IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4188 OF 2009

1. Pradeep s/o Basaji Gaikwad,
Age : 56 Years,
President, Disha Kendra,
Indira Nagar, Biloli,
Taluka Biloli, District Nanded.

2. Gangadhar s/o Rama Honparkhe,
Age : 46 Years,
The Head Master,
Sant Kabir Vidyalaya,
Pimpalgaon (Kundalwadi),
Taluka Biloli, District Nanded. … Petitioners

Versus

1. Maroti s/o Gangadhar Sakhre,
Age : 39 Years, Occu : Service,
R/o : Pimpalgaon (Ku), Taluka Biloli,
District Nanded.

2. The Education Officer (Secondary),
Zilla Parishad Nanded,
District Nanded. … Respondents

WITH
CIVIL APPLICATION NO. 3185 OF 2016
IN WRIT PETITION NO. 4188 OF 2009

Maroti s/o Gangadhar Sakhare,
Age : 47 Years, Occ. At present nil,
R/o Pimpalgaon (Ku), Taluka Biloli,
District Nanded.

Versus

1. Disha Kendra Indranagar,
Biloli, District Nanded,
Through its President,

Shri. Pradeep Basaji Gaikwad,
Age : 63 years, Occu. Business,
R/o Indranagar, Nanded,
Taluka and District Nanded.

2. Gangadhar Rama Honparkhe,
Age : 51 years, Occu. Service,
Age Headmaster, Sant Kabir
Vidyalaya, Pimpalgaon (Ku),
Taluka Biloli, District Nanded.

3. The Education Officer (Secondary)
Zilla Parishad, Nanded. … Respondents

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Ms. Sakshi Katneshwarkar h/f Mr. R. R. Kazi, Advocate for the Petitioners in Writ Petition and for respondent nos.1 and 2 in Civil Application.
Mr. V. D. Gunale, Advocate for Respondent No.1 in Writ Petition and for the Applicant in Civil Application.
Mr. A. D. Wange, AGP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 18.06.2026
Pronounced on : 23.06.2026

JUDGMENT :

1. Original respondent Nos. 1 and 2 before learned Presiding Officer, School Tribunal, Latur, hereby challenge the judgment and order passed on 29.01.2009 in Appeal No. 24 of 2007.

2. In nutshell, background of the case is that, present respondent no.1, who was appointed as Assistant Teacher by petitioner institution, was served with chargesheet leveling almost eight

allegations and questioning as to why action should not be taken against him. Respondent no.1 refuted the charges and tendered detailed reply on 16.10.2006. Present petitioner institution constituted inquiry committee and based on its findings, management decided to terminate services of respondent no.1 and accordingly issued termination order.

3. Feeling aggrieved by the same, present respondent no.1 moved the School Tribunal, Latur by filing appeal under Section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [for short, “MEPS Act”], thereby challenging his termination order dated 12.03.2007 terminating his services w.e.f. 10.03.2007. After notice, present petitioners, who were respondents before the tribunal, resisted the appeal and justified the action.

On appreciating the respective contentions raised by each side, learned School Tribunal allowed the said appeal by setting aside the termination order dated 12.03.2007 and directing reinstatement of present respondent no.1 forthwith with continuity of service and payment of full back-wages along with all consequential benefits since the date of termination i.e. by judgment and order dated 29.01.2009.

Dissatisfied by the same, the President and Headmaster on behalf of the institution, questioned the above judgment and order of learned School Tribunal on multiple grounds raised in the Writ Petition.

4. Learned counsel Ms. Sakshi Katneshwarkar h/f learned counsel Mr. Kazi, apart from placing written notes of arguments, would submit that, there is no dispute regarding appointment of respondent as an Assistant Teacher since 1994. However, according to her, since his appointment, respondent no.1 indulged in several misconducts apart from being negligent in rendering work. That, he was penalized for helping students during exams i.e. by way of stopping his increment. That, in spite of he serving as an Assistant Teacher, he was found to be facing criminal charges like u/s 379 of IPC i.e. for commission of theft of sand, a business in which he was said to be involved when he was rather not permitted to take other occupation which was rather gainful. That, crime was registered against him and he remained absconding. All his above activities were detrimental to the interest of institution. That, without sanction of leave, he was found to be continuously absent for longer period and therefore, on all above counts, management thought it fit to take action. Because of above misdeeds and indulgence in acts of moral turpitude,

management was left with no other alternative but to take action of termination.

5. She would further submit that, the proposed action was very well within the permissible rules and regulations. That, initially show cause notice was issued and thereafter special committee was constituted and after completing due procedure and inquiry, when there was no satisfactory explanation for the charges, appropriate action of termination was initiated that too, after compliance of all rules and regulations under MEPS Act. According to her, the action was justified and there was no reason for the School Tribunal to interfere or set aside the order of termination. That, there were no good grounds to overturn the action. Hence she prays to allow the Writ Petition by setting aside the impugned order.

6. Per contra, Mr. V. D. Gunale, learned counsel for respondent no1 would justify the impugned order to be legally correct. According to him, respondent has been victimized with ulterior motive to promote relative of present petitioner no.1 as I/c Headmaster. That, as respondent was senior and better qualified, he was eligible for the promotion to the said post, but to accommodate above relative, false charges were levelled against him and he was illegally terminated.

7. Taking this court through the entire record, he pointed out that respondent was appointed as Assistant Teacher having acquired qualification of M.A., B.Ed. on a clear, vacant and sanctioned post. Approval to his appointment was already accorded by Education Department. According to him, he had unblemished record since 01.08.1994. To deprive of promotional post and to accommodate brother-in-law of present petitioner no.1, above action has been initiated. According to him, none of the charges levelled against him were substantiated or proved.

8. Learned counsel Mr. Gunale further pointed out that, at no point of time any action has been initiated by the Education Department for any of the acts levelled against respondent no.1. According to him, to falsely implicate him, fabricated story of indulging in offence under Section 379 IPC was put forth with the mere intention to falsely implicate him. He pointed out that, after registration of FIR, respondent had approached this Court for grant of anticipatory bail and this Court by order dated 21.09.2006 had already extended the same. He pointed out that, he is already acquitted in the crime in which he was involved. He invited attention of this Court to the copy of order of acquittal dated 14.05.2008 passed by learned JMFC, Biloli. That, on account of his illness, leaves

to which he was entitled to, were applied for, but deliberately the same were denied to show that there was absenteeism.

9. Learned counsel Mr. Gunale also took this Court through the reply filed by him to the show cause notice dated 16.10.2006. According to him, the very committee which was constituted was not comprising of members as per Rules and Regulations. Therefore, there was no proper coram while conducting inquiry and that there has been prejudicial approach by the said committee. That, there was no *iota* of evidence in support of any of the charges. That, reply given by respondent no.1 was deliberately not correctly appreciated. Consequently, against the illegal action of termination, respondent no.1 was constrained to approach learned School Tribunal and according to him, only on getting satisfied that the action of present petitioners was illegal and perverse, it was rightly interfered and thus according to him, petition having no merits, should be dismissed in limine.

10. Heard each side. Perused the record. Here, there is challenge to the order of School Tribunal which had interfered and allowed the appeal by setting aside the order of termination of present respondent no.1. From the record and from the case raised by petitioners, there

does not seem to be any dispute that, present respondent was working as an Assistant Teacher since 1994. Petitioner institution being registered under the Bombay Public Trust Act and the Societies Registration Act, the said institution is also receiving full grant-in-aid from the Government. It appears that, the bone of contention was the promotional post of Headmaster. On one hand present respondent no.1 claims to be qualified and eligible as per seniority and therefore he tendered application to the management in September 2005, but instead, another person namely Honpakhare was made I/c Headmaster. According to learned counsel, management was bent upon in appointing said Honpakhare as Headmaster and deprive him of the said post. It is specific case of respondent that said Honpakhare happened to be brother-in-law of present petitioner no.1.

Before the Court, such contentions and submissions are not refuted or denied by the petitioners.

11. From the record, it is emerging that following are the charges which are slapped upon present respondent by tendering questionnaire ;

1. By virtue of registration of crime no. 27/2006 dated 21.06.2006 for offence under Section 379 of IPC, you are absconding. Because of such misconduct, institution

is getting defamed thereby adversely affecting the minds of students.

2. Remaining absent from 22.06.2006 without prior intimation, thereby causing loss to the education of students.

3. By indulging in illegal sell of sand while in full time service of Government, there is breach of rules of conditions of service.

4. That, Secondary Board had directed action for indulging in illegal activities in the school exams for the year 2001 and penalty by way of stoppage of salary increment for one year was already inflicted, but still there is negligence in rendering services.

5. That, by committing breach of rules, papers of examination were taken home for checking when it was expected to be done under the control of Headmaster and controller of examination of which notice was also served on 29.03.2005.

6. Refusal to do exam work in the year 2005 amounting to negligence/refusal to perform duty.

7. There is breach of confidentiality by making school functioning public, of which notice was served on 11.03.2005 but was not accepted.

8. By hands in glove with Headmaster, without any intimation to institution, benefits of tax exemption under the head of disability are availed thereby causing economic loss to the Government.

12. Reply to the above charges on behalf of present respondent is annexed to the petition at Exhibit 34, in which respondent no.1 has offered explanation/answers to the above charges that, the land over which there was pile of sand, does not belong to him; that, he is not the owner of the tractor also; that, proof/evidence regarding school certification examination for the year 2001 has already been tendered on 29.12.2006; that, all proofs pertaining to Secondary School Examination for March 2005 are tendered on 29.12.2006; that, no notice has ever been served upon him by Headmaster for any negligence or breach; that, Headmaster, on his own accord had retained examination section with himself.

13. On considering the above submissions and on studying the material annexed herewith, respondent, an Assistant Teacher, was terminated w.e.f. 10.03.2007. As regards to above referred charges are concerned, i.e. regarding involvement in offence under Section 379 of IPC is concerned, respondent no.1 has placed on record the judgment passed by learned J.M.F.C., Biloli. in R.C.C. No. 131 of

2006 whereby he was chargesheeted and tried for offence of commission of theft of sand belonging to Government, but vide detail judgment dated 14.09.2008, present respondent no.1 along with others are shown to be acquitted from charge under Section 379 r/w 34 of IPC. There does not seem to be any appeal by State against said order of acquittal. Therefore, respondent no.1, on the charge of first count, has received clean chit on merits.

14. As regards to second charge of being absent without notice is concerned, respondent has placed on record leave applications dispatched by him dated 22.06.2006 and 25.08.2006. Medical certificates in support of entitlement of leave are also placed on record and he seems to have placed before the tribunal documentary evidence comprising of RPAD suggesting intimation. Therefore the charge of absconding or proceeding on leave without intimation or sanction, also has no substance.

15. Charge no.3 for indulging in sell of sand is also not substantiated so as to hold misconduct.

16. As regards to action being taken for allegedly helping students in exams, already salary increment has been stopped for a year and therefore that matter has ended then and there itself.

17. As regards to further charge of taking answer sheets home, it was open for the institution to take action, but no action seems to have been taken at that point of time. No distinct evidence is also placed on record in support of such allegation.

18. Charge of refusal to do exam work is also not substantiated so as to hold that there was deliberate negligence and avoidance of work.

19. As regards to availing tax benefit is concerned, no action is apparently taken by Education Department which is the proper authority to take action for wrongly availing the benefits and for causing loss to the Government. Moreover, before the School Tribunal, disability certificate has been placed on record by respondent no.1.

20. Consequently, here, the above charges are apparently not substantiated and more over, are duly replied by present respondent no.1. On going through the impugned judgment of learned Tribunal, from para 9 onward, it is emerging that entire record placed by both the sides has been studied and taken into account by the learned

Tribunal, of which there are discussions in paragraphs 12 to 15. Moreover, the committee which was constituted to conduct inquiry was also not said to be as per the Rules and Regulations.

21. Another fundamental ground on behalf respondent before the tribunal is, failure to grant and issue subsistence allowance which is in direct contravention to the settled law. Every employee under termination is entitled to receive subsistence allowance but learned counsel for the petitioners has not addressed on this issue. Another contention of respondent i.e., there is violation of Rule 36(1) as well as Rule 37, has not been countered by the petitioners.

22. To sum up, present respondent no.1, who was an Assistant Teacher appointed on a clear vacant post since 1994, ought not to have been terminated merely on the basis of charges of above nature. None of the charges are substantiate and therefore learned tribunal, who perused the entire record, rightly interfered. How learned School Tribunal erred and what was the illegality or perversity, is not demonstrated. Thus, there being no merits in the petition, the following order is passed :

ORDER

I. The Writ Petition is dismissed.

II. Respondent No.1 is permitted to withdraw the amount deposited by the petitioner in this Court, along with interest, if any, accrued thereon.

III. In view of dismissal of the Writ Petition, the pending Civil Application also stands disposed off.

[ABHAY S. WAGHWASE, J.]

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