

(2016) 08 BOM CK 0114

BOMBAY HIGH COURT

Case No: Writ Petition No.6199 of 2016.

Andheri Education Society,
Through its Secretary, Having
office at S.V. Road, Andheri (W)
Mumbai - 400 058 - Petitioner
@HASH Smt. Sherly Paul Plot
No.2, Hill View Apartment,
Opposite I.I.T. Main Gate, Powai,
Mumbai - 400 076

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 23, 2016

Citation: (2017) 1 ALLMR 841 : (2016) 6 MhLJ 218

Hon'ble Judges: R.D. Dhanuka, J.

Bench: Single Bench

Advocate: Mr. Mihir Desai, Senior Advocate a/w Ms. Bharati Desai a/w Mr. Sariputta Sarnath i/by Mr. Swaraj S. Jadhav, Advocates, for the Petitioners; Ms. Sherly Paul, Advocate, for the Respondent No. 1 in-person present; Mr. A.R. Mektari, AGP, for the Respondent Nos

Final Decision: Dismissed

Judgement

R.D. Dhanuka, J. - By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for a writ of certiorari or any other writ, order or direction in the nature of writ of certiorari for quashing and setting aside the judgment and order dated 16th October 2015 passed by the learned Presiding Officer, School Tribunal, Mumbai thereby allowing the appeal filed by the respondent no.1 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "the said MEPS Act") and setting aside the order of termination dated 14th July 2014. By the said judgment and order, the petitioners are directed to reinstate the respondent no.1 in the petitioner no.2 school on her original post of Headmistress with continuity of service

and back wages from the date of termination till date of reinstatement within three months from the date of the said order. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. Prior to the date of appointment of the respondent no.1 as Headmistress in the petitioner no.2 school, she was serving on the post of Assistant Teacher in a recognised unaided school by name St. Dominic High School, Andheri. In pursuance to an advertisement issued by the petitioner no.2 school for the permanent vacant post of Headmaster, the respondent no.1 applied for the said post. The petitioners appointed the respondent no.1 as Headmistress in the petitioner no.2 school w.e.f. 1st October 2008. It is the case of the respondent no.1 that while in service she had been given appreciation letters for her satisfactory work in the school and was not issued even a single memo or show cause notice.

3. It is the case of the petitioners that from the academic year 2012-13, the petitioners were in process of raising the fees for the school. During one of the meetings between the petitioners and the members of the Parents Teacher Association, some of the members of the said association became violent and verbally abused and physically manhandled some of the teachers of the petitioner no.2 school. It is the case of the petitioners that petitioner no.1 Trust, vide its letter dated 28th September 2011, asked the respondent no.1 to narrate what happened in the said meeting dated 26th September 2011. The respondent no.1 vide her reply dated 11th September 2012 gave evasive answers. It is the case of the petitioners that the academic year 2012-13 concluded with the conclusion of term examination in the month of April 2013. In the middle of April 2013, the respondent no.1 circulated a notice in the school stating that re-test would be conducted for the students of standard IX who had failed to clear the final examination. It is the case of the petitioners that the said notice issued by the respondent no.1 was in violation of Secondary School Code, 1986 and such students were illegally promoted to standard X. On 27th April 2013, the petitioners sought explanation from the respondent no.1 for conducting such examination without prior permission. According to the petitioner, the respondent no.1 never clarified as to why she conducted such re-test and granted promotion to the students from standard IX to standard X despite several reminders.

4. On 18th December 2013, the petitioners received a letter dated 17th December 2013 from the respondent no.1 informing that F.I.R. was registered with D.N. Nagar Police Station against Mr. Yogesh Yadav, one of the Assistant Teachers teaching in the petitioner no.2 school. It is the case of the petitioners that on 21st December 2013, the petitioners received a complaint signed by 37 teachers of the petitioner no.2 school alleging that the said F.I.R. lodged against Mr. Yogesh Yadav was based on false complaint made by the respondent no.1 and alleging that the respondent no.1 had been threatening other teachers with dire consequences if they did not obey her.

5. On 24th December 2013, the petitioners addressed a letter to the respondent no.1 appreciating the steps of the respondent no.1 but asked her as to why she kept the management in dark about such heinous act happening in the school premises. It was the case of the petitioners that on 3rd January 2013, the petitioners once again received a detailed complaint signed by the teaching and non-teaching staff against the alleged arbitrary action and conduct of the respondent no.1 alleging omission of duty on her part.

6. On 27th January 2014, the petitioners issued statement of allegations to the respondent no.1 containing 10 charges. The respondent no.1 filed a reply to the said statement of allegations. The petitioners issued a charge-sheet with the letter of suspension of services of the respondent no.1 on 20th February 2014. The petitioners in its meetings, decided to constitute an inquiry committee against the respondent no.1 as per Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short "the said MEPS Rules"). The said inquiry committee consisted of President of the petitioner no.1 Trust i.e. Smt.Dr.Leena Dalal as a Convener, State Awardee Teacher Shri Ramakant Pandey and nominee of the respondent no.1 Shri V.V. Barge. During the pendency of the said enquiry proceedings, the respondent no.1 herein approached this Court on 1st August 2014 thereby challenging her suspension and also the proceedings of the inquiry committee. By an order dated 1st August 2014 passed by this Court, the respondent no.1 was directed to approach the appropriate forum as the enquiry proceedings were over and her services were terminated.

7. There were 13 meetings held by the Enquiry Committee. Two witnesses were examined by the petitioners. The respondent no.1 entered the witness box. The Enquiry committee submitted a report and tendered various findings against the respondent no.1 holding her guilty of all charges and recommended her termination on 14th July 2014. The petitioners accepted the recommendations made by the Enquiry Committee and terminated the service of the respondent no.1 vide letter dated 14th July 2014.

8. Being aggrieved by the said order of termination issued by the management, the respondent no.1 filed an appeal before the School Tribunal (40 of 2014). The said appeal was resisted by the petitioners by filing a written statement before the School Tribunal. By a Judgment and Order dated 16th October 2015, the School Tribunal allowed the said appeal and set aside the impugned order of termination dated 14th July 2014 and directed the petitioners to reinstate the respondent no.1 in the petitioner no.2 school on her original post of Headmistress with continuity of service and awarded back wages from the date of termination till the date of reinstatement within three months from the date of the said order. The Judgment and Order dated 16th October 2015 passed by the School Tribunal is impugned by the petitioners in this writ petition.

9. Though the present writ petition was adjourned on the ground of the parties negotiating for settlement, the matter could not be settled. This Court has thus heard the learned senior counsel for the petitioners, the respondent no.1 who appeared in-person and learned AGP who appeared for the Education Officer and Deputy Director of Education.

10. Mr. Desai, learned senior counsel appearing for the petitioners invited my attention to the statement of allegations issued by the petitioner no.1 Trust and also the charge-sheet containing 10 charges. He also invited my attention to the statement recorded by the D.N. Nagar Police Station, Mumbai. It is submitted that though the respondent no.1 was aware of the alleged act of sexual harassment by Mr. Yogesh Yadav in the school premises in March 2013, she had filed F.I.R. only in the month of December 2013 without informing the petitioner no.1 and had kept the management in dark since March 2013. He submits that if the respondent no.1 would have informed the petitioner no.1 about such alleged incident immediately, the petitioner no.1 would have taken an early action and would have taken steps to verify the complaint made by the students and helped such victim student through proper counselling by other appropriate methods. He submits that the petitioner no.1 was not against the respondent no.1 for registering the F.I.R. against the said Mr. Yogesh Yadav but had issued a charge-sheet against the respondent no.1 since there was abdication of duties by not informing the petitioner no.1 till December 2013 and for not taking any action against the alleged culprit for such a long time exposing the students for further sexual harassment.

11. It is submitted by the learned senior counsel for the petitioners that the School Tribunal has rendered a finding that as per the provisions of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), the respondent no.1 was commuted from any action against her for filing such F.I.R. The School Tribunal failed to appreciate that the charges against the respondent no.1 were of abdication of duties for not informing the management about entire events of alleged sexual harassment and for not registering the F.I.R. against the alleged culprit.

12. It is submitted by the learned senior counsel for the petitioners that out of 10 charges levelled against the respondent no.1, the petitioners had basically pressed 3 charges i.e. charge nos.(i), (ii) and (iv). The learned senior counsel invited my attention to the affidavit-in-lieu of examination-in-chief filed by the first witness examined by the management i.e. Ms. Lindwin Pinto and her cross-examination conducted by the respondent no.1. It is submitted by the learned senior counsel that the School Tribunal has erroneously disbelieved the evidence of two witnesses examined by the petitioner no.1 on the ground that some of the questions were not replied by those two witnesses on the ground that those questions were not related to what was stated by them in the examination-in-chief.

13. It is submitted by the learned senior counsel that the School Tribunal has totally misconstrued the charge nos.1 to 3 by considering those charges for filing false F.I.R. and erroneously relied upon Sections 21, 21 (2) of the POCSO Act. He submits that those charges were levelled against the respondent no.1 for keeping quite for almost 9 months, despite her knowledge about the alleged offence of sexual harassment of the female students of standard X which was a very grave and serious offence. He submits that the respondent no.1 had acted in contravention of the provisions of the POCSO Act and MEPS Rules. He submits that the petitioners had proved beyond reasonable doubt all three charges and thus the School Tribunal could not have granted any relief in favour of the respondent no.1.

14. Learned senior counsel for the petitioners submits that the respondent no.1 was holding the position of Trust being Headmistress in the petitioner no.2 school, the School Tribunal ought not to have granted relief of reinstatement with continuity of service and at the most could have considered the compensation in lieu of reinstatement.

15. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **O.P. Bhandari v. Indian Tourism Development Corporation Ltd. & Ors., reported in (1986) 4 SCC 337** and in particular paragraphs 7 to 10 thereof. He submits that the School Tribunal could have at most allowed the compensation equivalent to 3.33 years" salary including the allowances as admissible as reasonable amount on the basis of last pay and allowances drawn by the employee in lieu of reinstatement. Reliance is also placed on the judgment of the Supreme Court in the case of **Hindustan Petroleum Corporation Ltd. v. Yeshwant Redkar & Anr., reported in 2004 (5) B.C.R. 325** and in particular paragraphs 30 and 31 thereof.

16. Smt.Paul, respondent no.1 who appeared in-person submits that instead of appreciating the efforts taken by the respondent no.1 in taking the appropriate steps against Mr. Yogesh Yadav by filing F.I.R. and from stopping such heinous crime in the premises of the school and thereby protecting the school girls, the petitioners with malafide intention have issued statement of allegations and charge-sheet containing false allegations. She submits that the entire enquiry proceedings initiated by the petitioners against her were totally mala fide. She submits that the enquiry proceedings conducted by the Enquiry Committee were conducted illegally and unfairly. She placed reliance on various averments made by her in the affidavit-in-reply filed in this writ petition. She also placed reliance on various provisions of the said POCSO Act. She submits that though the petitioners had examined two witnesses to prove the three charges levelled against her, the cross-examination of the first witness Ms. Lindwin Pinto was abruptly discontinued by the management. She submits that both the witnesses examined by the petitioners evaded giving reply to most of the questions in their cross-examination. She submits that the School Tribunal has thus rightly disbelieved the evidence of

such witnesses in the impugned order.

17. It is submitted by the respondent no.1 that she had explained as to why the complaint against Mr. Yogesh Yadav was not filed immediately. It is submitted that though some of the students had approached her in the month of March 2013, those students were frightened and had requested her to keep silence about the sexual harassment meted out because they were terrified about the consequences, both personal and academic, in case such complaint would have been made public. Those students were 14-15 year old girls and were concerned about their reputation and the social consequences. The students had requested her to keep an eye on Mr. Yogesh Yadav. She accordingly kept a check on the safety of the students personally as well as through the Vice Principal and class teachers. She submits that though she had repeatedly requested the petitioners for CCTV footage, the petitioners deliberately ignored the said request made by her. In these circumstances, she waited till December 2013 to file a complaint against Mr. Yogesh Yadav.

18. It is submitted that when the next batch of students were willing to complain against Mr. Yogesh Yadav and came forward with their class teachers, she filed a complaint with the concerned police station. She submits that it was her legal responsibility to report sexual abuse under Sections 21, 21(2) of the POCSO Act and thus in the good faith to protect the best interest of the girl students, she filed a complaint against Mr. Yogesh Yadav with the concerned police station. She submits that the Special Court while granting bail to the said Mr. Yogesh Yadav had noted that there was a *prima facie* case against him. She submits that the petitioners did not lead any evidence regarding any other charges against the respondent no.1 i.e. about her alleged misconduct or other charges.

19. It is submitted by the respondent no.1 that the School Tribunal has passed a detailed judgment and order and has rendered various findings of facts which cannot be interfered with by this Court. She submits that this petition filed by the management is an additional attempt to harass her and thus the same shall be dismissed by this Court.

20. Mr. Desai, learned senior counsel for the petitioners in rejoinder submits that the enquiry was fair and proper and thus the School Tribunal ought not to have interfered with the findings rendered by the Enquiry Committee and with the order of termination passed by the management terminating the services of the respondent no.1. He submits that several complaints were received by the management against misconduct committed by the respondent no.1 and thus action taken by the petitioners of terminating her services was justified.

Reasons And Conclusions:-

21. The management had though issued a charge-sheet containing 10 charges against the respondent no.1, learned senior counsel fairly stated that the petitioners had pressed only three charges before the School Tribunal and accordingly

addressed this Court on those charges namely (i), (ii) and (iv). The charges (i), (ii) and (iv) are extracted as under :-

(i) You filed F.I.R. against Mr. Yogesh Yadav (Assistant Teacher) in D.N. Nagar Police Station without intimating the management and kept the management in the dark about the incidents of sexual harassment for 9 months.

(ii) You refused to produce the proofs and documents about the incidents of sexual harassment this act of yours amounts to gross misconduct.

(iv) You promoted 144 pupils of Std.IX by violating promotion Rules mentioned in S.S.Code, 1986, Rules 27.4 (Annexure-7) in April 2013.

22. There is no dispute that though the petitioners had given a list of 12 witnesses and had proposed to examine 12 witnesses before the Enquiry Committee, the petitioners examined only two witnesses who were cross-examined by the respondent no.1 before the Enquiry Committee.

23. A perusal of the evidence of the first witness of the management i.e. Ms. Lindwin Pinto who was acting Headmistress in the school indicates that she was appointed as an Assistant Teacher in the year 1989 in the petitioner no.2 school and was acting Headmistress while she gave evidence before the Enquiry Committee. Though in her examination-in-chief, she admitted that on 18th December 2013, the police came to the school premises at 12.40 p.m. and arrested Mr. Yogesh Yadav, one of the assistant teacher of the school and till then she did not know anything about the conduct of Mr. Yogesh Yadav and hence was shocked to see the incident, however, in her cross-examination, the said witness refused to answer any questions regarding the conduct of Mr. Yogesh Yadav on the ground that she was not examined by the management on the issue of incidence of Mr. Yogesh Yadav in the school and thus she was not answerable to any questions relating to the said incident regarding Mr. Yogesh Yadav.

24. A perusal of the evidence recorded by the Enquiry Committee of the said witness clearly indicates that the respondent no.1 was not permitted thereafter to cross-examine the said witness on the ground that the respondent no.1 could ask the questions and cross-examine only on the issues regarding which she was examined by the management as a witness. Various rulings were given by the Enquiry Committee in this regard while recording of the evidence of the said witness Ms. Lindwin Pinto. During cross-examination of the said witness, she stressed that she was a witness only about the re-test of standard IX and she would answer the questions only relating to those allegations and nothing else. The Conveyer of the Enquiry Committee made it clear that Ms. Lindwin Pinto should be cross-examined only on the statements given by her in examination-in-chief and if the respondent no.1 wanted to ask anything else, she was at liberty to call the said witness as her witness.

25. The State Awardee Teacher who was a member of the said Enquiry Committee also conveyed that the cross-examination was to be taken only on the statements of the witnesses and not outside such statements. Though the nominee of the respondent no.1 in the Enquiry Committee raised an issue that the respondent no.1 should be allowed to ask any questions about the incidence of Mr. Yogesh Yadav, the Conveyer of the Enquiry Committee disagreed and said that the cross-examination was to be based only on the examination-in-chief. The respondent no.1 was at liberty to produce her witnesses for whatever she wanted to prove. The State Awardee Teacher gave a ruling that the respondent no.1 was at liberty to ask any questions but it had to be within the framework of evidence given by the said first witness of the management i.e. what was stated by her in the examination-in-chief.

26. A perusal of the report submitted by the Enquiry Committee, in so far as the charge no.(i) and charge no.(ii) are concerned, indicates that though the Enquiry Committee found that most of the questions asked to the said first witness of the management were not replied on the ground that such questions could not be asked to her and cross-examination could be restricted to what was stated by her in her examination-in-chief, the said committee considered the evidence of the first witness of the management and totally ignored the evidence led by the respondent no.1 who had submitted a complaint made by 40 students out of 52 students in writing about their feelings and behaviour of Mr. Yogesh Yadav with the girl students.

27. In so far as the second witness examined by the management is concerned, he was in-charge for standard VII and VIII, but was teaching algebra in standard IX and was Supervisor in the petitioner no.2 school. In his examination-in-chief, he deposed that he had come to know about the arrest of Mr. Yogesh Yadav after he was taken away by the police at 12.40 p.m. on 18th December 2013. Though he was a Supervisor in the petitioner no.2 school, he was not aware of incidence of Mr. Yogesh Yadav. His examination-in-chief was also identical to the examination-in-chief of the first witness examined by the management. In his cross-examination, when he was asked the questions about Mr. Yogesh Yadav, the Conveyer of the Enquiry Committee and the State Awardee Teacher once again gave various rulings to the effect that the said witness was also not bound to answer any questions relating to the incidence of Mr. Yogesh Yadav since this examination-in-chief was also not pertaining to this issue. The respondent no.1 was accordingly not allowed to pursue the cross-examination on that issue.

28. A perusal of the report of the Enquiry Committee, in so far as the evidence of the second witness of the management is concerned, clearly indicates that though the said witness in his examination-in-chief had referred to the incidence of arrest of the said Mr. Yogesh Yadav, in the cross-examination, he refused to answer any questions relating to the said incident. Two members of the Enquiry Committee did

not allow the respondent no.1 to pursue the cross-examination on the incidence of Mr. Yogesh Yadav. The Enquiry Committee, however, totally ignored the evidence led by the respondent no.1 and considered the evidence of both the witnesses who had refused to give any answer on the incidence of Mr. Yogesh Yadav though had referred to such incident in their examination-in-chief. The Enquiry Committee has rendered various findings based on such evidence of the two witnesses of the petitioners.

29. A perusal of the impugned order passed by the School Tribunal on charge nos.(i) and (ii) indicates that the School Tribunal had framed four points for determination. In so far as the issue as to whether the constitution of the Enquiry Committee was legal and proper, the School Tribunal has rendered a finding on that issue in affirmative. In so far as the issue as to whether the findings recorded by the Enquiry Committee members were perverse or not, the School Tribunal has answered the said issue in affirmative. The School Tribunal has also answered the issue as to "whether the termination order dated 14th July 2014 was liable to be set aside" in affirmative.

30. The School Tribunal has held that though the management had levelled 10 charges against the respondent no.1, the management had only led evidence on about 2-3 charges and without any evidence either oral or documentary, the Enquiry Committee had given findings on each and every charge in their report.

31. After perusing the entire evidence recorded by the Enquiry Committee, the School Tribunal has held that the Conveyer of the Enquiry Committee had given his opinion during the course of recording the evidence that the first witness examined by the management could be cross-examined only on the statements given in the examination-in-chief and if the respondent no.1 wanted to ask anything else, she was at liberty to call the said witness as her witness and could ask her those questions at that time. The School Tribunal has gone through the entire evidence and has highlighted some of the crucial part of the evidence led by those two witnesses who repeatedly refused to answer the questions asked in the cross-examination by the respondent no.1 contending that they were not answerable to those questions as the same were not related to their examination-in-chief.

32. After considering the evidence of both the witnesses, the School Tribunal was of the view that Ms. Lindwin Pinto, first witness of the management had flatly refused to answer to the questions relating to the charges by stating that these questions were irrelevant to her examination-in-chief. The Conveyer also gave verdict that the respondent no.1 was only permitted to cross-examine the witnesses regarding the statements given in the examination-in-chief and was not allowed to ask the question to the witnesses regarding the charges levelled against her.

33. Similarly in respect of the charge no.(iv), the first witness examined by the management refused to answer the questions relating to the said charge by stating that since such questions were not relating to her examination-in-chief, she was not answerable to those questions.

34. The School Tribunal held that the respondent no.1 was not permitted to ask the questions relating to the charges levelled against her by the management. A perusal of the impugned order passed by the School Tribunal indicates that the School Tribunal has very minutely examined the evidence recorded by the Enquiry Committee and has rendered finding of fact that the none of the witnesses examined by the management replied to the questions asked on the specific charges levelled against the respondent no.1 by the management and thus the charges levelled against the respondent no.1 were not proved. In my view, non-relying the questions relating to charges in the cross-examination by the witnesses examined by the management and rulings given by the Enquiry Committee not to permit the respondent no.1 to ask the questions on relevant charges seriously affected the rights of the respondent no.1 and was in violation of principles of natural justice.

35. In so far as the charge no.(iv) is concerned, the School Tribunal has rendered a finding of fact that both these witnesses were holding the post of Assistant Headmistress and Supervisor respectively in the petitioner no.2 school and were equally responsible for conducting re-examination and promotion of the students of standard IX. The second witness examined by the management admitted in the cross-examination that there was an existence of Government rule relating to the promotion of the students of standard IX.

36. It is held by the School Tribunal that except the charge no. (iv), there was no evidence produced by the management in respect of the re-examination of standard IX. The management had not led any evidence in so far as the charge no.(iv) is concerned. The witnesses examined by the management admitted that there was a Government rule to promote the students to standard IX.

37. In my view, the learned senior counsel could not point out any infirmity in the impugned order passed by the School Tribunal. Learned senior counsel could not convince this Court that the witnesses who were examined by the management could refuse to give answer to the questions in the cross-examination which were relating to the charges levelled against the respondent no.1 or could refuse to those questions simply on the ground that those questions were not relating to the deposition made in their respective examination-in-chief. It is surprising that the management had examined such witnesses to prove serious charges against the respondent no.1 who were not replying to the relevant questions relating to the serious charges on false pretext, obviously to avoid any answer which would assist the case of the respondent no.1. Though the learned Conveyer and the State awardee teacher were not aware of their role, duties and obligations while

conducting an enquiry and had acted totally contrary to the basic principles of law, justice and good conscience and in most irresponsible manner, the management accepted such perverse recommendation of such Enquiry Committee without application of mind and took a drastic action of termination of the services of the respondent no.1.

38. In so far as the judgment of the Supreme Court in the case of O.P. Bhandari v. Indian Tourism Development Corporation Ltd. & Ors. (supra) relied upon by the learned senior counsel for the petitioners is concerned, Supreme Court in the said judgment has held that it was in public interest that the public sector undertakings or their Board of Directors are not compelled and obliged to entrust their management to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the following three-dimensional sense as their common goal i.e. (i) maximum production for the benefit of the community, (ii) social justice for workers, consumers and the people, and (iii) reasonable return on the public funds invested in the undertaking. Supreme Court considered in the facts of that case that the Trade Union of the employees had lodged a strong protest and even held out a threat of strike, in the context of some acts of the employees and such unrest among the workmen was likely to have a prejudicial effect on the working of the undertaking which would *prima facie* be detrimental to the larger National interest, not to speak of detriment to the interest of concerned undertaking.

39. Supreme Court was of the view that the compensation equivalent to 3.33 years" salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the employee would be a reasonable amount to award in lieu of reinstatement. Supreme Court accordingly directed the management to reinstate the employee with full back wages (including usual allowances) or at its option to pay to the employee salary including usual allowances for the period commencing from the date of termination of his service under the impugned order till the date of payment of compensation equivalent to 3.33 years" salary including usual allowances to him, provident fund amount and retirement benefits within three months from the date of the said judgment.

40. Division Bench of this Court in the case of Hindustan Petroleum Corporation Ltd. v. Yeshwant Redkar & Anr. (supra) has adverted to the judgment of the Supreme Court in the case of O.P. Bhandari v. Indian Tourism Development Corporation Ltd. & Ors. (supra) in case of an Acting Deputy Manager working with the public sector company i.e. Hindustan Petroleum Corporation Ltd. and directed the management to pay compensation to the said employee equivalent to 3.33 years" last drawn salary.

41. In my view, none of the aforesaid judgments relied upon by the learned senior counsel for the petitioners in support of the submission that in view of strained

relations between the petitioners and the respondent no.1 and the petitioners having lost faith in the respondent no.1, the School Tribunal could not have granted her reinstatement with continuity of service but ought to have granted compensation as awarded by the Supreme Court equivalent to 3.33 years" last drawn salary are applicable to the facts of this case. Supreme Court had considered the dispute between the employee holding senior managerial post in a public sector undertaking in whom the public sector company had lost faith and there was a threat of strike by the workers if the said employee would have been continued in the employment. In this case, the respondent no.1 had taken steps in lodging the complaint against the Assistant Teacher Mr. Yogesh Yadav whose activities were *prima facie* prejudicial to the interest of the Institution and against the girl students. In my view, instead of appreciating the efforts taken by the respondent no.1 to lodge a complaint against the Assistant Teacher against whom the serious allegations were made by the girl students, the management had taken drastic steps against her and had terminated her services.

42. The School Tribunal has rightly rendered various findings of facts and has rightly set aside the order of termination passed by the petitioner no.1 against the respondent no.1. In my view, the formula suggested by Mr. Desai, learned senior counsel for the petitioners for payment of lump-sum amount of compensation equivalent to 3.33 years" last drawn salary to the respondent no.1 in lieu of reinstatement cannot be made applicable in the facts and circumstances of this case and is rightly not acceptable by the respondent no.1.

43. In my view, the respondent no.1 had satisfactorily explained the delay, if any, in lodging the complaint against Mr. Yogesh Yadav. It was her case that several girl students who were minor had brought to her notice about various incidents of alleged misbehaviour of Mr. Yogesh Yadav with a request not to disclose their names with a view to save their reputation. In these circumstances, in my view, the respondent no.1 could not be held responsible for not lodging the complaint against the said Mr. Yogesh Yadav immediately upon receiving such complaint from the girl students. I am inclined to accept this justification given by the respondent no.1.

44. I am not inclined to accept the submission of the learned senior counsel for the petitioners that the members of the management and other teachers of the school were not aware of the incident having taken place in the premises of the school for last 9 months. In my view, the findings recorded by the School Tribunal are based on the evidence led by the respondent no.1 and has rightly not accepted the evidence led by the management in the circumstances stated aforesaid. Such findings rendered by the School Tribunal are not perverse and thus cannot be interfered with by this Court in the present writ petition under Articles 226 and 227 of the Constitution of India. In my view, the petition is totally devoid of merit and is accordingly dismissed.

45. I therefore pass the following order :-

- (a) Writ Petition No.6199 of 2016 is dismissed. No order as to costs;
- (b) The petitioners are directed to comply with the judgment and order dated 16th October 2015 passed by the School Tribunal within four weeks from today in so far as reinstatement of the respondent no.1 is concerned;
- (c) Office is directed to permit the respondent no.1 to withdraw the balance amount lying deposited by the petitioners within one week from today;
- (d) Parties and office to act on the authenticated copy of this order.