IN THE HIGH COURT OF JUDICATURE AT BOMBAY

AT NAGPUR

CIVIL APPELLATE JURISDICTION

REFERENCE IN

LETTERS PATENT APPEAL NO. 87 OF 2006

IN

WRIT PETITION NO. 5546 OF 2004

Saindranath s/o Jagannath
Jawanjal,
aged about 36 years,
Occupation: presently Nil,
R/o At Post Miregaon, Tahsil: Lakhni,
District- Bhandara. ... Appellant.

V/s.

1. Pratibha Shikshan Sanstha,
   At Post Tanheri, Tahsil: Lakhni,
   District- Bhandara.
   Through its President.

2. The Presiding Officer
   (Additional), School
   Tribunal, Chandrapur. ... Respondents.

Advocate Mrs.Ujwala Patil with M/s.A.D.Mohagaonkar, Anil S..Mardikar and A.Z.Jibhkate for the appellant.

Mr.S.A.Gordey for respondent No.1.

Mr.R.B.Pendharkar, Senior Advocate as amicus curie.

CORAM : V.C.DAGA, A.P.LAVANDE
AND A.B.CHAUDHARI, JJ.
DATE OF RESERVING JUDGMENT: 18.12.2006
DATE OF PRONOUNCING : 10.4.2007.

JUDGMENT : (Per V.C.DAGA, J.)

This Reference has been made on account of conflict of views expressed by the Division Benches of this Court regarding the powers of the School Tribunal constituted under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as Act / MEPS ACT for short)

Conflict of Views :

2. In Writ Petition filed by the ***Children's Education Uplift Society*** against ***Shri Narayan H. Sukhaja*** bearing W.P.No.463 of 1983, decided on 12.8.1987 (unreported), the Division Bench has taken the view, that it is open for the School Management to lead evidence before the School Tribunal to prove misconduct of the employee, in the following words:

> 5. However, the Tribunal has erred in setting aside the order of termination of the services and granting reinstatement only on that ground. Once the Tribunal came to the conclusion that the constitution of the committee was improper, the correct course was either to order a fresh inquiry with the constitution of a new committee, or to hold the inquiry itself into the merits of the charges. It appears that the Tribunal is not aware of its powers under the Act. Sections 10 and 11 of the Act read together give ample power to the Tribunal as are vested in the appeal Court under the Civil Procedure Code, 1908. <u>The Tribunal could therefore, have remanded the matter for a fresh inquiry or disposed of the matter by recording the evidence itself.</u> The failure on the part of the Tribunal to do so has resulted in an avoidable delay of about four years and has undoubtedly resulted inconvenience to both the parties...

Another Division Bench in **Gurumaharaj Shikshan Prasarak Mandal and another v. *Jalindar Mahadeo Kedar and others,*** reported in 2006 (2) Mh.L.J. 748 held that the Management has no right to lead evidence/ additional evidence in the proceedings filed under section 9 of the Act, before the School Tribunal, to prove the misconduct of the employee where either no enquiry or defective enquiry is held. The said conclusion has been arrived at on the grounds, namely; (i) Inquiry under the Act and the Rules is not akin to domestic inquiry; (ii) The powers of the Tribunal cannot be equated with the powers of the Tribunal under the Industrial Disputes Act; (iii) Permitting the Management to lead evidence before the Tribunal would amount to truncating the powers under section 11(2) of the Act; (iv) The School Tribunal exercises appellate powers and, therefore, there is no question of leading evidence before it; (v) The Enquiry Committee is neutral and the inquiry conducted by the Committee cannot be equated with the domestic inquiry and; (vi)The report of the Enquiry Committee is binding on the management. It may be stated here itself that the attention of the learned Division Bench was not invited to the earlier decision aforementioned touching the question.

Factual Score :

3. The appellant was a permanent teacher working in Shukracharya Vidyalaya, Miregaon run by respondent no.1. On 15.12.1998 there was a gathering of the students in the School. During the night the appellant after knocking the door of the house, where one of the students; who was a member of the Scheduled Caste was staying with her married sister, forced entry in the house and committed rape on her. The appellant succeeded in rescuing himself although he was chased by some students. On the same night report was lodged against the appellant under Section 376 of the Indian Penal Code and thereafter in the course of investigation several statements were recorded which disclosed the involvement of the appellant in the offence of rape on his students. Several parents of the girl students from the village made representation to the school authorities to take immediate action and threatened agitation against the Management if no action was taken. The incident was widely published. The management took cognizance of this fact and came to the conclusion that it was impossible to conduct a regular departmental enquiry against the appellant and, therefore, the management decided to terminate the services of the appellant and accordingly terminated the services of the appellant with effect from 11.1.1999.

4. The appellant preferred appeal under Section 9 of the Act before the Additional School Tribunal, Chandrapur challenging his termination primarily on the ground that no inquiry contemplated by the Maharashtra Employees Private Schools (Conditions) Rules, 1981 (hereinafter referred to as 'the Rules')was held and, therefore, the termination of his services was illegal. During the pendency of the appeal, the application was filed by the Management for grant of permission to prove misconduct of the appellant before the Tribunal. The School Tribunal rejected the said application by order dated 10.10.2004 observing that the application was made after the case was closed for Judgment and further that the appellant was acquitted by the Sessions Court for the offence of rape and, therefore, no case was made out for permitting the Management to lead evidence. The said order passed by the Tribunal was challenged by the Management by filing Writ Petition bearing No.5546/04 before this court. The learned Single Judge of this Court by order dated 10.3.2005 admitted the petition and passed an interim order staying the proceedings before the School Tribunal pending disposal of the writ petition. The said interim order has been challenged in the present Letters Patent Appeal.

5. During the course of argument in the Letters Patent Appeal the Division Bench observed that there were conflicting decisions of this Court on the issue framed and, therefore, it was necessary to have the legal position settled by a larger Bench. Accordingly, the papers were placed before the Hon'ble Chief Justice who was pleased to constitute the Full Bench and that is how the Reference is now required to be heard and decided by this Full Bench.

Rival Contentions :

6. We have heard Advocate Mrs.Patil with M/s.Mohagaonkar; Mardikar and Jibhkate on behalf of the appellant and Advocate Mr.Gordey for respondent no.1. Since the issue was of immense importance we requested Mr.R.B.Pendharkar, learned Senior Advocate to act as amicus curie who readily agreed and rendered valuable assistance in deciding the issue involved in the Reference.

7. Mrs. Patil, learned counsel appearing for the appellant placing reliance upon Sections 9, 10 and 11 of the Act as well as the Rules submitted that the view taken by the Division Bench in **Gurumaharaj Shikshan Prasarak Mandal** (supra) is the correct view. She pressed into service the reasons given in the said

judgment to contend that the enquiry conducted under the Act and Rules is not akin to the domestic enquiry which is understood in the conventional sense as such principles recognising right of the employer to lead evidence cannot be recognised or made applicable to the appellate proceeding before the School Tribunal. According to her, if employer is permitted to lead further evidence and cure the defect, then the same would result in curtailing or truncating the power vested in the Tribunal by virtue of section 11(2) of the Act. Mrs. Patil, in support of her submission, relied upon the following authorities.

i) ***Shesrao Wankhede's 56th Birth day foundation and another*** **v.** ***Pratibha Uttamrao Gadwe***, 2005 (3) Mh. L. J., 304;

ii) Prahladrai ***Dalmia Lions College of Commerce and Economics*** *v.* ***A.M.Rangaparia and others***, 1988 Mah. L. J., 530;

iii) ***Gurumaharaj Shikshan Prasarak Mandal, Chousala*** *v.* ***Jalindar Mahadeo Kedar***, 2006(2) Mah. L. J. 748.

8. Per contra, Mr.Gordey, learned counsel appearing for the respondent no.1 Management submitted that the view taken by the Division Bench of this Court in the case of *Children's Educational*

Uplift Society lays down the correct law. He further urged that in a given case it may not be possible for the Management to conduct inquiry and in that case the Management is entitled to lead evidence before the School Tribunal in appeal preferred by employee, who is dismissed or terminated. He further urged that the Act as well as the Rules do not prohibit leading of evidence by the Management in an appeal preferred under Section 9 of the Act and it would be in consonance with the principles of natural justice to permit the Management to lead evidence before the School Tribunal in a case where no inquiry is held or inquiry held is found to be defective. He further urged that the term appeal is misnomer and having regard to the nature of the proceedings challenging the termination by the Management before the School Tribunal the same are to be treated as original proceedings and not appellate proceedings as commonly understood.

9. Mr.Gordey placed heavy reliance on the judgment of the learned single Judge of this Court affirmed by the Division Bench in the case of ***A.M.Rangaparia*** (referred to hereinafter) to contend that the provisions of sections 42B to 42F of the Bombay University Act were bodily lifted and incorporated in the M.E.P.S. Act as such the ratio laid down in the said judgment needs due consideration.

10. Mr.Gordey also pressed into service section 4E of The Act, wherein by Amendment Act of 1987, the Director is given power to hold or order to hold enquiry, to contend that the Legislature itself has given go bye to the composition of the enquiry committee contemplated under rule 36(2)(a) of the M.E.P.S. Rules (Rules for short) in view of the experience gained in implementing the provisions of the Act. He, thus, submits that the character of the enquiry under the Act is that of a fact finding enquiry which in service *jurisprudence* is called as departmental enquiry as was held by the Supreme Court in the case of ***Venkatraman* v. *Union of India***, AIR 1954 SC 375. The purpose is to find out whether grounds exist for taking departmental action against the delinquent employee. In support of his submissions, the learned counsel relied upon the following authorities.

i) ***Workmen Motipur Sugar Factory, Pvt. Ltd.* v. *The Motipur Sugar Factory Pvt. Ltd.***, AIR 1965 Supreme Court, 1803;

ii) ***Workmen Firestone Tyre and Rubber Co. of India Pvt. Ltd.* v. *The Management and others***, AIR 1973 Supreme Court, 1227;

iii) ***Karnataka State Road Transport Corporation v. Lakshmidevamma (Smt.) and another***, 2001(5) Supreme Court Cases, 433;

iv) ***Prahladrai Dalmia Lions College of Commerce and Economics*** **v.** ***A.M. Rangaparia***, 1988 Mh. L. J., 530.

11. Mr. Pendharkar, learned amicus curie submitted that the term appeal is a 'misnomer' and the proceedings filed by an employee against the order of termination by the management are original proceedings. He further urged that in appeal preferred by the employee against the order of termination it is permissible for both the employee and Management to lead evidence. He has further urged that the view taken in the case of ***Gurumaharaj Shikshan Prasarak Mandal*** (supra) is not the correct view. He then urged that in order to avoid multiplicity of the proceedings and to avoid delay the parties are entitled to lead evidence before the Tribunal in appeal preferred by the employee against the order of termination or dismissal. He then urged that the School Tribunal as an appellate court has wide powers to permit the parties to lead evidence in appeal preferred by the dismissed employee. In support of his submissions he pressed into service various provisions of the Act and Rules and relied upon the following Judgments.

i) ***Chandrika Prasad Mishra*** **v.** ***Shree Babulnath Mandir Charities and another,*** 2000 (3) Mh. L.J. 73.

ii) ***Provincial Transport Services*** **v.** ***State Industrial Court, Nagpur and others,*** AIR 1963 Supreme Court, 114;

iii) ***Rambhau Vyankuji Kheragade*** **v.** ***Mah. Road Transport Corporation,*** 1995 (Supplementary) 4 SCC 157;

iv) ***Shankar Chakrawarti*** **v.** ***Britania Biscuit Company Limited and another,*** AIR 1979 SC 1652;

v) ***K. Venkat Ramiah*** **v.** ***Seetharama Reddy and others,*** AIR 1963 Supreme Court, 1526.

v) ***Mardia Chemicals Ltd. & ors.*** **v.** ***Union of India, 2*** 2004 (2) Mh.L.J. 1090.

12. In rejoinder, Mrs.Patil and Mr.Mohagaonkar urged that the powers of the School Tribunal are very narrow it being an appellate authority under the Act. They expressed their apprehension that if the management is allowed to prove misconduct before the Tribunal in case of no enquiry, then the majority of the school managements, who have enormous money power, may resort to illegal termination or dismissal without holding enquiry and may choose to take chance to justify their actions, for the first time before the School Tribunal, leaving employee without jobs for years together.

The Issue :

13. From the order of reference and rival submissions made, the question that arises for consideration is: Whether the School Tribunal hearing appeal against the order of termination/dismissal, reduction in rank etc. can permit the School Management to lead evidence before the Tribunal in respect of the misconduct alleged against an employee; when the Management did not hold any enquiry before terminating the services of the employee or the enquiry held against the employee is found to be defective?

Scheme of the Act & Rules :

14. Answer to the above issue on which conflicting decisions are rendered, as noticed above, depends on a fair reading and proper interpretation of the provisions of the Act and Rules and upon examination of powers of the School Tribunal. First; we propose to deal with the scheme of the Act and then to trace the length and breadth of the powers of the School Tribunal.

15. Before we deal with the rival contentions of the parties, it would be appropriate, if we consider the relevant provisions of the Act and the Rules.

The Act (Mah. Act II of 1978) was enacted by the Legislature of the State of Maharashtra.

16. The preamble of the Act reads thus:

> WHEREAS it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently;
>
> AND WHEREAS, it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the standard of education;
>
> AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions; It is hereby enacted in the Twenty-eighth year of the Republic of India as follows:-

17. It is not in dispute that the Act came into force with effect from July 15, 1981 which was appointed date as defined in clause (1) of section 2. The expression Employee is defined in clause (7)

as any member of the teaching and non-teaching staff of a recognised school , Management is defined in clause 12 thus:

> Management in relation to a school, means:-
>
> (a) in the case of a school administered by the State Government, the Department;
>
> (b) in the case of a school administered by a local authority, that local authority; and
>
> (c) in any other case, the person, or body of persons, whether incorporated or not by whatever named called, administering such school;

The expressions Prescribed as defined in clause (7) means prescribed by rules .

18. Section 16 enables the State Government to make Rules for carrying out the purposes of the Act by issuing Notification in the Official Gazette. Sub-section (2) of section 16 declares that in particular and without prejudice to the generality of the provisions in the Act, such rules could provide for matters enumerated in clauses (a) to (g) of the said sub-section. Those clauses relate to qualifications for recruitment of employees of private schools, their pay scales and allowances, their post-retirement and

other benefits, other conditions of service, duties of employees and code of conduct and disciplinary matters, manner of conducting inquiries, etc. Under sub-section (3) of section 16, such rules shall be subject to the conditions of previous publication.

In exercise of powers conferred by sub-sections (1) and (2) of section 16 of the Act, the Government of Maharashtra framed Rules referred to hereinabove. The Rules have been previously published as required by sub-section (3) of section 16 of the Act.

Under rule 26, a permanent employee may be retrenched from service by the management in certain circumstances on conditions specified therein.

Rule 27 deals with principles of termination of service in the event of retrenchment.

Rule 28 provides for removal or termination of service. The original text of rule 28 as it stood prior to the Maharashtra Employees of Private Schools (Conditions of Service) (Amendment) Rules, 1984 contained sub-rules (2) and (3), [which came to be deleted by Notification No.PST/1083/194/E-3 (CELL) dated 20.12.1984] which pertained to the termination of the permanent employees. Sub-rule (2) was as under:

> Subject to the provisions of sub-rule (3), the services of a permanent employee may be terminated by the Management on giving compensation equal to six months' emoluments (pay and allowances) in case he has put in

> less than 10 years' service, and 12 months' emoluments (pay and allowances) if he has put in service of 10 years or more, in the following circumstances, namely:-
>
> > Immodest or immoral behaviour with a female or male student or employee or such other action involving moral turpitude into which, if an open enquiry is held undesirable social consequences may follow.

Sub-rule (3) of rule 28 provided that the said order of termination could not be issued under; sub-rule (2), unless a show-cause-notice was given to the employee by the management within a reasonable time and unless such cause shown by him, if any, was considered by the management. It further specifically provided as under:-

> .....If, after considering the cause shown, if any, an order of termination of services of an employee is passed, the Management may not assign any reason in the order to be issued to the employee

As already stated, the above sub-rules (2) and (3) now stand deleted with effect from 20.12.1984. Sub-rule (4) is not relevant. However, sub-rule (5) provides that the employee is liable to be punished on one or more of the four grounds, namely; (a) misconduct; (b) moral turpitude; (c) willful and persistent negligence of duty and (d) incompetence.

Rule 29 prescribes penalties.

Rule 31 classifies penalties into two categories as minor and major. Major penalties are as under:

(i) reduction in rank,

(ii) termination of service.

Whereas Rule 33 provides for inflicting major penalties. Rule 34 deals with payment of subsistence allowance.

Rule 36 provides for Inquiry Committees and Rule 37 as to procedure of inquiry.

Rule 38 clarifies that the management shall not delegate to any subordinate authority other than the Chief Executive Officer, power to execute the decision of the Inquiry Committee in respect of reduction in rank or termination of services.

19. Returning back to the provisions of the Act, section 3 of the Act declares that the provisions of the Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not .

Section 4 prescribes terms and conditions of service of employees of private schools. Sub-section (6) of section 4 is relevant which reads thus:

No employee of a private school shall be

> suspended, dismissed or removed or his services shall not be otherwise terminated or he shall not be reduced in rank, by the Management, except in accordance with the provisions of this Act and the rules made in that behalf.

20. Section 4-A of the Act, which came to be inserted by Mah.30 of 1987, empowers the Director to hold or order holding of inquiry by the management. Section 5 imposes certain obligations on management of private schools. Section 6 deals with obligations of head of a private school. Section 7 prescribes procedure for resignation by employees of private schools. Sections 8 to 15 deal with constitution of Tribunals and powers and procedures of conduct of cases. They also prescribe penalty on the management for failure to comply with Tribunal's directions.

21. Section 9 of the Act confers a right of appeal upon an employee of a private school before the Tribunal in case of his dismissal or removal from service or if he is otherwise terminated or reduced in rank by the order passed by the management.

22. Section 10 of the Act provides for general powers and procedure before the Tribunal. Sub-section

(1) of the said section 10 provides that for the purposes of admission, hearing and disposal of appeals, the School tribunal shall have the same powers as are vested in the appellate Court under the Code of Civil Procedure, 1908 (C.P.C. short) and shall also have the power to stay the operation of any order against which an appeal is made, on such conditions as it may think fit to impose and such other powers as are conferred on it by or under the Act. Sub-section (2) of section 10 then empowers the Presiding Officer of the School Tribunal to decide the procedure to be followed by the Tribunal for the disposal of its business including the place or places at which and the hours during which it shall hold its sittings. Sub-section (3) of section 10 requires the School Tribunal to decide the appeal expeditiously and, preferably, within three months.

23. Section 11 of the Act then confers substantive powers upon the Tribunal for passing appropriate orders and for giving appropriate reliefs in the appeal before it. Sub-section (1) thereof provides for the dismissal of the appeal if it is not in respect of any of the matters specified in section 9 or is not maintainable or there is no sufficient ground to set aside the order of the management under appeal. However,

sub-section (2) of section 11 is relevant for our purpose in regard to the substantive powers of the School Tribunal in appeal. It is, therefore, reproduced hereinbelow for ready reference.

> "(2) Whether the Tribunal, after giving opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal otherwise termination of service or reduction in rank was in contravention of any law(including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management-
>
> (a) to reinstate the employee on the same post or on a lower post as it may specify;
>
> (b) to restore the employee to the rank which held before reduction or to any lower rank as it may specify;
>
> (c) to give arrears of emoluments to the employee for such period as it may specify;
>
> (d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;
>
> (e) where it is decided not to reinstate the employee or in any other appropriate

> case, to give to the employee twelve months' salary (pay and allowances, if any) if he has been in service of the School for less than 10 years, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or
>
> (f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.

In fact, the heading of section 11 itself is: Powers of Tribunal to give appropriate reliefs and directions .

24. Sub-section (2) of section 11 of the Act provides that after giving reasonable opportunity to both the parties of being heard, it is open to the School Tribunal to set aside the order of dismissal, removal, termination of service or reduction in rank if it is in contravention of any law, contract or conditions of service for the time being in force or is otherwise illegal or improper. On setting aside such order, the School tribunal is empowered to either reinstate the employee on the same post or on a lower post as it may specify and to direct the payment of emoluments to him for such period as it may specify. It can also award such lesser

punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be. In case it decides not to reinstate the employee or in any other appropriate case, it can direct the employee to be given suitable compensation equivalent to twelve months' salary if the employee has been in service for 10 years or more and six months' salary if he has been in service of the school for less than 10 years, regard being had to the loss of employment and the possibility of getting or not getting suitable employment in future.

25. In particular clause (f) of section 11(2), extracted hereinabove, would show that the School Tribunal has power to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case. It has also power to give any other relief to the employee including imposition of lesser punishment having due regard to the circumstances. As herinbefore stated the said power is conferred by the Statute to give justice to the parties. There is no reason to limit the expression such other relief thereto to mean to decide the case without granting any other opportunity to the parties to the appeal.

26. Perusal of the above provisions of the Act shows that the Act has provided right of appeal and in appeal, normally, the concept is that the appellate authority has all powers of the original authority subject to statutory limitations. Perusal of the provisions of the Act, quoted and referred to hereinabove, shows that the Tribunal has been conferred with the powers of the Appellate Court under the Code of Civil Procedure for the purposes of admission, hearing and disposal of the appeals. It is further pertinent to note that sub-section (3) of section 11 makes it lawful for the Tribunal to recommend to the State Government regarding payment to be made to an employee who has been directed to be reinstated by the Tribunal out of the dues that may become due and payable in future to the management.

27. Section 13 provides for prosecution of the management for not obeying the order made by the Tribunal. It may also be seen that not only the powers of the appellate Court under the Civil Procedure code for the purpose of admission, hearing and disposal of the appeals have been conferred on the Tribunal, but it has already been held to be a `Court' by the Division Bench of this Court in the case of ***Chandrakant Ganpat Shelar v. Sophy Keely, Hill Garage High School, Bombay***, 1987 Mh.L.J. 1012.

28. It is also clear from the preamble of the Act that this Act has been enacted to regulate the recruitment and conditions of service of the employees, to provide such employees security and stability of service, to enable them to discharge their duties effectively and efficiently. The legislature has constituted School Tribunal which is presided over by a person who is judicial official not lower than rank of the Civil Judge. The legislature has also conferred upon the School Tribunal the powers of the appellate authority under C.P.C., for the purposes of admission, hearing and disposal of the appeals before it, and even otherwise also being a quasi-judicial, if not a judicial authority, it would mean that it has inherent powers to pass appropriate orders in the *lis* before it.

29. In the case of ***Union of India v. Paras Laminates (P) Ltd.***, AIR 1991 SC 696 after referring to the provisions contained in section 129(c) of the Customs Act, 1962, the Apex Court observed in para-8 of its judgment as under:

> There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has

> all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, not because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised.

30. Thus, it is clear that when the legislature expressly confers power, grant of that statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective.

Concept of Right to lead Evidence before Court or Tribunal :

31. The concept of right to lead evidence in the case of defective enquiry or no enquiry has been recognised by the Apex Court in catena of decisions. The consistent view of the Apex Court right from the year 1955-56 is that the Court or Tribunal established under the Labour Legislation shall not only have jurisdiction to look into the limited question as to whether the domestic enquiry is proper or not but also to satisfy itself on the evidence adduced before it,

whether dismissal or discharge is justified. Let us find out genesis of this procedure recognised by the Apex Court.

32. In the case of the Workmen of the Motipur Sugar Factory Private Ltd. (Supra), the Hon'ble Apex Court held in para 12 as under;

> 12. If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on the ground that, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be the benefit of the employee. That is why this court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself.....

33. In the latest case of ***Karnataka State Road Transport Corpn.*** (supra), following above case of the Motipur Sugar Factory (supra), a constitution Bench of the Hon'ble Apex Court observed in para-45; [Shivaraj V. Patil, J. (as he then was) for Khare, J. & himself] (concurring) as under ;

> 45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.
>
> (Emphasis supplied)

34. In the above Judgment, the apex Court has expressly upheld the right of an employer to adduce evidence before the Tribunal justifying its action even where no domestic inquiry whatsoever has been held.

35. It is well settled by catena of the decisions of the apex Court that the strict rules of evidence are not applicable to the proceedings before the Labour Court/ Tribunal but the Labour Court/ Tribunal has to observe the rules of natural justice in the proceedings before it. The power of Labour Court/ Tribunal to call for any evidence if the facts and circumstances of the case demand to meet the ends of justice has been recognized.

<u>This Court on pari materia provision</u> :

36. The learned Single Judge of this court Shri S.P. Kurdukar, J (as he then was) in the case of ***Prahladrai Dalmia Lions College of Commerce and Economics, Bombay and others*** **v.** ***A.M. Rangaparia and others*** (1988 Mh. L. J. 530) had an occasion to examine the very same question involved in the present appeal. At this juncture, it will be relevant to note that the provisions of the M.E.P.S. Act and the Bombay University Act are *pari materia.* The comparative

table of these parallel sections is reproduced hereinbelow for immediate reference.

COMPARATIVE TABLE

Bombay University Act	M.E.P.S. Act
Section 42-A	Section 8
Section 42-B	Section 9
Section 42-C	Section 10
Section 42-D	Section 11
Section 42-E	Section 12
Section 42-F	Section 13

37. The learned single Judge while interpreting sections 42C and 42D of the Bombay University Act observed thus:

> 26. The important question that falls for my consideration is as to what are the powers of the Tribunal under section 42C of the Act. This section has to be read in conjunction with section 42D of the Act. Section 42D as set out earlier empowers the Tribunal after giving reasonable opportunity to both parties of being heard to decide in any appeal that the order of dismissal, removal otherwise termination of service or reduction in rank was in

contravention of any law, contract or conditions of service for the time being in force or was otherwise *illegal or improper*, it (the Tribunal) may set aside the order of the Management, partially or wholly, and direct the Management as provided in section 42D(2) .

27. While interpreting the scope of sections 42C and 42D, one cannot be unmindful of the several situations which led to the passing of the variety of orders including the order of dismissal, removal etc. It would be too bold a proposition to lay down that every order of dismissal, removal etc. must precede an enquiry. Take a case where an employee is appointed for a fixed period. After expiry of the said period the services automatically come to an end and the Management need not necessarily hold an enquiry. Take another case where a contract of service provides that an employee shall not remain absent at any point of time. The employee remains absent and consequently an order of termination is made. Consistent with the contract order of termination may appear to be valid and no enquiry whatsoever on these admitted facts may be necessary and may not be held. It must therefore follow that every order of dismissal, removal etc. need not be preceded by an enquiry. It can be a simpliciter termination without any enquiry yet such an order can be challenged by way of an appeal to the Tribunal. Taking into account the various situations and in view of the wide powers conferred upon the Tribunal in my opinion the appeal filed against an order passed by the Management is nothing but a

plaint challenging the order on various grounds. Merely because in section 42C the legislature has termed the College Tribunal as an appellate court it cannot be strictly construed to mean that it has no powers to record evidence. The nomenclature would not be a decisive factor in determining the jurisdiction and the powers of the Tribunal. It has used the expression Tribunal equivalent to an Appellate Court because there is always an order of Management which is sought to be challenged before the College Tribunal and, therefore, it is in that sense An Appellate Court . The College Tribunal is also given power to go into the question of legality and correctness of the impugned order including to decide as to whether the order is illegal or improper. The Tribunal is also empowered to set aside the order of Management partially or wholly and issue directions to the Management accordingly. The words 'illegal and improper' used in sub-section (2) of section 42D are indicative of the fact that the College Tribunal can also find out as to whether the impugned order is illegal or improper. The phrase, 'impropriety' covers a larger area which includes in my opinion non-observance of the principles of natural justice. The Tribunal is also empowered to direct the Management to reinstate the employee on the same and/or lower post as it may specify. It may also direct the Management to restore the employee to the rank which he held before reduction or to nay lower rank as it may specify. The Tribunal can also direct to give arrears of emoluments to the employee. The Tribunal can also impose a lesser punishment in lieu of dismissal, removal

etc. The Tribunal is also empowered to direct that in case if it is decided not to reinstate the employee or in any other appropriate case, to give such sum to the employee, by way of compensation but not exceeding his emoluments for six months. Section 42D if considered in its proper perspective, to my mind it leaves no manner of doubt that College Tribunal has got jurisdiction to try all issues and to adjudicate upon the dispute between the Management and the employee including power to record evidence. If the argument of Mr.Deshmukh is accepted it will amount to giving too narrow jurisdiction to the College Tribunal and this would result into multiplicity of proceedings. In a case where the enquiry fails because of non-observance of the principles of natural justice, it does not mean that the employee has not committed any misconduct and it may still be open to the management to hold an enquiry on the same charges of misconduct. Does it not amount to multiplicity of proceedings ? Would it not cause greater hardship to the employee ? It would also result in waste of time and money on both sides. In order to obviate this difficulty in my opinion, the only proper interpretation of section 42 C would be that the College Tribunal will have a jurisdiction to hold further enquiry if it comes to the conclusion that the enquiry held by the Enquiry Officer is vitiated on the ground of non observance of principles of natural justice. The object of enactment as stated earlier is to adjudicate and resolve the dispute between the Management and the Employee and as indicated in section 42C (3) to dispose of such appeals within

three months from the date of its receipt by the Tribunal. The object indicated in this section needs no further comments.

38. The provisions of Section 42 (B), (C) & (D) of the Bombay Universities Act, 1974, which have been considered in the above decisions, as stated hereinabove; were in pari materia with the provisions of Sections 8, 9, 10 and 11 of the Act. Therefore, the observations made in the above judgment that nomenclature would not be decisive factor in determining the jurisdiction and the powers of the Tribunal would squarely apply to an appeal preferred under the Act.

Consideration :

39. Having taken survey of the scheme of the Act and Rules and various cases giving rise to the genesis of the procedure recognising right of the employer to lead evidence to prove misconduct before the Labour Courts and Tribunals and interpretation put by the learned single Judge of this Court on the pari materia provisions of the Mumbai University Act, 1974, now, we propose to turn to the rival submissions of the parties to find out to what extent the very same concept could be imported under the provisions of the M.E.P.S. Act

and Rules and made applicable to the appeals filed before the School Tribunal.

In case of no enquiry :

40. One of the submissions is that under the industrial and labour legislations the consistent view of the Apex Court is that, in case of no enquiry or defective enquiry, the employer has a right to lead evidence before the Court or Tribunal to justify its punitive action. Thus according to the submission made, the case of no enquiry and defective enquiry should be treated on equal footing. In order to consider this submission, one has to go into the legislative history of the Act and Rules framed thereunder. Sub-rules (2) and (3) of rule 28 of the Rules, prior to its amendment in the year 1984 vide notification dated 20th December, 1984, did provide for contingency to dispense with the necessity of holding enquiry against the employee involving immodest or immoral behaviour with a female or male student or employee or such other action involving moral turpitude. The existence of sub-rules (2) and (3) of rule 28 permitting the School Management not to hold enquiry in certain contingencies mentioned therein was considered and recognised by the learned single Judge of this court in the case of ***Sindhu Education Society***

v. Kacharu Jairam Khobragade, 1996 (1) Bom.C.R. 404. However, the said sub-rules, subsequently, came to be deleted by the amending Rules vide notification dated 20th December, 1984. It is, thus, clear that at one point of time, the case of no enquiry leading to infliction of major penalties in certain types of cases had a legislative sanction, but the legislature in its wisdom thought it fit to delete the said sub-rules from the statute. If that be so, the clear legislative intent is not to permit the management to dismiss a permanent employee without holding enquiry in any contingency. In the circumstances, what is not allowed to be done directly cannot be allowed to be done indirectly. Sub-rules (2) and (3) of rule 28 cannot be made alive by judicial sanction. Thus, in view of deletion of sub-rules (2) and (3) of rule 28 from the Rules any action inflicting major penalty on a permanent employee without holding enquiry or without following principles of natural justice is bad, illegal and violative of the provisions of the Act and Rules. Consequently, school management cannot be allowed to justify their action, for the first time, before the Tribunal, in absence of any enquiry in accordance with the provisions of the Act and Rules, which are clear and unambiguous. The acceptance of submission made in this behalf that, even in case of no enquiry school management should be allowed to justify their action

inflicting major penalties for the first time before the Tribunal would amount to giving bonus to a person indulging in the illegal act having no sanction of the Act and/or Rules.

41. Needless to mention that a statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of the statute take their colour from the reason for it. If judicial recognition is given to the right of management to inflict major penalties against their permanent employee without holding enquiry, the possibility of rampant misuse of such recognition by the school managements, who have enormous money power, cannot be ruled out. The school managements can afford to take a risk of dismissing their employees without holding enquiry at the cost of the finances of the school to satisfy their own ego; and may not mind spending money to fight out frivolous and untenable litigation in the courts for years together since everybody knows that once the matter goes to the court, it takes years together to get final decision. In this legal battle, poor employees would always be at the receiving end. It would take away the right of the employee to claim security and stability of service for which the Act has been enacted. The very purpose of the Act and Rules

framed thereunder would stand defeated.

42. If one turns to the Full Bench judgment in the case of ***Awdhesh Narayan K. Singh v. Adarsh Vidya Mandir Trust***, 2004 (1) All MR 346 authored by Justice C.K.Thakker, C.J. (as he then was), para-55 thereof makes a reference to a well known judgment in the case of ***Taylor v. Taylor***, (1875) 1 Ch D 426, by Jessel M.R. and quoted as under:

> When a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted.
>
> (Emphasis supplied)

In the same para the Full Bench has further quoted judgment of Frankfurter, J. in ***Viteralli v. Saton***, 359 Us 535; wherein again a principle is recognised that if statute provides particular mode of doing a particular thing in a particular manner, then in that event that thing must be done in that manner only.

43. The aforesaid principle is recognised by the Apex Court in the case of ***State of Uttar Pradesh v. Singhara Singh***, AIR 1964 SC 358.

44. If one turns to section 4(6) of the M.E.P.S.Act, then it would be clear that provisions thereof and Rules framed thereunder do not allow the school management to by-pass the necessity of holding enquiry, if the management wants to resort to take action against a permanent employee inflicting major penalties. Any action in breach of section 4(6) of the Act would be invalid and illegal.

45. At this stage, it would be relevant to make reference to the cases of Government employees, who are protected under Article 311 of the Constitution of India. If the punitive action leading to dismissal, removal or reduction in rank without holding enquiry is taken in case of Government employee, then no alternative is left for the Courts but to direct reinstatement with full back wages. However, in the recent judgments, the Apex Court has adopted little different route and permitted the management to hold departmental enquiry from the stage the illegality has crept in. In this behalf, readily available judgments are in the cases of ***State of Punjab and others v. Dr.Harbhajan Singh Greasy, U.P.State Spinning Co.Ltd. v. R.S.Pandey and another***, (2005) 8 SCC 264, ***U.P.State Textile Corpn. Ltd. v. P.C.Chaturvedi and others***, 2005 (8) SCC 211; wherein the Supreme Court has observed that in case of no enquiry or defective

enquiry, proper relief is to set aside the dismissal with direction to the management to hold enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purposes of holding fresh enquiry and no more. So far as back wages are concerned, the entitlement thereof is to make dependent on the final outcome of the fresh enquiry.

46. The aforesaid principle has been adopted by the Division Bench of this court while considering provisions of the M.E.P.S. Act in the case of ***Kashiram Rajaram Kathane v. Bhartiya R.B. Damle Gramsudhar Shikshan Prasar Sanstha***, **1997(3) Mh.L.J.235**; wherein and the Division Bench has read the aforesaid statement of law and the principles recognised by the Supreme Court in section 11 of the Act. This view is holding the field for a decade.

47. The up shot of above is that the M.E.P.S. Act and Rules do not subscribe to the action of the management leading to inflicting major penalties without holding enquiry as contemplated under the provisions of the Act and Rules. In this backdrop, in case of no enquiry , the school management cannot be allowed to justify their action, for the first time, before the School Tribunal. It is open for the School Tribunal; to adopt the same route which has been

adopted by the Supreme Court in the case of ***Dr.Harbhajan Singh Greasy*** with some other cases noted supra but the school management cannot be allowed to justify their action for the first time before the Tribunal in case of no enquiry.

In case of enquiry :

48. Having said so, let us now turn to the case of enquiry and find out to what extent the School Tribunal has power, if any, to allow school management to cure the defect of the enquiry.

49. The issue needs to be considered on the touch stone of section 10 of the Act, which lays down that for the purposes of admission, hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in the appellate Court under C.P.C. Therefore, now we can turn to the provisions of C.P.C. dealing with the powers of the appellate Court, which reads as under:-

> **107. Powers of appellate Court:** (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-
>
> (a) to determine a case finally;
> (b) to remand a case;
> (c) to frame issues and refer

them for trial;
(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

50. The above powers can be exercised by the Court subject to such conditions and limitations as may be prescribed . Section 107 is required to be read with order 41 of C.P.C. Reading these provisions together, the powers of the appellate court to decide case can be culled out from the text of section 107 itself, which is quite self-explanatory which includes powers- to decide case finally; to remand the case; to frame issues and refer them for trial; to take additional evidence with other powers which can be exercised by the court of original jurisdiction.

51. Clause (d) of section 107(1) of C.P.C. empowers the appellate court to take additional evidence or require such evidence to be taken. Order 41 rule 27 of C.P.C. reads as under;

27. Production of additional evidence in Appellate Court.- (1) The parties to an

> appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. But, if-
>
> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
>
> (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or)
>
> (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
>
> (2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission .

52. Order 41 Rule 33 of C.P.C. provides that the appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed

any appeal or objection.

53. Sub-section (2) of section 107 declares that the Appellate Court can exercise same powers and discharge same duties as can be exercised and discharged by the original court. The powers and duties of the appellate court are co-extensive and co-terminus with those of the trial court. Extending the same analogy, it is, thus, clear that the Tribunal constituted under the Act will also have the same powers of the civil court given under the C.P.C.

54. In the above scenario; the question is: whether the School Tribunal dealing with the appeal under the Act challenging punitive action could cure the defect of enquiry exercising its powers by taking on record additional evidence either on the request of the management or the employee concerned or on its own to find out truth and to do complete justice between the parties. To hold that the School Tribunal dealing with the appeal preferred by the employee, who has been terminated on the ground of major misconduct, has absolutely no power to permit the party to lead additional evidence before it, would result in depriving an opportunity to the party to the appeal in placing his side before the Tribunal, even though, he

may be in a position to prove his contentions.

55. At the cost of repetition, we may mention that the powers of the Tribunal are circumscribed by the provision of order 41 rule 27 of C.P.C., which enumerates the circumstances in which the School Tribunal can admit additional evidence whether oral or documentary in appeal. They are: where the original authority has improperly refused to admit evidence which ought to have been admitted; or where such additional evidence was not within the knowledge of the party or could not, after exercise of due diligence, be produced by him at the time when the original authority passed the order; or where the appellate court itself requires such evidence either (a) to enable it to pronounce judgment or (b) for any other substantial cause.

56. Now the question comes: how and at which stage the School Management is expected to seek leave from the Tribunal to lead additional evidence in exercise of its right. In our considered view, such right should be exercised, as soon as there is challenge to the action of the management, in appeal before the Tribunal, contending that there was no sufficient evidence to prove the charges leveled against the appellant/employee. In the event of exercise of such

right by the school management, the Tribunal is expected to consider the question of grant of leave to lead additional evidence subject to compliance of provision of order 41 rule 27 of C.P.C. In the event of grant of leave opposite party-employee would also get an opportunity of placing his side before the School Tribunal i.e. when the School Management is allowed to lead additional evidence on the question of misconduct before the Tribunal.

57. At the same time, if the employee comes before the Tribunal challenging the punitive order on merits in appeal contending that the evidence is not sufficient to prove alleged misconduct or that he has some additional evidence in his possession to establish his innocence, which he could not produce for want of knowledge in spite of due diligence at the time when the enquiry was conducted; in such circumstances, there is no fetter on the power of the School Tribunal to admit such evidence at the instance of the employee. It is, thus, always open for the School Tribunal to take such additional evidence on record for the reasons to be recorded, after giving rival parties fair opportunity following principles of natural justice. This power, however, has to be exercised by the Tribunal before expressing its opinion about validity or invalidity of the punitive action of the management

challenged in appeal. In every case, the management cannot be allowed to lead *de novo* evidence before the Tribunal because that right is circumscribed with certain conditions laid down under order 41 rule 27 as indicated hereinabove.

58. The Tribunal, therefore, has power to take additional evidence on record only in the contingency, where the management or employee wants to supplement the evidence already on record by leading additional evidence to prove their contentions, however, subject to the provisions of section 107 read with order 41 rule 27 of C.P.C. After leading the evidence by both the parties in support of their contentions, it is always open to the Tribunal, in exercise of its power of judicial review, to reappreciate the said evidence so as to find out whether or not action of the school management can be sustained.

59. In so far as the submission of the learned counsel for the appellant that the Enquiry Committee being neutral cannot be equated with inquiry in domestic enquiry and further that report of the Enquiry Committee is binding on the Management is concerned, we find ourselves unable to agree with the same.

60. In so far as the binding nature of report of the Committee is concerned it appears to us that section 4A of the Act is a complete answer to the said submission. Section 4A came to be inserted by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 1987 to provide for Director/s power to hold or to order holding of inquiries where the Director is satisfied that in any case of alleged misconduct or misbehavior of serious nature or moral turpitude of an employee, the Inquiry Committee has unreasonably exonerated the employee or where the Management has either neglected or refused to hold an inquiry against such employee, or where there is a failure on the par of the Management to initiate action as directed by him, under this section. On holding such inquiry by himself or on receipt of the report of the inquiry officer if the Director is satisfied that the charges of serious misconduct, misbehavior or, as the case may be, moral turpitude have been substantially proved he shall, after giving an opportunity to the Management and the employee of being heard direct the Management to impose a penalty of dismissal, removal from service termination of service, or as the case may be, reduction in rank as he may, in the circumstances of the case, deem fit. Reading of Section 4 A makes it clear that the findings of the Enquiry Report or the recommendations of the

Enquiry Committee are not final and the Management can always challenge the same before the Director.

61. We also disagree with the submission urged by Mrs.Patil that in case the additional evidence is permitted to be led before the Tribunal the powers of the Tribunal under section 11(2) would be truncated inasmuch as much as the Tribunal would not be able to declare the action of the management in terminating the services in violation of the Rules. We also hold that while deciding the appeal before it, the Tribunal can always exercise powers under section 11(2) of the Act even in a case where the evidence or additional evidence is allowed to be led before the Tribunal.

62. Needless to mention that so far as enquiries before the Labour Court or the Industrial Court under the Labour and Industrial legislation are concerned, those enquiries are basically required to be in tune with the principles of natural justice and in consonance with the standing orders which cannot be elevated to the status of statutory provisions. The certified standing orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding upon both, the employers and employees, though they do not amount to statutory

provisions . Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open.

63. The policy of law emerging from the Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute. As against this, the M.E.P.S. Act and Rules constitute statutory provisions themselves. As such, free-hand given to the employer under Industrial and Labour Legislations to lead evidence to prove misconduct in case of no enquiry or defective enquiry cannot be recognised in toto while considering such cases arising under the provisions of the M.E.P.S. Act and Rules.

64. In the aforesaid backdrop, we hold that the Tribunal has a power to take additional evidence on

record mainly in the contingency, when the management wants to supplement its evidence already on record, at the same time, the employee has also a corresponding right to lead additional evidence either in rebuttal or to supplement his attempt to dislodge the action of the management, again but subject to the provision of order 41 rule 27 of C.P.C. This is independent of power of the Tribunal given under sub-rule (1)(b) of rule 27 of order 41 of C.P.C. The parties, thereafter, are expected to leave the matter in appeal for being decided by the Tribunal on its own merits.

65. But this should not be understood as placing fetters on the powers of the Tribunal. It is always open to the Tribunal to exercise its powers on the peculiar facts and circumstances of each case as it deems just and necessary in the interest of justice. Take a case where the management is not in a position to hold enquiry because of the situation brought about by the employee himself making it impossible for the management to hold enquiry before taking punitive action against him, in such contingency, the School Tribunal is not powerless to permit the School management to lead evidence to prove the act of misconduct before it to support its action. This legal sanction in law is implicit in sub-rule (b) of rule 27 of order 41 of C.P.C. which reads as .....for

any other substantial cause This clause gives wide discretion to the Tribunal, which, no doubt, is required to be exercised judiciously for the reasons to be recorded. But, exercise of such powers in every case; in a routine manner would take away the very object of the legislation meant to provide the employees security and stability of service to enable them to discharge their duties effectively and efficiently. Therefore, such power is available for being exercised only in the extremely exceptional cases and in compelling circumstances and not in a routine manner in every case.

66. We may make it clear and clarify that although we have observed that in certain extremely exceptional and compelling contingencies the school management may, in a case of grave nature of misconduct, dismiss the employee without holding an enquiry but, ordinarily, such an enquiry should not be dispensed with unless it is impossible to hold. In the event, it is found ultimately by the Tribunal that the School Management has taken recourse to dispense with the enquiry without any exceptional and compelling circumstance or the order of termination has been passed *mala fide* or by way of victimization, then it would be open to the Tribunal to award suitable compensation to the employee and adopt the route followed by the Division Bench of

this Court in the case of ***Kashiram Kathane***(supra)for the reason that the mandate of the Act and Rules has not been followed and principles of natural justice have not been complied with.

67. In view of what is stated hereinabove, the question referred and the issue framed is answered accordingly. The Registry is directed to place this Letters Patent Appeal before the Division Bench for hearing and order.

68. We express our gratitude to Mr.R.B.Pendharkar, a Senior advocate of this Court, who at a short notice agreed to act as `amicus curie' upon request made by us.

V.C.DAGA, J.

A.P.LAVANDE, J.

A.B.CHAUDHARI, J.