

Bombay High Court Shikshan Prasarak Mandal, ... vs Ramesh Bhimrao Narayankar And Ors on 10 March, 2016 Bench: S.C. Dharmadhikari 1 of 62 WP.126.2012-FB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.126 OF 2012
WITH

CIVIL APPLICATION NO.3181 OF 2015
ig AND
CIVIL APPLICATION NO.3182 OF 2015

1. Shikshan Prasarak Mandal,
Awasari (BK), Tal.Ambegaon,
District Pune through Chairman/Secretary

2. Vidya Vikas Mandal,
Awasari (BK), Tal.Ambegaon,

District Pune through Head Master

Petitioners

versus

1. Ramesh Bhimrao Narayankar,
R/o.Awasari (BK), Tal.Ambegaon.

2. The Education Officer (Secondary),

Zilla Parishad, Pune.

3. Deputy Director of Education,
Pune Region, Pune.

4. The Learned Presiding Officer,
School Tribunal, Pune.

Respondents

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WP.126.2012-FB

WITH

WRIT PETITION NO.5199 OF 2011

1. Shri Gajanan Maharaj Shikshan
Prasarak Mandal, at Otur, Tal.Junnar,
District PUNE through Secretary.

2. Veer Savarkar Vidyalaya Ballalwadi
(Pangari Matha), Tal.Junnar, Dist. Pune.

Petitioners

versus

1. Balu Shrimant Sarvade,

R.o.Ishwar Wathar, Post Tungat,
Tal. Pandharpur.

2. The Education Officer (Secondary),
Zilla Parishad, Pune.

3. The State of Maharashtra.

Respondents

WITH

WRIT PETITION NO.10686 OF 2011

WITH

CIVIL APPLICATION NO.319 OF 2015

1. Rangdas Swami Shikshan Vikas
Mandal, at Post Ane, Tal. Junnar,
Dist. Pune, through President.

2. The Head Master,
Kamalajadevi Secondary and Higher
Secondary Vidyalaya, At Post Kalamb,
Tal.Ambegaon, Dist. Pune.

3. The Head Master,
Rangdas Swami Post Basic Ashram Shaha,

At Post Ane, Tal.Junnar, Dist.Pune.

Petitioners

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WP.126.2012-FB

versus

1. Mutyal Vilas Rambhau,

R/o.Post Alkuti, Tal.Parner,
District Ahamednagar.

2. The Education Officer (Secondary),

Zilla Parishad, Pune.

3. The Special District Social Welfare
Officer, PMT Building, Swargate, Pune.

Respondents

Mr.N.V.Bandiwadekar with Mr.Sagar Mane, Advocates, for
Petitioners in Writ Petition No.126 of 2012.

Mr.Parvinder Singh Sethi with Mr.R.R.Nair and Mr.Nilesh Shah

i/by Mr.Mathew Nedumpara for Respondent no.1 in WP No.126 of 2012 and for Applicants in CAW No.3182 of 2015.

Mr.Prashant Bhavke for Applicants in CAW No.3181 of 2015.

Mr.A.B.Vagyani, Government Pleader, with Mr.A.I.I.Patel, AGP, for Respondent nos.2 and 3 in WP Nos.126/2012 and

10686/2011.

Mr.Machhindra A. Patil with Mr.A.M.Katkar for Respondent no.1 in WP No.5199 of 2011.

Mr.D.S.Mhaispurkar for Petitioners in WP No.10686/2011.

Mr.Vilas B. Tapkir for Respondent no.1 in WP and for Applicants in CAW No.319 of 2015.

Mr.Shaikh Nasir Masin, Mr.Murtaza Najmi, Mr.Surel Shah and Mr.A.M.Kulkarni assisted the Court.

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CORAM : S.C.DHARMADHIKARI, G.S.PATEL

AND A.K.MENON, JJ.

Date of Reserving the Judgment : 21st January 2016 Date of Pronouncing the Judgment : 10th March 2016 CAV JUDGMENT - (Per : S.C.Dharmadhikari, J.) :- 1. On 30 March 2012, while dealing with Writ Petition No.126 of 2012, a learned Single Judge of this Court was confronted with two judgments, both rendered by Division Benches of this Court, on the point involved, namely whether a retired teacher can be a member of the Inquiry Committee to inquire into the misconduct of Respondent no.1 appointed as Assistant Teacher in Petitioner no.2 school? 2. The management was aggrieved and dissatisfied with the findings of the School Tribunal: firstly, that the constitution of the inquiry committee was defective; And secondly, that the inquiry and the punishment imposed on this teacher were both bad in law. The School Tribunal therefore directed the management to reinstate the School Teacher with full back wages but reserving liberty to the management to conduct a fresh inquiry against him. 5 of 62 WP.126.2012-FB 3. One Division Bench sitting at Aurangabad in Writ Petition No.5867 of 2008 (Leelatai d/o. Annapa Patil Vs. The State of Maharashtra) held that the third member appointed on the inquiry committee has to be not only an awardee teacher but ought to be in service. There is a prior judgment, according to the learned Single Judge, rendered in the case of Sudha d/o. Bhaskarrao Saikhede Vs. Yashodabai Shikshan Sanstha and others reported in 2003 (4) Mh.L.J. 659, which suggests and seems to take a view that there is no bar for a retired awardee teacher to be a member of the inquiry committee. The learned Single Judge found that the attention of the later Division Bench in Leelatai Patil's case (supra) was not invited to the judgment in the case of Sudha Saikhede (supra). 4. Then the learned Single Judge's attention was invited to a third judgment rendered in the case of Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) Vs. State of Maharashtra (Writ Petition No.10032 of 2010) decided on 28 September 2011 reported in 2012 (1) Mh.L.J. 370. Though both the above referred Division Bench judgments were cited before the learned Single Judge while dealing with Writ Petition No.10032 of 2010, he has not assigned any reason why he chose to follow the judgment rendered by the Division Bench in Leelatai Patil's case (supra) and not earlier judgment in Sudha Saikhede's case (supra). 6 of 62 WP.126.2012-FB 5. In the referral order it has been observed that this issue arises repeatedly in large number of cases before the School Tribunal and the School Tribunal faces a precarious situation as to which judgment, out of the above referred two judgments, both of Division Benches, should be followed. In view thereof and there being necessity of an authoritative pronouncement on the issue, the learned Single Judge who was dealing with Writ Petition No.126 of 2012, requested the Hon'ble Chief Justice to refer the issue to a Larger Bench of three Judges. That is how this Larger Bench has been constituted and to answer the following questions : "(i) Whether a Teacher or Headmaster on whom State/ National Award has been conferred,

who is to be chosen as a third member in an Inquiry Committee constituted under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981, can be a retired Teacher/Headmaster or has essentially to be an in service Teacher/Headmaster? (ii) Which of the judgments of the Division Benches in the case of Leelatai d/o. Annapa Patil and Sudha d/o. Bhaskarrao Saikhede lay down a binding precedent regarding the age of the Award Winning Teacher/Headmaster?" Accordingly, these questions were posed for answer and opinion by us. 7 of 62 WP.126.2012-FB 6. At the outset, we clarify that we have not addressed the merits of the individual cases before us. Upon the questions referred being answered, the individual matters will go back to their respective Benches for being heard and disposed of in light of this judgment. 7. Mr.N.V.Bandivadekar making the lead arguments invited our attention to the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for the sake of brevity) and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules' for the sake of brevity). Then he invited our attention to Rule 36 of the MEPS Rules to submit that a careful perusal of all the sub-rules therein and particularly Rule 36(2) (a) and (b), reveals that the inquiry committee has to be constituted in the manner set out therein. Inviting our attention to clause (a) of sub-Rule 2 of Rule 36 and particularly sub- clauses (ii) and (iii), it is submitted by Mr.Bandivadekar that there is no embargo or prohibition in choosing a member of the inquiry committee any teacher from the panel of teachers on whom State/National Award has been conferred. Meaning thereby, the awardee teacher in the panel need not be an in- service candidate. The inquiry committee, therefore, cannot be said to be defective if the Chief Executive Officer chooses from the panel any awardee teacher who has retired from service. 8 of 62 WP.126.2012-FB 8. In support of the above contention, apart from emphasizing the language and rather the difference in the same as far as Rules 36(2)(a)(ii) and (iii) are concerned, he also relies upon certain definitions. He would specifically rely upon the expression "Chief Executive Officer" as defined in Rule 2(c) of MEPS Rules. He would also rely upon the definitions of the word "Teacher" as defined in Section 2(26) of MEPS Act. According to Mr.Bandivadekar, prior to the MEPS Act and Rules, the field of disciplinary proceedings and inquiry was covered by paragraph 77.3 of the Secondary School Code. However, it was on account of the grievance that there was no proper representation given to the employees proceeded against and the Secondary Schools Code fell short of the requirements of fairness and justice, that this MEPS regime was brought in. Mr.Bandivadekar has outlined the difference between Rule 36 prior to its amendment in 1984 and thereafter. He would submit that there is no substance in the complaints generally made that all inquiry committees are dominated by the managements. Now equal representation has been given to the delinquent employees. Further, an independent person in the form of an awardee teacher is also a part of such inquiry committee. That would ensure that the inquiries are fair, just and proper. Mr.Bandivadekar has also invited our attention to Annexure-A to the Rules. The argument is that the mischief in the earlier provisions has been completely done away with. Now there is a

guarantee of an independent and impartial inquiry. 9 of 62 WP.126.2012-FB 9. The further argument of Mr. Bandivadekar is that the Division Bench in Leelatai Patil (supra) seems to suggest that the award winning teachers necessarily have to be in service. The award is conferred for a meritorious service rendered in the past. If the schemes for awarding teachers at the State and National levels are considered in their proper perspective, it is apparent that even after superannuation, a teacher is entitled to retain the award conferred while the teacher was in service. For conferring the award while the teacher is in service, detailed information is called for about every teacher, which includes his teaching abilities, his performance and the views of fellow teachers and students. {NB: the scheme, included in the compilation, p. 45 @ 46, indicates that normally retired teachers are ineligible; the narrow exception seems to be only for those who have served part of the calendar year} Once the award can be conferred even on the verge of retirement, then Rule 36(2)(a)(iii) will have to be interpreted with the aid of these award schemes. If that is how it is interpreted, then the distinction in the language of these two sub-clauses would be maintained. Our attention is invited to certain other definitions in the MEPS Act namely the word "Employee" appearing in Section 2(7) and "Head of a School" appearing in Section 2(9). The premise on which the Division Bench in Leelatai Patil's case (supra) has proceeded is erroneous, according to Mr. Bandivadekar, for the scheme of Rule 36 of MEPS Rules and particularly sub-rule 2, sub clause (a) and the other sub-clauses 10 of 62 WP.126.2012-FB thereof do not warrant reading any further requirement in the same. If as suggested in Leelatai Patil's case (supra), this sub-rule (iii) is read to mean that the awardee teacher has to be part and parcel of the teaching staff of a school, then, that would amount to adding words in the sub-rule/clause. The clause and sub- clause does not omit anything nor does it include anything of this nature. Therefore, going by its plain language, it is apparent that an awardee teacher could be a retired awardee teacher as well and does not necessarily have to be an in-service awardee teacher. 10. Mr. Bandivadekar has also relied upon a Circular issued by the State Government which clarifies that a retired awardee teacher can be part of the inquiry committee, but as far as possible he should be less than 65 years of age and secondly he should not be overburdened with several inquiries. Though these are merely administrative instructions, they come closer to the view taken in Sudha Saikhede's case (supra). Therefore, Mr. Bandivadekar would submit that Leelatai Patil's case (supra) does not lay down the correct law. 11. Mr. Bandivadekar also submits that ordinarily the School Tribunal follows the later judgment in Leelatai Patil's case (supra). That was a judgment rendered without the benefit of full and complete arguments. Rather the issue arising before us was not specifically raised there. Mr. Bandivadekar submits 11 of 62 WP.126.2012-FB that emphasis ought to be on the words "panel of teachers" on whom the award has been conferred. Mr. Bandivadekar has also invited our attention to Rule 17 of the MEPS Rules. 12. Mr. Bandivadekar's arguments have been adopted by Mr. Shaikh Nasir Masin appearing in other petitions. Mr. Shaikh Nasir Masin submits that the state maintains a panel of awardee teachers. The name of an awardee teacher is not deleted from the panel

merely because he/she has retired from service. The only condition that has to be fulfilled in the present case is that the Chief Executive Officer must choose an awardee teacher. He/she may be from an adjoining district. Thus, there is no ambiguity in sub-clause (iii) of clause (a) of sub-rule 2 of Rule 36 of MEPS Rules. 13. This line of argument is also adopted by Mr. Murtaza Najmi. He would submit that the status 'awardee teacher' is not lost even after his/her retirement. The status is achieved due to the award conferred by the State for his/her excellence and merit. His presence on the inquiry committee would lend it the necessary moral and intellectual strength. That is why there is no scope for importing the definition of the term "Teacher" as appearing in Section 2(26) of the MEPS Act. 14. Mr.Surel Shah, learned Advocate, also adopted the same line of arguments in supporting Mr.Bandivadekar. It must 12 of 62 WP.126.2012-FB be stated that Mr.Shaikh, Mr.Murtaza Najmi, Mr.Surel Shah and Mr.A.K.Kulkarni have been allowed to appear on their request and with a view to assist the Court. Mr.Bandivadekar relied upon the following judgments : 1 Sudha d/o Bhaskarrao Saikhede Vs. Yashodabai Shikshan Sanstha reported in 2003(4)-Mh.L.J.-659 (DB). 2 Leelatai d/o Anna Patil Vs. The State of Maharashtra and others - Writ Petition No.5867 of 2008 decided on 18 November 2008. 3 Savita d/o Vinay Nandre Vs. The State of Maharashtra and others - Writ Petition No.3926 of 2008 decided on 9 September 2008. 4 Kranti Junior Adhyapak Mahavidyalay (D.Ed) and others Vs. The State of Maharashtra and others reported in 2012(1)- Mh.L.J.-370 5 Shikshan Prasarak Mandal, Pune Vs. The State of Maharashtra and others reported in 2009(5)-Mh.L.J.-969 (FB). 15. A contrary line of argument is canvassed by Mr.Machhindra Patil, Mr.Parvinder Singh Sethi, Mr.Vilas Tapkir and Mr.A.M.Kulkarni. All of them contended that the view taken in Leelatai Patil's case (supra) is the only possible and plausible view of the matter. They would contend that it is erroneous to 13 of 62 WP.126.2012-FB assume or contend that the expression "Teacher" which finds place in sub-rule (iii) of Rule 36(2)(a) will not have the same meaning as is assigned to it in the substantive part of MEPS Act. Therefore, nothing is being imported or read into the sub-rule, as is suggested by Mr.Bandivadekar and other learned Advocates. It is the plain meaning of the sub-rule that if a teacher has to be on the inquiry committee and that too an awardee from the State, he must be a serving employee. Else, the inquiry committee will not be legally and validly constituted. They would submit that there cannot be two conflicting uses of the word 'teacher', one referring to an in- service employee as part of the teaching staff and the other referring to a past teacher or ex-employee who has been superannuated. The constitution of the inquiry committee would then be not in accordance with Rule 36 of the MEPS Rules. Each one of them has also relied upon the expression "Head of School". Therefore, according to them, a in-service member or a serving teacher would add qualitatively to the committee. In the circumstances, the only view can be as in Leelatai Patil's case (supra) and that is correctly decided. The questions, therefore, be answered accordingly. 16. Mr.Surel Shah, learned Advocate assisting the Court, relies on the following decisions : 14 of 62 WP.126.2012-FB

1 Vanguard Fire and General Insurance Co.

Ltd., Madras Vs. Fraser and Ross and
another reported in AIR-1960-SC-971.

2 Ramesh Mehta Vs. Sanwal Chand Singhavi
and others reported in (2004)5-SCC-409.

3 Indian City Properties Ltd. and another Vs.
Municipal Commissioner of Greater
Bombay and another reported in (2005)6-
SCC-417.

4 Mathuradas Mohta College of Science

Nagpur Vs. R.T.Borkar and others reported in 2011(1)-All.M.R.-912. 5 Nishad Sadashiv Pawar and others Vs. Dnyansadahana College (through Hon. Gen. Secretary) and others reported in 2005(4)-All.M.R.-101. 17. For properly appreciating the rival contentions, a reference will have to be made firstly to the MEPS Act. That is an Act to regulate recruitment and conditions of service of employees in certain private schools. The preamble to the Act says that it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to effectively and efficiently 15 of 62 WP.126.2012-FB discharge their duties towards pupils and their guardians in particular, and the institution and society in general. The further aspect which is relevant for us is that the Legislature intended that it is expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the management and contribute their might for improving the standard of education. That is how it was necessary to make certain supplemental, incidental and consequential provisions. 18. We have, therefore, an enactment before us which not only seeks to regulate the recruitment and conditions of service of employees in certain

private schools with a view to providing such employees security and stability in service, to enable them to discharge their duties towards pupils and their guardians and also to the institution and society in general effectively and efficiently but their duties and functions are laid down in the public interest. That is to make them accountable to the management and to the public by directing their efforts to improving the standard of education. It is therefore, apparent that the provisions of the MEPS Act must receive such interpretation as would advance the object and purpose sought to be achieved and equally suppress the mischief which is noticed by the Legislature. The Act extends to the whole of the State of Maharashtra. 16 of 62 WP.126.2012-FB 19. Section 2 of MEPS Act contains definitions. The definitions of the expressions “Coaching Class”, “College”, “Department”, “Deputy Director” and “Director” are to be found in Sections 2(2) to 2(6) of the Act. The expression “Divisional Board” is defined in Section 2(6A). Section 2(7) defines the expression “Employee” as under : “Employee” means any member of the teaching and non-teaching staff of a recognised school and includes ‘Assistant Teacher (Probationary)’. A bare perusal of this definition indicates that it means any member of the teaching and non-teaching staff of a recognised school and includes Assistant Teacher (Probationary). The expression “Employee” is thus a comprehensive term taking in its fold the members of teaching and non-teaching staff of a recognised school. The expression “Existing Private School” is defined in Section 2(8) to mean a recognised private school which is in existence on the appointed date. The expression “Head of a School” is defined in Section 2(9), which reads as under : “Head of a School” or Head means the person, by whatever name called, in-charge of the academic and administrative duties and functions of a school conducted by any management and recognised or deemed to be recognised under this Act, and includes a principal, vice- principal, head master, head mistress, assistant head master, assistant head-mistress, or superintendant thereof. 17 of 62 WP.126.2012-FB The nomenclature apart, the expression “Head of a School” is defined to mean a person, by whatever name called, in-charge of the academic and administrative duties and functions of a school conducted by any management and recognised or deemed to be recognised under this Act. The expression “Junior College of education” is defined in Section 2(10) to mean a school imparting teacher education to persons for being appointed as teachers and assistant teacher (probationary) in pre-school centres or primary schools. The expression “Local Authority” is defined in Section 2(11) to mean a Zilla Parishad, a Municipal Corporation, or a Municipal Council, as the case may be. The expression “Management” is defined in Section 2(12) and reads as under : “Management” in relation to a school, means : (a) In the case of a school administered by the State Government, the Department; (b) in the case of a school administered by local authority, that local authority; and (c) in any other case, the Person, or body of persons, whether incorporated or not and by whatever name called, administering such school. Therefore, there could be a school administered by the State Government through its Department of Education; there could be a school administered by a local authority; and there could 18 of 62 WP.126.2012-FB be a school administered by a person or body of persons whether incorporated

or not and by whatever name called. Then come the expressions “Minority School” in Section 2(13) and “Municipal Corporation”, “Municipal Council”, “Pre-School Centre” in Sections 2(14), 2(15) and 2(16) respectively. Section 2(17) defines the expression “Prescribed” to mean prescribed by the Rules. The expression “Primary Education” defined under Section 2(18) means education imparted in such subjects and upto such standards as may be determined by the State Government, from time to time, located either in primary or a secondary school. The expression “Primary School” is defined in Section 2(19). The important definition is then of the term “Private School” which means a recognised school established or administered by a management, other than Government or a local authority. Section 2(21) defines the term “Recognised” to mean recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards. Section 2(23) defines the expression “Rules” to mean the Rules made by the State Government under MEPS Act. 20. The expression “School” is defined in Section 2(24) to mean a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or part of any such school, college or institution, 19 of 62 WP.126.2012-FB which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level. Section 2(24A) defines the expression “Assistant Teacher (Probationary)”. Section 2(25) defines the expression “State Board” and Section 2(26) defines the expression “Teacher” to mean a member of the teaching staff, including the Head of a School. The expression “Zilla Parishad” is defined in Section 2(27). Here the definition section ends. 21. By Section 3 it is stated that the provisions of this Act shall apply to all private schools in the State of Maharashtra whether receiving any grant-in-aid from the State Government or not. By sub-section 2 of Section 3, it is clarified that the provisions of this Act shall not apply to the recruitment of the Head of a Minority School and any other persons not exceeding three, who are employed in such school and whose names are notified by the management to the Director or, as the case may be, the Deputy Director for this purpose. 22. By Section 4, the terms and conditions of service of employees of private schools are set out. That section reads as under : “Section 4 - Terms and conditions of service of employees of Private schools : 20 of 62 WP.126.2012-FB (1) Subject to the provisions of this section, the State Government may make rules providing for the minimum qualification for recruitment (including its procedure), duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of backward classes : Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and post-retirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the disadvantage of such employee by any such rules. (2) Every employee of a private school shall be governed by such Code of Conduct as may be prescribed. On the violation of any provision of such Code of Conduct, the employee shall be liable to disciplinary action after

conducting an enquiry in such manner as may be prescribed. (3) If the scales of pay and allowances, post retirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under sub-section (1), the Director shall direct in writing the Management of such school to bring the same upto the level provided by the said rules, within such period or extended period as may be specified by him. (4) Failure to comply with any direction given by the Director in pursuance of sub-section (3) may result in the recognition of the school concerned being withdrawn, provided that the recognition shall not be withdrawn unless the Management of the school concerned has been given a reasonable opportunity of being heard. (5) No employee working in a private school shall work in any coaching class. If any employee, in 21 of 62 WP.126.2012-FB contravention of this provision, works in any coaching class, his services shall be liable to be terminated by the Management, provided that no such order of termination shall be issued unless the employee concerned has been given a reasonable opportunity of being heard. (6) No employee of a private school shall be suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank, by the Management, except in accordance with the provisions of this Act and the rules made in that behalf." A perusal of this substantive provision would indicate how the terms and conditions of service of employees of private schools are determined by the Rules which may be made by the State Government. There is by sub-section 2 of Section 4 a Code of Conduct which may be prescribed for every employee of a private school. On the violation of any provision of such code of conduct, the employee may be liable to face disciplinary action after conducting an inquiry in such manner as may be prescribed. Then, there is power given to the Director to issue directions in writing to the management of a school to determine the scales of pay and allowances, post retirement and other benefits on par with those provided by the Rules made by the State Government within the meaning of sub-section 1 of Section 4. A failure to comply with any direction given by the Director under Section(3) may result into recognition of the school concerned being withdrawn. No employee working in private school shall work in any coaching class and if any employee contravenes these provisions, his services shall be 22 of 62 WP.126.2012-FB liable to be terminated by the management, provided that no such order of termination shall be issued unless the employee concerned has been given a reasonable opportunity of being heard. By sub-section 6 of Section 4, it is mandated that no employee of a private school shall be suspended, dismissed or removed or his services shall not otherwise be terminated or he shall not be reduced in rank by the management, except in accordance with the provisions of Rules in that behalf. Therefore, the terms and conditions of service are determined so as to carry forward the object and purpose of the Act. A teacher who does not have safety and security so also fixed tenure in service is exploited by not paying him adequately and properly, is not expected then to render efficient and effective service to the pupils and their guardians, to the institution and to society as a whole. The public has a definite stake in the administration and management of even private schools. It is erroneous to assume that a school is only for employees, students and their

parents. A school has a definite role in society. No employee including a teacher or a student can be seen as a disconnected or detached individual or person. Once the school is set up to educate and which means to teach, to inculcate, to imbibe and to impress upon the students the moral and social values, assist them in attaining skill by a process of learning together, then, the terms and conditions of service of employees of private schools have to be determined by the intervention of the State. 23 of 62 WP.126.2012-FB 23. By Section 4A, a power is conferred in the Director to hold or order holding of inquiries. This provision reads as under : “4A. Director’s power to hold or order holding of inquiries : (1) Notwithstanding anything contained in sub-section (6) of section 4 or any other provisions of this Act or the rules made thereunder, where in any case of alleged misconduct or misbehaviour of a serious nature or moral turpitude of an employee,- (a) an inquiry is held by an Inquiry Committee into such allegations and the Director is of the opinion that the Inquiry Committee has unreasonably exonerated the employee, he may call for and examine the record and proceeding of such inquiry for the purpose of satisfying himself as to the correctness of the decision on the basis of its findings, and may either annul, reverse, modify or confirm the said decision or may direct the Inquiry Committee to make further inquiry for taking such additional evidence as he may think necessary or he may himself take or authorise any other officer not below the rank of the Education Officer to take such additional evidence; and while making an order under this clause, if the Director is satisfied that the charges of serious misconduct, misbehaviour, or as the case may be, moral turpitude have been substantially proved, he shall direct the Management to impose on such employee any of the penalties as specified in sub-section (4) : Provided that the Director shall not record any order under this sub-section without giving the party affected thereby and the Management an opportunity of being heard; 24 of 62 WP.126.2012-FB (b) the Management has either neglected or refused to hold an inquiry against such employee in accordance with the provisions of this Act and rules made in that behalf, the Director shall direct the Management to initiate action within thirty days from the receipt of such direction, for holding inquiry into the allegations against such employee and to complete the same in accordance with such provisions and rules. (2) Where there is a failure on the part of the Management to initiate action as directed under clause (b) of sub-section (1), to hold an inquiry and to complete the same within the period prescribed under the rules, the Director may himself hold, or direct any officer not below the rank of Education Officer to hold, such inquiry. (3) While holding an inquiry the Director or the officer authorised by him shall follow the same procedure as is followed by the Inquiry Committee under the rules made under this Act as if the Director or the Officer so authorised were an Inquiry Committee for the purpose of holding such inquiry. (4) On holding such inquiry by the Director himself or on receipt of the report of the inquiry officer, if the Director is satisfied that the charges of serious misconduct, misbehaviour or, as the case may be, moral turpitude have been substantially proved, he shall by an order in writing, direct the Management that penalty of dismissal, removal from service, termination of service, or as the case may be, reduction in rank as

he may, in circumstances of the case deem fit, be imposed on the employee concerned; Provided that, no such order shall be passed by the Director unless the employee and the Management concerned are given a reasonable opportunity of showing cause against the proposed order; 25 of 62 WP.126.2012-FB (5) The order of the Director under clause (a) of sub-section or sub-section (4) shall be binding on both the Management and the employee and the same shall be complied with by the Management within such period as may be specified by the Director.” 24. A perusal of this provision would reinforce our conclusion that the overriding power of the Director to hold or direct the holding of inquiries subserves the larger public interest. That is subserved by the statutory power conferred on the Director to intervene in the event an inquiry held is unsatisfactory and the management has unreasonably exonerated any employee accused of a serious misconduct or misbehaviour of a serious nature or moral turpitude. By clause (b) of sub-section 1 of Section 4A of the MEPS Act, if the management has neglected to hold an inquiry against an employee who has misconducted or misbehaved himself, then, the Director can order holding of an inquiry into the allegations against such employee and to complete the same in accordance with the Rules. The Director can also hold such inquiry himself or direct any officer not below the rank of Education Officer to hold it. The Director can also intervene and interfere with the report of the Inquiry Officer to the extent of punishment within the meaning of sub-section 4 of Section 4A, and by sub-section 5 of Section 4A, the directions of the Director are binding. 25. By Section 5, certain obligations are cast on the managements of private schools. This section reads as under : 26 of 62 WP.126.2012-FB “5. Certain obligations of Management of private schools : (1) The Management shall, as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy : Provided that unless such vacancy is to be filled in by promotion, the management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad, or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools, and in the event of such person being available, the Management shall appoint that person in such vacancy. (2) Every person appointed to fill in a permanent vacancy except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject to the provisions of sub-sections (4) and (5), he shall on completion of this probation period of two years, be deemed to have been confirmed. Provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years. (2A) Subject to the provisions of sub-sections (3) and (4), the Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher. 27 of 62 WP.126.2012-FB (3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the

said period after giving him one month's notice or salary or honorarium of one month in lieu of notice. (4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2). (4A) Nothing in sub-sections (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1). (5) The Management may fill in every temporary vacancy by appointing person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person." 26. It would appear from a bare perusal of this section how the obligation in the matter of recruitment of teachers has to be discharged and we have a complete scheme for the same in the rules. Then comes Section 6 which provides for obligations of the Head of a private school. By Section 7, the procedure for resignation of employees of private schools is set out. 28 of 62 WP.126.2012-FB 27. Then the MEPS Act takes care of a forum for redressal of the grievances and that is how a School Tribunal is constituted. A right of appeal to the Tribunal by the employees of private schools is conferred by Section 9. By Section 10, the general powers and procedure of Tribunal are set out. By Section 11, the Tribunal is conferred with the power to give appropriate reliefs and directions and the decision of the Tribunal is made final and binding by Section 12. Section 13 provides for penalizing managements for failure to comply with the directions of the Tribunal. Section 14 excludes legal practitioners from appearance before the Tribunal and transfer of pending appeals is also envisaged by Section 15. 28. Section 16 is titled as Rules and reads as under : "16. Rules : (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:- (a) the minimum qualifications for recruitment of employees of private schools (including its procedure); (b) their scales of pay and allowances; (c) their post retirement and other benefits; 29 of 62 WP.126.2012-FB (d) the other conditions of service of such employees including leave, superannuation, re-employment and promotions; (e) the duties of such employees and code of conduct and disciplinary matters; (f) the manner of conducting inquiries; (g) any other matter which is required to be or may be prescribed. (2A) The power to make rules under clauses (a) to (d) conferred by sub-section (2) shall include the power to give retrospective effect to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. (3) All rules made under this Act shall be subject to the conditions of previous publication. (4) Every rule made under this Act shall be laid, as soon as may be, after it is made before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions,

and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and, notify such decision in the official gazette, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.” 30 of 62 WP.126.2012-FB A perusal of Section 16 would indicate as to how in widest terms a rule making power is conferred in the State Government. It may, by notification in the official gazette, make rules for carrying out the purpose of MEPS Act. The Rules may provide for all or any of the matters enumerated in sub-section 2 of Section 16 of the Act. By sub-section 2A of Section 16, a power to make rules and give them retrospective effect is conferred on the State in respect of clauses (a) to (d) of sub- section (2) of Section 16. However, Section 2A prohibits the State from giving retrospective effect to any rule so as to prejudicially affect the interests of any persons to whom such rule may be applicable. Sub-sections 3 and 4 of Section 16 of the Act set out the manner in which rules have to be published and laid before the House. 29. It is conceded before us that the MEPS Rules are traceable to this power under Section 16 and that by the said Rules, it is permissible for the State to include therein the matter of duties of the employees and code of conduct and disciplinary matters so also the manner of conducting inquiries. 30. For this reference, we refer to a few rules. A screening of the rules would indicate that under Rule 2 of MEPS Rules, certain expressions are defined. We are concerned in this matter with the definition of the expression “Chief Executive Officer” appearing in Rule 2(c). That would mean the Secretary, 31 of 62 WP.126.2012-FB Trustee, Correspondent, Trustee Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the management. The expression “Director” is defined in Rule 2(d) and the expression “Education Officer” is defined in Rule 2(e). The definition of the word “Government” is in Rule 2(f) and the other definitions are of the expressions “Girls Schools”, “Schedule”, “School Committee”, “Trained Graduate”, “Trained Teacher” and “Night School” in Rules 2(g) to 2(l) respectively. It is clarified by sub-rule 2 of Rule 2 that the words and expressions used but not defined in these rules shall have the meanings respectively assigned to them in the Act. 31. Rule 3 sets out the qualifications and appointment of Head. Rule 4 sets out his responsibilities and Rule 5 lays down qualifications and appointment of Assistant Head and Supervisor. Rule 6 sets out the qualifications of the teachers. Rule 7 deals with their scales of pay and allowances of the full time as well as part time assistant head, head, supervisors, teachers and non-teaching staff in the primary schools, secondary schools including night schools etc.. Rule 8 provides for determination of the pay scale admissible to the head and the admissibility of the posts of assistant head, supervisors etc.. Rule 9 provides for appointment of staff. Rule 10 sets out the categories of the employees and there shall be permanent or non-permanent appointments. Non-permanent employees may be either temporary or on probation. A temporary employee is 32 of 62 WP.126.2012-FB one who is

appointed to a temporary vacancy for a fixed period. Rule 11 provides for the maintenance of a service book and by Rule 12 a seniority list is provided for and is to be prepared and maintained by every management in terms of the guidelines in Schedule-F. Rules 13 to 21 deal with several aspects such as vacation and vacation pay, assessment of employee's work, writing of confidential reports etc; leave, superannuation and re-employment, discharge certificate, pension, provident fund, workload etc. 32. By Rule 22, duties and code of conduct of head, assistant head, supervisor, teachers and non-teaching staff (clerks) are set out. They read as under : "22. Duties and Code of Conduct : (1) The duties of Head, Assistant Head, Supervisor, teachers and non-teaching staff (clerks) shall be specified in Schedule-I. (2) All teachers and employees shall observe the following code of conduct namely :- (a) An employee shall treat all students without discrimination on political ground or for reasons of race, religion, caste, language or sex or any other reason of arbitrary or personal nature and shall refrain from instigating students against other students or other employees or school administration. (b) A teacher shall not misuse the facilities of

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the school while exercising freedom of academic thought or expression. (c) An employee shall not make use of the resources and facilities of the institution or Management for his personal use or for commercial, political or religious purposes. (d) A teacher shall be impartial in assessment of students and shall not deliberately overmark or undermark or victimize students on any ground. (e) A teacher shall not conduct or be employed in any private coaching classes or give private tuitions on commercial basis, except as otherwise provided in rule 23. (f) An employee shall communicate change in address, if any during vacation or leave period to the Head, Chief Executive Officer or President, as the case may be. (g) Full-time teaching staff shall not accept part-time employment on payment or for any consideration in another educational, cultural or literary institution without obtaining prior written permission from the authorities, of the school in which he is employed on full-time basis. Such work shall, however, be limited to two hours per day including private tuitions. In respect of a full-time non-teaching employee desirous of working in night school, he shall be so allowed for the entire working period of the night school. (h) The behaviour of an employee with male and female students and employees shall be modest. (i) An employee shall -

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(i) Strictly abide by any law relating to

intoxicating drinks or drugs in force in any area in which he may happen to be for the time being; (ii) Not consume any intoxicating drink or be under the

influence of any intoxicating drink or drug, during the course of his duty; and shall also take due care that the performance of his duties at any time is not affected in any way by the influence of any such drink or drug; (iii) refrain from consuming any intoxicating drink or drug in a public place; (iv) not appear in a public place in a state of intoxication;

(v) not use any intoxicating drink or drug

in excess so that he is unable to control his behaviour. Explanation : For the purpose of this rule, "Public Place" means any place or premises (including conveyance) to which the public have or are permitted to have access, whether on payment or otherwise. (3) Failure to conform to any of the rules of Code of Conduct mentioned in sub-rule (2) shall be treated as an act of negligence or mis-conduct or both." 33. Private tuition is not permitted save and except in the manner laid down in Rule 23. Rule 24 provides for submission of representations. Rule 25 deals with requirement of obtaining higher or additional qualifications. Rule 25A deals with termination of service on account of abolition of posts and 35 of 62 WP.126.2012-FB Rule 26 deals with retrenchment on account of abolition of posts. Rule 27 sets out the principles of termination of service in the event of retrenchment. Rule 28 deals with removal or termination of service. The provisions of Rule 28(5) are material for our purpose and they read as under : "Rule 28(5) - An employee shall be liable to be punished on one or more of the following grounds, namely :- (a) misconduct;

(b) moral turpitude;

(c) willful and persistent negligence of duty;

(d) incompetence.

For the purpose of this rule -

(a) "Misconduct" shall include the following acts, namely :-

(b) breach of the terms and conditions of service laid down by or under these rules;

(ii) violation of the code of conduct; and

(iii) any other act of similar nature.

(b) "Moral turpitude" shall include the following acts, namely :-

(c) immodest or immoral behaviour with a female or male student or employee; and

- (ii) any other act of similar nature. 36 of 62 WP.126.2012-FB
- (iii) "Willful negligence of duty" shall include the following acts namely :-
- (iv) dereliction in, or failure to discharge, any of the duties prescribed by or under these rules;
- (v) persistent absence from duty without previous permission; and
- (vi) any other act of similar nature;
- (vii) "Incompetence" includes the following acts, namely:-
- (viii) ig failure to keep up academic progress and up to date knowledge in spite of repeated instructions in that behalf and provisions of facilities;
- (ix) failure to complete the teaching of the syllabus determined for the year within the fixed periods for reasons not beyond his control; and
- (x) any other act of similar nature."

34. Thus, the punishment can be inflicted or an employee shall be punished on one or more of the grounds set out in sub-Rule 5 of Rule 28 reproduced above. Rule 29 sets out the penalties for the acts covered under Rule 28. Rule 29 sets out that without prejudice to the provisions of the rules, an employee guilty of misconduct, moral turpitude, wilful and persistent neglect of duty and incompetence, as specified in Rule 28, shall be liable for any of the penalties enumerated in Rule 29. Rule 30 deals with imposition of penalty of withholding of increment and Rule 31 classifies the penalties. 37 of 62 WP.126.2012-FB Rule 32 sets out the procedure for imposing minor penalties and Rule 33 sets out the procedure for inflicting major penalties. Then comes Rule 34 which deals with the payment of subsistence allowance. Rule 35 sets out the conditions of suspension. Then comes Rule 36 which reads as under : "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 case 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

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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) -
- (c) 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 along with 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. 39 of 62 WP.126.2012-FB (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).

- (4) 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.
- (5) 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."

35. A bare perusal of this entire Rule 36 would indicate that if an employee allegedly found guilty on any of the grounds specified in sub-rule 5 of Rule 28 of the MEPS Rules 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 40 of 62 WP.126.2012-FB allegations and demand from him a written explanation. If this explanation is not satisfactory in the opinion of the Chief Executive Officer or the President, then he shall place it before the management and the management shall, in turn, decide within the time stipulated in sub-rule (2) whether an inquiry be conducted against the employee concerned and if it decides to conduct an inquiry, that shall be conducted by an inquiry committee constituted in the manner set out in sub-rule (2).

36. Thereafter sub-clauses (a) and (b) provide for constitution of inquiry committee and the persons comprising the same. In the case of inquiry against an employee, clause (a) of sub-rule 2 of Rule 36 enumerates that one member from amongst the members of the management to be nominated by the management or by the President, if so authorised by the management, whose name shall be communicated to the Chief Executive Officer within fifteen days from the date of decision of the management, one member to be nominated by the employee from amongst the employees of any private school and one member chosen by the Chief Executive Officer from the panel of teachers on whom state/national award has been conferred have to act as a Inquiry Committee. Similarly, in the case of inquiry against the head of the school, the inquiry committee must be constituted in accordance with clause (b) of sub-rule (2) of Rule 36. Sub-rules 3 to 6 of Rule 36 provide for communication of the names of the members nominated by 41 of 62 WP.126.2012-FB registered post acknowledgement due to the employee or the head, as the case may be and directing him to nominate a person on his behalf on the proposed inquiry committee and to forward the name along with 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 communication to that effect. The consequence of failure to communicate the name of the nominated person by the head

or the employee would result in the inquiry committee comprising of or constituted with only two members. By sub-rule (5) of Rule 36, a convener is contemplated for the purposes of maintaining the record and he shall be the nominee of the President. The convener can be the President himself.

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. 42 of 62 WP.126.2012-FB 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.
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 43 of 62 WP.126.2012-FB 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 empaneled 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 44 of 62 WP.126.2012-FB teachers. If the interpretation suggested by Mr.Machhindra Patil and others is placed on sub-clause (iii) of clause (a) of sub-rule 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 Nnational 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 45 of 62 WP.126.2012-FB 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. It 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 46 of 62 WP.126.2012-FB 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. 47 of 62 WP.126.2012-FB

40. The arguments of Advocate Macchindra 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 48 of 62 WP.126.2012-FB 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 49 of 62 WP.126.2012-FB circumstances that we are unable to agree with the narrow interpretation placed on this sub-clause.

41. There is one more reason why we are unable to agree with the counsel propounding a contrary view. For every definition in any statute opens with the following words : "In this Act, unless the context otherwise requires" In a decision in *Vanguard Fire and General Insurance Co. Ltd. Madras Vs. Fraser and Ross* and another reported in AIR 1960 SC 971, the Supreme Court had an occasion to construe such words. In paragraph 6 of this decision, this is what is held : "6. The main basis of this contention is the definition of the word "insurer" in Section 2(9) of the Act. It is pointed out that that definition begins with the words "insurer means" and is therefore exhaustive. It may be accepted that generally the word

“insurer” has been defined for the purposes of the Act to mean a person or body corporate etc. which is actually carrying on the business of insurance i.e. the business of effecting contracts of insurance of whatever kind they might be. But Section 2 begins with the words “in this Act, unless there is anything repugnant in the subject or context” and then come the various definition clauses of which (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or 50 of 62 WP.126.2012-FB context. Therefore in finding out the meaning of the word “insurer” in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word “insurer” as used in the Act would mean a person or body corporate actually carrying on the business of insurance, it may be that in certain sections the word may have a somewhat different meaning."

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 51 of 62 WP.126.2012-FB 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 re-employment, there is a specific age prescribed for superannuation but equally there is a power to re-employ 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.

43. Once we take the above view, then what remains for consideration are the written submissions tendered by Advocate A.M.Kulkarni. After inviting our attention to the relevant provisions of MEPS Act and Rules, Mr.Kulkarni relied upon the view emerging from the judgments delivered in the two Division Bench judgments of this Court namely Leelatai Patil’s case (supra) and Ajaz Ahmed Khan s/o. Abdulla Khan Vs. The State of 52 of 62 WP.126.2012-FB Maharashtra and others (Writ Petition No.9951 of 2012 with Civil Application No.283 of 2014 and Civil Application (Stamp) No.16863 of 2014, decided on 12 January 2015). Mr.Kulkarni and Mr.Tapkir both argued that the judgment in Ajaz Ahmed Khan (supra) following Leelatai Patil’s case (supra), is the only view which ought to commend itself to us.
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 53 of 62 WP.126.2012-FB 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. 54 of 62 WP.126.2012-FB

45. Once we take the above view, it is apparent that we cannot agree with the view taken in Leelatai Patil's case (supra). In fact, in that case, the Division Bench was not really called upon to answer any specific question or issue of interpretation of Rule 36(2)(a)(iii) of the MEPS Rules. An argument in passing with regard to composition of the inquiry committee and being termed as faulty, was required to be dealt with by that Division Bench. That is apparent from the argument of the Petitioner-Teacher, who sought to quash a departmental/ disciplinary inquiry against her. During the course of dealing with this incidental argument, in paragraph 8, the Division Bench held thus : "8. So far as composition of 3-member enquiry committee is concerned, Advocate Shri Killarikar has taken an exception, because one Mr.Deshpande, who is appointed from the panel of teachers on whom the State/National award has been conferred, is a retired teacher and on reference to definition of 'teacher' as contained in Section 2(26), teacher means a member of teaching staff and includes head of the school. Therefore, if clause (iii) of Rule 36(2)(a) of MEPS Rules requires the 'teacher on whom State/National award has been conferred' to be a member of the 3-member committee for holding departmental/disciplinary enquiry of an employee, the teacher has to be one who is in the employment and not the one who has retired. We, therefore, direct Respondent no.2 to rectify the composition of 3-member committee."
46. For the reasons that we have indicated above, with respect, we cannot agree with this exposition of Rule 36(2)(a) and the meaning ascribed to the expression "award winning teacher" or "Teacher on whom State/National award has been conferred". 55 of 62 WP.126.2012-FB
47. Another learned Single Judge of this Court had before him both views namely in Sudha Saikhede's case (supra) and Leelatai Patil's case (supra). He chose to follow the later one i.e. Leelatai Patil's case (supra). This would mean that judgment of the learned Single Judge in Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others Vs. The State of Maharashtra and others reported in 2012 (1) Mh.L.J. 370, would have to be held, with respect, as not laying down the correct law. In dealing with

the argument that the inquiry committee was not properly constituted (see paragraph 11), the learned Single Judge in paragraph 26 held as under : “26. So far as the Committee, which was 'appointed for inquiry, is concerned, Smt.Sonia D. Bagade, being the Secretary of the Management, remained as Chief Executive of the Inquiry Committee. The Management has appointed Mr.L.G.Kale, a retired teacher as member of the Committee, being awardee teacher. The appellant objected for appointment of Mr.L.G.Kale on the ground that he is a retired teacher and relevant rules do not permit appointment of a retired teacher. The School Tribunal referring to the judgment of this court in Writ Petition No.5867/2008 in the case of Leelatai Annappa Patil Vs. State of Maharashtra and others, has taken a view that said Mr.L.G.Kale, who is a retired teacher, is not competent to be member of the Committee. The discussion in respect of said point is in paragraph 38 of the impugned judgment. I do not see any reason to interfere in the said finding/conclusion reached by the School Tribunal. I find some substance in the arguments of learned counsel appearing for the appellant that Smt.Sonia Bagade, being daughter of Head Mistress Mrs.Bagade, has some grudge and bias against the appellant while conducting the inquiry. It has also come 56 of 62 WP.126.2012-FB on record that Smt.Sulabha Mundhe was appointed as a nominee of the appellant, however, she was not allowed to participate in the inquiry. It further appears that said grievance was brought before this Court and this Court granted liberty to said Smt.Sulabha Mundhe, nominee of the appellant, to participate in the inquiry proceedings. It is also not disputed by the management that the report of the committee was signed by only two members and not by three members. Therefore, findings, which are recorded by the School Tribunal in respect of appointment of member of the committee and also on other aspects, need no interference.” These conclusions in paragraph 26 following Leelatai Patil’s case (supra), with respect, cannot be approved. In Sudha Saikhede’s case (supra), though the question was not directly involved, there was a circular of the Government to the contrary issued by the Director of Education, Maharashtra State, Pune clarifying certain points. While doing so in this circular of 6 February 1986, it was stated that retired persons below the age of 65 years on whom State or National level awards are conferred should be taken on panel. The Division Bench approached the issue thus: “4. The learned counsel for the petitioner submits that as the Awardee Teacher chosen in the instant case by the Chief Executive Officer is above the age of 65 years and as he is already conducting one more inquiry, he stands disqualified to be nominated on the inquiry committee.

48. Shri Parsodkar, learned counsel appearing for the management submits that Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules which deals with the constitution of Inquiry 57 of 62 WP.126.2012-FB Committee, its powers and procedure, is a complete Code and subject of inquiry is fully and completely regulated by the statutory rule and as such it is impermissible for the State to issue ad-

ministrative instructions which runs counter to the mandate of the Rules. Shri Parsodkar submits that the power of the State Government to issue administrative instructions under Article 162 of the Constitution of India is subject to the legislation made by the State in that regard. He as such contends that the State Government's instructions cannot impinge upon the statutory rules but the same ought to yield to Rule 36 of MEPS Rules.

49. It is settled position of law that the executive power of the State is co-extensive with the legislative power of the State, subject to the provisions of the Constitution. Proviso to Article 162 limits the executive power of the State in regard to matters with respect to which the legislature of a State has power to make laws. Section 16 of the MEPS Act empowers the Government to frame rules which may provide for all or any of the matters enumerated in the said section. Section 16(2)(e) and (f) reads thus :

- (e) the duties of such employees and Code of Conduct and disciplinary matters;

- (f) the matter of conducting inquiries. Sub-section (4) lays down that the rules so framed shall be laid before each House of State Legislature, in the manner prescribed. The rules are then to be notified in the Official Gazette and on such notification the rules come into force. In tune with the mandate of section 16, the MEPS Rules, 1981 have been brought into force with effect from 15.7.1981. Rule 36 squarely deals with composition and constitution of Inquiring Committees. Rule 36(2)(a)(iii) reads as under : 58 of 62 WP.126.2012-FB "36(2)(a)(iii) - One member chosen by the Chief Executive Officer from the panel of teachers on whom State/ National Award has been conferred". Reading of Rule 36(2)(a)(iii) of the MEPS Rules, 1981, makes it clear that it does not disqualify an Awardee teacher if he is above 65 years of age nor does Rule 36 limits the association of an Awardee teacher to only one enquiry committee at a time. If this be the position of law, we have no doubt that the clarification issued by the Government cannot encroach upon Rule 36 of the MEPS Rules, and it must yield to the Rules. In the result, we hold that the clarification issued by the Government cannot either be read in Rule 36 nor can it invalidate an Inquiry Committee constituted in breach thereof. Having held that the breach of the Government instructions in no way affects the validity of the constitution of the Inquiry Committee, we proceed to consider the scope and applicability of the said instructions."

48. With respect, the interpretation placed on Rule 36(2)(a)(iii) of the MEPS Rules by the Division Bench does not run in any manner counter or contrary to the view taken by us. Whether an awardee teacher should be of a particular age or not cannot control the interpretation of the legal provision, as rightly held by the Division Bench in Sudha Saikhede's case (supra). No circular or view of the executive can thus bind the Court when interpreting a legal provision. However, whether it would be advisable to

include an awardee teacher on the panel despite difficulties on account of old age or illness etc. are matters of policy for the State to determine. They need not be gone into and commented upon, for they may affect the 59 of 62 WP.126.2012-FB outcome of inquiries or composition or constitution of the inquiry committee in each individual case. No general rule can be laid down in that behalf and everything must depend on the facts and circumstances of each case.

49. Once we have taken the above view, then we cannot agree with the judgment delivered by another Division Bench at Aurangabad in Ajaz Ahmad Khan s/o Abdulla Khan (supra). With respect, we overrule the judgment to the extent it takes a view contrary to what has been held by us hereinabove. To be fair, in Azaz Ahmad Khan's case (supra), the Division Bench only follows Leelatai Patil's case (supra) and Krantee Junior Adhyapak Mahavidyalay (D.Ed.)'s case (supra). Once we have overruled both the above judgments, then Ajaz Ahmad Khan's case (supra) to the extent indicated above, must be held as not laying down a correct law. The observations in paragraph 5 of the said judgment and which are contrary to our views are, therefore, overruled.
50. Before parting, we may indicate that, as expressed above, the constitution of the inquiry committee in terms of Rule 36 provides for appointment of an awardee teacher. In making such appointment, the Chief Executive Officer should and is rather expected to peruse the panel of awardee teachers. Before choosing and appointing, the Chief Executive Officer should ascertain and in order to avoid any allegation of bias, prejudice or malafides that he does not choose and appoint an 60 of 62 WP.126.2012-FB awardee teacher who has served or is serving the management holding inquiry, in any capacity. He should also verify the antecedents and if there are any criminal cases in which any awardee teacher is involved or if the awardee teacher is facing inquiry into allegations of moral turpitude, then, he must avoid appointing him on the inquiry committee. This will not only ensure that the inquiry is fair, just and proper, but is not delayed unnecessarily by the delinquent employee questioning the process on the ground of antecedents of the awardee teacher. All that we emphasise is that the Chief Executive Officer also must discharge his duty bearing in mind the object and purpose of the Act.
51. In the view that we have taken, it is not necessary to scan the "Scheme of National Award to Teachers" which has been formulated by Government of India, Ministry of Human Resource Development Department of School Education and Literacy, New Delhi. Mr. Bandivadekar has placed a copy of the scheme only because he wanted to emphasise the conditions of eligibility of teachers for consideration for the awards. Apart from their teaching abilities, their expertise, it is apparent that the main considerations for conferring the award are the reputation in the local community, his/her academic efficiency and desire for its improvement, his/her genuine interest in and love for children; and his/her involvement in the social life of the community. The proforma for recommending a teacher has 61 of 62

WP.126.2012-FB several columns and items which take care of the above qualities. Equally, the guidelines which are comprehensive in character would guide the selection process. Beyond the emphasis on the legal argument, Mr.Bandivadekar placed before us the scheme only as a supporting material. We do not think that any further reference is necessary. In the light of the above, the question/issues referred for our consideration are answered as under :

- (i) Whether a Teacher or A teacher or headmaster on Headmaster on whom State/ whom State/National Award is National Award has been conferred and who is chosen as a conferred, who is to be chosen as third member of the Inquiry a third member in an Inquiry Committee under MEPS Rules, Committee constituted under the 1981, can be a retired teacher or Maharashtra Employees of headmaster. Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981, can be a retired Teacher/Headmaster or has essentially to be an in service Teacher/Headmaster?
 - (ii) Which of the judgments of For the reasons indicated above, the Division Benches in the case the view taken by a Division of Leelatai d/o. Annapa Patil and Bench of this Court in case of Sudha d/o. Bhaskarrao Saikhede Sudha d/o Bhaskarrao Saikhede lay down a binding precedent Vs. Yashodabai Shikshan Sanstha regarding the age of the Award reported in 2003 (4) Mh.L.J. 659 Winning Teacher/Headmaster?" commends itself to us and while concurring so also approving it, we overrule all contrary views and rendered in the three decisions of this Court referred in detail above. 62 of 62 WP.126.2012-FB
52. Now individual matters and petitions shall be placed before appropriate Benches for being heard and disposed of in the light of above enunciation of law.
 53. The Court expresses its gratitude for the able assistance rendered by all counsel including Mr.Shaikh Nasir Masin, Mr.Murtaza Najmi, Mr.Surel Shah and Mr.A.M.Kulkarni who appeared to assist the Court. (S.C.DHARMADHIKARI, J.) (G.S.PATEL, J.) (A.K.MENON, J.) MST