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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6162 OF 2018

1. Lokmanya Shikshan Sanstha,
   through its President / Secretary
2. Lokmanya Vidya Mandir High School
   through it's Headmaster ... Petitioners

ATUL GANESH KULKARNI

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Date: 2026.10.27 16:14:10 +0530

Vs.

1. Pratap Shankarao Tambe
2. The Education Inspector, Brihanmumbai North Zone, Chembur, Mumbai
3. The Deputy Director of Education Mumbai Region, Mumbai
4. Director of Education, Directorate of Secondary and Higher Secondary
5. The State of Maharashtra ... Respondents

Mr. R.V. Govilkar, Senior Advocate with Ms. Sanika Kulkarni, Mr. Jitendra M. Pathade, and Ms. Priyanka Singh for the Petitioners.

Mr. Sugandh Deshmukh with Mr. Aniket Konawade, and Mr. Vaibhav Thorave i/by Mr. Irvin D'Souza for Respondent No.1.

Ms. Vaishali Nimbalkar, AGP for Respondent Nos.2 and 3.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 19, 2026

PRONOUNCED ON : OCTOBER 27, 2026

JUDGMENT:

1. By the present Writ Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners challenge the legality, validity and propriety of the order dated 13 April 2018 passed by the learned School Tribunal in Appeal No. 27 of 2016.

2. According to the Petitioners, during the last week of December 2011 and again on 7 July 2012, Respondent No. 1 molested a girl student, namely, Miss Ujwala Bhimrao Kamble, thereby outraging her modesty. Consequently, on 3 August 2012, First Information Report bearing C.R. No. 252 of 2012 came to be registered against Respondent No. 1 for the offences punishable under Sections 354 and 506 of the Indian Penal Code. On 24 August 2012, a show cause notice was issued to Respondent No. 1. Thereafter, Respondent No. 1 was placed under suspension with effect from 1 November 2012. During the period of suspension, he was paid the admissible subsistence allowance in accordance with the applicable Rules. On 1 March 2013, the Enquiry Committee submitted its report and imposed the penalties of denial of promotion to the post of Headmaster and withholding of one increment for a period of one year, with effect from 14 March 2013, subject to the applicable procedure and approval of Respondent No. 3. On 18 November 2014, minutes of the meeting and an order came to be passed by Respondent No. 3. Thereafter, Respondent No. 1 filed Civil Writ Petition No. 190 of 2015 before this Court, seeking quashing and setting aside of the order dated 11 March 2015. On 28 August 2015, Respondent No. 3 quashed and set aside the report dated 1 March 2013 submitted by the

Enquiry Committee. The Petitioners contend that the said decision was erroneous. On 15 September 2015, the Petitioners sought permission to conduct a fresh enquiry on the grounds that the objections raised by Ashwini Chavan had not been recorded, the relevant papers and proceedings had not been duly considered, and the seriousness of the allegations and the past conduct of Respondent No. 1 had not received adequate consideration. On 29 September 2015, Respondent No. 3, after considering the proceedings and the evidence available on record, is stated to have applied its mind to the allegations against Respondent No. 1. The allegations included molestation of a minor girl student, misbehaviour with girl students within the school premises and misbehaviour with female teachers. Upon consideration of the statements of the girl students and the other material available, Respondent No. 3 took the view that the conduct of Respondent No. 1 was not suitable for a person holding the post of a teacher. Thereafter, on 28 December 2015, upon obtaining the requisite permission from Respondent No. 3, the Petitioners issued a statement of allegations to Respondent No. 1 and called upon him to submit his explanation. Following the fresh enquiry, the Enquiry Committee submitted its report and concluded that Respondent No. 1 was liable to face major penalties, having regard to the serious allegations concerning the alleged molestation of a minor girl student. Consequently, by order dated 21 September 2016, the Petitioners terminated the services of Respondent No. 1.

3. Respondent No. 1 challenged the order of termination dated 21 September 2016 before the learned School Tribunal, Mumbai

Region, by filing Appeal No. 27 of 2016. By the impugned order dated 13 April 2018, the learned School Tribunal partly allowed the appeal. The Tribunal set aside the termination order dated 21 September 2016 issued by Petitioner No. 1, which had been passed following the fresh enquiry stated to have been initiated on the basis of a letter dated 28 September 2015 issued by Respondent No. 4. The Tribunal directed the Petitioners to reinstate Respondent No. 1 to his former post within sixty days from the date of the order and to pay him 75% of the back wages from the date of termination. The Petitioners contend that the impugned order has been passed without proper consideration of the material facts, the evidence on record and the circumstances in which the fresh enquiry came to be initiated.

4. Mr. Govilkar, learned Senior Advocate appearing on behalf of the Petitioners, submits that Respondent No. 1 was accused of having committed the serious misconduct of molesting a minor girl student on more than one occasion. According to him, during the first enquiry, the victim girl was suffering from mental trauma and was not in a position to depose before the first Enquiry Committee. Upon becoming aware of the victim's mental condition and the difficulties faced by her in giving her statement, the Petitioners decided to seek the necessary permission from the concerned authorities, namely, Respondent Nos. 3 and 4. After obtaining the requisite permission from Respondent No. 3, the Petitioners initiated a fresh enquiry, taking into consideration the mental trauma suffered by the minor victim at the time of the first enquiry. Learned Senior Advocate submits that this important circumstance

was not considered by the learned School Tribunal while deciding the appeal. He submits that, although the initiation of a second enquiry may be alleged to amount to double jeopardy, the Petitioners' specific case is that the fresh enquiry was undertaken only after obtaining permission from the office of Respondent No. 3. The permission was sought and granted in view of the seriousness of the charges levelled against Respondent No. 1 and his alleged past conduct. According to the Petitioners, the fresh enquiry was therefore initiated in accordance with the applicable legal provisions and not with the intention of subjecting Respondent No. 1 to an impermissible second punishment.

5. Learned Senior Advocate submits that the Petitioners acted in accordance with Section 4-A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act), having regard to the serious allegations of misconduct and misbehaviour against Respondent No. 1. According to the Petitioners, the first Enquiry Committee had unreasonably exonerated Respondent No. 1, despite the seriousness of the allegations. The Petitioners contend that, upon consideration of additional evidence, including the statements of the victim and other witnesses, it became necessary to examine whether the charges of serious misconduct and misbehaviour involving moral turpitude stood established. It is their case that permission was accordingly granted to initiate an appropriate enquiry in accordance with law. Learned Senior Advocate submits that the learned School Tribunal failed to apply its mind to the detailed statement of the victim girl and the statements of the additional

witnesses. According to him, these materials were relevant for determining whether the circumstances justified the initiation of a fresh enquiry. He submits that no letter dated 28 September 2015 issued by Respondent No. 3 forms part of the record. Nevertheless, the learned School Tribunal proceeded on the basis of the said letter and relied upon it while deciding the appeal. The Petitioners contend that the impugned order suffers from an error apparent in its consideration of the record, as the Tribunal relied upon a document which was not available on record.

6. Mr. Deshmukh, learned Advocate appearing for Respondent No. 1, invited my attention to Section 4-A of the MEPS Act. He submitted that this provision gives the Director of Education the power to conduct a disciplinary enquiry and that this power cannot be delegated to any other person. He submitted that the charge-sheet issued in the first enquiry contained nine charges relating to the alleged conduct of Respondent No. 1 towards a female student. Those charges were held to be not proved. However, after considering the complaints made by the Headmaster against Respondent No. 1, including the complaint made by Assistant Teacher Sulakshana Chavan, a punishment of stoppage of one increment for one year was imposed upon Respondent No. 1. According to learned Advocate, the charges in the second enquiry were the same as those in the first enquiry. The only difference was Charge No. 8 in the second enquiry, which related to former teacher Sulakshana Chavan. This matter had been considered while imposing the punishment of stoppage of increment upon Respondent No. 1.

7. Mr. Deshmukh then invited my attention to the findings recorded by the learned School Tribunal. He submitted that the Tribunal rightly held that, once Respondent No. 1 had been found guilty of certain charges and punishment had been imposed upon him, the Management could not start a fresh enquiry on the same cause of action merely because the earlier punishment was subsequently set aside. He submitted that the seriousness of the charges and allegations against Respondent No. 1 could not, , justify the initiation of another enquiry. The Tribunal had rightly held that, in the absence of any power of review, the Management could not reopen the matter and conduct a fresh enquiry on the same charges. In support of his submissions, Mr. Deshmukh relied upon the judgment of the Supreme Court in *Director General, R.P.F. v. Saibabu,* AIR 2003 SC 1437. He submitted that the Supreme Court had considered the principle against double jeopardy in that case and held that imposing a second penalty on the basis of the same cause of action would amount to double jeopardy. According to him, the facts of that case were similar to the present matter, as both cases concerned disciplinary proceedings in service matters. He relied upon paragraph 31 of the judgment, wherein the Supreme Court considered the relevant earlier judgment and observed that the charges against the appellant in the first charge-sheet were the same as those in the second enquiry. Mr. Deshmukh submitted that the Petitioners' contention regarding permission obtained from the office of Respondent No. 3 to conduct the second enquiry had been considered in detail by the School Tribunal. According to him, paragraphs 18 to 28 of the Tribunal's

judgment deal with the Petitioners' submissions and the contents of the letter dated 29 September 2015. He submitted that the Petitioners' present contention was legally unsustainable and had been raised as an afterthought. He requested that this submission be considered while deciding the present Writ Petition.

8. In support of his submissions, Mr. Deshmukh relied upon the judgments in *Union of India v. K.D. Pandey and Another,* (2002) 10 SCC 471; *Lt. Governor, Delhi and Others v. H.C. Narinder Singh,* (2004) 13 SCC 342; *Vijay Shankar Pandey v. Union of India and Another, (*2014) 10 SCC 589; *The Secretary, Lucy Sequeira Trust and Another v. Kailash Ramesh Tandel and Others,* Civil Appeal No. 3456 of 2019, decided on 8 April 2019; and *Rayat Shikshan Sanstha v. Gajanan Krishna Swami, Writ Petition No. 6764 of 2018, decided on 14 December 2023.* He relied upon these decisions in support of his submission that the Management could not initiate a fresh disciplinary enquiry on the same charges in the circumstances of the present case.

REASONS AND FINDINGS:

9. The main issue in this Petition is whether the Petitioners could hold another enquiry against Respondent No. 1 on nearly the same charges, when the first enquiry was completed and punishment was given. The other issue is whether the permission said to have been given by the concerned authority under Section 4-A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, hereinafter referred to as the MEPS Act, were enough to permit the second enquiry.

10. The Petitioners say that Respondent No. 1 was accused of molesting a minor girl student during the last week of December 2011 and again on 7 July 2012. Because of these allegations, a First Information Report bearing C.R. No. 252 of 2012 was registered against him on 3 August 2012 for offences under Sections 354 and 506 of the Indian Penal Code. A show cause notice was thereafter issued to Respondent No. 1 on 24 August 2012. He was then suspended from service with effect from 1 November 2012. An enquiry was held and the Enquiry Committee submitted its report on 1 March 2013. According to the Petitioners, Respondent No. 1 was punished by not promoting him to the post of Headmaster and by stopping one increment for one year, which was thereafter set aside. However, the Advocate for Respondent No. 1 says that the charges about the alleged misconduct with the girl student were not proved in the first enquiry. According to him, the punishment was given because of other complaints, including the complaint made by Assistant Teacher Sulakshana Chavan.

11. The events which took place later are required to be seen. The record before the School Tribunal mentions an order dated 28 August 2015 passed by the concerned authority and directions or correspondence during September and October 2015. After these events, the Petitioners held another enquiry and terminated the services of Respondent No. 1 by order dated 21 September 2016. Respondent No. 1 then challenged that termination before the School Tribunal.

12. The Petitioners say that the first enquiry did not consider the condition of the minor girl. According to them, she was suffering

from mental trauma and was not in a position to give her evidence. They say that additional evidence was available and, because the allegations were serious, the matter needed to be examined once again. Their case is that they had obtained permission from the concerned authority under Section 4-A of the MEPS Act to conduct the fresh enquiry.

13. Mr. Govilkar, learned Senior Advocate appearing for the Petitioners, submits that the School Tribunal did not consider the statement of the victim girl and the statements of the additional witnesses. According to him, the Petitioners did not start the second enquiry on their own, but had obtained permission from the concerned authority. He says that the Tribunal wrongly relied upon a letter dated 28 September 2015, which, according to the Petitioners, was not available on record. He therefore submits that the order passed by the School Tribunal should be set aside.

14. Mr. Deshmukh, learned Advocate appearing for Respondent No. 1, opposes the Petition. He submits that the first charge-sheet contained nine charges concerning the alleged misconduct with the girl student, but those charges were not proved. According to him, almost the same charges were again taken up in the second enquiry. Respondent No. 1 had faced disciplinary proceedings and punishment. Therefore, the Management could not start another enquiry only because it was not satisfied with the result of the first enquiry.

15. Mr. Deshmukh submits that Section 4-A does not give the Management unlimited power to reopen an enquiry which has

been completed. He relies upon the judgments of the Supreme Court. According to him, these judgments show that the same charges cannot be examined only to get a finding or punishment which was not obtained in the earlier enquiry.

16. I have considered the arguments of both sides and the material placed before the Court. The allegations against Respondent No. 1 are serious. The safety and dignity of girl students in a school must be protected. However, the seriousness of an allegation does not give the Management a power which the law has not provided. The question is whether the Petitioners acted within the limits of the MEPS Act and the legal principles governing disciplinary enquiries.

17. It is therefore necessary to consider Section 4-A of the MEPS Act. The relevant part of the provision reads as follows:

> "Section 4A: Director's power to hold or order holding of inquiries. —
>
> (1) Notwithstanding anything contained in sub-section (6) of section 4 or any other provisions of this Act or the rules made thereunder, where in any case of alleged misconduct or misbehaviour of a serious nature or moral turpitude of an employee, —
>
> (a) an inquiry is held by an Inquiry Committee into such allegations and the Director is of the opinion that the Inquiry Committee has unreasonably exonerated the employee, he may call for and examine the record and proceeding of such inquiry for the purpose of satisfying himself as to the correctness of the decision on the basis of its findings, and may either annul, revise, modify or confirm the said decision or may direct the Inquiry Committee to make inquiry for

taking such additional evidence as they may think necessary or he may himself take or authorise any other officer not below the rank of the Education Officer to take such additional evidence"

18. The provision states:

"Provided that, the Director shall not record any order under this subsection without giving the party affected thereby and the Management an opportunity of being heard."

19. The words used in Section 4-A have to be considered carefully. This section gives the Director power to examine an enquiry relating to serious misconduct or moral wrongdoing. If the Director is of the opinion that the Inquiry Committee has unreasonably cleared the employee, the Director may cancel, change, modify or confirm the decision. The Director may direct the Inquiry Committee to conduct enquiry for taking additional evidence. Therefore, it cannot be said that the Director has no power to interfere with an earlier enquiry. Section 4-A provides such power. But the power must be used by following the conditions given in that section. The Director must form the required opinion that the employee was unreasonably cleared. If enquiry is directed, it must be conducted according to law. The employee who is affected and the Management must be given an opportunity of being heard before an order is passed under clause (a) of sub-section (1). Section 4-A does not give the Management a separate and unlimited power to hold a second enquiry whenever it feels that the result of the first enquiry was not satisfactory. The Management must remain within the powers given by the Act. The special power given to the Director cannot be treated as a general

permission to reopen every completed disciplinary enquiry without considering what had taken place in the first enquiry.

20. In the present case, the School Tribunal examined the first and second charge-sheets. In paragraph 31 of the order under challenge, the Tribunal recorded that, out of the eight charges in the second enquiry, five charges concerned the same girl student. One additional charge concerning alleged misconduct with former teacher Sulakshana Chavan was included. The Tribunal noted that, according to the material before it, the matter relating to that teacher had ended after Respondent No. 1 gave an apology and was warned. The Tribunal observed that Charges Nos. 6 and 7 referred to alleged misconduct with girl students without giving proper details. On considering the finding in paragraph 31, I find that the Tribunal did not decide the matter only by comparing the number of charges. It looked at the actual nature of the charges. The Tribunal found that the main allegations in the second enquiry were almost the same as those in the first enquiry. The Petitioners have not shown from the material before this Court that this finding was incorrect or that the Tribunal misunderstood the nature of the two sets of charges.

21. There is some substance in the Petitioners' submission that the victim girl was suffering from mental trauma during the first enquiry. A person, particularly a minor, may not be able to give a complete statement when suffering from mental distress. It is possible that additional evidence may become available after an enquiry has been completed. Section 4-A recognises that evidence may be needed in certain cases. However, the availability of

additional evidence and the serious nature of the allegations do not automatically make every later enquiry lawful. The important question is whether the additional evidence was taken by following the procedure permitted by law. A enquiry permitted under Section 4-A and a fresh enquiry started to examine almost the same charges again are not the same. This difference must be considered in the present Petition.

22. The Petitioners rely upon the permission which was given by the concerned authority. They say that they approached the authority after considering the condition of the minor girl and the seriousness of the allegations. However, there is a dispute about the existence and availability on record of the letter dated 28 September 2015. The order under challenge refers to directions or correspondence during September 2015, while paragraph 28 of the Tribunal's order refers to another letter dated 26 October 2015. These circumstances must be considered along with the requirement of giving a proper hearing under Section 4-A. In paragraph 28, the School Tribunal recorded that a letter dated 26 October 2015 issued by Respondent No. 4 to Respondent Nos. 1 and 2 stated that the employee should be prevented from making representations to the authority. The Tribunal observed that Respondent No. 4 was not willing to hear the representations of the employee, who had been deprived of the benefit of the order dated 28 August 2015 passed by the same officer.

23. Giving an opportunity of hearing under Section 4-A is not merely a formality. If an order is passed to reopen an earlier enquiry and the employee is affected by it, he must get a fair

chance to place his case before the authority. The seriousness of the allegations does not permit the authority to ignore this requirement. The Petitioners have not placed sufficient material before this Court to show that the Tribunal was wrong in its finding about the manner in which the later directions were issued and the opportunity given to Respondent No. 1. Therefore, the Petitioners' argument that the second enquiry was authorised under Section 4-A must be examined by looking at the procedure followed. Merely because the law gives a power, it does not mean that the power has been used in every case. It must be shown that the authority considered the conditions mentioned in Section 4-A, examined whether evidence was necessary and gave the affected parties an opportunity of being heard. The record considered by the Tribunal does not show that these requirements were followed in a way which can support the later termination order.

24. The next question is whether the principle laid down by the Supreme Court in *K.D. Pandey*, applies to the present case. In that matter, the Supreme Court considered whether another enquiry could be held after the first enquiry had found that the charges were not proved. In paragraph 5, the Supreme Court observed:

> "Indeed this resulted in second inquiry and not in a inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law."

25. The principle in this decision is that a disciplinary authority cannot send a matter for enquiry merely because it disagrees with

the earlier report. There must be a reason for asking for enquiry. Otherwise, an employee may have to face one enquiry after another until a finding against him is obtained.

26. The Petitioners are right in saying that the present matter involves serious allegations of misconduct and that the first enquiry did not prove the main allegations relating to the girl student. They have relied upon the later statements of the victim and additional witnesses. These circumstances make the present case somewhat different from a case where the authority rejects an enquiry report without giving any other reason. However, this difference does not take the Petitioners outside the principle laid down in *K.D. Pandey*. The Tribunal found that almost the same charges were repeated. The Petitioners have not established that the later proceedings were restricted to taking additional evidence through a lawful process under a valid direction issued according to Section 4-A. They have not been able to displace the findings about the manner in which the authority dealt with the representations of Respondent No. 1.

27. In H.C. Narinder Singh, the Supreme Court considered a second disciplinary action based on the same cause of action. In paragraph 4, the Court held:

> "The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was right in law in annulling such an action."

28. This principle must be applied carefully. It is not necessary in the present case to hold that Article 20(2) of the Constitution, which deals with prosecution and punishment for the same offence, applies to departmental proceedings in the same way as it applies to a criminal case. The relevant point is that the Management cannot start a second disciplinary proceeding to impose another punishment for the same cause of action without legal authority.

29. The Petitioners submit that the second enquiry was not a continuation of the first enquiry, but was supported by additional evidence relating to the victim girl. I have considered this argument. If proper enquiry had been ordered under Section 4-A after the Director formed the necessary opinion and followed the prescribed procedure, the fact that some charges were similar to those in the first enquiry would not make the enquiry unlawful. However, the Petitioners must first show that the statutory procedure was followed. Referring to the serious nature of the allegations cannot replace this requirement.

30. In Vijay Shankar Pandey, in paragraphs 25 and 26, the Supreme Court relied upon the Constitution Bench decision in *K.R. Deb v. Collector of Central Excise,* (1971) 2 SCC 102. The relevant portion reproduced in paragraph 25 reads:

> "12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the

disciplinary authority may ask the enquiry officer to record evidence. But there is no provision in Rule 15 *for completely setting aside previous inquiries* on the ground that the report of the inquiring officer or officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence and come to its own conclusion under Rule 9."

31. The Supreme Court held in paragraph 26:

"It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has recognised the possibility of a enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry."

32. These decisions do not mean that enquiry can never be held. In some cases, a defect in the enquiry may make it necessary to take additional evidence or conduct proceedings. But there must be a lawful reason for doing so and the procedure prescribed by law must be followed. The purpose cannot be to obtain a different finding on the same material.

33. In the present case, the Petitioners have explained why they thought another enquiry was necessary. Their explanation cannot be rejected only because the allegations are serious. However, when the first enquiry had been completed, the Management was required to show that the later proceedings were permitted under Section 4-A and were conducted within the limits of that provision. The Tribunal's findings about the similarity of the charges and the circumstances in which the later directions were issued have not

been displaced by the material placed before this Court.

34. The Respondent rely upon the judgment of the Supreme Court in The Secretary, Lucy Sequeira Trust. In paragraph 17, the Supreme Court observed:

> "It is well settled that a departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is different."

35. The Supreme Court held that departmental proceedings concerning serious allegations of sexual harassment must be considered independently of a pending criminal trial. In paragraph 18, while referring to *Apparel Export Promotion Council v. A.K. Chopra,* (1999) 1 SCC 759, the Court emphasised that such cases must be examined with sensitivity and by considering the entire material. Courts should not be influenced by small differences in statements or narrow technical objections. The importance of these observations cannot be disputed. Allegations of misconduct by a teacher towards a minor girl student must be considered seriously. School authorities have a duty to protect students. They cannot ignore credible allegations merely because the criminal case has not yet been completed. However, *Lucy Sequeira Trust* does not say that the Management can ignore the legal procedure required for conducting a disciplinary enquiry. The facts of Lucy *Sequeira Trust* are important. In paragraph 19, the Supreme Court referred to an enquiry in which twelve persons, including five girl students, were examined. The Court found that the Management had acted fairly and openly and upheld the termination. That case concerned

action taken after an enquiry conducted on the material available in that matter. It does not permit another enquiry on the same cause of action without following the requirements of the applicable law.

36. The Respondent has relied upon the judgment of this Court in *Rayat Shikshan Sanstha v. Gajanan Krishna Swami,* Writ Petition No. 6764 of 2018, decided on 14 December 2023*,* reported as 2023:BHC-AS:38284. In that case, the School Tribunal had set aside a termination order mainly because the employee's Defence Nominee had not signed the final part of the enquiry report. In paragraphs 10 and 11 of that judgment, this Court examined the report and found that the Defence Nominee had signed the findings concerning both charges. He had recorded that he disagreed with the other members and thereafter refused to give separate reasons before leaving the meeting. The Court held that the employee could not get relief because his own Defence Nominee had refused to complete that part of the report. In paragraph 12, this Court observed that there was sufficient evidence to prove the charges and that the Tribunal should not have adopted an excessively technical approach. The principle in *Rayat Shikshan Sanstha* is that a Tribunal should not set aside disciplinary action merely because of a technical defect, when the enquiry was otherwise conducted and sufficient evidence supported the charges. But that decision does not remove the requirement that disciplinary action must be taken within the powers given by law. There is a difference between overlooking a small defect in an otherwise valid enquiry and allowing another

enquiry on almost the same charges without showing that Section 4-A was followed.

37. I am therefore unable to accept the Petitioners' argument that the School Tribunal interfered with the termination order only on a technical ground. The Tribunal examined the original charges, the connection between the first and second charge-sheets, the earlier punishment and the later proceedings before the concerned authority. It found that the later enquiry was substantially based on the same cause of action and that the required legal basis for conducting it had not been established. I find that the Petitioners cannot justify the fresh enquiry merely by referring to the earlier conduct of Respondent No. 1. Previous conduct, if relevant and proved according to law, may be considered for a proper purpose. However, an earlier allegation or disciplinary proceeding cannot automatically be used as a reason to reopen charges which have been dealt with. Every proceeding must be supported by the powers given under the Act and the Rules.

38. I have considered the serious nature of the allegations. The evidence said to have been given by the victim girl and the additional witnesses is relevant for deciding whether the allegations were proved in the second enquiry. However, even important and relevant evidence cannot correct the failure to satisfy a mandatory legal requirement governing the power to start or reopen an enquiry. The Court cannot uphold a termination order only because the allegations are serious. It must examine whether the procedure required by law was followed.

39. I am, therefore, of the view that the legal objection raised by Respondent No. 1 must be accepted. Section 4-A cannot be used as an unrestricted power to reopen a disciplinary matter repeatedly. On the facts recorded by the School Tribunal, the second enquiry has not been shown to be a lawful enquiry for taking additional evidence under a valid exercise of power under Section 4-A. Therefore, the termination order dated 21 September 2016, which is based on that enquiry, cannot be upheld.

40. It must be made clear that this finding does not mean that the allegations against Respondent No. 1 were false or that the alleged conduct, if proved, would be acceptable. This Court is deciding whether the disciplinary action challenged in this Writ Petition was legal. The serious nature of the allegations cannot be used as a reason to avoid the requirements of the Act. In the same way, the finding that the second enquiry was not lawfully established does not mean that the alleged conduct of Respondent No. 1 was proper.

41. The next question is about the relief granted by the School Tribunal. The Tribunal directed the Petitioners to reinstate Respondent No. 1 in his earlier post and pay him 75% back wages from the date of termination until he is taken back. In paragraph 37 of the judgment under challenge, the Tribunal considered what should happen to Respondent No. 1 if the fresh enquiry and the termination based on it were found to be illegal. In paragraph 38, it considered the question of back wages. The Tribunal noted that Respondent No. 1 had filed an affidavit stating that he had not been gainfully employed after his termination and that the

Management had not challenged this statement. Back wages have to be decided according to the facts of each case. In this case, the Tribunal considered the period during which Respondent No. 1 remained without employment, his affidavit about not having gainful employment. For these reasons, the Tribunal limited the back wages to 75%. The Petitioners have not shown any sufficient reason for this Court to interfere with that decision.

42. The Writ Petition is dismissed. The judgment and order dated 13 April 2018 passed by the School Tribunal, Mumbai Region, in Appeal No. 27 of 2016 is upheld, subject to the following clarification regarding the relief to be granted to Respondent No. 1.

43. During the pendency of the present Writ Petition, Respondent No. 1 has attained the age of superannuation. Consequently, the direction for reinstatement shall stand modified to the extent that Respondent No. 1 shall be entitled to all consequential service and retiral benefits admissible to him in accordance with law, by treating his service in accordance with the order passed by the School Tribunal. The question of back wages shall be governed by the following directions.

44. Respondent No. 1 shall be entitled to 75% back wages for the period from the date of his termination until the date on which he would have attained the age of superannuation, as directed by the School Tribunal. The liability to pay such back wages shall be determined in the following manner:

(i) If the State Government has not released the grant-in-aid admissible in respect of the post held by Respondent No. 1 for the relevant period, the State Government shall bear the liability to pay the aforesaid back wages.

(ii) If the State Government has released the grant-in-aid admissible in respect of the said post for the relevant period, the Management shall be liable to pay the aforesaid back wages to Respondent No. 1.

45. The concerned authorities and the Management shall calculate and release the admissible retiral and other consequential service benefits of Respondent No. 1, in accordance with law, within a period of twelve weeks from the date of production of an authenticated copy of this judgment. The back wages, as directed above, shall also be calculated and paid within the same period.

46. Rule is discharged in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)