

MANU/MH/0977/2016

Equivalent Citation: 2016(4)ABR537, 2016(6)BomCR154, 2016LabIC3671

IN THE HIGH COURT OF BOMBAY

Writ Petition Nos. 2506 and 2507 of 2006

Decided On: 17.06.2016

Appellants: **Prithviraj S. Singh and Ors.**
Vs.

Respondent: **The Secretary, School Education Department, State of Maharashtra, Mantralaya and Ors.**

Hon'ble Judges/Coram:

R.D. Dhanuka, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.C. Naidu, i/b. Shaikh Nasir Masih

For Respondents/Defendant: U.S. Upadhyay, A.G.P.

Case Note:

Service - Suspension - Misappropriation of funds - Present petitions filed against order whereby Petitioner's service was suspended by Respondent on account of misappropriation of funds - Whether Petitioner was liable to reinstate with full back wages - Held, documents produced by management before enquiry officer were not disputed by Petitioner - Petitioner was also guilty of charges of misconduct and negligent in discharging his duties - There was sufficient documentary evidence to substantiate charges leveled against Petitioner - Entries in cash book register showed that Petitioner had received money but failed to deposit them in bank account of school immediately - Perusal of record indicated that Petitioner never made any grievance before enquiry committee - It is settled law that unless prejudice is shown and established, mere non-payment of subsistence allowance could not ipso facto be ground to vitiate proceedings - Therefore, no infirmity found in suspension order of Petitioner's service - Petitions dismissed.[134],[135],[143] and[144]

JUDGMENT

R.D. Dhanuka, J.

1. By these two writ petitions filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of certiorari, for quashing the two separate orders passed by the School Tribunal, Mumbai in Appeal No. 1 of 2005 and Appeal No. 2 of 2005 filed by the petitioners respectively and praying for an order and directions against the respondents to reinstate the petitioners with all full back wages and consequential benefits. Since the facts in both the matters are identical, by consent of parties both the writ petitions were heard together and are being disposed of by a common order. Since the learned counsel for the petitioners has summarized the facts in Writ Petition No. 2507 of 2006, I shall deal with the facts in the said writ petition in the later part of this judgment. Some of the relevant facts for the purpose of deciding aforesaid two petitions are as under:--

2. The respondent Nos. 1 to 3 are the officers appointed under the provisions of the of Maharashtra Employees of Private Schools (CS) Regulation Act, 1978 (in short MEPS Act). The respondent No. 4 is a registered trust under the provisions of Bombay Public Trust Act, 1950 which runs a school viz. Dayanand Vedic Vidyalaya Hindi High School. The respondent Nos. 5 to 8 were the office bearers of the respondent No. 4.

3. Sometimes in the year 1971, the petitioner in Writ Petition No. 2507 of 2006 was appointed as a junior clerk in the school run by the respondent No. 4 w.e.f. 25th October, 1971. He was thereafter promoted as a senior clerk in the 7th respondent school. The said school is a private, recognized and fully aided Hindi Medium High School.

4. It is the case of the petitioner that from 1999 onwards there were serious disputes between factions of the managing committee of the respondent No. 4. There were also disputes between one senior most teacher Mr. K.K. Mishra as well as Mr. Jai Shankar Singh, the then Head Master when the dispute arose in respect of the subject matter of this petition is concerned. On 1st January 2000 the post of the Head Master fell vacant. The education inspector accorded the signatory powers to the senior most teacher Mr. K.K. Mishra w.e.f. 1st January, 2000. Mr. Jaishankar Singh filed an appeal on 18th January, 2000 before the school tribunal.

5. By an order dated 28th March, 2001, the school tribunal dismissed the said Appeal No. 4 of 2000 filed by the respondent No. 8 and recorded a finding that the appointment of the respondent No. 8 was not legal and that the said appeal was filed in collusion with one Mr. Mithailal Singh who headed one of the rival group of the management committee members.

6. On 29th March, 2001 the respondent No. 8 was suspended by the respondent No. 5 on account of the alleged misappropriation of the school funds. In the year 2001, the respondent No. 8 filed a writ petition (2202 of 2001) impugning the order and judgment dated 28th March, 2001 delivered by the school tribunal.

7. By an order dated 2nd September, 2002 this Court dismissed the said writ petition. The respondent No. 7 thereafter preferred Letters Patent Appeal (St) No. 37822 of 2002 before the Division Bench of this Court but did not move the said appeal.

8. It is the case of the petitioners that on 12th December, 2003, the group headed by respondent No. 6 made a baseless complaint against Mr. K.K. Mishra, the then headmaster, the petitioner as well as the senior clerk to the Education Department alleging misappropriation of the school and trust funds.

9. On 15th December, 2003 the respondent No. 6 also lodged a complaint against three persons with the respondent No. 1 with a request through appropriate authority to inquire into the matter under his supervision and to take necessary action against those three persons including the petitioner.

10. The respondent No. 1 by his order dated 19th December, 2003 ordered an enquiry through respondent Nos. 2 and 3 pursuant to the said complaint dated 15th December, 2003. The respondent No. 3 thereafter conducted a detailed enquiry in the school and submitted his report dealing with the allegations. According to the petitioner, there was no substance found in the complaint lodged by the respondent No. 6 in the said report submitted by the respondent No. 3.

- 11.** On 23rd December, 2003, the respondent No. 6 issued an appointment letter in favour of the respondent No. 7 as headmaster w.e.f. 19th December, 2003. It is the case of the petitioner that the appointment letter is issued by Mr. Umesh Pratap Singh and he himself has accepted the same instead of Mr. Jai Shankar Singh who was a dismissed employee and was pursuing his appeal (12 of 2002) in the school tribunal.
- 12.** On 20th January, 2004 the respondent Nos. 6 and 7 filed consent terms in the Letters Patent Appeal (L) No. 37822 of 2002. It was recorded that the respondent No. 7 was reinstated. The said LPA was disposed of in terms of the consent terms. No reliefs were claimed against Mr. K.K. Mishra in the said LPA and his name was deleted from the cause title of the said appeal.
- 13.** On 1st March, 2004, the respondent No. 3 granted conditional approval in favour of the respondent No. 7 as headmaster subject to any judicial order as may be passed in respect of his appointment.
- 14.** Respondent No. 3 by his letter dated 11th March, 2004 recorded that the respondent No. 7 had not assumed the post of headmaster and conditional approval dated 1st March, 2004 would be revoked. It is the case of the petitioner that the respondent Nos. 6 and 7 sought to remove the senior most teacher Mr. K.K. Mishra working as a headmaster. The said Mr. K.K. Mishra accordingly filed a writ petition (852 of 2004) in this Court. This Court granted ad-interim reliefs in favour of Mr. K.K. Mishra on 2nd April, 2004. The said writ petition was thereafter admitted on 20th April, 2004. This Court however refused to grant interim relief. The said Mr. K.K. Mishra thereafter preferred a special leave petition. The Supreme Court directed this Court to hear Writ Petition No. 852 of 2004 at an early date.
- 15.** On 11th May, 2004 the respondent No. 8 filed a civil suit (1636 of 2004) in the City Civil Court for taking the charge. On 29th May, 2004 the respondent No. 6 issued a suspension letter to the petitioner. It is the case of the petitioner that the said suspension order was not acted upon by respondent Nos. 6 and 7.
- 16.** On 7th June, 2004, the respondent No. 5 issued a letter to the petitioner calling upon him to continue to perform his duties as usual and warned the petitioner not to entertain and accept any correspondence issued by the rival group. It is the case of the petitioner that on 19th July, 2004, the respondent No. 8 took the charge of the school records pursuant to the order passed by this Court.
- 17.** Sometime in the month of August 2004, the petitioner alongwith other 24 staff members filed a Writ Petition (L) No. 2640 of 2004 in this Court inter alia praying for appointment of the administrator of the school and for other reliefs.
- 18.** It is the case of the petitioner that on 20th August, 2004, the respondent No. 6 in his purported capacity as secretary of the trust communicated the name of two members to the proposed enquiry committee. The name of Mr. Umesh Pratap Singh was given as a convener and without any intimation to the petitioner the said convener was changed and Mr. C.K. Singh was appointed as a second convener. It is the case of the petitioner that Mr. C.K. Singh had lodged a criminal complaint against the management and the petitioner in the year 2002.
- 19.** On 20th August, 2004 the respondent No. 6 served the statement of allegation dated 14th June, 2004 upon the petitioner. By letter date 30th August, 2004 the petitioner questioned the authority of the respondent No. 6 and did not nominate his nominee. By the said letter, the petitioner made it clear that his objection did not

confer any right in favour of respondent No. 6 to execute the threat given by respondent No. 6 to proceed ex-parte in the said enquiry.

20. On 1st September, 2004, the petitioner addressed a letter to the Deputy Director of Education requesting for issuing necessary directions to the headmaster of the school not to obstruct him to perform the regular duties.

21. On 3rd September, 2004, the respondent No. 6 served charge-sheet upon the petitioner. It is the case of the petitioner that most of the allegations in the said charge-sheet were similar in nature as were alleged in the complaint dated 12th December, 2003 made to the respondent No. 1. The petitioner vide letter dated 11th September, 2004 denied the charges as alleged to be imaginary and devoid of any substance.

22. It is the case of the petitioner that vide his letter dated 22nd September, 2004, he recorded that the respondent No. 6 was sending empty envelop to him for preparing false evidence. The petitioner made a representation to the respondent No. 3 alleging that previous complaint lodged by the respondent No. 6 was thoroughly investigated by him on 19th December, 2003.

23. On 24th September, 2004 Mr. C.K. Singh, the convener asked the petitioner to submit his explanation to the charge-sheet prepared by him. On 24th September, 2004 the convener informed that the suspension period of the petitioner was extended by one month.

24. On 18th September, 2004, the earlier convener Mr. Umesh Pratap Singh informed the petitioner that in his place Mr. C.K. Singh would be the convener. The petitioner vide his letter dated 3rd October, 2004 raised various objections against conducting the disciplinary proceedings. The petitioner alleged that he had not received any document as demanded in the letter dated 24th September, 2004 and requested to permit the petitioner to nominate his nominee, to furnish the documents, to pay the full salary, to extend an opportunity to take inspection of the relevant records after furnishing the supporting documents, to send all the letters by R.P.A.D., to desist from sending empty envelopes.

25. On 15th October, 2004, the Division Bench of this Court passed an order in Writ Petition (L) No. 2640 of 2004 directing the respondents to pay the salary of the staff members. Respondent Nos. 6 and 7 contended that the petitioner would be paid the subsistence allowance.

26. It is the case of the petitioner that the petitioner did not open the letter dated nil dispatched on 12th October, 2004 by the convener and the said envelope was opened by the learned presiding officer in presence of respondent No. 7 and found that there was no enclosure as mentioned in the said letter annexed to the said letter which was sent to the petitioner.

27. It is the case of the petitioner that on 21st October, 2004, Mr. Umesh Pratap Singh who claimed to be a secretary of the respondent No. 4 trust deposited an in accurate amount in the saving bank account No. 2429 of the petitioner.

28. On 25th October, 2004, the petitioner was served with the summary of proceedings by the convener. The petitioner was asked to tender further explanation within seven days from the date of receipt of the said letter, summary of proceedings. It is the case of the petitioner that the respondent No. 6 created some

record to show that the enquiry was in progress.

29. The petitioner vide letter dated 3rd November, 2004 submitted their explanation pointing out that particulars were not given nor the supporting documents were made available by the convener to the petitioner. The petitioner expressed his readiness that he was keen and willing to participate in the enquiry if the documents relied upon by the convener were furnished to him and if the correct procedure for conducting the said enquiry was followed.

30. On 20th November, 2004 the petitioner was served with the termination letter effective from 25th November, 2004 which was alleged to have been received by the petitioner on 14th December, 2004. The petitioner filed an appeal (2 of 2005) on 3rd January, 2005 before the school tribunal impugning the said letter of termination. The parties to the said proceedings including the Education Inspector filed an affidavit in the said proceedings before the school tribunal. On 10th March, 2005 the school tribunal granted the stay to the impugned order of termination with a direction to pay 50% salary. Respondent Nos. 6 and 7 filed a writ petition on 17th March, 2005 [Writ Petition (L) No. 776 of 2005] challenging the said interim order passed by the school tribunal. This Court passed an order on 17th March, 2005 in the said writ petition staying operation of the said interim order.

31. It is the case of the petitioners that the said order dated 17th March, 2005 passed by this Court was not complied with by the respondent Nos. 6 and 7. The petitioners thereafter sent reminder to the respondent Nos. 6 and 7 to comply with the said order. The respondent Nos. 6 and 7 thereafter filed written statement and compilation of documents before the school tribunal and made an application for giving an opportunity to lead evidence to prove the charges, in the event if the enquiry was not found to be fair and proper. By an order dated 24th August, 2005, the school tribunal allowed the application of the respondent Nos. 6 and 7 by holding that they would be at liberty to lead evidence only after conclusion of the school tribunal that the enquiry was held to be perverse and unjust. The respondent No. 5 thereafter filed written statement dated 13 September, 2005 supporting the case of the petitioners. The respondent Nos. 6 and 7 thereafter made an application on 19th November, 2005 for seeking amendment to the written statement. The said amendment came to be allowed by the school tribunal. The parties filed various affidavits before the school tribunal.

32. It is the case of the petitioners that by an order dated 4th February, 2006, the school tribunal took the documents annexed to the affidavit of the petitioners dated 12th January, 2006 on record and granted an opportunity to the respondent Nos. 4, 6 and 7 to meet with the said documents. The respondent Nos. 4, 6 and 7 did not challenge the said order.

33. The respondent Nos. 6 and 7 thereafter filed an application on 17th February, 2006 before the school tribunal inter-alia praying for adjournment of the hearing of Appeal No. 2 of 2005 or in the alternative not to consider the report till the matter was heard by this Court. The school tribunal by an order dated 22nd February, 2006 rejected the application of respondent Nos. 6 and 7 dated 17th February, 2006. The petitioners thereafter filed an application under section 11(3) of the MEPS Act in the said appeal pending before the school tribunal for seeking an order and direction against the respondent Nos. 6 and 7 to deposit a total sum of Rs. 1,82,900/- in the saving bank account of the petitioners in view of the directions issued by this Court in an order dated 17th March, 2005. The said application was allowed by the school

tribunal by an order dated 26th April, 2006.

34. On 13th July, 2006, the respondent Nos. 6 and 7 filed the original records and proceedings of the enquiry committee before the school tribunal. It is the case of the petitioners that the inspection of the original records and proceedings however, was not offered to the petitioners. The matter was kept for orders on 18th July, 2006. The school tribunal by an order dated 19th July, 2006 dismissed the appeals filed by the petitioners. The respondent No. 1, 2, 6 and 7 were directed to pay the amount equivalent to the subsistence allowance to the petitioners till the date of the said order as per the order passed by this Court in Writ Petition No. 774 of 2005. It is held that in view of the said order dated 18th July, 2006, the application dated 14th June, 2006 filed by the petitioners did not survive.

35. The petitioners vide their advocates letter dated 28th August, 2006 called upon the respondent No. 1 and the Headmaster of the school to make payment of Rs. 1,45,086/- which was not paid by those respondents out of Rs. 2,96,876/-. The petitioners have impugned the said order dated 19th July, 2006 passed by the school tribunal in this petition by a writ of certiorari or any other writ or direction in the nature of the writ of certiorari inter-alia praying for quashing of the said order and for various other reliefs.

36. Mr. Naidu, learned counsel appearing for the petitioners in both the writ petitions invited my attention to the documents referred to aforesaid and submits that the entire order of suspension dated 20th November, 2004 deserves to be set aside on the ground of parity. He submits that Mr. Jaishankar Singh was appointed as Headmaster by one of the rival group. The signing authority was given to Mr. K.K. Mishra by the Education Officer. The appeal filed by Mr. Jaishankar Singh admittedly came to be dismissed. The writ petition filed by the said Mr. Jaishankar Singh (2202 of 2001) also came to be dismissed. However, in the letters patent appeal filed by the said Mr. Jaishankar Singh, the parties to the said letters patent appeal filed the consent terms. The termination of the said Mr. Jaishankar Singh came to be set aside under the said consent terms. He submits that the management had filed a complaint against Mr. K.K. Mishra and two petitioners to the Education Department. The allegations against the petitioners were that they had colluded with said Mr. K.K. Mishra. Mr. K.K. Mishra filed Writ Petition No. 852 of 2004.

37. The termination of Mr. K.K. Mishra was stayed by an ad-interim order passed by this Court on 2nd April, 2004 in Writ Petition No. 852 of 2004. The said writ petition was admitted on 20th April, 2004. Interim relief however was refused. The said Mr. K.K. Mishra thereafter filed Special Leave Petition before the Supreme Court. The said Mr. K.K. Mishra succeeded before the school tribunal partly. The termination of Mr. K.K. Mishra was set aside and he was made to retire with effect from 16th November, 2004. Mr. K.K. Mishra filed writ petition bearing No. 1208 of 2007. In the said writ petition, Mr. K.K. Mishra was treated as superannuated with effect from 31st March, 2005. It was made clear in the said order that the said order shall not be used as a precedent.

38. It is submitted by learned counsel that the allegations against the said Mr. K.K. Mishra and the petitioners were identical. The management has not treated the petitioners equally with Mr. K.K. Mishra. The said Mr. K.K. Mishra also had not participated in the enquiry though he was facing similar charges as were faced by the petitioners. He submits that no finding was recorded by the enquiry officer on the charge of misappropriation in view of the pendency of the criminal proceedings filed

by the management against the petitioners. He submits that the Education Officer did not record any finding. The Metropolitan Magistrate ultimately dismissed the complaint filed by the management holding that the charges of misappropriation were not proved. He submits that though the complaint was dismissed by the Metropolitan Magistrate, the petitioners were however, punished for the alleged misappropriation.

39. It is submitted by the learned counsel that since both the petitioners were identically placed as Mr. K.K. Mishra and since the school tribunal had set aside the quantum of punishment awarded to Mr. K.K. Mishra, the school tribunal ought to have set aside the quantum of punishment awarded to the petitioners by passing identical order. He submits that the school tribunal has applied two different yardsticks in the matter of quantum of punishment though the facts of the two cases were identical.

40. It is submitted by learned counsel that the petitioners were admittedly placed under suspension by an order dated 29th May, 2004. Under Rule 33(1) of the MEPS Rules, the management was required to authorize the Chief Executive Officer, after obtaining permission of the Education officer if the management had decided to suspend any employee. The said Chief Executive Officer is a competent person to place the employee under suspension under rule 33(i) if the management has decided to suspend the employee after seeking permission of the Education Officer. It is submitted that Mr. Uday Pratap Singh was not appointed as the Chief Executive Officer by the management and thus was incompetent person.

41. Reliance is placed on section 2(12) of the MEPS Act, which defines the term "management". It is submitted that under section 2(12)(c), it is provided that in case not falling under section 2(12)(a) or (b), the person or body or person whether incorporated or not and by whatever name called, administering such school.

42. It is submitted that the management of the trust was elected on 7th December, 2003 comprising of 19 members. 6 members out of those 19 members were elected a new office bearers of the trust. He submits that there was no resolution passed by the managing committee of the trust by which one of the office bearers was elected as Chief Executive Officer of the trust. No copy of any such alleged resolution was produced before the school tribunal or before this Court by the management. He submits that the respondent management has not even averred in any of the affidavits that any one of the office bearers from amongst six office bearers was appointed as the Chief Executive Officer.

43. It is submitted that in absence of any Chief Executive Officer, the employee could not be placed under suspension under the provisions of MEPS Rules. The order of suspension has been issued by Mr. Uday Pratap Singh as the Secretary of the respondent No. 1. In the said order, he did not mention that he was functioning as the Chief Executive Officer. He submits that the order of suspension cannot be issued by any person even if he happens to be the office bearer of the trust. It is submitted that the MEPS Rules are mandatory and have to be strictly complied with and in view of the respondent No. 1 not having complied with said MEPS Rules, the entire disciplinary proceedings were vitiated. He submits that since the suspension order was illegal, the petitioners became entitled to full back wages for the period of suspension.

44. Learned counsel appearing for the petitioners placed reliance on the judgment of this Court in case of National Education Society & Anr. v. Mahendra Baburao Jamkar

& Anr., MANU/MH/0271/2007 : 2007 (3) All M.R. 707 and it is submitted that only one person from amongst office bearers, who is subsequently empowered by the management to execute its decision could be the Chief Executive Officer, who would be the person empowered to execute the decision of the management. He submits that no permission of the Education Officer was obtained by the respondent No. 1 and thus the suspension without such permission under rule 33(1) was illegal.

45. Learned counsel for the petitioners placed reliance on the judgment of this Court in case of Avdesh Narayan Singh v. Adarsh Vidya Mandir Trust, MANU/MH/0772/2003 : 2004(1) Mh.L.J. 676 (Full Bench) and submits that since the petitioners were suspended without prior permission of the Education Officer as contemplated under rule 33(1), the management of the school would be responsible to pay subsistence allowance due to the petitioners as per law. He submits that under rule 34 of the MEPS Rules, the employee is entitled to the suspension allowance of 50% of the salary drawn for the first four months and thereafter at the rate of 75% of the salary till the date of completion of the enquiry. He submits that the petitioners in this case were not paid subsistence allowance by the management from the date of suspension till their illegal termination. He submits that this Court had directed the management to pay subsistence allowance to the petitioners according to law during the pendency of the appeal filed by the petitioners before the school tribunal. The said order however, was not complied with by the management. He submits that since the said order was not complied with by the management, the petitioners were required to file an application before the school tribunal for a direction to deposit the subsistence allowance. The school tribunal had directed the respondent Nos. 6 and 7 to deposit the unpaid subsistence allowance in the bank account of the petitioners within 90 days from the date of the said order. The respondent Nos. 6 and 7 however, did not comply with the said order passed by the school tribunal also.

46. It is submitted by the learned counsel for the petitioners that this Court had thereafter directed the Education Officer to verify and determine the amount due and payable to the petitioners as and by way of subsistence allowance and the balance amount, if any, to be paid. The Education Officer had thereafter calculated the amount of the subsistence allowance not paid by the management to the petitioners in the sum of Rs. 1,12,921/- in Writ Petition No. 2506 of 2006 and separate amount in Writ Petition No. 2507 of 2006. Since the management was not paying the said amount, this Court directed the officer of the Andhra Bank Limited to remain present in Court and gave directions to the bank to transfer a sum of Rs. 1,12,921/- from the account of the respondent No. 1 and to keep the said amount in a fix deposit in favour of the petitioners and to deposit the original fixed deposit receipt in this Court.

47. It is submitted by learned counsel for the petitioners that when an employee is suspended and is required to face the disciplinary proceedings, the management is obliged to pay the subsistence allowance as per law and if such subsistence allowance is not paid, it would render the disciplinary proceedings illegal and consequently the termination of services also as an illegal. In support of the aforesaid submission, learned counsel for the petitioners placed reliance on the following judgments:--

"1. Fakirbhai Fulabhai Solanki v. Presiding Officer And Anr., MANU/SC/0324/1986 : AIR 1986 SC 1168 (paragraphs 5, 8 and 9)

2. The Western India Tanneries Ltd. v. M.R. Bhape and others, 1991(62)

Bombay High Court 887 (paragraph 9)

3. Jagdamba Prasad Shukla v. State of U.P. And others MANU/SC/0524/2000 : AIR 2000 SC 2806."

48. It is submitted by the learned counsel that the non payment of the subsistence allowance by the management is contrary to and in violation of the order passed by the Division Bench of this court on 15th October 2004 in Writ Petition (Lodging) No. 2640 of 2004, order dated 17th March, 2005 passed by this court, orders dated 26th April, 2006 and 19th July, 2006 passed by school tribunal.

49. The next submission of the learned counsel for the petitioners is that the respondent No. 1 had committed breach of rule 36(2), (3), (4) and (5) of the MEPS Rules. He submits that the compliance of the said rule is mandatory and has to be complied with strictly. In support of this submission, he placed reliance on the judgment of the Supreme Court in case of Vidya Vikas Mandal & Anr. v. Education Officer & Anr. MANU/SC/7084/2007 : (2007) 11, SCC 352 and judgment of this Court in case of Mahalaxmi Shikshan Sanstha v. State of Maharashtra, MANU/MH/0313/1998 : (1998) 3 Bom.C.R. 796. It is submitted that the said Mr. Uday Pratap Singh had admittedly called upon the petitioners to submit the reply vide letter dated 20th August, 2004 within seven days. He submits that by another letter of the same date, the said Mr. Uday Pratap Singh called upon the petitioners to nominate a person to the enquiry committee.

50. It is submitted that the said Mr. Uday Pratap Singh did not even wait for submission of the reply by the petitioners before calling the petitioners to nominate a person to the enquiry committee. It is submitted that the procedure of formation of the enquiry committee under rule 36(2) of the MEPS Rules can be initiated after perusal of the explanation submitted by the employee to the statement of allegations and only after the Chief Executive Officer comes to the conclusion that the explanation was not satisfactory. He submits that the letter dated 20th August, 2004 addressed by the said Mr. Uday Pratap Singh calling upon the petitioners to submit the reply itself was received by the petitioners on 26th August, 2004. He had submitted his reply to the statement of allegations on 30th August, 2004.

51. It is submitted by the learned counsel for the petitioners that the Chief Executive Officer has to place the statement of allegations along with the explanation of an employee before the management within 15 days of the receipt of the explanation given by an employee to the statement of allegations. He submits that the said Mr. Uday Pratap Singh however, did not follow this mandatory procedure by placing an explanation given by the petitioners to the statement of allegations before the management for consideration. The management has to take appropriate decision under rule 36(2) of the MEPS Rules within 15 days as to whether any enquiry has to be conducted against the said employee or not.

52. It is submitted that admittedly no such procedure came to be followed by said Mr. Uday Pratap Singh as contemplated under rule 36(2) of the MEPS Rules. He submits that admittedly the said Mr. Uday Pratap Singh had issued a notice on 20th August, 2004 itself calling upon the petitioners to nominate a person to the enquiry committee which notice was issued even before the time to give explanation to the statement of allegations given to the petitioners had expired and even before considering the explanation given by the petitioners and without waiting for the decision of the management on such explanation rendered by the petitioners. It is

submitted that the enquiry committee thus constituted by the management was not properly constituted and thus the entire enquiry proceedings were vitiated, illegal and void-ab-initio. He submits that the order of termination issued by the management based on such illegally constituted enquiry committee also is thus illegal, void and unsustainable in law.

53. It is submitted by the learned counsel that under rule 36(2)(a) of the MEPS Rules, one member has to be nominated from the management i.e. he should be office bearer of the trust. It is submitted that the person nominated by the management however, was not the office bearer of the trust. Reliance is placed on the judgment of this Court in case of *Shatrughna Dada Kamble v. State of Maharashtra* in support of his submission that if one member of the enquiry committee is not an office bearer of the management, the committee appointed would not be a properly constituted committee and the enquiry held by the said committee would be vitiated. Reliance is also placed on the judgment of this Court in Writ Petition No. 2054 of 1997 in case of *Smt. P.G. Garodia Charitable Trust v. Madhav V. Atre & Anr.* It is submitted that Mr. Chandra Kumar Singh was incompetent and could not be nominated by the management as he was not a member of the management. He submits that the respondent No. 1 did not deny specific averment of the petitioners that the said Mr. Chandra Kumar Singh was not a member of the management and was thus incompetent to act as part of the enquiry committee. He submits that the enquiry committee as constituted by the management was illegal also on this ground.

54. It is submitted by the learned counsel for the petitioners that the management did not communicate to the Chief Executive Officer about the member of the management so authorized by the management within 15 days from the date of decision of the management as contemplated under rule 36(2)(a)(i) of the MEPS Rules. He submits that the order of termination dated 20th November, 2004 passed by the management is ex-facie in violation of rule 36(2)(a)(i) of MEPS Rules and thus the petitioners are entitled to full back wages with continuity of service and all consequential benefits till the date of retirement and also all post retirement benefits.

55. It is submitted by the learned counsel for the petitioners that the communication of the name of the nominee of the management for the purpose of constitution of the enquiry committee could be made only after observing the mandatory provisions of rules 36(1) and 36(2). He submits that the petitioners were however, called upon to nominate the nominee contrary to rule 36(2)(a)(iii), which defect is incurable. He submits that the constitution of the enquiry committee there is vitiated on this ground alone.

56. It is submitted that the said Mr. Chandra Kumar Singh, who acted as convener of the enquiry committee could not have been appointed by the management at all since he was totally hostile and was biased against the petitioners. He submits that the said Mr. Chandra Kumar Singh was a complainant in complaint No. CC 187/SS/2002 filed before the Court of Metropolitan Magistrate 27th Court, Mulund, Mumbai against the petitioners. It is submitted that since the convener of the enquiry committee himself was the complainant against the petitioners, he could not act as a Judge in another proceedings to decide the veracity of self same charges. Reliance is placed on the judgment of the Supreme Court in case of *Tilakchand M. Obhan v. Kamalprasad Shukla & Ors.* MANU/SC/0850/1995 : 1995 Supp. (1) SCC 21 in support of his submission that the said Mr. Chandra Kumar Singh being a complainant against the petitioners, he could not be a convener, he having acted

hostile and biased against the petitioners.

57. The next submission of the learned counsel for the petitioners is that though under rule 36(3) of the MEPS Rules, the Chief Executive Officer was required to communicate the names of the members nominated by the management by registered A.D. post to the employee and to call upon him to nominate a person on his behalf which stage would have arisen only after the mandatory requirement under rule 36(2) of the MEPS Rules would have been exhausted. He submits that the petitioners were however, called upon to nominate his nominee on the same date when they were called upon to submit the explanation to the statement of allegations under rule 36(1). He submits that the respondent Nos. 4, 6 and 7 have thus violated the principles of natural justice which has caused grave prejudice to the petitioners.

58. Without prejudice to his aforesaid submissions, the learned counsel for the petitioners submits that the charge sheet issued by the Chief Executive Officer was totally vague, bereft of material particulars and was not supported by any documents. The list of witnesses proposed to be examined by the management in support of the charges was also not annexed to the charge sheet. He submitted that the purported charge sheet was issued even before a valid enquiry committee had been constituted. The time framed set out in rule 37 had been also completely violated. It is submitted that since the statutory time framed under rule 37 was violated, the respondent No. 1 had violated the principles of natural justice. Learned counsel placed reliance on the judgment of the Supreme Court in case of *Bharat Iron and Still Works v. Bagubhai Patel*, MANU/SC/0345/1975 : AIR 1976, SC 98.

59. It is submitted by the learned counsel for the petitioners that under rule 37(1) of the MEPS Rules, the management was required to prepare a charge sheet containing specific charges, hand over the charge sheet together with statement of allegations and explanation of the employee to the convener of the enquiry committee and to forward the charge sheet as well as statement of allegations to the employee by registered acknowledgement post within seven days from the date of constitution of the enquiry report. He submits that the Secretary however, had drawn up the charge sheet dated 20th September, 2004 and was not drawn up by the management as provided in rule 37(1) of the MEPS Rules. Such charge sheet along with statement of allegations and the explanation of the petitioners was not even forwarded to the convener as required under rule 37(1) of the MEPS Rules. He submits that no communication received from the petitioners was produced on record nor was pleaded before the tribunal by the management.

60. It is submitted that though the petitioners had repeatedly demanded inspection and copies of the documents, which the management desired to tender, if any, before the convener, the management however, did not produce any documents or did not give any inspection of the documents. The entire procedure followed by the management was thus in complete violation of rule 37(2)(b) of MEPS Rules. He submits that the enquiry committee did not give any report and finding nor communicate the same as contemplated under rule 37(6) of the MEPS Rules.

61. It is submitted by the learned counsel for the petitioners that the enquiry committee admittedly did not decide the charge of misappropriation against the petitioners on the ground that the said charges were sub-judice. He submits that substantial part of the charges levelled against the petitioners were the charges of misappropriation which also admittedly not decided by the enquiry committee. Reliance is also placed on paragraph 26 of the order passed by the school tribunal

recording that the charges of misappropriation was not decided by the enquiry committee in view of the fact that the same were pending before the learned Metropolitan Magistrate. He submits that it is thus clear that the alleged charge of misappropriation was not established before the enquiry committee and no finding was rendered by the enquiry committee or by the school tribunal on such charges. He submits that the management itself could not have imposed any penalty upon the petitioners on the charges of misappropriation in absence of any finding rendered by the enquiry committee holding that the petitioners are guilty of the acts of omission and commission.

62. It is submitted by the learned counsel that even otherwise the charge of misappropriation levelled against the petitioners by the management is totally baseless and contrary to the record. He submits that on 12th December, 2003, Mr. Umesh Pratap Singh had lodged a complaint with the Secretary, School Education Department, Government of Maharashtra alleging that Mr. K.K. Mishra had engaged in the acts of misappropriation of the trust fund. In the said complaint, it was alleged that the petitioners had alleged to have colluded along with Mr. K.K. Mishra in purported act of misappropriation. He submits that pursuant to an order passed by the School Education Department for carrying out an investigation into the charges levelled against the petitioners, the education inspector visited the respondent No. 1 school and recorded the statements of the employees. He submits that the education inspector thereafter recorded that no amount has been withdrawn from the trust because the amount of the trust had been frozen due to disputes amongst the trustees. In the said report, the education inspector further recorded that the funds collected from the students were deposited in the designated account as per rules. It was recorded that the school trust account was in Andhra Bank and Mr. K.K. Mishra had no authority or power to withdraw the said amount from the said account.

63. It is submitted by the learned counsel for the petitioners that Mr. Chandra Kumar Singh had filed a complaint against the petitioners alleging misappropriation which was identical to the charges (1) (a), (2) (a), (2) (b) and 3(c). He submits that the said complaint filed by Mr. Chandra Kumar Singh was registered as CC No. 187/SS/2002 by the Metropolitan Magistrate 27th Court, Mulund. By an order dated 8th November, 2014, the Metropolitan Magistrate recorded that the complainant did not adduce evidence before charges were framed and was absent and therefore, the petitioners and other accused stood discharged under section 245(2) of the Criminal Procedure Code. He submits that the decision under section 245(2) of the Criminal Procedure Code amounted to an acquittal in law.

64. It is submitted by the learned counsel for the petitioners that the second charge comprises of very petty allegations such as the petitioners had alleged to have failed to attend the school without intimation to the headmaster, failed to effect notional increment to some of the employee, failed to sign the valid and legal muster, instigated the teaching and non-teaching staff not to obey the orders of the headmaster etc. He submits that there is no dispute that Mr. K.K. Mishra was appointed by the Education Department to function as the headmaster and was given an authority to sign effective from 1st January, 2000. It is submitted that the faction of trustees however appointed Mr. Jaishankar Singh as a principal on 14th September, 1999 with effect from 1st January, 2000. The said appointment of Mr. Jaiprakash Singh was challenged by another employee in Appeal No. 4 of 2000 before the school tribunal. The school tribunal passed an order on 28th March, 2001 and held that the appointment of Mr. Jaiprakash Singh as a headmaster was illegal.

65. This Court rejected the writ petition filed by the said Mr. Jaiprakash Singh and the respondent No. 1 by an order dated 2nd September, 2002. In the letters patent appeal filed by the respondent No. 1 and said Mr. Jaiprakash Singh, the parties filed the consent terms whereby Mr. Jaiprakash Singh was re-appointed as a principal. The appointment of Mr. Jaiprakash Singh however, was approved as a principal with effect from 1st March, 2004 and he could take charge on 19th July, 2004. He submits that the petitioners were already placed under suspension much prior to the said Mr. Jaiprakash Singh taking charge of a principal on 19th July, 2004. The petitioners thus could not have disobeyed a lawful and reasonable order of Mr. Jaiprakash Singh. He submits that since the charges levelled by the management against the petitioners were bogus and ex-facie false, all subsequent actions culminating any order of termination dated 20th November, 2004 were also illegal and untenable.

66. It is submitted by the learned counsel for the petitioners that the entire enquiry proceedings were conducted and completed in undue haste and showed an unholy approach on the part of the management and convener. The notes of the convener did not disclose any witness having been examined by the management in support of the charges levelled against the petitioners. He submits that various documents were though not furnished to the petitioners by the management, such documents were admittedly taken on record contrary to rule 37(2)(a)(iii) of the MPES Rules. It is submitted that though the petitioners had requested for the documents by their letters dated 22nd September, 2004 and 3rd October, 2004, the said documents were not served upon the petitioners. It is submitted that the school tribunal had rendered the findings of fact. Moreover the report and the findings were also not served upon the petitioners. He submits that the enquiry conducted by the convener was in breach of the statutory rules and principles of natural justice. It is submitted that the school tribunal did not deal with the issues raised by the petitioners properly and has rendered various perverse findings.

67. It is submitted by the learned counsel for the petitioners that the petitioners were not given a reasonable opportunity to meet the allegations levelled against the petitioners. The statements of the witnesses were not even recorded. He submits that without any evidence on record, the enquiry committee appears to have arrived at a finding that the petitioners were guilty of misappropriation of moneys and were liable to be dismissed in the interest of institution. He submits that the petitioners were not served at all with any sort of report/findings referred in the impugned order of termination dated 22nd November, 2004. He submits that though specific grounds were raised by the petitioners in the appeals filed before the school tribunal, evasive denials, no positive assertions were made by the management in the written statement filed before the school tribunal. Reliance is placed on the judgment delivered by this Court on 20th April, 2011 in case of Y.P. Education Society v. Shri Anant Rangnath Kulkarni.

68. In support of the submission that if the mandatory procedure prescribed under rules 36 and 37 of the MEPS Rules, which are based on primary principles of natural justice and fair play is not followed, the entire enquiry proceedings were vitiated, reliance is placed on the judgment of this Court in case of Mahalaxmi Shikshan Sanstha v. State of Maharashtra, MANU/MH/0313/1998 : 1998(2) Bom.C.R. 796. It is submitted that the procedure prescribed in Rules 36 and 37 which deals with constitution of the enquiry committee and the procedure of enquiry is intended to ensure that every reasonable opportunity is extended to an employee for the defence of his case in the enquiry instituted against him. He submits that the order of termination issued by the management is void and non-est. He submits that this

Court shall quash and set aside the order of termination and the petitioners be reinstated with full back wages with continuity of service on and from 20th November, 2004 till the date of retirement i.e. 30th April, 2013 with consequential retirement benefits.

69. Insofar as the respondent Nos. 4, 6 and 7 who are contesting parties in these two writ petitions are concerned, they have preferred to file the written arguments in reply to the oral arguments advanced by the petitioners and also have dealt with synopsis of arguments filed by the petitioners.

70. It is submitted by the learned counsel for the respondent Nos. 4, 6 and 7 that the petitioners have suppressed various material documents from this Court which were placed before the school tribunal which documents included the entire documents of minutes of enquiry filed by them before the school tribunal including the minutes of the meeting dated 11th November, 2004 wherein the enquiry committee had given the findings on the basis of the documents which were produced before it after scrutinizing the evidence and documents on record which were filed on 26th August, 2005 before the school tribunal. The petitioners have deliberately not annexed the said minutes of meeting in these writ petitions.

71. It is submitted that the petitioners deliberately did not participate in the enquiry, they were fully aware of the enquiry being conducted and remained absent on the ground that the management of the respondent No. 6 was a secretary, there was no validly elected management etc. The petitioners had questioned the authority of the respondent Nos. 4, 6 and 7 to hold the enquiry on account of the dispute of their election as the managing committee members of the respondent No. 4 trust and not on account of absence of the resolutions/decisions. It is submitted that the petitioners did not raise an issue about there being no resolutions to support holding of the enquiry, appointment of the Chief Executive Officer, issuance of statement of allegations, issuing of charge sheet and acceptance of the enquiry committee report and consequent resolution to terminate the services of the petitioners in the appeals filed before the school tribunal or in these writ petitions. It is submitted that the petitioners cannot be allowed to raise this issue for the first time across the bar. If the petitioners would have raised this issue before the school tribunal, the respondent would have produced all necessary resolutions for perusal of the school tribunal. It is submitted that the petitioners cannot be allowed to question the enquiry proceedings in view of the petitioners not having participated in the enquiry. In support of this submission, the respondent Nos. 4, 6 and 7 placed reliance upon the judgment of the Supreme in case of Ranjan Kumar Mitra, (1997) 10 SCC 386 and the judgment of this Court in case of Abha Chawla Mohanty v. The Oriental Insurance Co. Ltd. & Ors., MANU/MH/1403/2011 : 2012(1) All MR 757 and in particular paragraphs 49 and 50.

72. Insofar as the submission of the petitioners that the petitioners also should have been given same benefits which were given to Mr. K.K. Mishra in Appeal No. MUM/3/05/2005 dated 20th January, 2007 is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that there cannot be a parity or equity in the matter of illegality. It is submitted that it has been proved in the enquiry that the petitioners were guilty of charges levelled against them. In case of Mr. K.K. Mishra, since he had retired, the school tribunal had taken a sympathetic approach towards him. He submitted that the order of the school tribunal in case of Mr. K.K. Mishra was challenged before this Court by Mr. K.K. Mishra and also by the management by filing two separate writ petitions. This Court passed an order in both those writ petitions on

21st September, 2007. In the said order passed by this Court, it was made clear that the said order passed by this Court could not be used as a precedent. It is submitted that the petitioners thus cannot claim parity in view of the order of the school tribunal in the matter of Mr. K.K. Mishra having merged with the order of this Court. In support of this submission, the respondent Nos. 4, 6 and 7 placed reliance on the judgment of the Supreme Court in case of Basawaraj & Anr. v. Land Acquisition Officer, MANU/SC/0850/2013 : AIR 2014 SC 746 and in particular paragraph 8 and the judgment of the Supreme Court in case of Fuljit Kaur v. State of Punjab & Ors., MANU/SC/0411/2010 : AIR 2010 SC 1937 and in more particular paragraphs 6 and 7.

73. Insofar as the submission of the petitioners that since the petitioners were not paid subsistence allowance during the pendency of the enquiry before the enquiry officer and thus the order of the termination passed by the management is vitiated is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that neither before the school tribunal nor before this Court the petitioners have pleaded or proved that on account of non-payment of the subsistence allowance to the petitioners by the management during the pendency of the enquiry, any prejudice was caused to the petitioners to represent before the enquiry committee. It is submitted that unless it is pleaded and proved that any prejudice was caused to the case of the petitioners in view of the management not having paid subsistence allowance during the pendency of the enquiry, it cannot be held that the enquiry was illegal or was vitiated. In support of this submission, the respondent Nos. 4, 6 and 7 placed reliance on the judgment of the Supreme Court in case of U.P. State Textile Corporation Limited v. P.C. Chaturvedi & Ors., MANU/SC/0792/2005 : (2005) 8 SCC 211.

74. Without prejudice to the aforesaid submissions made by the respondent Nos. 4, 6 and 7, it is submitted that it was the contention of the petitioners themselves in the correspondence exchanged between the parties which were forming part of compilation of documents that the petitioners continued to be in service and were signing the muster roll and their suspension was illegal, the petitioners cannot be allowed to urge that the enquiry was illegal on the ground of non-payment of the subsistence allowance by the management to the petitioners during the pendency of the enquiry against them.

75. It is submitted by the respondent Nos. 4, 6 and 7 that the subsistence allowance had been paid by them to the petitioners partly and thus it could not be urged by the petitioners that no subsistence allowance was paid during the enquiry. It is submitted that the subsistence allowance has been deposited by the management and is lying in the fixed deposit in this Court as ordered by this Court.

76. Insofar as the submission of the petitioners that there was no resolution passed or decision taken by the management to show that one of the managing committee members was appointed as the Chief Executive Officer is concerned, it is submitted that this issue was neither raised in any pleadings before the school tribunal nor raised in the arguments before the school tribunal. If the petitioners would have raised this issue before the school tribunal, the respondent Nos. 4, 6 and 7 would have produced necessary resolutions authorizing the Secretary to initiate enquiry proceedings against the petitioners. It is submitted that respondent Nos. 4, 6 and 7 have already annexed the result of the election declared by the election officer in their affidavit in reply in these two writ petitions which elections were held pursuant to the directions of this Court. There are 19 members, who had been elected as members of the managing committee constituted by the management. It is submitted that under section 2(12)(c) of the MEPS Act management is the body of a person

administering the school. It is submitted that the issue regarding resolution being not passed was not raised before the school tribunal nor is raised in these writ petitions, thus cannot be allowed to be urged for the first time across the bar at the stage of final hearing.

77. The respondent Nos. 4, 6 and 7 distinguished the judgment of this Court in case of Avdesh Narayan Singh (*supra*) relied upon by the petitioners on the ground that the Full Bench of this Court in the said judgment has held that in the event the management decides to suspend the employees without permission of the education officer, the suspension allowance would be paid by the management, and absence of permission from the education officer would not render the suspension illegal or bad in law. He submits that in any event, since no prejudice is shown by the petitioners on account of non-payment of the subsistence allowance during the pendency of the enquiry, the judgments relied upon by the petitioners would not assist the case of the petitioners and are clearly distinguishable in the facts of this case.

78. Insofar as the submission of the petitioners that the statement of allegations was issued by an incompetent person i.e. Mr. Uday Pratap Singh on the ground that the said Mr. Uday Pratap Singh was not empowered by any resolution passed by the management appointing him as the Chief Executive Officer and to issue the statement of allegations is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that this contention had not been raised before the school tribunal nor in these two writ petitions, and thus cannot be allowed to be raised for the first time across the bar at this stage. It is submitted that even in the reply dated 30th August, 2004 to a letter dated 20th August, 2004, the petitioners did not raise this issue. The only contention raised in paragraph 2 of the said reply dated 30th August, 2004 was that said Mr. Uday Pratap Singh was neither a member nor trustee of the management and that the matter was pending before the judicial/quasi judicial authorities and thus was not competent to issue the letter.

79. It is submitted that the petitioners were parties to the said suit filed by Jaishankar Singh against the petitioners in the City Civil Court. The City Civil Court in the said suit had held that a new body of the management of the trust had come into force forthwith. The said order passed by the City Civil Court dated 11th May, 2004 was challenged in an appeal filed before this Court. By an order dated 28th May, 2004, this Court refused to grant any ad-interim relief in the said appeal. It is submitted that the submission of the petitioners that the said Mr. Uday Pratap Singh was not a member or a trustee is thus contrary to the view taken by the City Civil Court in the said suit in which the petitioners were parties.

80. It is submitted by the respondent Nos. 4, 6 and 7 that the petitioners were fully aware of the members elected as the managing committee members and thus could not urge that the said Mr. Uday Pratap Singh or Mr. Chandra Kumar Singh were not the managing committee members of the management as both these petitioners were parties to the said order passed by the City Civil Court and had unsuccessfully assailed it. It is submitted that the petitioners had admittedly received the salary from the respondent Nos. 4 and 6 and cannot be allowed to challenge their authority or status. The name of Mr. Uday Pratap Singh as a Secretary was clearly mentioned in the list of six office bearers, who had been appointed as the office bearers.

81. Insofar as the submission of the petitioners that the learned convener had committed violation of rule 36(2) of the MEPS Rules is concerned, it is submitted that the statement of allegations was issued on 14th June, 2014 by registered post

address. The said packet was refused by the petitioners. The petitioners were required to file their reply within seven days from the date of service of the said statement of allegations and since the petitioners did not file their reply within seven days, the management decided to hold an enquiry by passing a resolution on 7th August, 2014. It is submitted that by the said resolution, the management also resolved to appoint an enquiry committee. The petitioners did not raise any issue that the resolution was not passed by the management to hold an enquiry in the appeal memo filed before the school tribunal nor this issue was urged before the school tribunal.

82. Insofar as the submission of the petitioners that the letter dated 20th August, 2004 addressed by the convener was received by the petitioners on 26th August, 2004 and the reply was submitted on 30th August, 2004 and thus the management could not have constituted a committee on 20th August, 2004 is concerned, it is submitted that the petitioners had refused to accept the earlier notice dated 14th June, 2004 containing statement of allegations. The letter dated 20th August, 2004 was also sent by R.P.A.D. and was received by the petitioners at the same address on which the letter dated 20th August, 2004 was sent. It is submitted that in the letter dated 30th August, 2004, addressed by the petitioners, the petitioners had challenged the authority of Mr. Uday Pratap Singh on the ground that the dispute regarding election of the management was pending in various judicial/quasi judicial authorities and not on the ground that there was no resolution passed by the management empowering him to issue the statement of allegations. It is submitted that the said reply dated 30th August, 2004 thus could not be considered as a reply to the statement of allegations. It is submitted that the management or the convener did not commit any breach of rule 36(2) of MEPS Rules as canvassed by the petitioners when the petitioners had not even participated in the enquiry.

83. Insofar as the submission of the petitioners that the said Mr. Chandra Kumar Singh was incompetent and could not be appointed as the convener since he was not a member of the management is concerned, it is submitted that the elections results declared by the election officer, which were part of the affidavit in reply filed by the respondent Nos. 4, 6 and 7 clearly indicate that the said Mr. Chandra Kumar Singh was elected as the management committee member. There was thus no violation of rule 36(2) (a) of the MEPS Rules as canvassed by the petitioners.

84. Insofar as the submission of the petitioners that there was no communication about the decision of the appointment of one member communicated to the Chief Executive Officer and thus there was alleged violation of rule 36(2)(a)(i) is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that the said issue was neither raised in the appeal memo filed by the petitioners in the school tribunal nor was urged before the school tribunal. If such an issue would have been raised by the petitioners before the school tribunal, the respondent Nos. 4, 6 and 7 could have produced necessary resolution in that regard before the school tribunal. It is submitted that the petitioners thus cannot be allowed to urge this issue across the bar at this stage.

85. Insofar as the submission of the petitioners that the communication dated 20th August, 2004 was in breach of rule 36(3) of the MEPS Rules, 1981 on the ground that the petitioners were called upon to nominate the members without following procedure under rule 36(1) and (2) is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that no such ground was raised in the appeal filed before the school tribunal nor the same was urged before the school tribunal. If the petitioners would

have urged the said ground before the school tribunal, the respondent Nos. 4, 6 and 7 would have placed before the school tribunal the entire correspondence between the Chief Executive Officer and the management. It is submitted that on the contrary, the petitioners in their letter dated 30th August, 2004 had refused to nominate any nominee. It is submitted that in view of rule 36(3) of the MEPS Rules, on failure on the part of the petitioners in nominating their nominee, the enquiry committee was constituted on expiry of a period contemplated under rule 36(3) of the MEPS Rules. It is submitted that the respondent Nos. 4, 6 and 7 thus have not committed any violation of rule 36(3) of the MEPS Rules. It is submitted that the respondent Nos. 4, 6 and 7 have complied with rule 37(6) of the MEPS Rules.

86. Insofar as the submission of the petitioners that the respondent Nos. 4, 6 and 7 have violated rule 37 of the MEPS Rules is concerned, it is submitted that admittedly the charge sheet was issued on 3rd September, 2004 and since the petitioners did not appoint their nominee, the enquiry committee was constituted on 3rd September, 2004. It is submitted that neither any prejudice was caused to the petitioners nor any such alleged prejudiced was pleaded or proved because of the alleged premature constitution of the enquiry committee and more particularly when the petitioners had clearly refused to nominate their nominee. It is submitted that no such issue was raised in the appeal memo before the school tribunal nor the same was argued before the school tribunal. In support of this submission, the respondent Nos. 4, 6 and 7 have placed reliance on the judgment of the Supreme Court in case of State Bank of Patiala & Ors. v. S.K. Sharma, MANU/SC/0438/1996 : AIR 1996 SC 1669.

87. Insofar as the submission of the petitioners that the charge sheet was not prepared by the management and forwarded to the convener is concerned, it is submitted by the learned counsel for the respondent Nos. 4, 6 and 7 that this issue was not raised before the school tribunal in the pleading nor was urged before the school tribunal and thus, the petitioners cannot be allowed to urge this issue for the first time in these writ petitions.

88. Insofar as the submission of the petitioners that the respondent Nos. 4, 6 and 7 did not produce inter-se communication between the management and the convener is concerned, it is submitted that this contention of the petitioners is contrary to record. Reliance is placed on the minutes of the meeting of the enquiry committee dated 23rd September, 2004, in which the enquiry committee had asked the management whether it desired to examine the witnesses. It is submitted that on 30th September, 2004, a list of the documents was given to the convener by the management. In the meeting dated 9th October, 2004, the committee recorded that the same was produced by the Secretary of the management. It is submitted that there was thus sufficient compliance of rule 37 of the MEPS Rules.

89. Insofar as the submission of the petitioners that there was breach of rule 37(1) (a)(iii) of MEPS Rules is concerned, it is submitted that the documents were supplied to the petitioners along with letter dated 26th September, 2004. The said letter was produced, with reply filed by the respondents to the said application. It is submitted that since some of documents were records and registers, the petitioners were permitted to take out relevant extract thereof. It is submitted that the petitioners have suppressed this letter in the present proceedings and have deliberately not annexed.

90. It is submitted by the respondent Nos. 4, 6 and 7 that since the petitioners did not remain present in the enquiry, the petitioners have lost an opportunity to get the documents. It is submitted that rule envisaged that the employee had to be permitted

to take out extracts as the documents relied upon by the respondent Nos. 4, 6 and 7 were records and registers of the school. The respondent Nos. 4, 6 and 7 thus had followed the requisite procedure. It is submitted that this ground was also not raised before the school tribunal by the petitioners. It is submitted that the petitioners had refused to participate in the enquiry by raising the issue of competency of the management on account of pendency of the disputes and thus cannot be allowed to challenge the conduct of enquiry on any ground.

91. The respondent Nos. 4, 6 and 7 placed reliance on the letter dated 3rd October, 2004 contending that the petitioners had imposed a condition precedent for appearing before the enquiry committee that the respondents shall come with clean hands and to show that they were duly elected members. He submits that the petitioners having deliberately remained absent in the enquiry committee, cannot be allowed to urge violation of principles of natural justice under any of the provisions of the MEPS Act or the Rules.

92. Insofar as the submission of the petitioners that the charge sheet issue by the management was bereft of material particulars and unsupported by documents is concerned, it is submitted that the petitioners cannot be allowed to raise this issue as the petitioners deliberately did not participate in the enquiry, nor filed any reply before the enquiry committee. It is submitted that the minutes of the enquiry committee clearly indicated that the entire procedure was followed by the enquiry committee.

93. Insofar as the submission of the petitioners that the petitioners had repeatedly asked for inspection and copies of the documents but were not furnished is concerned, it is submitted that the reply to the charge sheet filed by the petitioners would clearly indicate that the petitioners had once again raised the issue regarding the dispute amongst the managing committee members and had never sought any documents. It is submitted that the letter dated 22nd September, 2004 addressed by the petitioners to the convener would clearly show that the petitioners had never raised the issue of alleged non-receipt of documents.

94. Insofar as the submission of the petitioners that there was no communication of report and finding of the enquiry committee and that the petitioners had never received summary proceedings is concerned, the petitioners have not annexed the findings forming part of the enquiry report which was placed before the school tribunal. It is submitted that there is no violation of rule 37 of MEPS Rules committed by the respondent Nos. 4, 6 and 7 as canvassed by the petitioners.

95. Insofar as the submission of the petitioners that there was breach of rule 38 of the MEPS Rules is concerned, it is submitted that the said contention was not raised in the appeal filed before the school tribunal, nor is raised in the writ petitions and thus cannot be allowed to raise for the first time across the bar at this stage.

96. Insofar as the submission of the petitioners that the charge sheet issued by the management was without any material is concerned, it is submitted that since the petitioners deliberately did not participate in the enquiry, the petitioners cannot be allowed to challenge the charge sheet on merits including the nature of charges levelled therein against the petitioners. It is submitted that though there were several serious charges against the petitioners in the charge sheet, the petitioners have classified those charges only under two heads which are contrary to the charges narrated in the charge sheet. Insofar as the charge of misappropriation is concerned,

it is submitted that admittedly the enquiry officer did not render any finding on the charge of misappropriation in view of the fact that the same was subject matter of the criminal proceedings. It is submitted that the petitioners thus cannot challenge the maintainability of the said charge. It is submitted that reliance placed by the petitioners on the report of education officer is misconceived since the said report would indicate that there was no finding rendered by the education officer against the petitioners. It is submitted that the criminal complaint filed against the petitioners by the management had been dismissed under section 245(2) of the Criminal Procedure Code, 1973 however, the said order is of no relevance since neither the enquiry committee nor the school tribunal have rendered any finding on such charge of misappropriation.

97. Insofar as the second category of charges are concerned, the petitioners have sought to challenge those charges on the basis of appointment of Mr. Jaishankar Singh as headmaster. It is submitted that the consent terms were admittedly filed in this Court on 20th January, 2004 which referred to the appointment of Mr. Jaishankar Singh on 19th December, 2003. It is submitted that the contention of the petitioners that said Mr. Jaishankar Singh took charge on 19th July, 2004 is thus erroneous. The charge of the school records was illegally retained by Mr. K.K. Mishra and the petitioners herein. It is submitted that the City Civil Court had directed the petitioners not to obstruct Mr. Jaishankar Singh in his functioning as a headmaster in view of the fact that the City Civil court had come to the conclusion that the said Mr. Jaishankar Singh was duly appointed which order was confirmed by this Court by an order dated 11th May, 2004.

98. Insofar as the submission of the petitioners that the enquiry was conducted in haste or not or was unholy is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that since the petitioners had refused to participate in the enquiry and had imposed various conditions to be satisfied by the respondent Nos. 4, 6 and 7 before the petitioners participating in the enquiry, the enquiry proceedings continued in view of the petitioners refusing to participate therein. It is submitted that the documents of the school were the records and registers of which, the petitioners were asked to take extract. The petitioners however, did not take extracts of the said record and did not participate in the enquiry proceedings. It is submitted that there was thus no violation of the principles of natural justice as canvassed by the petitioners. It is submitted that in the letter dated 16th October, 2004 the petitioners had only contended that they would participate in the enquiry only after their objections were satisfied.

99. It is submitted by the respondent Nos. 4, 6 and 7 that the proceedings of the enquiry committee and the summary of report was served upon the petitioners, including the finding of the enquiry committee. All these documents were annexed by the respondent Nos. 4, 6 and 7 in the reply filed by the respondent Nos. 4, 6 and 7 to the said application before the school tribunal. It is submitted that the petitioners could have appear before the enquiry committee and could have raised their grievances, including competency, bias etc and having remained absent, now cannot be allowed to challenge the findings of the enquiry committee on merits.

100. Insofar as the submission of the petitioners that there was breach of rule 38 of the MEPS Rules is concerned, it is submitted that the petitioners have not given any reasons in the written arguments as to how according to the petitioners there was any breach or rule 38 of the MEPS Rules. Insofar as oral argument advanced by the petitioners across the bar that the termination order had been issued by the said Mr.

Uday Pratap Singh as the Chief Executive Officer and also as a Secretary without any resolution empowering him to the Chief Executive Officer is concerned, it is submitted that this issue was never raised by the petitioners before the school tribunal and thus cannot be allowed to be raised for the first time in these writ petitions.

101. Insofar as the submission of the petitioners that there was violation of rule 37(6) of the MEPS Rules on the ground that no explanation was called for and the findings were not furnished to the education officer or deputy director is concerned, it is submitted that this submission is contrary to the record of the school tribunal. The summary of the proceedings were served upon the petitioners vide letter dated 24th October, 2004 and the explanation was also sought from the petitioners which they failed to furnish. There was thus no violation of rule 37(6) of MEPS Rules by the respondent Nos. 4 or 6. It is submitted that all the grounds raised by the petitioners to challenge an action are vague and without particulars. The petitioners were offered full opportunity to present their case before the enquiry committee. It is submitted that the finding of the enquiry committee is based on evidence in the form of documents. It is the case of the respondent Nos. 4, 6 and 7 that the second member of the enquiry committee was an outsider, who was a state awardee teacher, who had also observed in concurrence with the other member that the petitioners were guilty. It is submitted that there was no hostility against the petitioners as alleged or otherwise.

102. The respondent Nos. 4, 6 and 7 have distinguished the judgment reported in *Yavatmal Islamia Anglo Urdu Education Society & Anr. v. Mujib Ahmed Abbas Ali & Anr.*, 2010(4) Bom.C.R. 416 on the ground that the facts before this Court in the said judgment were totally different. The employee in the said matter had participated, had nominated his nominee and was not supplied the documents. In that case, the City Civil Court took a view that the employee was not given fair opportunity to lead evidence. It is submitted that however, in the facts and circumstances of this case, the petitioners chose not to participate in the enquiry and had refused to nominate their nominee and were also supplied the documents, the said judgment of this Court would not assist the case of the petitioners. It is submitted that the petitioners have deliberately denied the receipt of some of the letters though they had admitted the other letters which were sent at the same address.

103. Insofar as various judgments of the Supreme Court including in the case of *U.P. State Textile Corporation Limited (supra)* relied upon by the petitioners on the issue of non-payment of subsistence allowance during the pendency of the enquiry vitiates the enquiry is concerned, it is submitted by the respondent Nos. 4, 6 and 7 that all such judgments relied upon by the petitioners do not hold good in view of the subsequent law laid down by the Supreme Court in case of *U.P. State Textile Corporation Limited (supra)*.

104. Insofar as the judgment of this Court in case of *Shatrughna Dada Kamble (supra)* delivered by Mr. Justice N.M. Jamdar is concerned, the respondent Nos. 4, 6 and 7 have distinguished the said judgment on the ground that the issue in the said judgment was regarding appointment of an outsider by the management as its nominee, whose appointment was objected to by the employee, whereas in this case the petitioners had contended that Mr. Uday Pratap Singh or Mr. Chandra Kumar Singh were not validly elected which objection was contrary to the order passed by the City Civil court in the suit between said Mr. Jaishankar Singh and the petitioners.

105. Insofar as the judgment of the Supreme Court in case of Anant Rangnath Kulkarni (supra) relied upon by the petitioners in support of the contention that the charge sheet cannot be vague, summary of proceedings have to be served, evidence adduced should not be perfunctory is concerned, it is submitted that the said judgment is not applicable to the facts of this case since the charge sheet issued by the management in this case would indicate that the charges were specific and the petitioners had understood the case they had to meet. It is submitted that the statement of allegations and the charge sheet were admittedly served upon the petitioners. It is submitted that the evidence before the enquiry committee was in the form of school record such preservation of bogus muster roll under the signature of the petitioners, withholding of increment in the service books etc. It is submitted that the petitioners have clearly understood the charges levelled against them and thus cannot be allowed to urge that the charge sheet was vague and without particulars. The respondent Nos. 4, 6 and 7 also placed reliance on several judgments of the Supreme Court and this Court by filing a separate compilation on various issues raised by them. The petitioners did not seek any liberty to make submissions in rejoinder and closed their arguments.

106. I have heard learned counsel for the petitioners at length and have also considered the synopsis of arguments filed by the petitioners and also the written arguments of respondent Nos. 4, 6 and 7, the case laws relied upon by both the parties and have given my anxious consideration to the aforesaid submissions and case laws relied upon by both the parties.

REASONS & CONCLUSIONS:

107. The first submission of the petitioners is though there were similar allegations of misappropriation made by the management against Mr. K.K. Mishra and Mr. Jaishankar Singh, they were granted various benefits and not the petitioners, the management applied different yardstick to the petitioners. There is no dispute that the writ petition filed by Mr. Jaishankar Singh was dismissed. However, in the Letters Patent Appeal filed by the management, the termination of Mr. Jaishankar Singh was set aside under the consent terms arrived at between the parties. Insofar as Mr. K.K. Mishra is concerned, he had succeeded before the tribunal partly. The termination of Mr. K.K. Mishra was set aside and he was made to retire with effect from 16th November, 2004. In the writ petition filed by the said Mr. K.K. Mishra, he was treated as superannuated. It was however, made clear in the said order that the said order shall not be used as a precedent. I am not inclined to accept the submission of the learned counsel for the petitioners that since the allegations against Mr. K.K. Mishra, Mr. Jaishankar Singh and the petitioners were identical and the said Mr. K.K. Mishra was treated as superannuated and was granted all the benefits, the management ought to have treated the petitioners equally with Mr. K.K. Mishra and Mr. Jaishankar Singh, who had also not participated in the enquiry though facing similar charges.

108. In the order passed by this Court, thereby treating the said Mr. K.K. Mishra as superannuated, it was made clear that the said order shall not be used as a precedent. Be that as it may, merely because the management had entered into the consent terms with Mr. K.K. Mishra and he was treated as superannuated, it cannot be urged on behalf of the petitioners that the order of suspension or termination deserves to be set aside on the ground of parity. The Supreme Court in case of Fuljit Kaur v. State of Punjab (supra) has held that equality cannot be claimed in illegality and therefore, cannot be enforced by a citizen or the Court in a negative manner. There is thus no merit in this submission of the learned counsel for the petitioners

that the order of suspension or of the termination ought to have been set aside by the school tribunal on the ground of parity. Similarly in my view, there is no substance in the submission of the learned counsel for the petitioners that the management had not treated the petitioners equally with Mr. K.K. Mishra or that the school tribunal ought to have set aside the quantum of punishment awarded to the petitioners by passing an identical order which was passed in favour of Mr. K.K. Mishra.

109. Insofar as the submission of the learned counsel for the petitioners that there was no resolution passed by the Managing Committee of the trust by which one of the office bearer was elected as the Chief Executive Officer of the trust or that no copy of such alleged resolution was produced before the school tribunal or before this Court by the management and thus constitution of the enquiry committee was illegal is concerned, a perusal of the record including the appeal filed by the petitioners before the school tribunal clearly indicates that no such issue was raised by the petitioners in the appeal memo or had made such submission before the school tribunal. No such ground has been raised even in the writ petitions filed by the petitioners. If the petitioners would have raised such issue in the appeal memo and/or would have urged this submission before the school tribunal, the management could have produced a copy of the resolution passed by the management, if any, to controvert such submission. In my view, the petitioners cannot be allowed to urge this submission across the bar for the first time. A perusal of the complaint dated 12th December, 2003 made by the trust to the Secretary of the Education Department against the petitioners and others clearly indicates that in the said complaint also, there was a reference to the managing committee meeting held on 10th December, 2003 in which new office bearers were elected. The names of those office bearers were mentioned in the said complaint. The name of Mr. Umesh Pratap Singh and Mr. Uday Pratap Singh were mentioned as the Secretaries of the trust. In the said complaint, a list of newly elected managing committee members declared by the Election Officer was enclosed.

110. The petitioners were also parties to the suit filed by Mr. Jaishankar Singh in the City Civil Court. It was observed by the City Civil Court in the order passed in the said suit that the new body of the management of the trust had come in force. The said order passed by the City Civil Court on 11th May, 2004 was challenged in an appeal filed before this Court. The petitioner were admittedly parties to the said suit and thus were aware of the appointment of the office bearers of the trust, who were appointed pursuant to an election held in compliance with the order passed by this Court.

111. Insofar as the submission of the learned counsel for the petitioners that since none of the office bearer was appointed as the Chief Executive Officer or that the suspension order was issued by Mr. Uday Pratap Singh as the Secretary of the trust and the suspension order thus was alleged to be illegal is concerned, the petitioners did not raise any such issue in the appeal memo and thus cannot be allowed to urge this issue for the first time in these writ petitions. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the suspension order issued by Mr. Uday Pratap Singh was illegal on the ground that he was not alleged to have been appointed as the Chief Executive Officer. If such objection would have been raised in the appeals filed by the petitioners before the school tribunal, the respondents would have an opportunity to produce a copy of any such resolution before the school tribunal. In my view, the petitioners cannot be allowed to raise this issue for the first time across the bar in the present proceedings and that also at this

stage.

112. Insofar as the submission of the learned counsel for the petitioners that since no permission of the Education Officer was obtained by the management before issuing the letters of suspension to the petitioners or that such action was in violation of rule 33(1) of the MEPS Rules is concerned, the petitioners did not raise any such objection at any stage before filing the appeals before the school tribunal and did not raise any such issue even in the appeal memo and also did not urge the same before the school tribunal. The reliance thus placed by the petitioners on the judgment of this Court in case of National Education Society (*supra*) is misplaced. The petitioners have not disputed that the person who acted as the Chief Executive Officer was one of the office bearer of the trust.

113. Insofar as the submission of the learned counsel for the petitioners that under rule 36(2)(a) of the MEPS Rules, one member has to be nominated from the management who should be office bearer of the trust and since the person nominated by the management was not the office bearer, the enquiry committee appointed was not properly constituted committee and thus the enquiry held by the said committee was vitiated is concerned, a perusal of the record indicates that no such issue had been raised by the petitioners either before the enquiry committee or in the appeal filed before the school tribunal or was not even urged before the school tribunal by the petitioners. The petitioners thus cannot be allowed to urge this submission across the bar at this stage in the present proceedings. Be that as it may, the record produced by the respondents before the school tribunal clearly indicates that the member who was one of the member of the enquiry committee was an office bearer of the trust.

114. In my view, the petitioners having deliberately not participated in the enquiry proceedings, thus cannot be allowed to raise this issue across the bar. If the petitioners would have raised this issue at appropriate time, the management could have produced appropriate documents to controvert such submission, if any. The petitioners were admittedly informed the name of such person nominated by the management as part of the enquiry committee and were called upon to nominate their nominee in such enquiry committee. The petitioners however, did not raise any objection about the appointment of such nominee by the management even at that stage. Insofar as the judgment of this Court in case of Shatrughna Dada Kamble (*supra*) relied upon by the petitioners is concerned, an employee in that case had raised an objection about the appointment of the member of the enquiry committee. In this case, the petitioners however did not raise any such objection about the appointment of a nominee of the management in such enquiry committee. The judgment of this Court in case of Shatrughna Dada Kamble (*supra*) would not assist the case of the petitioners.

115. Insofar as the judgment of this Court in case of Smt. P.G. Garodia Charitable Trust (*supra*) is concerned, the facts before this Court in the said judgment were totally different. The issue before this Court was as to whether in terms of rule 36 of the MEPS Rules when an enquiry has to be commenced by the head of institution, the committee amongst others must constitute President of the managing committee and whether only the President approved by the Assistant Charity Commissioner could hold of the post of President of the managing committee and none else. In my view, reliance placed by the petitioners on the said judgment of this Court is thus misplaced. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the appointment of the nominee of the management in the

enquiry committee was in violation of rule 36(2) of the MEPS Rules or that the enquiry was vitiated on this ground.

116. A perusal of the order passed by the school tribunal indicates that the finding is recorded by the school tribunal that the petitioners had deliberately avoided to participate in the proceedings and did not avail off the opportunity of defending themselves and thus they could not challenge the order of termination of their services. It is held by the school tribunal that the petitioners failed to nominate their nominee for constitution of the enquiry committee and to participate in the proceedings. I do not find any infirmity in this finding of fact recorded by the school tribunal. The Supreme Court in case of Ranjan Kumar Mitra v. Andrew Yule Co. Ltd. & Ors. (supra) has held that if the services of an employee was terminated after an enquiry in which he chose not to participate, he cannot assail his termination on merits. In my view, the said judgment of the Supreme Court applies to the facts of this Court. I am respectfully bound by the said judgment.

117. The school tribunal has rendered a finding that on perusal of the record of enquiry, the tribunal was of the opinion that the enquiry held against the petitioners was legal and the findings of the enquiry committee was un-biased and were proper. In my view the finding rendered by the school tribunal is not perverse and cannot be interfered with.

118. Insofar as the submission of the learned counsel for the petitioners that the name of the persons nominated by the management and the notice to call upon the petitioners to nominate their nominee could have been done only after mandatory requirement under rule 36(2) of the MEPS Rules were first complied with and not having been done in accordance with the mandatory procedure under rules 36(2) and 36(3) of the MEPS Rules, the enquiry is vitiated is concerned, a perusal of the record indicates that no such issue had been raised by the petitioners before the school tribunal in the appeal memo or in the submissions advanced before the tribunal. No such issue is raised in these two writ petitions also. In my view, the petitioners thus cannot be allowed to raise this issue across the bar and that also at this stage. A perusal of the record further indicates that the petitioners have neither pleaded nor proved either before the school tribunal or even in the present proceedings that because of the alleged pre-mature constitution of the enquiry committee, any prejudice was caused to the petitioners. On the contrary, the record clearly indicates that both the petitioners had clearly refused to nominate their nominee by imposing untenable conditions. In my view, the judgment of the Supreme Court in case of State Bank of Patiala & Ors. v. S.K. Sharma, (supra) relied upon by the respondent Nos. 4, 6 and 7 would assist their case on this issue.

119. Insofar as the submission of the learned counsel for the petitioners that the charge sheet has to be drawn by the management under rule 37(1) of the MEPS Rules and has to be forwarded to the convener along with statement of allegations and explanation of the petitioners is concerned, a perusal of the record indicates that no such issue had been raised by the petitioners in the appeal memo or had made such submission before the school tribunal. No such ground has been even raised in the writ petitions filed by the petitioners. The petitioners thus cannot be allowed to urge this ground across the bar for the first time at this stage.

120. Insofar as the submission of the learned counsel for the petitioners that the enquiry committee did not give any report and finding nor communicate the same to the petitioners in accordance with rule 37(6) of the MEPS Rules is concerned, a

perusal of the record produced by the respondent Nos. 4, 6 and 7 which was forming part of record before the school tribunal indicates the position contrary to the submissions advanced by the learned counsel for the petitioners. The summary of the proceedings were served upon the petitioners vide letter dated 24th October, 2004. The petitioners were asked to give their explanation which they failed to furnish.

121. Insofar as the submission of the learned counsel for the petitioners that the entire enquiry conducted by the enquiry committee was conducted in haste and showed unholy approach or that the conclusion drawn by the enquiry committee was based on no evidence is concerned, a perusal of the record indicates that though various opportunities were given to the petitioners to file their reply to the charge sheet, the explanation to the statement of allegations and to appear before the enquiry committee, the petitioners chose not to appear before the enquiry committee on one or other ground. In my view, the petitioners deliberately not having participated in the enquiry proceedings though were served with the statement of allegations, documents, charge sheet and the notices from time to time, the petitioners cannot be allowed to challenge the termination on merits. The petitioners chose to remain absent in the enquiry proceedings and allowed the same to be proceeded ex-parte and did so at their own risk. I am thus not inclined to accept the submissions of the learned counsel for the petitioners that there was any violation of principles of natural justice. The judgment of this Court in case of Mahalaxmi Shikshan Sanstha (supra) relied upon by the petitioners and thus would not apply to the facts of this case.

122. In my view, since the petitioners did not avail off the opportunity given to the petitioners to nominate their nominee in the enquiry committee as contemplated under rule 36 of the MEPS Rules, within the time given to them, the petitioners did so at their own risk. In my view, the enquiry committee of two members thus came to be properly constituted. There is no dispute that one of the two members of the enquiry committee was an award winning teacher and was an independent member and the decision taken by the enquiry committee was unanimous.

123. Insofar as the submission of the learned counsel for the petitioners that the charge sheet was vague, without list of witnesses, without particulars or that the same was issued even before the constitution of the valid enquiry committee is concerned, a perusal of the record indicates that no such issue was raised by the petitioners in the appeal memo filed before the school tribunal or was not even urged before the school tribunal. No such ground has been raised even in these two writ petitions. The letter date 3rd October, 2004 addressed by the petitioners clearly indicated that the petitioners had imposed a condition precedent for appearing before the enquiry committee, that the management shall come with clean hands and to show that they were duly elected members before the petitioners were asked to participate in the enquiry proceedings. The petitioners did not raise an issue that the petitioners were handicapped in dealing with the charge sheet on the ground that the alleged charges were vague or without particulars. The petitioners having chosen to remain absent deliberately, cannot be allowed to raise such plea. A perusal of the charge sheet forming part of the record indicates that the charges alleged against the petitioners were serious and sufficient particulars were indicated in the charge sheet. There is no dispute that the statement of allegations and charge sheet were admittedly served upon the petitioners. The petitioners had clearly understood the charges levelled against them and thus cannot be allowed to urge that the charge sheet was vague or without opportunities. The judgment of Supreme Court in the case of Anant Rangnath Kulkarni (supra) relied upon by the petitioners thus would

not assist the case of the petitioners and the same is clearly distinguishable in the facts of this case.

124. A perusal of the record indicates that the petitioners have not produced various minutes of the enquiry meetings, documents which were placed on record by the respondent Nos. 4, 6 and 7 before the enquiry committee and compilation of documents before the school tribunal in the present proceedings. A perusal of the record produced by the respondent Nos. 4, 6 and 7 before this Court would clearly indicate that the notices of various meetings, minutes of the enquiry proceedings were issued by the enquiry committee to the petitioners from time to time. The petitioners however, chose to remain absent at their own risk.

125. This Court in case of *Abha Chawla Mohanty v. The Oriental Insurance Co. Ltd. & Ors.* (supra) has held that if the delinquents themselves walks out of the enquiry proceedings without just cause, it is not open to him to complain about reasonable opportunity not offered to him in the said enquiry. This Court adverted to the judgment of the Supreme Court in case of *Bank of India v. Apurba Kumar Saha*, (1997) 10 SCC 386 and the judgment of the Supreme Court in case of *Ranjan Kumar Mitra v. Andrew Yule Co. Ltd. & Ors.*, (2009) 11 SCC 266. In my view, the judgment of the Division Bench of this Court in case of *Abha Chawla Mohanty* (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

126. Insofar as the submission of the learned counsel for the petitioners that the enquiry committee had committed violation of rules 36(2) to 36(5) of the MEPS Rules by calling upon the petitioners to nominate the person to the enquiry committee without waiting for the submissions of the reply, without placing the explanation submitted, if any, by the employee before the management etc. is concerned, a perusal of the record indicates that no such issue had been raised by the petitioners in the memo of appeal filed before the school tribunal, nor the same was urged before the school tribunal. No such issue has been raised even in these writ petitions. The petitioners thus cannot be allowed to urge this issue across the bar for the first time. Be that as it may, a perusal of the record indicates that the statement of allegations was issued to on 14th June, 2014 by a registered post A.D. The petitioners however, had refused to accept the said packet. Since the petitioners did not file their reply within seven days, the management decided to hold an enquiry by passing a resolution on 7th August, 2014. A letter dated 20th August, 2004 addressed by the convener was received by the petitioners on 26th August, 2004. The petitioners had submitted their reply on 30th August, 2004.

127. In my view, there is substance in the statement made by the learned counsel for the respondent Nos. 4, 6 and 7 that the correspondence and various documents were sent to the petitioners at the same address but the petitioners selectively admitted only some of the documents. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the procedure under rules 36(2) to 36(5) of the MEPS Rules for conducting the enquiry was not followed by the management or by the enquiry committee. The judgment of the Supreme Court in case of *Vidya Vikas Mandal & Anr.* (supra) relied by the petitioners is not at all applicable to the facts of this case. The issue before the Supreme Court in the said judgment was as to when the committee of the three members was appointed to enquire into a particular matter, whether all three members would submit their combine report, whether consenting or otherwise. There is no such issue involved in the present matter. In any event, since the petitioners, deliberately chose to remain absent and did not appoint any nominee though an opportunity was given by the

enquiry committee to the petitioners, the petitioners cannot be allowed to urge that constitution of the enquiry committee was illegal or that the same was not in compliance with the procedure prescribed under rules 36(2) to 36(5) of the MEPS Rules.

128. Insofar as submission of the learned counsel for the petitioners that the petitioners were not furnished with any documents which were relied upon by the management before the enquiry committee or were not offered any inspection thereof and thus the enquiry proceedings were conducted in violation of principles of natural justice and the decision of the management to terminate the services of the petitioners based on such enquiry report is thus illegal is concerned, a perusal of the reply to the charge-sheet dated 11th September 2004 and the letters of the petitioners dated 22nd September, 2004 to the convener would indicate that the petitioners did not raise an issue of non receipt of the documents. The petitioners were raising an issue regarding the alleged dispute amongst the management committee members.

129. A perusal of the record produced by the respondent Nos. 4, 6 and 7 before this court which was not annexed by the petitioners in the writ petition clearly indicates that along with letter dated 26th September, 2004 addressed by the trust to the petitioners, the management had forwarded list of documents, the evidence and records relied upon by the management to enquire into the charges leveled against the petitioners as per rule 37(2) and 37(3) of the MEPS Rules. In the said notice it was clearly mentioned that as some of those documents were registers, service books, personal files and records of the schools, the petitioners were permitted to take out the relevant extracts from the said registers and records and were requested to approach the headmaster Jaishankar Singh for the said purpose.

130. A copy of the said letter was also sent to the convener of the enquiry committee. An endorsement is made by one of the employee of the management at the bottom of the said letter to the effect that he had visited the residence of the petitioners along with the said letter and documents who after reading the said letter refused to acknowledge the receipt thereof. A perusal of the said letter indicates that a large number of documents in respect of various charges enumerated therein were relied upon by the management before the enquiry committee to prove those charges against the petitioners. It is clear that though the petitioners were given an opportunity to apply for extract of these documents relied upon by the management, the petitioners did not apply for relevant extracts of the registers and records which were produced by the management before the enquiry committee. In my view the petitioners thus cannot be allowed to urge that there was violation of principles of natural justice.

131. A perusal of the record indicates that since the petitioners did not dispute the contents of any of the documents referred to by the management in the said letter dated 26th September, 2004 thereby giving an opportunity to the petitioners to apply for extract and since the petitioners chose to remain absent before the enquiry committee, the enquiry committee rightly relied upon those documents produced by the management before the enquiry committee. A copy of all such documents were also produced before the school tribunal which were forming part of the record before the enquiry committee. Learned counsel for the respondent Nos. 4, 6 and 7 produced such records for perusal of this court also which record was not disputed by the learned counsel for the petitioners.

132. A perusal of the order passed by the school tribunal indicates that the school tribunal has rendered a finding of fact insofar as allegations of the petitioners that the documents were not furnished is concerned. It is held by the school tribunal that the documents which the management relied upon to prove the charges against the appellants were the registers and the receipt books which were part of the school record and it was not possible for the management to supply those documents to the petitioners. Though the petitioners could have demanded inspection of those documents and sought permission to take relevant extracts of those documents, the petitioners did not do so. If the petitioners would have participated in the enquiry proceedings, they would have received the extracts of those documents from the management while producing those documents in evidence before the enquiry committee. The school tribunal has rendered a finding that since the petitioners avoided to participate in the proceedings and face the enquiry, it could not be said that there was a breach of principles of natural justice.

133. The school tribunal in my view rightly placed reliance on the judgment of Supreme Court in case of Ranjan Kumar Mitra (supra) in which it is held that if the employee has not participated in the enquiry though opportunity was given, whose services were terminated after an enquiry, he cannot be allowed to assail his termination on merits. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the petitioners were not forwarded copies of the documents relied upon by the management before enquiry committee or was not offered inspection thereof or that the enquiry report submitted by the enquiry committee and the action taken by the management based there upon was in violation of principles of natural justice or in violation of Rule 37(2)(a)(iii) or any other provisions of MEPS Rules.

134. A perusal of the order passed by the school tribunal indicates that the tribunal has rendered a finding that the management had led satisfactory documentary evidence by producing account registers, receipt books, service books of the employees etc. which were maintained in routine course as part of school record. The genuineness of those documents could not be doubted unless contrary had been shown. It is also held that since the petitioners did not participate and doubted the genuineness or correctness of any document produced by the management before the enquiry committee, those documents had to be relied upon. In my view since the documents produced by the management before the enquiry officer were not disputed by the petitioners, the management was not required to lead any separate oral evidence to prove those documents. There is thus no substance in the submission of the learned counsel for the petitioners that the enquiry committee accepted the documents relied upon by the management without any oral evidence. In my view the findings of fact recorded by the school tribunal are based on the documents produced by the management before the school tribunal which were forming part of the record before the enquiry committee which findings in my view are not perverse and thus cannot be interfered with by this court.

135. Supreme Court in case of State Bank of Patiala & Ors. (supra) has considered a similar situation where though copies of the statement of two witnesses were not furnished to the employee but the employee was permitted to pursue them and to take notes in advance and the employee did not raise any objection during the enquiry that the non-furnishing of the copies of the statements had disabled him, no prejudice had resulted to the employee on account of non furnishing him the copies of the statement of the witnesses. Supreme Court accordingly rejected the submission of the violation of principles of natural justice.

136. In my view since the record being very bulky and the petitioners were permitted well in advance to apply for extract of those documents, the petitioners not having applied for inspection thereof or extract thereof and did not raise any objection when the documents were produced before the enquiry committee and not having pleaded or proved that any prejudice was caused to the petitioners for not having been furnished the copies of such documents, the petitioners cannot be allowed to urge that the principles of natural justice was violated by the management or by the enquiry committee. The findings of fact rendered by the school tribunal thus does not warrant any interference by this court on this issue. The judgment of Supreme Court in case of State Bank of Patiala & Ors. (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

137. Insofar as submission of the learned counsel for the petitioners that though the challenge of misappropriation against the petitioners in view of those charges being adjudged before the criminal court, the management took an action against the petitioners based on such challenge of misappropriation is concerned, a perusal of the record including the letter of termination issued by the management does not indicate that the services of the petitioners were terminated on account of alleged misappropriation as alleged in the charge-sheet. Admittedly there were several other charges other than the charges of misappropriation. The school tribunal has rendered a finding of fact that the committee held the petitioners guilty of charges of misconduct and negligent in discharging their duties. It is held that the enquiry committee had rightly held the petitioners guilty of the charges leveled against them on the basis of the documents produced in evidence by the management. The school tribunal also held that there was sufficient documentary evidence to substantiate the charges leveled against the petitioners such as service books of various employees which showed that the petitioners had stopped their annual increments for the academic year 2002-03 and 2003-04 without any order of the authority to that effect. The entries in the cash book register showed that the petitioners had received money but failed to deposit them in the bank account of the school immediately or within prescribed time limit.

138. The Division Bench of this court in case of Abha Chawla Mohanty v. The Oriental Insurance Co. Ltd. & Ors. (supra) has adverted to the judgment of Supreme Court in case of Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal & Anr. MANU/SC/0501/1999 : (1999) 7 SCC 332 in which it is held that in a domestic enquiry, once a conclusion is deduced from the evidence, it is not possible to assail that conclusion even though it is possible for the Court to arrive at a different conclusion on the same evidence.

139. Supreme Court in case of B.C. Chaturvedi v. Union of India MANU/SC/0118/1996 : 1995 (6) SCC 749 has held that the Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunal and the courts to substitute their subjective opinion in place of one arrived at by the domestic tribunal. It is held that once it is found that the enquiry in relation of charges of misconduct is held in conformity with the rules and in particular, rules of natural justice coupled with the fact that the finding reached by the concerned authority is based on some evidence, the court must be loath in interfering with the said findings. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to the disciplinary proceedings. In my view the school tribunal after having appreciated the evidence before the enquiry committee has having rightly rendered a

finding of fact that the charges of misconduct and negligence against the petitioners having been proved based on the documents produced by the management and such finding of fact being not perverse, this court cannot interfere with such findings of fact.

140. Insofar as submission of the learned counsel for the petitioners that Mr. Chandrakumar Singh had filed a complaint against the petitioners alleging misappropriation which were identical to some of the charges leveled in the charge-sheet and thus could not be a part of enquiry committee or Mr. Uday Pratap Singh also could not have been part of the enquiry committee for some time based on similar allegations is concerned, a perusal of the record indicates that no such objection was raised by the petitioners though the petitioners were aware of those two persons being part of the enquiry committee. No such issue had been admittedly raised by the petitioners before the school tribunal in the appeal memo filed before the school tribunal nor the same was urged before the school tribunal. The petitioners have also not raised any such ground in the writ petition. In my view the petitioners thus cannot be allowed to raise this issue across the bar at this stage. Since no action has been taken against the petitioners on the ground of alleged misappropriation, this court need not consider the effect of the acquittal of the petitioners under section 245(2) of the Code of Criminal Procedure in view of the dismissal of the complaint or not.

141. Insofar as submission of the learned counsel for the petitioners that the disciplinary proceedings were vitiated on account of non payment of subsistence allowance to the petitioners during the pendency of the enquiry against the petitioners from the date of suspension is concerned, it is the case of the respondent Nos. 4, 6 and 7 that though subsistence allowance was not paid to the petitioners in full, the petitioners were paid the part of the subsistence allowance. It was their case that the petitioners themselves had contended that their services were not suspended by the management but they continued to work. It is also their case that the balance amount of subsistence allowance is already deposited in this court in a fixed deposit and no prejudice is either pleaded or proved by the petitioners on account of non payment of subsistence allowance.

142. A perusal of the correspondence and pleadings on record indicates that the petitioners had never contended that the petitioners were not in a position to appear before the enquiry committee because of non-payment of subsistence amount from the date of suspension till termination of their service or that they were facing any financial difficulty due to such non-payment. On the contrary the petitioners had refused to participate in the disciplinary enquiry on one or the other ground. The petitioners had also contended in their correspondence with the education officer that the petitioners were not suspended but continued to work with the school. The school tribunal in the operative part of the judgment has directed the management to pay the amount equivalent to subsistence allowance to the petitioners till the date of the said order as per order of this court in Writ Petition No. 776 of 2005 within 30 days. Though the school tribunal has rendered a finding that the subsistence allowance was not paid by the management to the petitioners, in view of the petitioners not having pleaded or proved that any prejudice was caused to the petitioners due to non-payment of subsistence allowance by the management during the pendency of the enquiry, the school tribunal has rightly not rendered any finding that any prejudice of whatsoever was caused to the petitioners due to non-payment of subsistence allowance during the pendency of enquiry or that order of suspension or termination was vitiated on that ground.

143. Supreme Court in case of U.P. State Textile Corporation Limited v. P.C. Chaturvedi & Ors., (supra) has held that unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute position in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings. Supreme Court also considered that no grievance was made by the employee at any time during the pendency of the proceedings that the employee was being prejudiced on account of non-payment of subsistence allowance. The request for payment of subsistence allowance was made after completion of the enquiry.

144. A perusal of the record indicates that in this case also the petitioners never made any grievance before the enquiry committee or to the management or did not urge before the school tribunal that the petitioners could not participate in the enquiry proceedings because of non-payment of subsistence allowance or that they were not in a position to participate in the proceedings or effectively defend the proceedings. In my view unless the petitioners would have pleaded and established that they were not in a position to participate in the enquiry proceedings or effectively defend the proceedings or any other prejudice was caused to them in defending the enquiry proceedings, non-payment of subsistence allowance would not amount to denial of opportunity and would not vitiate the enquiry proceedings on that ground. The judgment of Supreme Court in case of U.P. State Textile Corporation Limited (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

145. Insofar as judgment of Supreme Court in case of Fakirbhai Fulabhai Solanki(supra), judgment of this court in case of The Western India Tanneries Ltd. (supra) and judgment of Supreme Court in case of Jagdamba Prasad Shukla (supra) relied upon by the petitioners in support of the submission that the enquiry proceedings were vitiated on the ground of non-payment of subsistence allowance is concerned, both the courts have not considered whether any prejudice was caused to the employee in defending the enquiry proceedings for non-payment of subsistence allowance or not. Judgment of Supreme Court in case of Fakirbhai Fulabhai Solanki(supra), judgment of this court in case of The Western India Tanneries Ltd. (supra) and judgment of Supreme Court in case of Jagdamba Prasad Shukla (supra) thus would not assist the case of the petitioners.

146. Insofar as submission of the learned counsel for the petitioners that since the management did not obtain prior permission of the authority under Rule 33(1) of the MEPS Act before suspending the petitioners and thus enquiry was vitiated on that ground is concerned, Supreme Court has dealt with this issue in case of Awdhesh Narayan K. Singh (supra) and has held that if an employee of a recognized school is placed on suspension without approval, rule 35(3) will apply and subsistence allowance will be paid by the management as laid down in the said provision. In my view there is thus no substance in the submission of the learned counsel for the petitioners that in view of the management not having obtained prior permission of the authority under Rule 33(1) of the MEPS Rules before suspending the petitioners, enquiry proceedings were vitiated on that ground.

147. In my view there is thus no merit in any of the submissions made by the learned counsel for the petitioners. The petitions are devoid of merits.

148. I, therefore, pass the following order:--

"(a) Writ Petition Nos. 2506 of 2006 and 2507 of 2006 are dismissed. It is however made clear that the petitioners would be at liberty to withdraw the amount of subsistence allowance deposited in this court pursuant to the interim orders passed by this court in the aforesaid writ petitions unconditionally. Rule is discharged.

(b) No order as to costs."

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