Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8199 OF 2018

SAYALI DEEPAK UPASANI

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Date: 2026.10.22 17:33:18 +0530

1. M/s. Shri Vile Parle Kelavani Mandal,
a society registered under the Societies Registration Act, 1860
2. M/s. Shri Vile Parle Kelavani Mandal's Shri Bhagubai Mafatlal Polytechnic, an Educational Institutions having its Office at Iral Juhu Road, Vile Parle (West),
Mumbai – 400056.
3. The Principal
M/s. Shri Vile Parle Kelavani Mandal's Shri
M/s. Bhagubai Mafatlal Polytechnic, having his Office at Irla Juhu Road, Vile Parle (West),
Mumbai – 400056. **...Petitioners**

Vs.

Arun Raghunath Kadam,
Adult, Mumbai, Indian Inhabitant
residing at Room No. 406, 4th Floor, Govind Paradaise Type – B, Kargil Nagar, Taluka,
Vasai, Dist. Palghar. **... Respondent**

Mr. Girish Godbole, Senior Advocate with Ms. Aishwarya and Ms. Mamorama Mohanty and Ms. Malika Mondal i/b SK Srivastav and Co., for the Petitioner.

Mr. Pramod G. Kathane with Mr. Amol Ghurde, for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 19, 2026.

PRONOUNCED ON : OCTOBER 22, 2026

JUDGMENT:

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the Petitioners challenge the legality and correctness of the Judgment and Order dated 27 April 2018 passed by the School Tribunal, Mumbai, in Appeal No. 20 of 2016.

2. The facts and circumstances which led to the filing of the present writ petition, as stated by the Petitioners, are as follows. On 8 March 1990, Respondent No. 1 was appointed as a Hamal/Sweeper in the Polytechnic section on probation. His appointment was confirmed on 29 March 1990. Thereafter, on 4 January 2007, he was promoted to the post of Junior Clerk. According to the Petitioners, on 12 August 2011 and 1 October 2012, Respondent No. 1 unauthorisedly collected a total amount of Rs. 51,000 from two scrap dealers. Out of this amount, Rs. 31,000 was collected from Nasim Khan and Rs. 20,000 from Irshad Ali. It is alleged that Respondent No. 1 issued two false receipts in the name of the Polytechnic, namely, Receipt No. 279 of 2011 dated 12 August 2011 to Nasim Khan and Receipt No. 40069 dated 1 October 2012 to Irshad Ali. The Petitioners alleged that Respondent No. 1 collected these amounts by falsely assuring the two scrap dealers that the motor machines lying in the Electrical Department of the Polytechnic would be sold to them. The

Petitioners stated that on 29 October 2012, when Respondent No. 1 was allegedly caught red-handed and questioned by the Management, he admitted his guilt by a letter of the same date. A show-cause notice was thereafter issued to him on 2 November 2012. The Petitioners referred to a letter dated 23 April 2012, by which the discontinuance of the earlier proceedings was communicated to Respondent No. 1. He was informed that the show-cause notice and charge-sheet would be withdrawn and that a fresh statement of allegations would be issued to him. The date of this letter, as stated in the record, appears to require verification in view of the subsequent events. On 16 January 2013, a charge-sheet was issued to Respondent No. 1, to which he submitted his reply on 25 February 2013. An enquiry committee was constituted to enquire into the allegations made against him. However, the Petitioners were subsequently advised that the constitution of the enquiry committee was irregular. Acting upon that advice, the Petitioners discontinued the charge-sheet dated 16 January 2013 and treated the two sittings of the domestic enquiry held as non-est, that is, as having no legal effect.

3. Thereafter, a fresh statement of allegations was issued to Respondent No. 1 on 19 December 2013. He submitted his reply to the same on 2 January 2014. On 7 March 2014, he was placed under suspension pending the domestic enquiry. The suspension was subsequently revoked on 15 March 2014. A fresh charge-sheet was issued to him on 7 May 2014. Thereafter, on 12 September 2014, an enquiry committee was constituted in accordance with the provisions of the Maharashtra Employees of Private Schools

(Conditions of Service) Regulation Act, 1977, and the Rules framed thereunder. Upon an objection being raised by Respondent No. 1, the committee was reconstituted with Harit S. Chitale, Imtiaz Ul Haq and Juee A. Hadkar as its members. During the enquiry, Rajan Chavan appeared as the representative of the Management, whereas V. V. Verghese appeared as the Defence Representative of Respondent No. 1. The Petitioners examined Santosh P. Panchal in support of the charges, while Respondent No. 1 examined in defence. On 26 February 2015, two members of the enquiry committee, namely, Harit S. Chitale and Juee A. Hadkar, submitted separate reports finding Respondent No. 1 guilty and recommending termination of his service. However, the third member, Imtiaz Ul Haq, who represented the defence in the enquiry committee, submitted a contrary finding and held Respondent No. 1 not guilty of the charges. The reports submitted by the members of the enquiry committee were forwarded to the Management of the second Petitioner on 15 April 2015. The reports were considered at the meeting of the Management held on 18 April 2015. The Management accepted the majority view holding Respondent No. 1 guilty and decided to terminate his service. Accordingly, on 23 April 2015, the Chief Executive Officer issued an order terminating his service. In the year 2016, Respondent No. 1 challenged the termination order before the School Tribunal, Mumbai, by filing Appeal No. 20 of 2016 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The Petitioners, who were the respondents before the School Tribunal, filed their

written statement opposing the appeal on 26 October 2016.

4. By the impugned Judgment and Order dated 27 April 2018, the School Tribunal held that the enquiry conducted by the Management was not in accordance with the provisions of the MEPS Act and the Rules framed thereunder. The Tribunal accordingly quashed and set aside the termination order. It directed the Petitioners to reinstate Respondent No. 1 in his former post of Junior Clerk and to pay him 75% of the back wages from 24 April 2013. The present writ petition was thereafter admitted on 7 December 2018. Being aggrieved by the decision of the School Tribunal, the Petitioners have approached this Court.

5. Mr. Godbole, learned Senior Advocate appearing for the Petitioners, submitted that the suspension of Respondent No. 1 was revoked on 15 July 2014 and that a fresh charge-sheet had been issued on 7 May 2014. He contended that even if there was any non-compliance with Rule 37-B of the Rules, such non-compliance had not caused any prejudice to Respondent No. 1. In support of this submission, he relied upon the judgment of the Supreme Court in *State Bank of Patiala and Others v. S. K. Sharma, (1996) 3 SCC 364*.

6. Mr. Godbole submitted that the charge against Respondent No. 1 was one of misappropriation. According to him, the Management had produced two receipts issued to the scrap dealers in support of the charge. He relied upon the letter written by Respondent No. 1, which was marked at Exhibit 20. According to the Petitioners, the letter was written in Respondent No. 1's own

handwriting and contained his admission that he had accepted money in connection with scrap material lying in the college premises.

7. Mr. Godbole pointed out that, in the said letter addressed to the Management, Respondent No. 1 had stated that he was required to return the amount received by him. He had stated that the scrap dealers had disclosed the incident to other persons. According to the Petitioners, Respondent No. 1 had accepted responsibility for his conduct, undertaken not to repeat such acts in future and requested the Management to forgive him for the misconduct.

8. Learned Senior Advocate submitted that the School Tribunal rejected this letter only on the ground that it had been obtained by force and coercion. He contended that Respondent No. 1 had not made any specific pleading in his appeal alleging that the Management had used force or coercion when the letter was written or obtained. Therefore, according to him, the Tribunal was not justified in discarding the letter on that ground.

9. Mr. Godbole then invited the Court's attention to the reports submitted by the two members of the enquiry committee who had found Respondent No. 1 guilty. He submitted that both reports were signed on 26 February 2015 and that the findings recorded by those members supported the decision taken by the Management to terminate the service of Respondent No. 1.

10. Learned Senior Advocate referred to the cross-examination of Respondent No. 1. He pointed out that, in response to Question

No. 1, Respondent No. 1 admitted that he had submitted the letter dated 25 February 2013 to the Convener of the enquiry committee. He had admitted that the contents of that letter were true and correct. According to Mr. Godbole, this admission supported the Petitioners' case regarding the correctness of the material relied upon by the Management.

11. Mr. Godbole submitted that Respondent No. 1 had admitted, in response to Question No. 1, that the last two lines of the said letter, stating that he had written the letter on his own, were correct. He invited the Court's attention to other answers given by Respondent No. 1 during cross-examination, in which he had admitted the existence of the receipts issued to the scrap dealers and the letter addressed to the Management accepting the alleged misconduct. On the basis of these admissions, Mr. Godbole contended that the School Tribunal had wrongly re-examined the evidence and applied standards similar to those followed in a criminal trial while deciding whether the misconduct had been proved. According to him, the Tribunal ought to have considered the evidence in the domestic enquiry in accordance with the principles applicable to disciplinary proceedings and ought not to have interfered with the findings recorded by the enquiry committee and accepted by the Management.

12. On the other hand, Mr. Pramod Kathane, learned Advocate appearing for Respondent No. 1, submitted that the first enquiry had been dropped and that the enquiry which ultimately resulted in the termination order was the third enquiry initiated against Respondent No. 1. He contended that, although the earlier two

enquiries had not been completed, repeated initiation of enquiry proceedings had caused delay and prejudice to Respondent No. 1. Learned Advocate submitted that, after the members of the enquiry committee submitted their respective reports, Respondent No. 1 was not given an opportunity to respond to those reports before the Management took its decision. He fairly accepted that there was no specific pleading alleging that the letter at Exhibit 20 had been obtained by force or coercion. However, he submitted that the absence of such a pleading did not resolve the other defects in the enquiry proceedings. Mr. Kathane contended that the enquiry was vitiated by non-compliance with Rule 37(b) of the Rules. He then referred to the cross-examination of the Management witness, who had admitted that scrap material was lying in the college premises. Relying upon this admission, he supported the finding recorded by the School Tribunal in paragraph 31 of its judgment that the scrap material had not been removed from the institution. Learned Advocate relied upon the admission of the Management witness that he did not know who had prepared the receipts marked at Exhibits 17 and 18. The witness had admitted that these receipts were not the counterfoils of the receipts contained in the receipt book produced at Exhibit 21. According to Mr. Kathane, these admissions raised doubts about the authenticity and evidentiary value of the receipts relied upon by the Management.

13. Mr. Kathane, therefore, submitted that the testimony of the Management witness could not be relied upon to establish the charges against Respondent No. 1. He contended that the witness

had no personal knowledge of the material facts relating to the alleged preparation of false receipts or the alleged involvement of Respondent No. 1 in the transaction with the scrap dealers. In the absence of reliable evidence establishing these allegations, he submitted that the School Tribunal had rightly interfered with the termination order and that no ground was made out for this Court to interfere with the impugned Judgment and Order in its writ jurisdiction.

Reasons and Findings

14. The main question which is required to be considered is whether the School Tribunal was right in holding that the domestic enquiry was not held as per the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules made under it. It is required to be seen whether the relief granted by the Tribunal can be allowed to remain as it is.

15. Respondent No. 1 was appointed as a Hamal/Sweeper in the Polytechnic section on probation on 8 March 1990. His appointment was confirmed on 29 March 1990. Thereafter, on 4 January 2007, he was promoted to the post of Junior Clerk. The allegations against him are relating to a transaction with two scrap dealers, namely Nasim Khan and Irshad Ali. According to the Management, Respondent No. 1 took Rs. 31,000 from Nasim Khan and Rs. 20,000 from Irshad Ali, making the total amount of Rs. 51,000. It was alleged that he took this amount by telling them that the motor machines lying in the Electrical Department of the Polytechnic would be sold to them. The Management alleged that

he gave false receipts in the name of the Polytechnic. These receipts were produced during the enquiry and marked as Exhibits 17 and 18. The record shows that a show-cause notice was issued to Respondent No. 1 on 2 November 2012. Thereafter, a charge-sheet was issued on 16 January 2013 and Respondent No. 1 gave his reply on 25 February 2013. The Management later stopped that enquiry because the enquiry committee was not constituted. The proceedings which had taken place were treated as non-est, which means that they were not to be considered as valid proceedings. Thereafter, a fresh statement of allegations was issued on 19 December 2013 and another charge-sheet was issued on 7 May 2014. The enquiry started on 19 July 2014 and ended on 20 November 2014. On 26 February 2015, two members of the enquiry committee, namely Harit S. Chitale and Juee A. Hadkar, separately held Respondent No. 1 guilty and recommended termination of his service. The third member, Imtiaz Ul Haq, did not agree with them and held Respondent No. 1 not guilty. The reports were sent to the Management on 15 April 2015. The Management accepted the view of the majority members and terminated the service of Respondent No. 1 on 23 April 2015.

16. The submissions made by both sides are required to be considered in the light of the procedure which the law has provided for holding disciplinary enquiries against employees of private schools. The question is not only whether the Management had suspicion against Respondent No. 1 or whether some circumstances created suspicion about him. It is necessary to see whether the enquiry was held according to the procedure provided

under the Rules and whether the material on record supports a finding on the charges which can be accepted. It is necessary to consider the alleged defects in following the procedure and whether the School Tribunal was right in interfering with the findings of the enquiry committee.

17. Rule 37 provides the procedure which is required to be followed while holding an enquiry. Rule 37(2)(c) provides that "The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case." Rule 37(2)(d)(ii) provides that "The employee shall have the right to be heard in person and lead evidence. He shall have the right to cross-examine the witnesses examined on behalf of the Management." From these provisions, it is clear that the employee must get a proper opportunity to understand the charges and put forward his defence. This opportunity must be real and effective. Merely because the employee attended the enquiry or was allowed to ask questions to a witness, it cannot be said that the Rules have been followed. The employee must get an actual opportunity to place his defence. Rule 37(4) requires the Convener to forward to the employee "a summary of the proceedings and copies of statements of witnesses, if any," within four days after completion of the prescribed steps. Thereafter, the employee is required to be given seven days to submit his explanation. Under Rule 37(5), the employee has to give that explanation within seven days from the date on which he receives the summary and statements. After this, Rule 37(6) requires the enquiry committee to complete the enquiry and communicate its findings and decision to the Management

"within ten days after the date fixed for receipt of explanation." A copy of the findings and decision is required to be sent to the employee and the concerned Education Officer or Deputy Director. After receiving the decision, the Management is required to issue the necessary order within seven days. The time limits given under Rule 37 form part of the procedure which the Management and the enquiry committee are required to follow. These requirements cannot be ignored only because the Management believes that the employee has committed misconduct. At the same time, every failure to follow a procedural requirement does not automatically make the whole enquiry invalid. It is necessary to see what type of requirement was not followed, why it was provided and what effect its breach has caused. This principle has been explained by the Supreme Court in *State Bank of Patiala and Others*.

18. In paragraph 33(1), the Supreme Court observed that an order of punishment passed in violation of the applicable rules "should not be set aside automatically." The Court or Tribunal has to examine whether the provision which was not followed is substantive or procedural. Paragraph 33(2) makes it clear that a substantive provision must ordinarily be followed and that "the theory of substantial compliance or the test of prejudice would not be applicable in such a case." In paragraph 33(3), the Supreme Court explained that where there is a procedural violation, the Court must ordinarily consider whether the employee suffered prejudice in and effectively defending. The Court recognised that some procedural requirements are of a basic nature and that their violation itself may show prejudice. Paragraph 33(6) states that

the main object of natural justice is "to ensure a fair hearing and to ensure that there is no failure of justice." Therefore, the Petitioners are right to the extent that a small or harmless mistake in procedure does not make the disciplinary enquiry invalid. However, this does not mean that a mandatory procedure given under the Rules can be ignored. The Court must first find out what kind of requirement was not followed and to what extent it was not followed. Only thereafter can it decide whether the test of prejudice applies and whether the breach can be treated as harmless.

19. In the present case, one important defect relates to the manner in which the enquiry committee prepared and sent its findings. The record shows that the enquiry proceedings ended on 20 November 2014. The minutes of that date state that the Management Representative had completed the cross-examination of Respondent No. 1, that no re-examination was asked for and that the witness was discharged. The minutes state that the committee would submit its reports and findings later. The majority reports were dated 26 February 2015 and were sent to the Management on 15 April 2015. Thus, a considerable time passed after the evidence was completed before the reports were sent to the Management. This delay is required to be considered along with the requirements of Rule 37(4), (5) and (6). The material placed before the Court does not show that the summary of the proceedings and the statements of witnesses were sent to Respondent No. 1 in the manner provided by the Rules. It does not show that he was thereafter given the required seven days to

submit his explanation. The record does not explain why the members prepared separate reports instead of submitting one combined report of the enquiry committee. These are important omissions because the Management is relying upon the validity of this very enquiry to support the termination of Respondent No. 1.

20. There is one more difficulty in the matter. Two members of the enquiry committee separately held Respondent No. 1 guilty, whereas the third member separately held him not guilty. The Management accepted the opinion of the majority members. However, the fact that two members agreed with each other does not answer the question whether the reports were prepared and submitted according to the Rules. A majority decision cannot remove a breach of a mandatory procedure which governs the working of the enquiry committee. This issue is covered by the judgment of the Supreme Court in *Vidya Vikas Mandal and Another v. The Education Officer and Another, (2007) 11 SCC 352*, reported in 2007 (2) ALL MR 461 (SC). The Supreme Court considered Rule 37(6) and held that the requirement under that provision was mandatory. It held that reports separately submitted by individual members, instead of one combined report of the three-member committee, were not according to the Rules. The Supreme Court observed that "all the three should submit their combined report whether consenting or otherwise." The Supreme Court set aside the termination order and the orders granting reinstatement and back wages. The Management was directed to constitute a committee under Rule 36(2)(a) to consider the matter afresh. The principle laid down in Vidya Vikas Mandal applies to

the present case. The reports sent to the Management were separate reports and the Management relied upon the two reports which held Respondent No. 1 guilty. The statutory requirement cannot be considered as fulfilled only because two out of three members agreed on the result. Rule 37(6) requires the enquiry committee to communicate its findings and decision. The Supreme Court has made it clear that the committee must submit a combined report, whether all members agree or some members do not agree. Therefore, the findings relied upon by the Management cannot be treated as a valid report prepared according to Rule 37.

21. The Petitioners rely upon *State Bank of Patiala* and submit that Respondent No. 1 has not shown that he suffered any actual prejudice. However, this submission does not remove the defect in the enquiry. The present case is not only about a small mistake in recording the proceedings or a short delay which had no effect on the enquiry. The reports were prepared separately, the majority findings were sent after a considerable period and the record does not establish that the procedure requiring the employee to submit his explanation before the findings were completed was followed. These requirements are safeguards given by the Rules to an employee. Their breach cannot be ignored only because Respondent No. 1 took part in the evidence and cross-examined the witness.

22. The submission of Respondent No. 1 that he was entitled to reply to the completed reports requires some clarification. Rule 37(4) and (5) provide for a explanation after the employee receives the summary of the proceedings and the statements of

witnesses. Rule 37(6) thereafter requires the committee to complete the enquiry and send its findings and decision, including a copy to the employee. The Rules do not provide for a separate second hearing only to answer the findings before the Management takes action. Therefore, the absence of such a second hearing would not be enough to make the proceedings invalid. The main defect in the present case is that the record does not show that the prescribed steps leading to the report were followed. This is apart from the separate reports and the delay in sending them. The fact that two earlier enquiries were discontinued is required to be considered. Respondent No. 1 submitted that the present enquiry was the third enquiry started against him and that the repeated proceedings caused prejudice to him. The record shows that the earlier charge-sheet dated 16 January 2013 was discontinued because the enquiry committee was not constituted. The proceedings which had taken place were treated as non-est. Those proceedings cannot be treated as a valid finding of guilt against Respondent No. 1. At the same time, the fact that those proceedings were discontinued does not prevent the Management from holding a lawful enquiry into the charges, provided the later enquiry follows the Act and Rules. However, the earlier proceedings are relevant while considering the delay and ensuring that the matter is not kept pending without any end. The dates on record show that the fresh charge-sheet was issued on 7 May 2014, whereas the suspension was revoked on 15 July 2014. Therefore, the submission that the fresh charge-sheet was issued after the suspension was revoked is not supported by the dates, because the

charge-sheet was issued first. This inconsistency does not decide whether the enquiry was valid. However, it does not support the Petitioners' submission that the sequence of events necessarily followed the Rules.

23. The next question is whether the School Tribunal was right in holding that the findings of the two members were perverse. The Tribunal considered the evidence of Santosh P. Panchal, the Management witness, and the answers given by Respondent No. 1 during cross-examination. It recorded that the witness did not know who had prepared the receipts marked as Exhibits 17 and 18. He admitted that those receipts were not the counterfoils of the receipts contained in the receipt book produced at Exhibit 21. The original receipts were not produced through him, though he stated that he had seen them. The Tribunal recorded that the scrap material had not been removed from the institution and that the witness did not have personal knowledge about the main part of the charge, namely, that Respondent No. 1 had allegedly received Rs. 51,000 and prepared false receipts. These circumstances were relevant to the charge against Respondent No. 1. The allegation was not only that Respondent No. 1 had met the scrap dealers or that some dispute had taken place regarding the scrap material. The main allegation was that he had taken Rs. 51,000 by falsely telling the dealers that the motor machines would be sold to them and had given false receipts in the name of the Polytechnic. Therefore, evidence showing that he had received the money and was connected with preparing the receipts was important. The fact that the scrap material continued to remain in the institution did

not disprove the charge. However, uncertainty about where the receipts came from, the absence of their original counterfoils and the Management witness not having direct knowledge were circumstances which required proper consideration before holding Respondent No. 1 guilty.

24. The Petitioners rely upon Exhibit 20, the letter dated 29 October 2012, and the cross-examination of Respondent No. 1. The record of cross-examination shows that Respondent No. 1 admitted that the letter was in his handwriting and that he had signed it. He accepted that the contents of its first paragraph were true and correct. He admitted that he had met Nasim Khan and Irshad Ali on 20 October 2012 and had gone with them to meet Panchal. In answer to Question No. 17, he admitted that he was present when the receipt was shown to Panchal. He admitted that he had not made any police complaint alleging that the Management had forced him to write Exhibit 20. These admissions show that Respondent No. 1 knew about the dispute relating to the receipts and was present when a receipt was shown to Panchal. His failure to make a police complaint makes his later claim that the letter was obtained by force less convincing. However, these circumstances do not automatically prove every part of the charge. Respondent No. 1 denied that he had voluntarily accepted the allegations concerning the receipts. He stated that the money had been taken by Farukh, whom he described as the middleman in the scrap transaction. He referred to declarations from Nasim Khan and Irshad Ali, which, according to him, were given after the dispute was settled. Whether these declarations were genuine or

were later obtained to support his defence was required to be considered along with the other evidence.

25. The finding of the School Tribunal that Exhibit 20 was obtained under pressure is required to be examined carefully. There was no specific statement in the appeal that force or pressure had been used when the letter was written. Respondent No. 1 admitted that the letter was in his handwriting and that he had signed it. These facts make it difficult to hold that the letter was obtained by force only from the way its last lines were written or arranged. The absence of a police complaint is a relevant circumstance, though it cannot decide the issue. The proper way was to examine the complete letter, what was written in it, the circumstances in which it was written and the answers given during cross-examination. The whole letter could not be rejected only because Respondent No. 1 later denied that he had written it voluntarily. At the same time, the letter cannot be treated as a complete admission of every allegation in the charge-sheet without seeing what it states. The admitted portion refers to the meeting and the complaint made by the scrap dealers. The answers given by Respondent No. 1 show that he knew about the dispute and had taken the dealers to Panchal. However, his defence was that Farukh had received the money. Whether Exhibit 20 contains an admission that Respondent No. 1 received the entire amount of Rs. 51,000 and prepared the disputed receipts must be decided by reading the actual words of the letter along with the other evidence. Just because the letter is in the employee's handwriting, it does not mean that he has admitted every allegation. In the same way, his

later denial does not make the letter irrelevant.

26. The School Tribunal was justified in examining the weaknesses in the evidence relied upon by the majority members. However, the standard of proof in a domestic enquiry is different from the standard of proof in a criminal trial. The Management was not required to prove the charges beyond reasonable doubt or to produce evidence in exactly the same manner as would be required to prove forgery before a criminal court. The charges could be established on the basis of reliable material which, when considered as a whole, reasonably supported the conclusion that misconduct had taken place. The Tribunal was required to apply this standard while deciding whether the findings of the majority members were supported by the evidence.

27. In the present case, some circumstances support the suspicion of the Management, particularly the letter and the admitted meeting with the scrap dealers. At the same time, there are gaps in proving the exact charge. These include the absence of direct evidence from the two scrap dealers, uncertainty about who prepared the receipts and the lack of a clear connection between the receipts and the actual receipt of money by Respondent No. 1. It would not be proper for this Court, while exercising writ jurisdiction, to record a finding of guilt only because some answers given by Respondent No. 1 make his defence weaker. In the same way, it cannot be held that the charges have been fully disproved only because the third member of the enquiry committee found him not guilty. The evidence and documents must be considered in an enquiry which is conducted according to the statutory

procedure.

28. The Petitioners are right to a limited extent that the School Tribunal could not reject the letter and the admissions only by applying the standard used in a criminal trial. Respondent No. 1 is right in pointing out that there are gaps in the receipts and the evidence of Panchal which require proper consideration. It is not necessary for this Court to hold that every finding given by the School Tribunal on the evidence was correct in all respects. The important point is that the termination was based on findings which were not prepared and communicated according to the mandatory requirements of Rule 37. These defects cannot be corrected only because two members agreed with each other or because Respondent No. 1 participated in cross-examination.

29. The School Tribunal held that no fresh enquiry could be allowed because the Management had conducted an enquiry and had failed to establish the charges. To this extent, its order requires to be changed. In *Vidya Vikas Mandal*, the Supreme Court considered the result of not following Rule 37(6). The Supreme Court did not hold that the employee must be treated as cleared of the charges only because the reports of the enquiry committee were invalid. Instead, it set aside the termination order and the orders granting reinstatement and back wages, and directed the Management to constitute a committee under Rule 36(2)(a) to consider the matter afresh. This decision shows that when the statutory procedure for submitting the enquiry findings has not been followed, a fresh committee may be required to consider the matter according to the Rules.

30. The present case is different from a case where the employer has held a valid enquiry, failed to prove the charge and then seeks another opportunity only to fill up the gaps in the evidence. Here, the main defect relates to the working and reporting process of the enquiry committee and the failure to follow the mandatory requirements for giving the findings. The fact that two earlier enquiries were discontinued is a matter of concern. Therefore, any fresh proceedings must be completed without any unnecessary delay. However, those earlier proceedings were treated as non-est and did not result in a decision on the charges. In view of the decision of the Supreme Court, the matter is required to be considered afresh by a constituted enquiry committee, instead of treating the defective reports as a decision either of guilt or innocence.

31. Any fresh enquiry must remain limited to the charges lawfully framed against Respondent No. 1 concerning the alleged collection of Rs. 51,000 and the disputed receipts. The Management cannot use the fresh proceedings to bring in unrelated allegations or to treat the earlier defective reports as proof of guilt. The new committee must consider the relevant material independently, give both sides the opportunity required under Rule 37, record the proceedings and provide the summary and statements in the manner given by the Rules. It must allow the explanation required under Rule 37(4) and (5), and submit a combined report and decision according to Rule 37(6). The committee must fairly consider the explanation and objections of Respondent No. 1. Its report must give reasons showing how the

evidence supports each material charge.

32. The direction to pay 75% back wages from 24 April 2013 cannot continue. The termination order under challenge was passed on 23 April 2015. The material placed before this Court does not explain why back wages were directed from 24 April 2013, which is nearly two years before the termination order. The School Tribunal could not direct payment of back wages for a period without considering whether Respondent No. 1 had received salary during that period or whether he had otherwise been kept out of service. Further, as the matter is required to be considered afresh according to the mandatory procedure, the question of reinstatement, back wages and other service benefits must depend upon the result of the fresh enquiry and the applicable Rules. Therefore, the direction granting 75% back wages from the date mentioned in the impugned order cannot be maintained.

33. In view of the above discussion, the writ petition deserves to be partly allowed. The finding that the enquiry proceedings and reports did not follow Rule 37 is upheld. The termination order dated 23 April 2015 cannot stand on the basis of reports which were not prepared and communicated according to the mandatory procedure. However, the directions of the School Tribunal granting reinstatement with continuity of service and 75% back wages, and refusing to allow a fresh enquiry, are set aside. The matter shall be considered afresh by a committee constituted according to Rule 36(2)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The enquiry shall be

completed according to Rule 37 within six months from the date on which the committee is constituted.

34. During the fresh enquiry, Respondent No. 1 shall be entitled to subsistence allowance and such treatment in relation to his service as is permitted under the Act and Rules. The Management shall not recover salary paid for the work performed only because the earlier termination order is set aside or the matter is sent back for fresh consideration. The new committee must decide the charges independently. It shall not treat either the earlier majority report or the minority report as binding upon it. Its findings must be based on the material brought on record and the explanation given by Respondent No. 1.

35. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The writ petition is partly allowed.

(ii) The finding of the School Tribunal that the enquiry proceedings were not conducted in accordance with Rule 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, is upheld.

(iii) The termination order dated 23 April 2015 is set aside.

(iv) The directions issued by the School Tribunal for reinstatement with continuity of service and payment of 75% back wages are set aside.

(v) Respondent No.1 shall be reinstated in service as Assistant Teacher, only for the purpose of enabling the disciplinary proceedings to be completed in accordance with law. Such reinstatement shall not be treated as a finding of exoneration from the charges levelled against him.

(vi) The Management shall constitute a fresh Inquiry Committee in accordance with Rule 36(2)(a) of the Rules and complete the enquiry in accordance with Rule 37 within six months from the date of constitution of the Committee.

(vii) The fresh Inquiry Committee shall independently consider the charges and the material on record, after giving Respondent No. 1 a reasonable opportunity to defend in accordance with the Rules.

(viii) The question of consequential service benefits and back wages shall abide by the outcome of the fresh enquiry and the applicable provisions of law.

(ix) There shall be no order as to costs.

(AMIT BORKAR, J.)