

JAI BHAVANI SHIKSHAN PRASARAK MANDAL

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v.

RAMESH & ORS.

(Civil Appeal No. 7937 of 2011)

MARCH 29, 2022

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[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 – ss. 2(9), 9 – Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 – r.36(2)(b)– Doctrine of necessity – First respondent was appointed as the Principal of the Institute of Pharmacy being run by appellant-society – Disciplinary proceedings were initiated against him on certain allegations – After completion of inquiry, management passed an order imposing penalty of removal from service – Appeal filed by respondent, allowed by School Tribunal on the ground that the constitution of the inquiry committee was not in accordance with r.36(2)(b) of 1981 Rules– Writ petition filed by the appellant was dismissed by High Court – On appeal, held: Two expressions namely “Head” and “Chief Executive Officer” used in sub-rule (1) of r.36 provide the fulcrum of the controversy on hand – Sub-rule (2) of r.36 provides for the composition of the Inquiry Committee in a particular manner in the case of “an employee” and it provides for the composition of the Inquiry Committee in a different manner in the case of “the Head” – In the present case, the Departmental Inquiry Committee as originally constituted, had the President of the appellant as a Member – But the President requested the appellant to relieve him due to ill health – Thereafter, one of the Vice-Presidents was requested to be part of the Inquiry Committee, however, the said Vice-President also recused due to family problems – Another Vice-President was nominated to be part of the Inquiry Committee – The said Vice-President also opted out – Then management decided to confer all the powers of the president to one ‘ASRP’ – However, school tribunal as well as High Court omitted to take note that the first respondent was informed about the ill health of the President of the society and the appointment of ‘ASRP’ in his place – Tribunal as well as the High Court failed to take note of the very pleadings of the first respondent with regard to the

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- A *circumstances in which the President of the Society could not continue as part of the Inquiry Committee – Therefore, the order of the School Tribunal was vitiated by perversity – Moreover, the High Court failed to take the note of doctrine of necessity – Once it is admitted, that the disciplinary proceedings commenced with an Inquiry Committee of which the President was a member; and that*
- B *subsequently he was replaced by someone due to ill health, the doctrine of necessity would come into play – Hence, the orders of High Court and School Tribunal are liable to be reversed – Since, the School Tribunal rejected all other contentions of respondent No.1, but upheld only the contention revolving around r.36(2)(b),*
- C *the penalty of removal from service imposed upon the first respondent is to be upheld.*

Allowing the appeal, the Court

- HELD: 1.1** Two expressions namely “*Head*” and “*Chief Executive Officer*” used in sub-rule (1) of Rule 36 provide the
- D **fulcrum of the controversy on hand. The expression “Head” is not defined in the Rules. However, the expression “Chief Executive Officer” is defined in Rule 2(1)(c). The word “Head” is defined in Section 2(9) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Sub-rule**
- E **(2) of Rule 36 provides for the composition of the Inquiry Committee in a particular manner in the case of “an employee” and it provides for the composition of the Inquiry Committee in a different manner in the case of “the Head”. In other words, the Inquiry Committee can comprise of (i) one member amongst the members of the Management, nominated by the management or**
- F **the President; (ii) one member nominated by the employee from amongst the employees; and (iii) one member chosen by the Chief Executive Officer from the panel of teachers, if the inquiry is against “an employee”. But if the inquiry is against the Head, the Inquiry Committee should comprise of: (i) the President of**
- G **the Management; (ii) one member to be nominated by the Head from amongst the employees of any private schools; and (iii) one member chosen by the President from the panel of Head Masters. [Paras 8-10][608-C-H; 609-A]**

- 1.2 In the case on hand, there is and there can be no dispute**
- H **about the fact that the first respondent was the Head within the**

meaning of the expression in terms of Section 2(9) of the Act, as A
he was the Principal of the Institute. But admittedly the first
respondent was not the Secretary, Trustee or Correspondent of
the Institute, to fall within the definition of the expression “*Chief*
Executive Officer” under Rule 2(1)(c) of the Rules. The main
contention of the first respondent which was accepted by the B
School Tribunal and the High Court was that by virtue of Rule
36(2)(b) of the Rules, the President of the Management should
have been one of the members of the Inquiry Committee. There
is no dispute about the fact that the President of the
appellant-Society was not a member of the Inquiry Committee.
But this fact provides only one part of the story. The other part of C
the story is that the Departmental Inquiry Committee as originally
constituted, had the President of the Appellant-Society as a
Member. But the case of the management is that by a letter dated
13.06.2004, the President requested the appellant-Society to
relieve him due to ill health. Therefore, by a letter dated D
14.06.2004 one of the Vice-Presidents was requested to be part
of the Inquiry Committee. But the said Vice-President also
recused due to family problems. Therefore, by a letter dated
16.06.2004 another Vice-President was nominated to be part of
the Inquiry Committee. The said Vice-President also opted out.
Therefore, by a Resolution dated 22.06.2004, the Management E
decided to confer all the powers of the President to one Shri
‘ASRP’. [Paras 11 and 13][609-B-F]

1.3 The School Tribunal as well as the High Court omitted
to take note of the very pleadings of the first respondent in his
appeal before the Tribunal. In paragraph 7 of the Memorandum F
of Appeal submitted by the first respondent before the School
Tribunal, he admitted that the chargesheet was signed by Shri
‘ASRP’, the President of the Society. In paragraph 9 of the
Memorandum of Appeal, the respondent No.1 also admitted that
by a letter dated 26.06.2004 he was informed about the ill health G
of the President of the Society and the appointment of Shri ‘ASRP’
in his place. Unfortunately the School Tribunal as well as the High
Court failed to take note of the very pleadings of the first
respondent with regard to the circumstances in which the
President of the Society could not continue as part of the Inquiry
Committee. Therefore, the order of the School Tribunal was H

- A vitiated by perversity. In any case, the High Court, in the impugned order, failed to take the note of doctrine of necessity. Once it is admitted, (i) that the disciplinary proceedings commenced with an Inquiry Committee of which the President was a member; and (ii) that subsequently he was replaced by someone due to ill health, the doctrine of necessity would come into play. Hence the impugned orders of the High Court and the School Tribunal are liable to be reversed. Since the School Tribunal rejected all other contentions of respondent No.1, but upheld only the contention revolving around Rule 36(2)(b), the penalty of removal from service imposed upon the first respondent is liable to be upheld. However, if by virtue of any interim order passed by any forum, the respondent No.1 has been granted any monetary benefit, the same shall not be recovered from him. [Paras 15, 16 and 23][610-D-E; 611-B; 613-D-F]

- D *National Education Society, Nagpur and another vs. Mahendra, s/o Baburao Jamkar and another* 2007 (3) Mh.L.J 707 – disapproved.

Case Law Reference

2007 (3) Mh. L. J 707 disapproved Para 6

- E CIVIL APPELLATE JURISDICTION : Civil Appeal No.7937 of 2011.

From the Judgment and Order dated 07.09.2009 of the High Court of Bombay at Aurangabad in Letter Patent Appeal No.77 of 2006.

Anil Kumar, Adv. for the Appellant.

- F Charudatta Vijayrao Mahindrakar, Samrat K. Shinde, Sachin Patil, Advs. for the Respondents.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

- G 1. The removal from service of respondent No.1 herein from the post of Principal of the Institute of Pharmacy, having been set aside by the School Tribunal, Aurangabad and the same having been confirmed by the learned Single Judge and the Division Bench of the High Court, the Educational Society running the Institute of Pharmacy has come up with the above appeal.
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2. We have heard the learned counsel appearing for the first A
respondent and the learned counsel for the State of Maharashtra.

3. The appellant is an Educational Society registered under the Bombay Public Trusts Act. It is running an institute of Pharmacy at Gadhi Georai Dist., Beed. In the year 1991, the first respondent herein was appointed as the Principal of the said Institute. In the year 2004 B
disciplinary proceedings were initiated against him on certain allegations of serious nature. The Departmental Inquiry Committee held an inquiry in which the first respondent was given all opportunities of fair hearing, including permission to be represented by a lawyer. After the completion of the inquiry, the Inquiry Committee submitted a report on 31.07.2004 C
holding 7 out of 10 charges proved. Therefore, after issuing a show cause notice enclosing a copy of the Inquiry Report, the Management passed an order dated 19.08.2004 imposing upon the first respondent, the penalty of removal from service.

4. The first respondent challenged the penalty before the School Tribunal by way of an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (*hereinafter referred to as the 'Act'*). The School Tribunal framed five issues as arising for consideration namely: (i) Whether the Inquiry Committee constituted by the Management to conduct further inquiry against the employee was proper, legal and permissible by law? (ii) E
Whether the Management did not pay subsistence allowance and whether non-payment of subsistence allowance vitiated the inquiry?; (iii) Whether the inquiry was vitiated on account of the fact that the Management conducted the inquiry by engaging a lawyer?; (iv) Whether the Management conducted the inquiry by following Rule 37 of MEPS Rules, 1981?; and (v) Whether the impugned dismissal order was legal and F
sustainable in law. Out of these five issues, the Tribunal found only the issue relating to the constitution and composition of the Inquiry Committee to be not in accordance with the Rules. Therefore, the said appeal was allowed by the Tribunal by an order dated 22.06.2006, primarily on the ground that the constitution of the Inquiry Committee was not in G
accordance with Rule 36(2)(b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (*hereinafter referred to as the "MEPS Rules"*).

5. The appellant-Management filed a writ petition in WP No.5387 of 2006 on the file of the High Court of Judicature at Bombay, H

- A Aurangabad Bench. A learned Judge of the High Court dismissed the writ petition, affirming the view taken by the School Tribunal.

6. The intra-court appeal filed by the appellant-Management was dismissed by the division Bench, by placing reliance upon the decision of the Full Bench of the High Court in *National Education Society, Nagpur and another vs. Mahendra, s/o Baburao Jamkar and another*¹. Aggrieved by the said order the Management is on appeal before us.

7. Since the entire dispute revolves around the constitution of the Departmental Inquiry Committee with reference to Rule 36 of the MEPS Rules, it is necessary first to look into Rule 36.

C “**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-

- G (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

H ¹ 2007(3) Mh.L.J 707

authorised by the Management whose name shall be communicated to Chief Executive Officer within 15 days from the date of the decision of the Management; A

(ii) One member to be nominated by the employee from amongst the employees of any private school; B

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom state/National Award has been conferred; B

(b) in the case of the Head referred to in sub-rule (1)-

(i) one member who shall be the President of the Management; C

(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. D

(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 or to the President, as the case may be, within fifteen days of the receipt of the communication to that effect. E F

(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). G

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A (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.

B (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.”

C 8. Two expressions namely “*Head*” and “*Chief Executive Officer*” used in sub-rule (1) of Rule 36 provide the fulcrum of the controversy on hand. The expression “*Head*” is not defined in the Rules. However, the expression “*Chief Executive Officer*” is defined in Rule 2(1)(c) as follows:-

D “Chief Executive Officer” means the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the Management.”

9. The word “*Head*” is defined in Section 2(9) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as follows:-

E “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 superintendent thereof”

F 10. Sub-rule (2) of Rule 36 provides for the composition of the Inquiry Committee in a particular manner in the case of “*an employee*” and it provides for the composition of the Inquiry Committee in a different manner in the case of “*the Head*”. In other words, the Inquiry Committee can comprise of **(i)** one member amongst the members of the Management, nominated by the management or the President; **(ii)** one member nominated by the employee from amongst the employees; and **(iii)** one member chosen by the Chief Executive Officer from the panel of teachers, if the inquiry is against “an employee”. But if the inquiry is against the Head, the Inquiry Committee should comprise of: **(i)** the President of the Management; **(ii)** one member to be nominated by the

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Head from amongst the employees of any private schools; and (iii) one A
member chosen by the President from the panel of Head Masters.

11. In the case on hand, there is and there can be no dispute about
the fact that the first respondent was the Head within the meaning of
the expression in terms of Section 2(9) of the Act, as he was the Principal
of the Institute. But admittedly the first respondent was not the Secretary, B
Trustee or Correspondent of the Institute, to fall within the definition of
the expression “*Chief Executive Officer*” under Rule 2(1)(c) of the
Rules.

12. The main contention of the first respondent which was
accepted by the School Tribunal and the High Court was that by virtue C
of Rule 36(2)(b) of the Rules, the President of the Management should
have been one of the members of the Inquiry Committee. There is no
dispute about the fact that the President of the appellant-Society was
not a member of the Inquiry Committee. But this fact provides only one
part of the story.

13. The other part of the story is that the Departmental Inquiry
Committee as originally constituted, had the President of the appellant-
Society as a Member. But the case of the management is that by a letter
dated 13.06.2004, the President requested the appellant-Society to relieve
him due to ill health. Therefore, by a letter dated 14.06.2004 one of the
Vice-Presidents was requested to be part of the Inquiry Committee. But D
the said Vice-President also recused due to family problems. Therefore,
by a letter dated 16.06.2004 another Vice-President was nominated to
be part of the Inquiry Committee. The said Vice-President also opted
out. Therefore, by a Resolution dated 22.06.2004, the Management
decided to confer all the powers of the President to one Shri Amarsingh E
Shivaji Rao Pandit. The said resolution reads as follows:- F

“Resolution no. 4:- The President Mr. Shivajirao Ankushrao Pandit
is the president and inviter of the Departmental Enquiry Committee
for inquiry of Mr. Kalkotwar R. S. (Suspended Principal).
Therefore, he is president of the enquiry committee for G
Departmental enquiry of Mr. Kalkotwar, but Mr. Shivajirao
Ankushrao Pandit by his application due to ill health and as per
advice of doctors have intimation to take rest. His application and
documents annexed thereto have been considered and his excuse
appears reasonable. Therefore, all the powers of the president of H

A Jaibhawani Shikshan Prasarak regarding the work to conduct the Enquiry id hereby given to Mr. Amarsingh Shivajirao Pandit. Therefore, it was unanimously decided by all that, henceforth, Mr. Amarsingh Shivajirao Pandit will see the work as president and inviter of the departmental enquiry committee conducting inquiry of Mr. Kalkotwar R.S.”

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14. But the School Tribunal held that the aforesaid Resolution dated 22.06.2004 surfaced only after the conclusion of the arguments in the appeal and that, therefore, it could have been prepared as an afterthought. The learned Single Judge of the High Court refused to interfere with this finding of fact, on the ground that the supervisory jurisdiction of the High Court was limited under Article 227 of the Constitution.

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15. But the School Tribunal as well as the High Court omitted to take note of the very pleadings of the first respondent in his appeal before the Tribunal. In paragraph 7 of the Memorandum of Appeal submitted by the first respondent before the School Tribunal, he admitted that the charge-sheet was signed by Shri Shivaji Rao Pandit, the President of the Society. In paragraph 9 of the Memorandum of Appeal, the respondent No.1 also admitted that by a letter dated 26.06.2004 he was informed about the ill health of the President of the Society and the appointment of Shri Amarsingh Shivaji Rao Pandit in his place. Paragraphs 9 and 10 of the Memorandum of Appeal filed by the first respondent herein, before the School Tribunal reads as follows:-

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“The appellant states that when the inquiry was under progress, the Administrative officer of the Respondent No. 1 Society, vide his letter dated 26.6.2004, informed the appellant that since the President of the Society was ill, his representative Shri. Amarsingh Shivajirao Pandit, who is the Member of the Respondent No. 1 Society, shall be the Convenor of the Inquiry Committee. A copy of this letter dated 26.6.2004 issued by the Administrative officer of the Respondent No.1 Society is annexed herewith and marked as EXHIBIT “G”.

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The appellant further states that vide letter dated 30.6.2004, the Administrative Officer of the Respondent No. 1 Society has issued a Corrigendum whereby it was informed that Shri Amarsingh Pandit would act as the Convenor of the Inquiry Committee and the

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President during the course of the Inquiry. A copy of the said A
Corrigendum dated 30.6.2004, issued by the Administrative Officer
of the Respondent No. 1 is annexed herewith and marked as
EXHIBIT “H”.”

16. Unfortunately the School Tribunal as well as the High Court B
failed to take note of the very pleadings of the first respondent with
regard to the circumstances in which the President of the Society could
not continue as part of the Inquiry Committee. Therefore, the order of
the School Tribunal was vitiated by perversity.

17. In any case, Rule 36(2)(a) begins with the words “*in the case* C
of an employee”. Rule 36(2)(b) begins with the words “*in the case of*
the Head referred to in sub-rule (1)”.

18. The interpretation given by the School Tribunal and the High D
Court to the aforesaid Rule would have been acceptable, if Rule 36(2)(b)
had began only with the words “*in the case of the Head*”. But it begins
with the words “*in the case of the Head referred to in sub-rule (1)*”.

19. Sub-rule (1) refers to the Head who is also the Chief Executive E
Officer. Therefore, clause (b) of sub-rule (2) of Rule 36 should be
construed to apply only to a person who is the “*Head*” and who is also
the “*Chief Executive Officer*”. Otherwise the words “*referred in sub-*
rule (1)” appearing in clause (b) would become redundant.

20. The Division Bench of the High Court relied upon the full F
Bench decision of the High Court in ***National Education Society*** (supra),
to come to the conclusion that irrespective of whether the Head of the
Institute is also the Chief Executive Officer or not, Rule 36(2)(b)
mandates the President to be a member of the Inquiry Committee. A
perusal of the Judgment of the Full Bench of the High Court of Bombay
in ***National Education Society*** (supra) shows that the full Bench framed
two questions for its consideration. Question No.2 framed by the Full
Bench reads as follows:-

“Whether the President of the management has to be a member G
of the Enquiry Committee as specified in Rule 36(2)(b)(i) for
holding disciplinary enquiry against the Head, whether or not he is
the Chief Executive Officer within the meaning of Rule 2(c) of
the Rules of 1981.”

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A 21. The above question was taken up for consideration by the full Bench in Paragraph 17 of its decision. In paragraphs 18 and 19, the full Bench held as under:-

B “18. Rule 36(1)(a) of the Rules provides for constitution of Inquiry Committee in respect of an employee while Rule 36(2)(b) provides for constitution of Inquiry Committee for the Head. We have already quoted the definition of “Head” in terms of Section 2(9) of the Act. If it is held that there is no requirement for the President of the management to be a member of the Inquiry Committee in case of the Head who is not the Chief Executive Officer, providing separate Inquiry Committee for the Head in Rule 36(2)(b) would be nugatory. In case such an interpretation is accepted Head of the school would be an employee for the purposes of Rule 36(2)(a) and there was no need to have separate constitution of Inquiry Committee in terms of Section 36(2)(b). It is well settled that the Legislature does not use any word unnecessarily. It would be appropriate to quote paragraph 9 of the judgment of the Apex Court in Utkal Contractors & Joinery Pvt. Ltd. v. State of Orissa reported in MANU/SC/0077/1987 : [1987]3SCR317. In para 9, the Apex Court observed as under:

E ...Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily....

F 19. We, therefore, hold that in case of Head whether or not he is empowered to act as Chief Executive Officer, the President of the management shall be a member of the Inquiry Committee as contemplated by Rule 36(2)(b)(i) of the Rules of 1981.”

G 22. As could be seen from the portion of the Judgment extracted above, the full Bench was unduly carried away by the fact that the Head of an Institution will become equated to an employee, if it was

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held that the President of the Society need not be a member of the Inquiry Committee. But what the Full Bench omitted to take note of was that the Chief Executive Officer of a Society, such as the President, Secretary or Treasurer cannot be an employee of the Institution run by the Society and that a Chief Executive Officer such as the President or Secretary is liable to get elected and not entitled to remuneration. On the other hand, the Head of the Institution is essentially an employee who is entitled to remuneration, seniority, promotion, continuance in service till the age of superannuation etc., and who is subject to the disciplinary control of the Management. In fact the President or Secretary of the Society cannot be removed under the MEPS Rules. But the Head of the Institution can be removed only in terms of the Rules. Therefore, the interpretation given by the Full Bench of the High Court of Bombay in *National Education Society* (supra), under Rule 36(2)(b) may not be correct.

23. In any case, the High Court, in the impugned order, failed to take the note of doctrine of necessity. Once it is admitted, (i) that the disciplinary proceedings commenced with an Inquiry Committee of which the President was a member; and (ii) that subsequently he was replaced by someone due to ill health, the doctrine of necessity would come into play. Hence the impugned orders of the High Court and the School Tribunal are liable to be reversed. Since the School Tribunal rejected all other contentions of respondent No.1, but upheld only the contention revolving around Rule 36(2)(b), the penalty of removal from service imposed upon the first respondent is liable to be upheld. However, if by virtue of any interim order passed by any forum, the respondent No.1 has been granted any monetary benefit, the same shall not be recovered from him. The appeal is accordingly allowed on the above terms and there shall be no order as to costs.