to justify the action of withholding the CCTV footage from the Respondent No.1 with a view to avoid further vilification of the victim, who happens to be a minor girl. The Management entertained an apprehension that making a CCTV footage public would further damage the reputation of the victim. The management may not be entirely wrong is taking this stand. However, in that case, the inquiry committee ought to have concentrated only on the oral and documentary evidence on record. In the present case, even if the CCTV footage is altogether ignored, the oral evidence given by the Headmistress is sufficient to prove the charges against the Respondent No.1. In my view, therefore, non-supply of CCTV footage to the Respondent No.1 would have no bearing on the finding of guilt recorded against him. I therefore hold that the finding recorded by the School Tribunal about perversity in the findings of the inquiry committee are totally unsustainable.

37. The penalty imposed on the Respondent No.1 is commensurate with the gravity of misconduct alleged and proved against him.

38. I, therefore, find the order passed by the School Tribunal to be indefensible. The Judgment and Order dated 11 January 2022 passed

by the School Tribunal is accordingly set aside. Writ Petition is allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.)